

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

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

### **Intake/Docketing**

Complaints against IJs may be initiated in one of two ways. *First*, an individual or group may file a formal complaint with either the Assistant Chief Immigration Judge for Conduct and Professionalism (ACIJ C/P) or the appropriate supervisory Assistant Chief Immigration Judge (ACIJ).<sup>1</sup> The complaint may be communicated either in writing or orally, and it may be anonymous. A written or oral complaint must contain at least a brief statement describing the IJ's alleged conduct that gave rise to concern.

*Second*, OCIJ may itself become aware of information that suggests an IJ may have engaged in inappropriate conduct. Such information may come to the attention of OCIJ in a variety of circumstances including, but not limited to, news reports, referrals from other components or agencies, such as the Board of Immigration Appeals or Office of Immigration Litigation, or routine reviews of agency and court decisions.

Upon the receipt or identification of a complaint, OCIJ will assign a number to the complaint and create an entry for it in OCIJ's complaint tracking database. When the complaint came from an identifiable complainant who has provided contact information, OCIJ will acknowledge its receipt of the complaint.

### **Office of Professional Responsibility (OPR)/Office of the Inspector General (OIG)**

If the allegations appear to fall under the jurisdiction of either OPR or OIG<sup>2</sup>, the complaint will be referred to those components for further investigation. Before such referral, an ACIJ or the ACIJ C/P may undertake some initial investigation of the complaint and the ACIJ C/P may informally consult with OPR and/or OIG in order to determine whether a referral should be made. Once a matter is referred to OPR and/or OIG, any further OCIJ investigation may be deferred pending the conclusion of the OPR and/or OIG investigation, at which point OPR and/or OIG will report back to EOIR concerning their findings and conclusions.

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<sup>1</sup> Please refer to the [ACIJ assignment web page](#) for a directory of each immigration court's supervisory ACIJ.

<sup>2</sup> OPR has jurisdiction over complaints where there is an appearance or allegation of professional misconduct. OIG has jurisdiction over allegations of criminal conduct or serious waste, fraud or abuse.

## **Agency Investigation**

For matters that fall outside of OPR or OIG jurisdiction, an ACIJ will investigate the complaint. OCIJ may also investigate after receipt of a report from OPR and/or OIG. If the complaint involves in-court conduct, the investigation will usually begin with a review of the hearing record, including the audio recordings. For complaints that involve in-court or out-of-court conduct, the ACIJ may also solicit statements from the complainant, the IJ, and any witnesses. If the investigating ACIJ concludes that the conduct implicates an issue that may be appropriate for general training of the entire IJ corps, he or she 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. Throughout the process, all complaints will be monitored by the ACIJ C/P to ensure proper and expeditious handling and resolution.

## **Action**

The ACIJ and/or ACIJ C/P may consult with the Employee and Labor Relations Unit (E/LR) in EOIR's Office of the General Counsel (OGC), and/or the ACIJ T/E regarding the appropriate action. Appropriate action may include non-disciplinary corrective action or formal discipline.

If the ACIJ determines that non-disciplinary corrective action is appropriate, the ACIJ may, for example, counsel the IJ orally or in writing, consult with the ACIJ T/E to arrange for individualized training, and/or initiate a performance-based action, as appropriate.

Generally disciplinary actions are progressive. Supervisory judges take the least severe action necessary to correct a problem, followed by increasingly severe measures when an IJ fails to correct a problem after a reasonable opportunity to do so. Where the conduct warrants it, serious disciplinary action may be imposed in the first instance. When imposing discipline, the deciding official, who, as noted below is usually the Deputy Chief Immigration Judge (DCIJ), will consider factors noted in *Douglas v. Veteran's Administration*, 5 M.S.P.B. 313 (MSPB 1981), such as, but not limited to, the nature and seriousness of the conduct, the immigration judge's length of service and past disciplinary record, mitigating circumstances, the likelihood of repeat occurrence absent action by the Agency, the impact of the offense on the reputation of the agency, and the consistency of the penalty with similar instances of misconduct.

Disciplinary actions that can be taken by ACIJs include a reprimand, or proposed suspensions without pay of up to 14 days, which are usually reviewed by the DCIJ who then imposes the appropriate discipline. Suspensions of more than 14 days or an IJ's removal from federal service are proposed by the Director, the CIJ or the CIJ's designee, and decided by other Department officials. If an IJ wishes to challenge a disciplinary action, the IJ may either file a grievance under the negotiated grievance procedure or pursue applicable statutory remedies such as filing a written notice of appeal.<sup>3</sup>

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<sup>3</sup> See Articles 8 & 9 of the Labor Agreement between the National Association of Immigration Judges (NAIJ) and USDOJ, EOIR; 5 U.S.C. §7121 (d).

When there is an identifiable complainant, he or she will be notified in writing once action is taken and/or the matter is closed. Such notification will not disclose information that would violate the privacy rights of an IJ.

Consistent with the Privacy Act, OCIJ will publish statistics periodically on its website to advise the public on the types of actions taken and to increase the transparency of the conduct and discipline process.

### **Dismissal and Conclusion**

An ACIJ may dismiss or conclude a complaint, with or without disciplinary action. A complaint may be dismissed for one or more reasons, including the following: the complaint is frivolous; the complaint relates directly to the merits of an IJ's decision; after investigation, the facts alleged were disproven or cannot be substantiated; or the facts alleged, even if true, do not constitute inappropriate conduct (i.e., "failure to state a claim"). A complaint will be concluded if, for example, it is determined that appropriate corrective action has already been taken or that action is unwarranted due to intervening events, such as an IJ's retirement or resignation. If a complaint is dismissed or concluded, the complainant and the IJ will be notified of the disposition, consistent with the Privacy Act.