

# **PREPARING AND CONDUCTING MASTER CALENDAR HEARINGS**

**JUDGE REX J FORD**

## **Preparing and Conducting Master Calendar Hearings**

Judge Rex J Ford

**After this session, you should be able to:**

1. Stock your courtroom and bench with the materials needed to conduct a Master Calendar Hearing.
2. Identify and use appropriate computer reports to schedule cases to properly manage your docket.
3. Prepare and conduct a Master Calendar Hearing giving appropriate advisals and use appropriate adjournment codes.
4. Close or reset a case to a Master or Individual Calendar and give instructions to your clerk for completion or rescheduling.

### **I. PRELIMINARY STEPS**

#### **A. STOCK YOUR BENCH**

1. All form orders should be within your reach;
2. Have your manual calendar as well as available dates on the bench;
3. Make certain that you have pens, pencils, stapler, staple puller, tapes, colored tabs or anything else that you use stocked and ready to go;
4. Have written copies of advisals in plastic for contract interpreters that they can read from as not to slow down your hearings.

### **II. HEARING/HOUSEKEEPING DETAILS**

#### **A. ALWAYS BE ON THE BENCH ON TIME**

1. Respect goes both ways;
2. Attorneys should check in with clerks and have all of their clients ready to proceed (See Tab "A").

**B. ALWAYS ADMINISTER OATH TO ALIEN**

1. 8 C.F.R. 3.34 (2002), The alien may "affirm".

**C. CONTRACT INTERPRETERS MUST HAVE OATH**

1. Administer oath once only at their first appearance of the day;
2. You must complete a new COI for each session.

**D. ALL WRITTEN NOTICES TO ALIENS ONLY**

1. In Deportation Proceedings 242 (b) applies;
2. In Removal Proceedings 240 applies.

**E. FEWER MOTIONS TO REOPEN**

1. Proper giving of advisals at the master calendar stage of the proceedings limits the number of motions;
2. Make certain that you give advisals in writing as well including form U9 for anyone filing an asylum application.

**F. CONSOLIDATE CASES**

1. If attorneys have more than one case, have them bring all clients at one time (See Tab "A");
2. Daily calendar completion will be accomplished sooner;
3. More time remains to address pro se cases.

**G. CONDUCT IN-ABSENTIA CASES ALL DAY**

1. Caveat: Not applicable in the 9<sup>th</sup> Circuit. You must wait until the end of the day;
2. You will complete the calendar earlier;
3. Attorney's will be on time;
4. Trial Attorneys will receive all orders for the day timely;
5. Make certain that TA's have all files with them in the morning session if you run a full day master calendar.

#### **H. SCHEDULING/CALL UP DATES/ADJOURNMENTS**

1. Your calendar is your responsibility;
2. Schedule your cases from the sheets (See Tab "B") for the maximum level of efficiency;
3. The computer will schedule for you but does it know you best?;
4. Use the proper adjournment and call up codes from the list (See Tab "C"). The IJ is responsible for the proper use of all codes.

#### **I. NO SHORTCUTS FOR FIRST THREE MONTHS**

1. Follow the Regulations;
2. Swear in the respondent and the interpreter if necessary;
3. Give all advisals orally and in writing and use rubber stamps to save time in noting the record accordingly;
4. Have the date, time and place of the hearing translated through the interpreter to the respondent;
5. Furnish all forms including appeal forms on the record to the respondent;
6. Not using shortcuts means that you save both yourself and the Court time. The clerks handle less paper and the goal is to address a case only one time.

#### **III. THE HEARING/THE REAL THING**

##### **A. ALWAYS BE ON THE BENCH TIMELY/PART 2**

1. Your calendar is large and only if you start on time will you be finished on time;
2. Lawyers, court staff and contract interpreters are all affected by tardiness on the part of the judge;
3. Work with your ACIJ if flexibility is needed with your IJ Agenda (See Tab "D").

**B. FUNCTION OF THE CLERK**

1. The clerk calls the cases. You must communicate with the clerk as to any special procedure that assists you in the completion of your calendar (See Tab "A");
2. In most cities the clerk writes the hearing notices and they only write what you tell them. Call out the adjournment code, give the length and type of the session that you are scheduling for proper data entry by the clerk;
3. Work together with the clerk for a smooth flow for the day. Remember we are only as strong as our weakest link;
4. Ask the clerk prior to the days hearings to test the recording system from all four stations.

