



U. S. Department of Justice

Executive Office for Immigration Review

Office of the Director

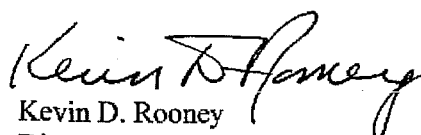
Director

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MEMORANDUM TO ALL EOIR EMPLOYEES

FROM:


Kevin D. Rooney
Director

SUBJECT:

The Attorney General's Directives

As I noted in my recent e-mail to you announcing my retirement from Federal service, this has been quite a year for all of us at EOIR. In particular, in August of last year we were charged with implementing the Attorney General's measures to improve the Immigration Courts and the Board of Immigration Appeals. I am proud to say that you not only accepted this challenge, you embraced it. Although there is important work still to be done, we have made substantial progress in ensuring that the Courts and the Board remain the nation's premier administrative tribunals.

As you can see from the attached document, of the 22 measures announced by the Attorney General, nine have been fully implemented. These include:

- Implementing a system to evaluate the performance of newly appointed immigration judges and Board members,
- Requiring all newly appointed immigration judges and Board members to pass a written exam prior to adjudicating cases,
- Improving training for new appointees and developing a continuing education program for veteran immigration judges and Board members,
- Developing a training program to strengthen the ability of Board staff attorneys to perform their screening and drafting duties,
- Creating a more systematic way for Board members and Office of Immigration Litigation attorneys to report conduct, professionalism or quality concerns raised by particular Board or immigration judge decisions that they encounter in the course of their responsibilities,
- Reviewing concerns raised regarding disparities in asylum grant rates and putting in place

- measures designed to assist in addressing them,
- Creating the position of Assistant Chief Immigration Judge for Conduct and Professionalism to monitor and review all allegations of misconduct against immigration judges,
 - Improving transcription services, and
 - Developing a process for referring complaints about immigration fraud and abuse.

An additional four measures are on the cusp of being implemented. These include assigning Assistant Chief Immigration Judges to six regional offices (four of the six already have been assigned), increasing the size of the Board (in December the Department published an interim rule expanding the Board to 15 members), issuing a Code of Judicial Conduct (a draft soon will be released for comment), and expanding EOIR pro bono programs (the program already has doubled in size from six to twelve sites, and the pro bono committee is in the process of analyzing additional proposals).

Other measures are well underway but with additional implementation expected later this year. For instance, the implementation of performance appraisals for immigration judges and Board members is targeted for the July 2007 - June 2008 rating period (subject to statutory bargaining obligations), digital audio recording is scheduled for a pilot deployment in the Fall of 2007, and the senior OCIJ attorney compiling the practice manual, as well as the committee working on the revised immigration judge benchbook, remain on target for the timely completion of their assignments in the coming months.

And finally, the remaining measures are going through the rule-making process. These include rules pertaining to improving the streamlining reforms, implementing sanction authority for immigration judges, expanding the bases for attorney discipline, and enhancing the sanction authority of the Board.

All of the measures that have not yet been fully put into place are on track for timely implementation.

It is because of your hard work and dedication that we have been able to respond to the Attorney General so quickly and so well. I want to thank you for all your efforts, and congratulate you for a job well done.

Attachment

Implementation of the Attorney General's Measures to Improve the Immigration Courts and the Board of Immigration Appeals

Directive #1 - Performance Evaluations

Objective: Institute performance appraisals for immigration judges and Board members.

Key Points: Performance evaluations for immigration judges and Board members will be conducted on an annual basis; the three levels of performance will be *Satisfactory*, *Improvement Needed*, and *Unsatisfactory*; any ratings below *Satisfactory* will trigger appropriate remedial measures.

Status: Implementation is targeted for the July 2007 - June 2008 rating period, subject to satisfying statutory bargaining obligations.

Directive #2 - Evaluation During Trial Period

Objective: Implement a system to evaluate the performance of newly appointed immigration judges and Board members during their trial period of employment, and take steps to improve that performance if necessary.

Key Points: At regular intervals, newly appointed immigration judges and Board members will be assessed to determine their suitability for retention; if at any time during their trial period of employment new appointees are not performing adequately, remedial action will be taken or employment will be terminated; if a new appointee's performance has been suitable, a final certificate of suitability will be issued at the end of the appointee's probationary period.

Status: Implemented.

