OOD
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Effective: February 13, 2020

To: All of EOIR
From: James R. McHenry III, Director
Date: February 13, 2020

THE IMMIGRATION COURT PRACTICE MANUAL AND ORDERS

PURPOSE:	Clarify the relationship between the Immigration Court Practice Manual and certain classes of orders and the rescission of outdated Operating Policies and Procedures Memoranda
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. §§ 1003.0(b), 1003.9(b), 1003.21(b), 1003.31(c), and 1003.40
CANCELLATION:	Operating Policies and Procedures Memoranda 08-03 and 08-04

In 2006, the Attorney General instructed the Director of the Executive Office for Immigration Review (EOIR), in consultation with the immigration judges, to issue a practice manual for the parties who appear before the immigration courts. EOIR subsequently issued the Immigration Court Practice Manual (ICPM) in 2008 to implement "best practices" nationwide in immigration courts. *See* 8 C.F.R. §§ 1003.0(b) and 1003.9(b) (providing authority for the Director and Chief Immigration Judge (CIJ) to, *inter alia*, issue "operational instructions" and "to otherwise manage the docket of matters to be decided by the immigration judges"). After issuing the ICPM, EOIR further indicated that "local practices which contradict the [ICPM's] provisions are no longer permitted, including local practices expressed through 'standing orders.'" AILA-EOIR Liaison Meeting Agenda Questions and Answers (Oct. 21, 2008) at 8, *available at* https://www.justice.gov/sites/default/files/eoir/legacy/2009/01/29/eoiraila102108.pdf.

It remains EOIR policy that a standing order that contradicts the ICPM or applicable law is improper. Thus, a standing order prohibiting a parent or legal guardian from representing a child in immigration proceedings generally would be improper. ICPM, ch. 2.8 ("If a party is a child, then a parent or legal guardian may represent the child before the Immigration Court, provided the parent or legal guardian clearly informs the Immigration Court of their relationship.").[1]

A standing order that is expressly permitted by the ICPM, however, is not improper. For

[1] The requirements of the ICPM are binding "unless the Immigration Judge directs otherwise in a particular case." ICPM, ch. 1.1(b). Thus, in a particular case, an immigration judge could prohibit a parent or legal guardian from representing the child (*e.g.* a case where there is evidence that the parent or guardian was abusing the child), but such an order would apply only to that case.

example, a standing order requiring the use of written pleadings for represented respondents is fully consistent with the ICPM. *See* ICPM, ch. 4.15(j) ("In lieu of oral pleadings, the Immigration Judge may permit represented parties to file written pleadings, if the party concedes proper service of the Notice to Appear (Form I-862).") and App'x L (Sample Written Pleading).

Further, the ICPM did not supersede any regulatory authority applicable to immigration judges. ICPM, ch. 1.1(c) ("Nothing in this manual shall limit the discretion of Immigration Judges to act in accordance with law and regulation."). Thus, almost by definition, a practice that is authorized by law, including one authorized by regulation, does not—and cannot—contradict the ICPM.

For example, pre-hearing orders[2] are expressly permitted by the ICPM. *Id.*, ch. 4.18(b) ("An Immigration Judge may order the parties to file a pre-hearing statement. . .Parties are encouraged to file a pre-hearing statement even if not ordered to do so by the Immigration Judge." (citation omitted)). But, more importantly, pre-hearing orders are explicitly authorized by regulation:

> The Immigration Judge may order any party to file a pre-hearing statement of position that may include, but is not limited to: A statement of facts to which both parties have stipulated, together with a statement that the parties have communicated in good faith to stipulate to the fullest extent possible; a list of proposed witnesses and what they will establish; a list of exhibits, copies of exhibits to be introduced, and a statement of the reason for their introduction; the estimated time required to present the case; and, a statement of unresolved issues involved in the proceedings.
> 8 C.F.R. § 1003.21(b).[3]

Thus, there is nothing improper or problematic about an immigration judge ordering a party to file a pre-hearing statement summarizing the party's case, including "copies of exhibits to be introduced, and a statement of the reason for their introduction." *Id.*[4] Further, a pre-hearing order is not limited solely to the items listed in the regulation and may properly require the filing of items that may "narrow and reduce the factual and legal issues in advance of an individual calendar hearing." ICPM, ch. 4.18(b)(ii). Moreover, pre-hearing orders that require the filing of applications and set deadlines for filing such applications are well within an immigration judge's authority. 8 C.F.R. § 1003.31(c) ("The Immigration Judge may set and extend time limits for the filing of applications and related documents and responses thereto, if any. If an application or document is not filed within the time set by the Immigration Judge, the

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[2] Pre-hearing orders and orders setting filing deadlines are not standing orders because they vary based on the facts and posture of each individual case even if they happen to use a common order template. Moreover, even if they were standing orders, their regulatory authorization makes them fully consistent with the ICPM.