**C. "ON THE RECORD"**

1. At the start of the hearing, do all announcements including the name of the respondent with spelling, the alien number, the date and appearances of counsel;
2. DO NOT REPEAT DO NOT go off the record. Time and time again controversy surfaces regarding "off the record" discussions resulting in needless remands and wasted hearing time. The tape is your friend;
3. Always verify address on the record as well as the issuance of a Form EOIR-33 to the respondent. Failure to report an address change eliminates our responsibility to notify the respondent of the hearing;
4. Note on the record that you have given notice of the date, time and place of the hearing to the respondent.

**D. ALL FINDINGS AND ADVISALS ON THE RECORD**

1. Clearly make any findings of deportability, removability and/or excludability on the record;
2. Note any relief requested on the record and ask the respondent if there is anything else that he/she requests from the Court;
3. Give the adjournment code and any call up date on the

record;

4. Advise the respondent of the abandonment of any relief if filing deadlines are not complied with as well as the consequences of failing to appear;
5. Only go off the record when the business before you has been concluded and the parties state that they have nothing further to address before you.

#### **E. SCHEDULING AND DOUBLE BOOKING**

1. Efficiency generally requires double booking of cases to some degree. Master calendar proceedings are no exception and by properly using this technique you will have much less stress in your new position (See Tab "B");
2. Voluntary Departure cases can be grouped together. Cuban Adjustment Act cases as well as certain 212 (c) cases are good cases to hear back to back if you are somewhat certain that the results will be grants of relief;
3. Cases with pending visa petitions, the author schedules for the same day and time at six month intervals on a master calendar. The inquiry is the same and cases that have an approved petition can be calendared to file an application. The others can be rolled over onto the next calendar date. This is similar to a status conference but no individual calendar hearing time is wasted for this purpose.

#### **F. WORKSHEET COMPLETION**

1. Complete the IJ worksheet while the parties are leaving. Place a check mark by the address and/or telephone number when verified.
2. Place a post it note on the front cover of the ROP if there is something or a change to be made in the record that you think the clerk may have missed;
3. Note that the advisals were given either with a note or a rubber stamp on the sheet and note the date that they were given;
4. Note the hearing date and time as well as the adjournment and/or applicable call up code on the worksheet.

5. If your local rules are discretionary and you wish to invoke them do so now or forever hold your peace.

**G. CASE COMPLETIONS AT MASTER CALENDAR**

1. If you complete the case at this stage make certain to issue an order, complete the worksheet and state clearly on the record that the case is closed and the matter adjourned;
2. The clerk will prepare a new worksheet after each hearing. The ANSIR guidelines require that a new worksheet be printed.
3. If a case is closed in-absentia at the master calendar hearing, note the time that the order is being issued and from your in court calendar note the 180<sup>th</sup> day on the worksheet that a motion to reopen must be filed to be timely;
4. You will have to renotice certain cases where notice was mailed to the wrong place. Pick a new date and adjourn the case to that date with a code "10". Make certain that no case is left off calendar at the conclusion of your master calendar day.

**IV. QUESTIONS**

### Master Calendar Hearings

- Hon. Rex J Ford
- US Immigration Judge
- Miami, Florida
- (b) (6) (Direct Dial-Office)
- (b) (6) (Cell)
- (b) (6)
- Call and/or e-mail me anytime—really!

### The Master Calendar Hearing

- Why do we have a Master Calendar Hearing?