Directive #3 - Immigration Law Exam

Objective: Require all newly appointed immigration judges and Board members to pass a written exam demonstrating familiarity with key principles of immigration law before they begin adjudicating cases.

Key Points: The exam for newly appointed immigration judges will be incorporated into the training program at the National Judicial College; in order to successfully complete their training, new immigration judges will be required to pass not only this exam but also mock-hearing and oral-decision exercises; newly appointed Board members will engage in independent study under the tutelage of a mentor prior to taking their exam.

Status: Implemented. (The exam requirement pertains only to immigration judges and Board members appointed after December 31, 2006.)

Directive #4 - Improved Training for Immigration Judges and Board Members

Objective: Improve the training for new appointees, and develop a continuing education program for veteran immigration judges and Board members regarding current developments in the field of immigration law.

Key Points: The training program for new immigration judges has been extended by two weeks; the next training conference for immigration judges, as well as the one for Board members, will focus on substantive legal issues and professionalism; circuit-specific reference materials and other information will be distributed electronically to all immigration judges throughout the year; the Board and OCIJ will distribute a monthly update on immigration law developments; a peer-observation program, which will provide immigration judges with an opportunity to observe colleagues conducting proceedings, is being developed; new Board members will have a senior mentor who will guide them through the adjudication process; all Board members will participate in periodic training programs and in-sessions with Federal judges facilitated by the Federal Judicial Center.

Status: Implemented.

Directive #5 - Improved Training and Guidance for EOIR Staff

Objective: Develop a plan to strengthen the ability of Board staff attorneys to perform their screening and drafting duties.

Key points: Periodic training sessions on both substantive topics, such as recent developments in immigration law, and procedural topics, such as standard operating procedures for screening, have begun; the Board distributes a monthly update on immigration law developments; a senior manager at the Board has been appointed to oversee all training activities; a quality assurance program has been implemented to increase the likelihood that any errors in proposed orders are detected prior to issuance.

Status: Implemented.

Directive #6 - Improved On-Bench Reference Materials

Objective: Provide immigration judges with up-to-date reference materials and standard decision templates that conform to the law of the circuits in which they sit.

Key Points: A committee comprising immigration judges and representatives from the Department of Justice, the Department of Homeland Security, and the Federal Judicial Center has been formed to revise and update the Immigration Judge Benchbook; circuit-specific sections related to such issues as asylum, withholding of removal, the Conventions Against Torture, evidence, bond determinations, and motions are being drafted; the updated benchbook will be in an interactive, web-based format. The committee is also soliciting the views of interested non-governmental entities.

Status: Implementation is targeted for the Spring of 2007.

Directive #7 - Mechanisms to Detect Poor Conduct and Quality

Objective: Establish procedures for the Board and the Office of Immigration Litigation (OIL) to report adjudications that reflect problems with the temperament of immigration judges or that demonstrate poor quality work by immigration judges or Board members.

Key Points: Board members now report instances where an immigration judge failed to display the appropriate level of professionalism so that the Office of the Chief Immigration Judge can take appropriate action to address the problem; similarly, upon reviewing a case pending in federal court that reflects a temperament, conduct, or quality problem on the part of an immigration judge or a Board member, OIL notifies EOIR's Office of General Counsel in order to enable the General Counsel's Office to determine whether it is appropriate to report the matter to the Office of the Chief Immigration Judge and/or the Office of Professional Responsibility.

Status: Implemented.

Directive #8 - Analysis and Recommendations Regarding Disparities in Asylum Grant Rates

Objective: Review a study which highlights disparities in asylum grant rates among immigration judges and make recommendations with respect to this issue.

Key Points: Caution must be exercised when evaluating accounts of disparities in asylum grant rates among immigration judges because the asylum process is complex, denials of asylum sometimes turn on factors unrelated to the underlying merits of the case, such as compliance with the statutory one-year filing deadline, and each asylum case is unique and cannot be directly compared to any other case. Thus many apparent disparities are related to differences between the cases being decided. To reduce instances where disparities may arise from other factors, the Office of the Chief Immigration Judge is improving training for judges, is developing a peer observation and mentoring program to encourage immigration judges to share best practices, and is closely supervising those immigration judges who have unusually high or low asylum grant rates.

Status: Implemented.

Directive #9 - Pilot Program to Deploy Supervisors to Regional Offices

Objective: Assign Assistant Chief Immigration Judges (ACIJs) to regional offices and then report whether these assignments improved managerial contact and oversight in those courts.

