

AILA NorCal/San Francisco EOIR Liaison Questions for April 8, 2010 Meeting

1. SF EOIR Judges are setting hearings over longer periods of time, or much further in the future. Can the Court update us on whether the 18 month case completion deadline has been extended or changed? If so, what are the new case completion deadlines?

This is a question that is best addressed through the national AILA/EOIR liaison meeting.

2. Under the Volunteer Immigration Program (VIP) of the Bar Association of San Francisco, respondents are typically not referred to the program for screening until after their second master calendar hearing. At present, Judges are granting much longer continuances to unrepresented respondents at the initial master hearing, but are less inclined to grant a further continuance at the second master hearing. This is affecting referrals and screening of cases to the VIP program. Generally, are there any exceptions for granting of continuances for cases that are being referred to VIP at the second master?

Immigration Judges adjudicate motions for a continuance on a case-by-case. There are no exceptions for motions to continue made in cases that are referred to the VIP. However, EOIR believes it is important to encourage pro bono representation. See, for example, Operating Policies and Procedures Memorandum 08-01: Guidelines for Facilitating Pro Bono Legal Services, which “provides guidance on how immigration courts and court administrators can encourage and facilitate pro bono legal services for respondents.” The ACIJ for San Francisco will therefore raise this as an item for discussion among the judges in the San Francisco Immigration Court.

3. What is currently happening with the docket for Judge DiCostanzo? Is there any set schedule for the transferring of his cases to another Judge at this time?

Approximately 300 cases from Judge DiCostanzo’s docket have already been transferred to Judge Griswold’s docket. From this point forward, Judge DiCostanzo will only be hearing continued cases that he started and which have had extensive testimony. This case transfer process from Judge DiCostanzo to Judge Griswold is largely complete, although there still may be some cases that will be transferred in the coming months. For all Judge DiCostanzo cases transferred to Judge Griswold, a new hearing notice has been sent along with an advisal to the parties of Judge Griswold’s expectations on case preparation.

4. What is the SF EOIR general policy for dealing with motions to reopen at the IJ level for an approved U visa holder, for example to seek adjustment of status, where OCC refuses to join

in or opposes the motion? In this situation, do Judges consider granting the motion to reopen under their sua sponte authority?

The San Francisco Immigration Court does not have a policy for dealing with motions to reopen for an approved U visa holder. This is a case-by-case determination to be made by the individual judge.

5. Generally, are Judges reviewing U visa eligibility with unrepresented respondents?

If a judge is given information that an unrepresented respondent was the victim of a crime while in the United States, the determination regarding how to proceed is made by the judge on a case-by-case basis.

6. One AILA NorCal member observed a court clerk allowing a USCIS supervisor to add a signature to an unsigned proof of service on a Notice to Appear (NTA) that had been filed with the Court on an earlier date. The member did speak to the clerk in question, as well as to the clerk's supervisor, the Deputy Court Administrator, who reminded the clerk that this is not proper. However, this member believes this may have also happened in at least two other cases since the respondents in those cases were served NTA's with unsigned proofs of service, but the Court file had NTA's with signed proofs of service. Has the Court determined whether USCIS has been allowed to amend filed charging documents ex parte on other occasions? If so, are respondents, and their counsel if represented, being notified of these amendments? If this is occurring, what is the Court doing to correct it?

The court believes the incident in question was an isolated one; it has been fully addressed with the staff member in question. If AILA believes this is an ongoing issue, then specific examples, including A-numbers, should be brought to the attention of the San Francisco ACIJ.

7. According to the Immigration Court Practice Manual, oral or written pleadings at a master calendar hearing are permitted. However, there are some SF EOIR Judges requiring written pleadings only. Can the Court clarify the procedure for taking pleadings at a master calendar hearing? If some Judges are requiring written pleadings, yet others are not, doesn't this create the inconsistency that the Practice Manual sought to do away with?

The use of written pleadings is not contrary to the Immigration Court Practice Manual. See Chapter 4.15(j). Furthermore, it is within the Immigration Judge's discretion to decide when written pleadings must be filed. See Chapter 1.1(c).

8. The mobility of attorneys in court is somewhat hampered by the current recording system whereby an attorney is tied by the need to speak directly into the microphone at counsel's table at all times. The flow of cases is also sometimes interrupted by the IJs who must repeatedly remind attorneys to speak into the microphone as they move from counsel table to

the bench and to the witness stand. Are distribution of wireless microphones possible or could the volume of the microphones be turned up to facilitate the in-court mobility of attorneys?

The DAR system uses directional microphones. These microphones only capture voices spoken directly into them. The volume cannot be turned up to record the voices of individuals who are moving around the courtroom. Thus it is necessary to speak directly into the microphone at counsel's table at all times when speaking. A similar question was raised in the July 16, 2009, AILA-San Francisco liaison questions. Those questions and the court's responses are available on the San Francisco Immigration Court's website. At this time, EOIR is not considering making wireless microphones available in the courtroom. However, even with the limitation on microphone range, the DAR system is far superior to the audio cassette system it replaced. Parties will become accustomed to remaining in front of the microphones as they continue to use DAR.

9. Currently, attorneys representing clients at SF EOIR are required to complete security screening each time they enter the Court, even if they have already been screened on one floor. The process is very time consuming. Is there any possibility of developing a pre-screening process for attorneys that could either shorten or eliminate the security check each time an attorney enters the court? Is there any way that private attorneys can be screened on a fast-track basis?

The EOIR Office of Security requires that all visitors be screened any time they enter EOIR public space, even if they have already been screened on another floor. There currently are no plans to create some type of pre-screening process or fast-track screening process for private attorneys. For additional information regarding security screenings, see Chapter 4.14 (Access to Court) of the Immigration Court Practice Manual.

10. Is there any possibility of developing an electronic court filing system, similar to technologies used by the US District Courts and Ninth Circuit Court of Appeals, for SF EOIR in the future? This would greatly facilitate representation by attorneys whose offices are not within the immediate area of the Court.

This question is best addressed to the national AILA-EOIR liaison committee. A similar question was raised in the October 21, 2008, AILA-EOIR liaison questions. Those questions and EOIR's responses are available on EOIR's website.

11. If a hearing (master or individual) is cancelled because the Immigration Judge is unavailable for some reason, currently notice is posted on the door of the Courtroom the day of the hearing. Is there any way to notify attorneys scheduled to appear with more advance notice of the cancellation? One member notes that attorneys sometimes drive from long distances to appear at the Court, only to find that the hearing has been cancelled.

Parties are called and notified of a cancellation as soon as the court is aware of it. In the vast majority of cases, however, the judge is not present because he or she called in sick the day of hearing. The judge's legal assistant will then try to call the attorneys, but it is often too late to reach them prior to departure from their office, especially for the morning cases.