

**AILA NORCAL EOIR LIAISON QUESTIONS  
FOR JANUARY 25, 2011**

1. In *Dent v. Holder*, the Ninth Circuit found that the government had a duty to provide a respondent access to his A-file, i.e. that because respondent was not provided with a copy of crucial documents in his A-file (without a written request under FOIA), he was denied an opportunity to fully and fairly litigate his case. Does SF EOIR have a general policy, or has it instituted any guidance to Immigration Judges on how to procedurally deal with requests made by a respondent for a copy of his A-file?
  - a. For example, if a respondent requests a copy of his A-file from the Office of Chief Counsel (OCC) at the initial master, are Judges instructing OCC to produce a copy and/or continuing the case to another master to permit production before pleadings are required?

**The San Francisco Immigration Court does not have a general policy and has not issued guidance to the Immigration Judges regarding this matter.**

2. The NBC has been denying I-765 applications that are based on an I-485 renewal before EOIR after a USCIS denial of the I-485. In November, AILA NorCal asked USCIS for guidance on what an attorney/applicant should do to prevent the denial of I-765 in this situation. Rob Cowan, acting District Director and Director for NBC recommended that the attorney/applicant file the renewed I-485 with the Texas Service Center so that such evidence can be filed along with the I-765 application. However, many judges have been adjudicating renewed I-485 applications with just an updating of the applicant's fingerprints (not requiring filing the application with TSC as no new fee is required). Can EOIR provide any guidance on the appropriate procedure in this situation?
  - a. Not all Judges issue a hearing notice indicating that the I-485 is on file with the Court when the I-485 is being renewed - Can this practice be standardized among SF EOIR Judges so that a copy of the hearing notice can be submitted with the I-765 application?

**This question raises issues that are best addressed on a case-by-case basis and therefore should be raised with the Immigration Judge in a particular case. The ACIJ for San Francisco will raise this issue as an item for discussion among the Immigration Judges in the San Francisco Immigration Court.**

3. Where removal proceedings are terminated so the respondent can pursue adjustment of status (AOS) directly with USCIS, CIS is requiring the original medical examination and application forms previously filed with the Court. What is the procedure for obtaining the originals from EOIR in this situation?
  - a. Alternatively, where it is anticipated that removal proceedings will be terminated to pursue AOS with USCIS, is it possible to submit copies, rather than originals, especially of the medical examination?

**When the attorney of record signs the government prepared joint motion requesting termination of proceedings, the attorney should submit copies of each and every form, document, medical, etc. pertaining to AOS the court has in its file. It would be helpful if the attorney would attach a cover sheet specifically listing each original item the attorney wants USCIS to receive. That should help ensure that all the necessary originals are extracted from the respondent's file and forwarded. These documents will be transmitted to ICE to the attention of Attorney Joe Park who will give them to USCIS when the respondent's file is transferred there for further adjudication. If the medical results have been opened and reviewed by the judge, the judge will initial and date the results to verify that the medical examination was opened by a proper authority before it is sent through ICE to USCIS.**

**Alternatively, where it is anticipated that removal proceedings will be terminated to pursue AOS with USCIS, it is acceptable to submit copies, rather than originals, of the adjustment package and supporting documentation to the court.**

4. In August 2010, AILA NorCal asked if EOIR had a general policy or established procedure for dealing with issues of competency and mentally disabled respondents in proceedings. The Court pointed to a new section in the IJ Benchbook on Mental Health Issues and various trainings. Some members have expressed continued concern about the lack of established procedure for dealing with issues of incompetence in removal proceedings. Are there any new developments in this area that EOIR can share with AILA NorCal members?

**A similar question was raised in the November 18, 2010, National AILA-EOIR Agenda Questions and Answers, which is available on EOIR's website at [http://www.justice.gov/eoir/statspub/EOIR\\_AILA\\_Final%20Agenda-Fall%202010.pdf](http://www.justice.gov/eoir/statspub/EOIR_AILA_Final%20Agenda-Fall%202010.pdf). Please see the response to question (C) (3) in Section I of that agenda.**

5. Recently, EOIR advised that recordings were taking 5-7 days to upload to the EOIR database, delaying the Court's ability to provide attorneys with CD Copies following a hearing. Does the Court have any update that it can provide AILA NorCal members?

**EOIR is exploring system improvements to ensure that hearing recordings are available as quickly as possible.**

- b. What is the best procedure for an attorney who requires access to the hearing recording immediately, i.e. a continued hearing is rescheduled within a week?

**See Chapters 1.6(c) (Records) of the Immigration Court Practice Manual for the procedure for obtaining a copy of a hearing recording.**

6. Do the Immigration Judges have different limits on the number of cases that they can hear in a master calendar hearing?

**There are no prescribed limits to the number of cases set to any Immigration Judge's master calendar. Immigration Judge agendas essentially set the maximum number of new cases each judge receives per week. However, each Immigration Judge manages the number of master calendar reset cases set to any given master calendar.**

- a. If so, how is that number determined?

