



OOD
PM 19-14

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To: All of EOIR
From: James R. McHenry III, Director
Date: August 16, 2019

**ALLEGATIONS OF MISCONDUCT BY EOIR ADJUDICATORS
AND *EX PARTE* COMMUNICATIONS**

PURPOSE:	Provides clarity regarding communications with EOIR regarding allegations of adjudicator misconduct.
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	None

The Executive Office for Immigration Review (EOIR) takes seriously allegations of adjudicator misconduct, especially when such allegations concern the integrity of the hearing process.¹ EOIR, therefore, provides a procedure through which government entities or the public, including parties to proceedings, may report allegations of misconduct.² Stakeholders also periodically raise issues of adjudicator conduct directly with EOIR supervisors and management, which may, in turn, be treated as complaints.

To promote the integrity and professionalism of immigration adjudications, including immigration court proceedings, appellate reviews, and administrative hearings, EOIR expects all of its adjudicators, including immigration judges, members of the Board of Immigration Appeals, and administrative law judges, to adhere to the highest standards of ethical conduct and professionalism and to maintain impartiality in order to ensure public confidence regarding proceedings before the agency.

Such conduct includes the general avoidance of *ex parte* communications, defined as contact between an adjudicator presiding over a proceeding and one party to the proceeding during which the opposing part is not present or included. See *Ethics and Professionalism Guide for Immigration*

¹ See Department of Justice, *Summary of EOIR Procedure for Handling Complaints Concerning EOIR Adjudicators* (Oct. 15, 2018), <https://www.justice.gov/eoir/page/file/1100946/download>.

² *Complaints Regarding EOIR Adjudicators*, Department of Justice, <https://www.justice.gov/eoir/complaints-regarding-eoir-adjudicators> (last visited May 3, 2019).

Judges (Guide);³ *Ethics and Professionalism Guide for Members of the Board of Immigration Appeals*;⁴ 5 C.F.R. Parts 2635 and 3801; and 28 C.F.R. Part 45.

The Guide, which closely tracks the Code of Conduct for U.S. Judges Canon 3(A)(4), provides that immigration judges should not initiate, permit, or consider *ex parte* communications concerning a pending matter – generally, *ex parte* communications are prohibited. If an immigration judge inadvertently receives an unauthorized *ex parte* communication bearing on the substance of the matter, the immigration judge should promptly notify the parties of the substance of that communication and provide the parties with an opportunity to respond. If appropriate, the immigration judge may recuse himself or herself from the case.

Notwithstanding this general prohibition, *ex parte* communications may be permissible in limited circumstances, such as administrative, scheduling, or emergency purposes. Those *ex parte* communications are permissible if they do not address substantive matters and the adjudicator reasonably believes that no party will gain procedural, substantive, or tactical advantage from such communications.⁵

Additionally, although allegations of improper conduct by EOIR adjudicators often involve actions that take place in the context of proceedings and, to some extent, may be intertwined with the substance of the proceedings, the raising of an issue of adjudicator conduct by a party or stakeholder or the filing of a misconduct complaint does not constitute an improper *ex parte* communication. Informing a supervisor or manager of an adjudicator’s alleged misconduct or the submission of such allegation to EOIR’s judicial conduct and professionalism unit does not involve contact between one party to a proceeding and the adjudicator immediately overseeing the related proceeding. Moreover, these methods of reporting do not raise the same concerns for the integrity and impartiality of proceedings as do impermissible *ex parte* communications. Rather, they are intrinsic elements of any adjudicator conduct review system and are necessary for EOIR to ensure that all allegations of misconduct by EOIR adjudicators are investigated and, if substantiated, addressed promptly.

EOIR also takes seriously allegations of retaliation by adjudicators against stakeholders or parties who raise issues of possible misconduct through appropriate channels. It is inappropriate for an EOIR adjudicator to retaliate against any party or stakeholder for raising an issue of conduct about that adjudicator through an appropriate channel, including for an EOIR adjudicator to incorrectly label a misconduct allegation as a prohibited *ex parte* communication in order to chill the raising of conduct issues or to harass or intimidate the individual, agency, or organization that made the allegation. EOIR adjudicators who retaliate against stakeholders or parties who raise issues of conduct may face corrective action.

It is equally inappropriate, however, for a party to retaliate against an adjudicator based on disagreement with an adjudicator’s decision in a particular case by filing a baseless complaint.

³ See Department of Justice, *Ethics and Professionalism Guide for Immigration Judges* (Jan. 26, 2011), <https://www.justice.gov/eoir/sibpages/IJConduct/EthicsandProfessionalismGuideforIJs.pdf>.

⁴ See Department of Justice, *Ethics and Professionalism Guide for Members of the Board of Immigration Appeals* (May 4, 2011), <https://www.justice.gov/eoir/page/file/992726/download>.

⁵ Further information regarding *ex parte* communications is available in Section XXXII of the Guide.

EOIR closely scrutinizes formal written complaints or government referrals that attempt to harass, threaten, intimidate, or retaliate against its adjudicators. Coercing or attempting to coerce an adjudicator through a retaliatory complaint or willfully threatening an adjudicator may subject a practitioner to disciplinary sanction. Similarly, coercing or attempting to coerce an adjudicator through a government referral may subject the referrer to corrective action.

EOIR expects both adjudicators and parties to its proceedings to comport themselves with professionalism and integrity. It expects adjudicators to act in a neutral and detached manner, to be faithful to the law and to maintain professional competence in it, and to refrain from giving preferential treatment to any organization or individual when adjudicating cases. It also expects parties and stakeholders to raise legitimate concerns about conduct, rather than simply make *ad hominem* attacks against adjudicators or express disagreement with the outcome of a particular case. Mutual respect and professionalism between adjudicators and parties is essential for ensuring that EOIR continues to fulfill its mission.

This PM 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 entities, its officers, employees, or agents, or any other person.

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