Key Points: Assistant Chief Immigration Judges have been assigned to the courts in New York, Los Angeles, San Francisco, and San Diego; the ACIJs designated for assignments in Miami and San Antonio are scheduled to assume their positions in the coming weeks; by making these assignments, more than 60% of all immigration judges will be supervised by ACIJs in the field.

Status: The assignment process has been implemented; a report evaluating this initiative is targeted to be completed in the Fall of 2007.

Directive #10 - Code of Judicial Conduct

Objective: Draft a Code of Conduct specifically applicable to immigration judges and to Board members.

Key Points: A Code of Conduct has been drafted for immigration judges and Board members that addresses their special responsibilities as adjudicators; the drafts will be made available for public comment; once the codes are finalized they will be posted online and thus be made available to counsel and litigants who appear before the immigration courts and the Board.

Status: Implementation is targeted for the Spring of 2007.

Directive #11 - Complaint Procedures

Objective: Develop a plan to standardize complaint intake procedures, to define more clearly the roles of EOIR, the Office of Professional Responsibility (OPR), and the Office of the Inspector General (OIG) in handling complaints, and to ensure a timely and proportionate response to those complaints.

Key Points: EOIR has created the new position of Assistant Chief Immigration Judge for Conduct and Professionalism; currently EOIR's General Counsel MaryBeth Keller is serving in this position in an "acting" capacity; the ACIJ for Conduct and Professionalism is responsible for reviewing and monitoring all complaints against immigration judges; she regularly consults with OPR and OIG about whether matters should be referred to those offices; she also tracks all complaints and works with the Acting Chief Immigration Judge, OPR, and OIG to ensure that investigations of complaints are concluded as quickly as possible and that disciplinary action, if appropriate, is imposed in an expeditious manner.

Status: Implemented.

Directive #12 - Improvements to the Streamlining Reforms

Objective: Draft proposed rules that will (a) adjust streamlining practices to (i) increase the use by the Board of Immigration Appeals of one-member written opinions (as opposed to Affirmances Without

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Comments?

Opinions (AWOs) in those cases where the immigration judge reached the correct result but a fuller discussion or clarification of the legal issues would be beneficial, and (ii) allow the use of three-member written opinions in a small class of particularly complex cases; (b) facilitate the publication of Board decisions as precedents; (c) facilitate return of cases to the Board when OIL determines that they merit reconsideration.

Key Points: a.(i) The proposed rule will make clear that a Board member has the discretion to issue a written decision, rather than an AWO, in those cases in which the immigration judge reached the correct result but exhibited inappropriate conduct, or where there are other infirmities in the immigration judge's decision that, although not affecting the outcome, would benefit from further discussion or clarification; (ii) The proposed rule will provide a Board member with the ability to refer a case to a three-member panel if the case presents complex or unusual issues of law or fact.

b. The proposed rule will amend the regulation so that either a majority of Board members on a panel or a majority of permanent members of the entire Board can authorize the publication of precedent decisions.

c. The proposed rule will build on OIL's current practice of seeking remands in certain cases in which the Board has ruled for DHS but OIL believes that further consideration by the Board is called for.

Status: Issuance of proposed rules is targeted for the Spring of 2007.

Directive #13 - Practice Manual

Objective: Draft a practice manual for immigration judges and for the counsel and respondents who appear before them.

Key Points: OCIJ is gathering and reviewing relevant material to identify a set of "best practices" that will be compiled in a comprehensive manual.

Status: Implementation is targeted for the Summer of 2007.

Directive #14 - Sanction Authority for Immigration Judges

Objective: Draft (a) a proposed rule "that creates a strictly defined and clearly delineated authority to sanction by civil money penalty an action (or inaction) in contempt of an immigration judge's proper exercise of authority" and (b) "revisions to the existing rules that provide sanction authority for false statements, frivolous behavior, and other gross misconduct" by immigration practitioners.

Key points: a. The proposed rule will be based on the statutory authority provided by Section 240(b)(i) of the Immigration and Nationality Act.

b. The proposed rule will incorporate the revisions required by AG Directive #15 regarding the sanction authority of the Board; the regulation will move forward in two stages, with the first phase focusing on attorneys who engage in misconduct and the second phase focusing on non-attorney "preparers" who create fraudulent documents for aliens.

Status: a. Issuance of the proposed rule is targeted for the Summer of 2007.

b. Issuance of a proposed rule that would carry out the first phase is targeted for the Spring of 2007; issuance of a proposed rule that would carry out the second phase is targeted for the Summer of 2007.

