

## **Summary of OCIJ Procedure for Handling Complaints Concerning Immigration Judges**

The Office of the Chief Immigration Judge (OCIJ) regularly monitors immigration judge (IJ) performance and conduct through the Executive Office for Immigration Review's (EOIR) performance management program, and through OCIJ's daily supervision of the immigration courts. In instances where concerns regarding an immigration judge's conduct arise, OCIJ is committed to ensuring that any allegations are investigated and resolved in a fair and expeditious manner.

### **The Complaint Process**

Judicial misconduct is conduct that may adversely affect the fair, effective, or expeditious administration of the business of the immigration courts. A complaint is information that comes to the attention of the Office of the Chief Immigration Judge suggesting that an immigration judge may have engaged in judicial misconduct.

Complaints concerning IJs may be initiated in one of three ways. *First*, an individual or group may file a formal written complaint with either the Assistant Chief Immigration Judge for Conduct and Professionalism (ACIJ C/P)<sup>1</sup> or the appropriate supervisory Assistant Chief Immigration Judge (ACIJ).<sup>2</sup> If requested, OCIJ will maintain the confidentiality of the complainant's identity when possible; however, for formal written complaints, OCIJ cannot guarantee such confidentiality.

*Second*, other EOIR components (such as the Board of Immigration Appeals), other DOJ components, or other agencies (such as the Department of Homeland Security), may refer information to OCIJ that suggests an IJ may have engaged in judicial misconduct. Referrals from other EOIR components, DOJ components, or other agencies shall not be confidential.

*Third*, information suggesting judicial misconduct may come to the attention of OCIJ through a variety of channels including, but not limited to, news reports or routine reviews of agency and court decisions.

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<sup>1</sup> The contact information for the ACIJ for Conduct and Professionalism is as follows:  
Office of the Chief Immigration Judge  
attn.: IJ Conduct and Professionalism  
5107 Leesburg Pike, Suite 2500  
Falls Church, VA 22041  
EOIR.IJConduct@usdoj.gov.

<sup>2</sup> Please refer to the ACIJ Assignments webpage, <http://www.justice.gov/eoir/sibpages/ACIJAssignments.htm>, for a listing of each immigration court's supervisory ACIJ.

## **How to File a Formal Written Complaint or a Referral**

Any group or individual may file a formal written complaint alleging that an immigration judge engaged in judicial misconduct. The complaint must be sent by email or postal mail to the ACIJ C/P or to the appropriate supervisory ACIJ. Another EOIR component, another DOJ component, or another agency may refer information suggesting that an immigration judge engaged in judicial misconduct.

To qualify as a formal written complaint or a referral from another EOIR component, a communication must include:

1. The name of the immigration judge;
2. A statement describing the alleged judicial misconduct, if a complaint, or an identification of the concerning behavior, if a referral;
3. The time and place of the alleged judicial misconduct or concerning behavior;
4. Any associated A-numbers;
5. Any witnesses to the alleged judicial misconduct or concerning behavior; and
6. Adequate contact information for the complainant, such as name, address, telephone number, and email address or, for a referral, the name of the referring individual and agency.

Complaints or referrals are limited to those involving active immigration judges currently engaged in adjudicating cases in immigration courts.

A complaint or referral is not a means to:

1. Appeal an unfavorable decision;
2. Challenge general misconduct unrelated to an IJ's role as an adjudicator in immigration court;
3. Request that an IJ withdraw from hearing a case;
4. Express disapproval of or disagreement with the outcome of an IJ's decision, unless that outcome reflects alleged judicial misconduct; or
5. Criticize or express political disagreement with established law or policy or an IJ's adherence to such law or policy.

A complaint or referral should not be filed to harass, threaten, intimidate, or retaliate against an IJ.

### **Intake**

Upon receiving a formal written complaint concerning an IJ, OCIJ's Conduct and Professionalism Unit, under the direction of the ACIJ C/P, will conduct an initial assessment to determine whether the allegations, if true, amount to judicial misconduct. If not, the ACIJ C/P will notify the complainant of OCIJ's determination that no judicial misconduct has been alleged and will give the complainant an opportunity to submit additional information. If the complainant submits additional information, the Conduct and Professionalism Unit will reassess

whether the complaint alleges judicial misconduct. If the complainant fails to submit additional information or the additional information, together with the original submission, does not allege judicial misconduct, the Conduct and Professionalism Unit will decline to docket the complaint and will close the matter.

When the ACIJ C/P receives a referral concerning an IJ from another EOIR component, the Conduct and Professionalism Unit will conduct an initial assessment to determine whether the referral suggests judicial misconduct. In conducting this assessment, the Conduct and Professionalism Unit will examine the referral document, any attachments, and any associated electronic records maintained by EOIR. As necessary, the ACIJ C/P may also consult with the supervisory ACIJ and the established point of contact at the other EOIR component in determining whether the referral suggests judicial misconduct. If the referral is determined not to suggest judicial misconduct, it will not be docketed as a complaint and the matter will be closed.