### **Purpose**

- Verify Information
- Pleadings
- Advisal of Rights
- Establish Removability
- Designation of Country
- Establish Relief from Removal
- ANSWER QUESTIONS

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### **General Scheduling Rule**

- Do not take a case off your Master Calendar docket and place on an Individual Calendar docket until it is ready to go forward.
- Example (s)
- Reason: You will complete cases more efficiently and in greater numbers if all issues are resolved prior to merits hearing
- Example (s)

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### **Rules of Procedure**

- Stick to the regulations and the law
- Remember that the law differs between circuits
- Always follow applicable BIA precedent where applicable.
- Example (s)

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### Rules For The IJ Generally

- ALWAYS be on the bench on time
- Your credibility depends on your being in Court timely especially if you are ordering others to do so
- Cell phones off
- Pagers off
- You must keep order

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### Always Administer Oath

- Either at Initial Master Calendar or at Master Calendar when pleadings are taken
- Many legal consequences take effect when testimony taken is "under oath".
- Remember that under the regulations an alien is not required to swear but may "affirm"

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### Oath for Others

- Regulations require that a contract interpreter be under oath
- EOIR employees need not take oath
- Janitor or other qualified persons may take oath and interpret if competent

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### When Do We Proceed?

- Section 239 (a)(1)(F) of the Act
- Once the respondent has been served with the legal aid list and the NTA the IJ may proceed as long as 10 days have elapsed
- "Nothing in this section shall keep the Attorney General from proceeding"

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### Continuances

- Continuances used effectively will help increase efficiency
- Continuances used ineffectively create problems system wide
- Regulation was published in the past to eliminate IJ discretion in granting continuances

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### Continuances (Cont'd)

- Use discretion appropriately to determine whether a continuance is warranted
- Some scenarios are obvious: Death of attorney or serious illness or injury of the respondent or attorney
- Example (s)
- Remember not all continuances benefit the respondent (Deadlines?)

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### Denials of Continuance

- Always give a reason for the denial of a continuance (Matter of M-P, Int. Dec. 3217)
- Alien must show actual prejudice or that a different result would have been reached (Matter of Sibrun, 181&N Dec. 354 (1982))
- The speaker grants continuances sparingly and only when good cause is shown

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### What Do You Do If?

- In certain circumstances and alien and/or counsel will not proceed
- You must explain the consequences of not going forward
- Proceed in-absentia if necessary

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### Is Something Fishy?

- Watch for certain attorneys and/or agencies requesting an inordinate number of continuances
- Colleagues use of continuances
- What do you do?

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### Make Things Easy For The Parties

- Allow attorneys and accredited representatives to bring all cases earlier
- Make certain that ACC's bring all files for the day in the morning if you do all day masters

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### Case Scheduling Generally

- Have a listing of both Master and Individual Hearing calendar dates for several months
- The speaker uses a "portrait" calendar to assign the next hearing date while the clerk is writing out the notice (Handout)
- Always call out the adjournment code

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### Double Booking

- You must double book to some extent to survive
- Certain types of cases may take five minutes while some take five hours
- Examples
- Effective double booking greatly increases efficiency and productivity

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### Advisals

- The speaker gives advisals both orally and in writing at every Master and Individual hearing.
- Avoids needless reopening of cases
- Case may go to someone else (VD example)

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### NO Shortcuts

- No shortcuts for the first several months on the bench
- Bad habits are hard to break
- Don't focus on speed now
- Focus on quality
- Learned shortcuts that you can take will help you pick up speed later

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### Showtime

- Your bench has been stocked
- You are on time
- You walk through the door
- Clerk says "all rise"
- You say "be seated"
- We are.....

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### ON THE RECORD

- Do not go "OFF THE RECORD"
- There may be times in court to go off the record
- Do not when it is anything concerning the case or argument

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### Announcements

- Name of the respondent (s)
- Name of the ACC
- Name of counsel for the respondent (s)
- Name of the interpreter and whether or not sworn.
- Always read the name of respondent (s) attorney from the EOIR-28. Why?

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### The Meat Of The Matter

- Take pleadings
- Establish relief
- Give new hearing date
- Give advisals
- Give notice with advisals attached
- Enter removal order as appropriate
- ALWAYS note the worksheet

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### Applications

- The speaker only accepts applications and supporting documents in court at a master calendar hearing
- Reason?
- Continuance codes for attorneys to comply

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### Close Out Of Master Calendar

- "Lost" cases
- In-absentia cases
- Renotices or "Code 10's"
- Other

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### Questions

- You must have some
- Everyone does
- Only dumb one is the one not asked
- We are here all week

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### Thank You

- Please remember to fill out your course evaluation at the end of this and every session
- Your comments are genuinely appreciated and incorporated into future presentations

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