



DM 22-01

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Effective: Immediately

## ENCOURAGING AND FACILITATING PRO BONO LEGAL SERVICES

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**PURPOSE:** Provide guidance to immigration courts and court staff on encouraging and facilitating pro bono legal services for respondents; rescind and cancel Policy Memorandum 21-08

**OWNER:** David L. Neal, Director 

**AUTHORITY:** 8 C.F.R. § 1003.0(b)

**CANCELLATION:** Policy Memorandum 21-08

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### I. Introduction

The Executive Office for Immigration Review (EOIR) recognizes the immense value of legal representation in immigration proceedings, both to the individuals that come before our courts and to the efficiency of our hearings. Competent legal representation better enables persons in proceedings to respond to the charges against them, articulate their circumstances, seek relief, and make informed decisions. Competent legal representation provides the court with a clearer record and can save hearing time through more focused testimony and evidence, which in turn allows the judge to make better-informed and more expeditious rulings.

Pro bono attorneys, authorized legal service providers, and law school clinics perform an invaluable public service by educating otherwise unrepresented individuals, assisting them in the preparation of their cases and providing direct representation. The agency therefore welcomes and encourages pro bono representation, and Immigration Judges and court staff should accommodate and facilitate pro bono representation as much as practicable within the scope described by this Director's Memorandum (DM), as well as in consideration of other agency guidance and applicable law and regulations.

This DM replaces PM 21-08, *Pro Bono Legal Services* (Dec. 10, 2020).

## **II. Definition of “Pro Bono Legal Services”**

Pro bono legal services are defined in 8 C.F.R. § 1003.61(a)(2):

*Pro bono legal services are those uncompensated legal services performed for indigent individuals or the public good without any expectation of either direct or indirect remuneration, including referral fees (other than filing fees or photocopying and mailing expenses), although a representative may be regularly compensated by the firm, organization, or pro bono referral service with which he or she is associated.*

Uncompensated initial consultations or initial court appearances, with the ultimate intention or goal of compensation by the respondent, are contrary to the spirit of pro bono representation. While an attorney or representative may be regularly compensated by an employing firm or organization, representation should be provided solely and honestly for the public good.

## **III. Facilitating Pro Bono Representation**

Each court should create a pro bono committee to represent that court in interactions with outside entities regarding pro bono representation and self-help legal services for respondents. Each pro bono committee should include the Assistant Chief Immigration Judge (ACIJ) and other Immigration Judges, the Court Administrator, and interested court personnel, as appropriate. ACIJs should be supportive of the liaison efforts of their pro bono committee. Further, the Chief Immigration Judge will designate a Regional Deputy Chief Immigration Judge who will be responsible for fostering and coordinating the immigration courts’ efforts to promote pro bono representation.

The ACIJ, together with appropriate committee members, should meet regularly with local pro bono legal service providers to discuss how best to improve the level and quality of pro bono representation and self-help legal services for that court. The purpose of such meetings is to share observations about best practices, develop proposals for facilitating pro bono representation and access to self-help legal services, and collaborate on ideas that foster broader and better representation in the context of that specific court.

On behalf of each court, the ACIJ should encourage and facilitate discussion between Department of Homeland Security and pro bono representatives. ACIJs should also consult with EOIR’s Legal Access Programs (LAP) to strengthen the agency’s legal access efforts and better coordinate the agency’s support of pro bono representation and self-help legal services. ACIJs are also encouraged to consult with one another, individually or collectively, to share best practices, lessons learned, and insights on facilitating pro bono representation. Further, the Office of the Chief Immigration Judge (OCIJ) should periodically compile these best practices, lessons

learned, and insights on facilitating pro bono representation, and transmit this information to EOIR's LAP so that they may benefit from the on-the-ground experiences of local liaison. OCIJ should also apply the experience gained from the committees to develop nationwide initiatives that further the agency's efforts to encourage pro bono representation.

### **A. Training for Pro Bono Counsel**

Pro bono training programs conducted by non-governmental groups are effective ways to increase the available pool of pro bono representatives.

Immigration Judges are strongly encouraged to play an active part in pro bono training programs on immigration courtroom practice and procedure, where appropriate and authorized. When an Immigration Judge is interested in participating in a training program, the Immigration Judge must promptly forward the invitation, and any additional information, to the ACIJ for supervisory authorization, consistent with the agency's guidance on speaking engagements.