If the formal written complaint, referral, or information received suggests general misconduct that is unrelated to the immigration judge's role as an adjudicator because it does not implicate the adjudication of immigration hearings, or if it concerns issues that do not amount to misconduct but that may be appropriate for management action, it will be handled appropriately outside of this judicial complaint process.

### **Docketing**

If OCIJ's Conduct and Professionalism Unit determines that a formal written complaint, referral, or information received suggests judicial misconduct, it will assign a unique number to the complaint and create an entry for it in OCIJ's complaint tracking database. In the case of a formal written complaint, if the complainant is identifiable, he or she will be notified of the receipt of the complaint.

### **Agency Investigation**

Unless a complainant has requested confidentiality and OCIJ has agreed to that, or notification would compromise an ongoing investigation, the IJ will be notified in a timely fashion that a formal written complaint has been filed concerning him or her, and be given an opportunity to respond. If a complaint is able to be dismissed or concluded without the IJ's input, the IJ will be apprised of the complaint at the same time he or she is notified that it has been resolved.

If the complaint involves in-court conduct, the ACIJ and OCIJ's Conduct and Professionalism Unit will conduct a review of the hearing record, including the audio recordings. For complaints that involve in-court or out-of-court conduct, the supervisory ACIJ and the ACIJ C/P may also solicit statements from the complainant, the IJ, and any witnesses.

For a referral that has been docketed as a complaint, unless notification would compromise an ongoing investigation, the IJ will be notified in a timely fashion that a referral has been filed concerning him or her, will be provided the identity of the individual and agency making the referral, will be provided an identification of the concerning behavior, and will be given an

opportunity to respond. If a referral is able to be dismissed or concluded without the IJ's input and does not involve non-disciplinary corrective action, the IJ will be apprised of the conclusion of the referral but need not be notified of the information above.

If the referral involves in-court conduct, the ACIJ and OCIJ's Conduct and Professionalism Unit will conduct a review of the hearing record, including the audio recordings. For referrals that involve in-court or out-of-court conduct, the supervisory ACIJ and the ACIJ C/P may also solicit statements from the referring individual and/or entity, the IJ, and any witnesses.

The supervisory ACIJ will consult with the ACIJ C/P, the Deputy Chief Immigration Judges (DCIJ), the Chief Immigration Judge (CIJ), and/or the Employee and Labor Relations Unit in EOIR's Office of General Counsel to determine if disciplinary or corrective action is warranted.

If the allegations appear to fall under the jurisdiction of Office of Professional Responsibility (OPR), Office of the Investigator General (OIG), or the Office of the Special Counsel (OSC),<sup>3</sup> the complaint will be referred to those components for further investigation.

### **Action**

#### **Allegations Frivolous, Disproven, Cannot be Substantiated, or Merits-Related**

If the investigating ACIJ and the ACIJ C/P conclude that the complaint or referral is frivolous or that the allegations are unsubstantiated, disproven, or merits-related, the complaint will be dismissed and the immigration judge will be notified.

#### **Intervening Events**

If intervening events, such as the IJ's retirement or resignation, make further action unnecessary, or if corrective action has already been taken on the matter, the complaint or referral will be concluded.

#### **Corrective Action**

If the supervisory ACIJ and the ACIJ C/P conclude that the conduct implicates an issue that may be appropriate for general training of the entire IJ corps, they will consult with the ACIJ for Training and Education (ACIJ T/E). Any such general training will be developed separate and apart from the ongoing complaint process.

If the supervisory ACIJ and the ACIJ C/P determine that non-disciplinary corrective action is appropriate, they may consult with the Employee and Labor Relations Unit to determine the appropriate action. Such action may include, for example, counseling the IJ orally or in writing,

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<sup>3</sup> OPR has jurisdiction over Department attorneys concerning allegation of professional misconduct, which includes IJ judicial misconduct. OIG has jurisdiction over allegations of criminal activity, waste, fraud, abuse, and serious administrative misconduct. OSC has jurisdiction over complaints of prohibited personnel practices in the federal government or Hatch Act violations relating to partisan political activity.

consulting with the ACIJ T/E to arrange for individualized training, and/or initiating a performance-based action, as appropriate.

### Disciplinary Action

If the supervisory ACIJ and the ACIJ C/P conclude that formal disciplinary action is required, they may consult with the Employee and Labor Relations Unit regarding the appropriate action.

### **Dismissal and Conclusion**

When there is an identifiable complainant, he or she will be notified in writing once the matter is closed. Such notification will not violate the privacy rights of the IJ.

To promote transparency and accountability, OCIJ will periodically publish statistics on its website concerning the number and type of complaints received and actions taken. Such publication will be consistent with the Privacy Act, 5 U.S.C. § 552a.