**See the response to question 6, above.**

- b. Is there a difference between non-detained and detained master calendar dockets in terms of how many cases can be heard?

**Yes. Due to the nature of detained cases, the master calendar hearings tend to take longer, so fewer cases are scheduled in comparison to the master calendar hearings at Montgomery Street.**

What is the current, average timeline from receipt of an NTA to the scheduling of the first master calendar hearing in a non-detained case?

**EOIR does not provide average timelines for scheduling immigration court hearings. However, statistical information relating to immigration court proceedings is available in EOIR's Statistical Year Book, which is available on EOIR's website at <http://www.justice.gov/eoir/statspub/syb2000main.htm>.**

- c. Detained respondents are typically told that they will have their first hearing within 10 days – but members report that it is taking much longer – what is the current timeline from receipt of the NTA to the first master hearing for detained cases?

**EOIR does not provide timelines for scheduling immigration court hearings. The Court's detained docket has grown dramatically in the past year, which led to Judge DiCostanzo's transfer to Sansome Street. The Court has also added additional detained master calendar dockets and is using all available Court space at Sansome Street to dedicate time to the detained caseload. In addition, the three Immigration Judges at Sansome Street are adding additional initial master calendar cases to their current master calendar dockets.**

7. How is the Differentiated Caseload Management (DCM) pilot program, with Judges Hayward, Griswold, Geisse and Maggard, going?

**The DCM pilot program is running smoothly. As the program is only one month old, we have not yet made any determination regarding whether the DCM program is more efficient than the traditional structure. The court does not plan on making any determination as to the program's effectiveness until several more months have elapsed.**

- a.** How many cases are currently part of the pilot program?

**Approximately 1,950.**

- b.** Are only new cases being assigned to these judges to participate in the pilot program?

**No. The cases participating in the pilot program are a combination of new cases and pre-pilot cases that were previously set to a master calendar on either Judge Maggard's, Judge Geisse's, or Judge Griswold's docket before Judge Hayward took over all four master calendar sessions.**

- i.** If an existing case is assigned for a master calendar hearing to one of the merits hearing Judges, will it be reassigned to Judge Hayward?

**Yes, any case that was on a master calendar with Judge Griswold is now set to Judge Hayward on a Tuesday afternoon; Judge Geisse's masters are now set to Judge Hayward on Wednesday morning; Judge Maggard's masters are now set to Judge Hayward on Thursday afternoon.**

- c.** How are cases divided up among the other three (3) judges after Judge Hayward adjudicates preliminary issues and completes the master?

**Once Judge Hayward has determined the case is ready for a merits hearing, all Tuesday afternoon masters with Judge Hayward are set to individuals on Judge Griswold's docket; Wednesday *morning* cases are set to Judge Geisse's docket; Thursday afternoon cases are set to Judge Maggard's docket. The Wednesday *afternoon* masters (once ready for individual hearing) are set on a weekly rotation between the three individual merits hearing judges.**

- i.** Is there any way to tell to which Judge the case will be assigned for the merits before the actual scheduling occurs?

**Yes, per the response in question 8.c., above, with the exception of cases set to a Wednesday afternoon master. Judge Hayward will tell the parties at the time a merits hearing date is chosen to which merits hearing judge the hearing is being set.**

- d. Are there any plans to expand the program to other Judges?

**Not at the present time. The Court needs to determine the effectiveness of the pilot program before considering whether to expand it to other Immigration Judges.**

- e. Are there any more details or updates on the DCM pilot program that EOIR can share?

8. Have all of Judge King's cases scheduled during her absence (November 2010 – April 2011) been reset to other Judges?

**No. Some of the expedited asylum cases previously set in November and December 2010 were transferred to other judges. Other have been scheduled to be heard via Tele-Video (VTC) beginning on February 2, 2011 from 10am-2pm, and others will be reset to the end of Judge King's docket.**

- a. Should questions regarding the rescheduling of Judge King's docket be directed to Alice Gumaru, Judge King's legal assistant?

**Yes. Alice Gumaru's direct phone number is 415.315.4645.**

9. After the transfer of Judge Daw, and the addition of two new Immigration Judges to SF EOIR, is the Court at its capacity for Judges?

**Yes. The Court does not currently anticipate the addition of any additional Immigration Judges.**

- a. If not, does EOIR expect to have any more Judges assigned/transferred to San Francisco this year?

10. Is there a preferred, established procedure for a private attorney to report DHS attorney misconduct to EOIR? Additionally, if the alleged misconduct affects a particular, active case, is there a procedure to have the DHS attorney removed from the case?

**Concerns about the conduct of DHS attorneys are best addressed with the DHS Office of the Chief Counsel where the Immigration Court is located. See Chapter 10.3(c) (DHS attorneys) of Immigration Court Practice Manual.**