### **B. Courtroom Practices**

Although EOIR is committed to completing cases promptly, fairness dictates that Immigration Judges consider the particular needs of pro bono representatives who appear before the immigration courts. Immigration Judges are strongly encouraged to be flexible with pro bono representatives, particularly in the scheduling of hearings and in the setting of filing deadlines.

#### **1. Pro Bono Appearances**

Immigration Judges should ask representatives appearing pro bono to identify themselves as such. A pro bono representative who wants the immigration court to know that a case is being represented pro bono would inform the court by checking the "yes" box on the Form EOIR-28. If the pro bono representation box is checked "yes," court staff must indicate in the case management system that the representative is appearing pro bono. Immigration Judges should also ask representatives choosing to do so to identify themselves orally on the record as appearing pro bono (e.g., "Jane Doe, appearing pro bono on behalf of John Smith").

Immigration Judges are encouraged to grant pro bono representatives' requests to be called first at master calendar hearings, and judges should call all scheduled cases for that representative in succession, when practicable. Upon request, and with the respondent's consent, Immigration Judges are also encouraged to allow a pro bono representative to "second chair" a hearing with a counsel of record (e.g., a mentor, supervising professor, or another pro bono representative). In addition, and with the respondents' consent, Immigration Judges are encouraged to allow pro

bono representatives an opportunity, subject to privacy restrictions, to observe master calendar and individual hearings before they have to appear in court.

## 2. Scheduling of Pro Bono Cases

Immigration Judges should be mindful of the inherent difficulties in the recruitment of pro bono representatives and the burdens that pro bono representatives assume for the benefit of the public good. To facilitate such representation, Immigration Judges are encouraged to give pro bono representatives priority scheduling at master calendar hearings when requested and to consider creating a docket focused on cases with pro bono representatives (i.e., a “pro bono docket”) at a particular time of the week or month to accommodate and foster the participation of pro bono providers. Pro bono organizations often recruit pro bono representatives from private law firms or other organizations. Given that pro bono recruitment can take several weeks or more, new volunteers often accept cases shortly before the next scheduled hearing and subsequently request a continuance of that hearing for preparation purposes. To foster volunteerism for pro bono representation, judges should be understanding and flexible with respect to newly appearing representatives.

With respect to individual hearings, Immigration Judges should be especially cognizant of the unique scheduling needs of law school clinics operating on an academic calendar and of other pro bono programs that require sufficient time to recruit and train representatives. Because such clinics and programs often face special staffing and preparation constraints, Immigration Judges should be flexible and are encouraged to accommodate appropriate requests for a continuance or to advance a hearing date. For law school clinics and pro bono programs that routinely provide representation before a specific court, the ACIJ and the pro bono committee should work together to ensure that the entire court is sensitive to the constraints on these entities.

## 3. Pre-Hearing Statements and Conferences

In the pro bono context, pre-hearing statements can be especially valuable, given the time and resource limitations that often attach to pro bono representation. Immigration Judges should therefore actively and routinely encourage parties to engage in pre-hearing communications, both for the efficiency of the court and for the efficacy of the pro bono representation.

As part of those pre-hearing communications, and pursuant to 8 C.F.R. § 1003.21, Immigration Judges should encourage pre-hearing conferences between the parties to narrow the issues and to prompt the timely submission of evidence. Immigration Judges may also require pre-hearing statements, including stipulations of fact, where appropriate.

#### 4. Appearance by Remote Technology

As discussed above, Immigration Judges should be mindful of the time and resource challenges facing pro bono representatives, as well as the conditions that complicate or discourage pro bono representation (e.g., emergency operational status). Accordingly, Immigration Judges should be flexible when a pro bono representative seeks to appear via remote technology, such as by telephone or through video teleconference.

As respondents are often detained in locations that make the representatives' in-person visits impracticable, remote technology facilitated through the detention facility or the immigration court can be an important means for communication between pro bono representatives and respondents. Where EOIR video teleconferencing is available in conjunction with a scheduled hearing, and the request to use the equipment is reasonable, courts should allow representatives to use that equipment to facilitate such communications. Courts should be careful, however, to ensure that the use of video teleconferencing by representatives does not disrupt essential court operations.