Directive #15 - Updated Sanction Power for the Board

Objective: Draft revisions to the existing rules that will enhance sanction authority of the Board.

Key Point: These revisions will be incorporated into the proposed rule required by AG Directive #14.

Status: Issuance of proposed rules is targeted for the Spring and Summer of 2007.

Directive #16 - Seek Budget Increases

Objective: Seek budget increases in order to hire more immigration judges, judicial law clerks, and Board staff attorneys.

Key Points: The Administration has sought budget increases which, if approved by Congress, would add 240 new positions to EOIR during the next two years (including 40 immigration judges, 40 judicial law clerks, and 20 Board staff attorneys); consistent with the President's FY 2007 budget request, Congress already included funding for 120 of these new positions in the 2006 supplemental appropriation, but the funding expires at the end of FY 2007; in the FY 2007 budget, Congress included funding for an additional 120 new positions; in the FY 2008 budget recently transmitted to Congress, the Administration has requested the funding for the full 240 positions (120 of which are identified as a program increase because funding in the 2006 supplemental appropriation expires at the end of FY 2007).

Status: The Administration has submitted the 2008 budget to Congress.

Directive #17 - Increase the Size of the Board

Objective: a. Draft a proposed rule increasing the size of the Board from 11 to 15 members.

b. Continue the use of temporary Board members to fulfill the needs of the agency.

Key Points: a. This increase in size will permit the Board to issue more detailed one-member orders, more three-member orders, and more precedent decisions while keeping the size of the permanent Board small enough to enable it to apply its own precedents consistently and deliberate effectively.

b. The rule expands the pool of persons eligible to serve as temporary Board members to include not only immigration judges but also EOIR attorneys with at least ten years of experience in the field of immigration law.

Status: a. On December 7, 2006, the Department published an interim rule with request for comments that expands the Board to 15 members and expands the pool of temporary Board members as described.

b. Three temporary members have been appointed to serve on the Board.

Directive #18 - Updated Recording System

Objective: Develop a plan to implement a digital audio recording system in the immigration courts.

Key Points: This project will significantly improve the full range of activities associated with generating, using, and storing a verbatim transcript of immigration court proceedings; immigration judges will be able to operate the system in the courtroom through the use of a desktop computer; recordings and transcripts will be transmitted electronically.

Status: The digital audio recording system is scheduled for a pilot deployment in the Fall of 2007; it will take several years to deploy the system to all 54 immigration courts throughout the country.

Directive #19 - Improved Transcription Services

Objective: Improve the timeliness and quality of the transcriptions of oral decisions.

Key Points: In FY 2006, EOIR assessed more than \$85,000 in liquidated damages on a transcription company, prompting improvement in the company's performance; an additional transcription company has been contracted with to provide services; now most detained cases are on a 5-day transcription turnaround schedule.

Status: Implemented.

Directive #20 - Improved Interpreter Selection

Objective: Develop a plan to improve the performance of interpreters in the immigration courts.

Key Points: Newly-hired government interpreters will be required to be certified by an agency-approved testing organization; current staff interpreters will be required to become certified within two years and to participate in a continuing education program, and they will be assessed for suitability for retention on a regular basis; an interpreter quality assurance review team will monitor the performance of contract interpreters.

Status: Implementation is targeted for the Fall of 2007.

Directive #21 - Referral of Immigration Fraud and Abuse

Objective: Develop a procedure whereby immigration judges and Board members may refer cases of immigration fraud and abuse to the appropriate investigative body.

Key Points: EOIR has instituted a new Fraud and Abuse program operated by the Office of General Counsel; every EOIR employee who detects suspicious conduct is required to report it; the Fraud and Abuse Program Manager analyzes the information and makes a referral to an investigative agency, if appropriate; a substantial number of referrals have been made under this program already.

Status: Implemented.

Directive #22 - Expanded Pro Bono Programs

Objective: Form a committee to oversee the expansion and improvement of EOIR's Pro Bono program.

Key Points: This committee has solicited the views of representatives from DHS, the Office of Refugee Resettlement, the United Nations High Commissioner for Refugees, nine nationally based nongovernmental organizations and bar associations, and two Washington-based private law firms with offices throughout the country.

Status: The first open meeting was held on November 29, 2006; the committee is in the process of analyzing various proposals to expand and improve the Pro Bono program.