[3] The regulations do not limit the use of pre-hearing orders to removal proceedings, and immigration judges may utilize them in bond proceedings as well, particularly as eligibility for relief is an appropriate and highly relevant consideration in bond proceedings. *See, e.g., Matter of Andrade*, 19 I&N Dec. 488, 491 (BIA 1987) ("A respondent with a greater likelihood of being granted relief from deportation has a greater motivation to appear for a deportation hearing than one who, based on a criminal record or otherwise, has less potential of being granted such relief.");

[4] Most pre-hearing orders simply summarize the regulatory and ICPM requirements regarding the submission of applications and supporting evidence. The use of such summary pre-hearing orders clearly does not contradict the ICPM and is permitted.

opportunity to file that application or document shall be deemed waived.").

Additionally, the ICPM did not prohibit immigration courts from adopting local operating procedures because such procedures are expressly authorized by regulation. 8 C.F.R. § 1003.40. EOIR has no policy prohibiting the use of local operating procedures adopted pursuant to 8 C.F.R. § 1003.40, and subject to those regulatory requirements being met, including written concurrence by a majority of immigration judges at the relevant court and written approval by the CIJ, an immigration court may establish local operating procedures.

Neither the regulations nor the ICPM prescribes rules for every conceivable situation arising in immigration proceedings, and a standing order that is consistent with the law and not inconsistent with the ICPM—even if it is not expressly addressed by applicable law or the ICPM—may be appropriate in certain instances.[5] Nevertheless, such orders should generally be rare and would be most appropriate for addressing issues of courtroom conduct by the parties.[6]

To ensure transparency, EOIR will make publicly available any local operating procedures adopted pursuant to 8 C.F.R. § 1003.40 as well as any standing orders by individual immigration judges that are not expressly addressed by the regulations or the ICPM.[7] Such procedures and orders will be placed on EOIR's website and incorporated into the ICPM.

Finally, just before the ICPM went into effect on July 1, 2008, EOIR issued an amended Operating Policies and Procedures Memorandum (OPPM) regarding the application of the ICPM to pending cases. OPPM 08-03, *Application of the Immigration Court Practice Manual to Pending Cases* (amended Jun. 20, 2008). As the ICPM has now been in place for over a decade, that OPPM is no longer necessary and is, accordingly, rescinded. Similarly, applicable law, 8 U.S.C. §§ 1225(b)(1)(B)(iii)(III) and 1229a(b)(2) and 8 C.F.R. § 1003.25(c), establishes the parameters for the form of immigration proceedings, and the ICPM does not limit an immigration judge's discretion under the law to grant or deny a motion to appear telephonically by either party. Consequently, OPPM 08-04, *Guidelines for Telephonic Appearances by Attorneys and Representatives at Master Calendar and Bond Redetermination Hearings*, is also no longer necessary and is rescinded.

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. Nothing herein should be construed as mandating a particular outcome in any specific case.

Please contact your supervisor if you have any questions.

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[5] Any proposed standing order not expressly addressed by law or the ICPM remains subject to approval by the CIJ pursuant to the CIJ's authority, *inter alia*, to "[d]irect the conduct of all employees assigned to OCIJ to ensure the efficient disposition of all pending cases." 8 C.F.R. § 1003.9(b)(3).

[6] Although such standing orders may be permissible, to promote uniform treatment of in-court conduct by the parties, immigration judges are encouraged to collaborate and adopt local operating procedures pursuant to 8 C.F.R. § 1003.40 rather than issuing individual standing orders.

[7] Courts should not adopt local operating procedures and immigration judges should not issue standing orders that merely duplicate provisions of a statute, regulation, or the ICPM or that merely require parties to adhere to the ICPM.