#### **C. Orientation and Self-Help Legal Assistance**

Immigration Judges and court staff are encouraged to support programs providing legal orientation, group rights presentation, and self-help legal services, whether funded by EOIR or non-governmental organizations. These programs can greatly assist local pro bono efforts to disseminate critical legal information, prepare respondents for hearings, help respondents to self-identify eligibility for relief, and identify cases for referral to pro bono representatives. These programs serve a vital role in providing respondents with access to basic legal services, helping respondents to understand the proceedings and thus enhancing the efficiency of court proceedings.

Immigration Judges and court staff can facilitate these types of programs in a variety of ways. Where appropriate, reasonable, and available, the court should allow the use of immigration courtrooms, pro bono rooms, or other suitable court space for pro bono providers to conduct orientation services. If feasible and appropriate, the court can make such space and complementary equipment available for these purposes. The court may also allow time for pro bono providers to give a brief announcement during breaks within a docket (e.g., upon completion of the represented cases but prior to beginning the pro se portion of the docket).

#### **D. Access to Respondent Information**

Upon reasonable request, immigration court records should be made available to pro bono providers, where court resources allow and the sharing of information is not prohibited by law

(e.g., attorney-client privilege, the Freedom of Information Act, the Privacy Act, 8 C.F.R. § 1208.6). Courts should support efforts by pro bono legal service providers to identify potential pro bono cases. With a respondent's properly executed consent for release of records (e.g., Form EOIR-59), courts may share non-classified information with the pro bono legal service provider prior to a formal entry of appearance.

### **E. Self-Help Legal Centers**

Self-Help Legal Centers, located within immigration courts, provide general legal information as well as specific information about the local immigration court to pro se respondents and other interested parties. These centers provide blank forms, such as change of address and fee waiver forms, information on various forms of relief, including asylum and voluntary departure, and answers to frequently asked questions about the immigration courts. These materials increase respondents' understanding of immigration law and removal proceedings. EOIR regularly reviews and updates the materials provided by these centers. All courts hearing non-detained cases will establish Self-Help Legal Centers to make these materials available at the courts.

EOIR's LAP staff welcomes comments and suggestions from Immigration Judges and other court staff on how to improve existing self-help legal materials. However, the supervising ACIJ and the LAP staff must first approve any self-help materials developed by immigration court staff for use at their location.

### **F. Child Respondents**

Given the particular vulnerability of child respondents, Immigration Judges are strongly encouraged to facilitate pro bono representation whenever children are involved. Immigration Judges are reminded to employ the child-friendly practices described in other agency guidance, such as scheduling dedicated juvenile dockets, employing child-sensitive questioning, and allowing the use of a Friend of the Court, among other practices. Many of those practices can and should be applied to any case involving a child, whether unaccompanied, accompanied, non-detained, or in Federal custody.

## **IV. Ethical Considerations**

It is incumbent on every Immigration Judge to facilitate pro bono representation and legal services where appropriate and permissible. In so doing, Immigration Judges must be careful to stay within the bounds of ethics and propriety.

When encouraging pro bono representation, Immigration Judges should be mindful neither to pressure representatives to appear pro bono nor to penalize representatives who do not wish to

handle pro bono cases. Pro bono representation should be voluntary, and representatives should not feel compelled to appear in specific cases. Immigration Judges are required by regulation to distribute the List of Pro Bono Legal Service Providers (“Pro Bono List”). Beyond distribution of the Pro Bono List, Immigration Judges generally should not refer respondents to specific representatives, groups, or organizations, though they may refer respondents to an organization providing services under contract with EOIR.

As issues regarding Department of Justice ethics and agency policy frequently arise in this area, individual Immigration Judges should consult their supervising ACIJ and the EOIR Ethics Office. Such consultations will ensure that new programs and new practices are permissible. Immigration Judges are also encouraged to review their current practices and consult headquarters personnel as appropriate.

## **V. Conclusion**

The best practices listed above are not exhaustive. Immigration Judges and court staff are invited to submit suggestions—both to OCIJ and to EOIR’s LAP—on how to encourage and facilitate pro bono representation and pro bono legal services.

This DM is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or equities, its officers, employees, or agents, or any other person.

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