

## **Working With The Record of Proceedings**

Judge Rex J Ford

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

1. Maintain and organize the Record of Proceeding (ROP).
2. Complete the IJ Worksheet.
3. Give instructions to your clerk for case closure or completion.
4. Review ROP's quickly helping to reduce the time necessary for case preparation.

**"The Immigration Court shall create  
and control the Record of Proceeding"  
8 C.F.R. 1003.36 (2005).**

### **I. RECORD OF PROCEEDINGS**

#### **A. GENERALLY**

1. The Record of Proceedings (ROP) is referred to most often as the "ROP". The regulations are not specific as to what is contained in the ROP, but does spell out that there is such a thing.
2. Over time and with advances in technology. ROP's have come to include more things, generally of the paper variety.
3. As of this writing, the ROP contains a tape envelope (sometimes referred to as the property envelope) which is placed on the right side of the file folder.
4. The most important part of the ROP to you and the proper administration of your calendar is the left side. The left side contains the IJ worksheet as well as the judge notes if any that are separate and apart from the worksheet. It is imperative that the IJ make clear and concise notes on the IJ worksheet furnishing the appropriate adjournment codes in the case of an adjournment as well as the call up codes for the filing of applications if you use the call up system as well as specifics about the case itself. Proper note taking will save you and your colleagues countless hours each year because tape review will be virtually unnecessary if the proper procedures are followed by everyone.
5. As a general rule, IJ's are responsible for all adjournment codes. In

court, you are expected to call out the adjournment code for the record if any adjournment is out of the ordinary. Simply adjournments for counsel or attorney preparation are generally known. Make certain and explain that to staff members that assist you in court.

6. For "out of court" adjournments or other matters the author suggests the use of a post it note with the date, time and place of the rescheduled hearing as well as the adjournment code written on it. It is imperative that expedited asylum cases have the proper adjournment codes to avoid problems with the asylum clock (example).
7. Mark evidence carefully. Evidence is subject to review and compilation by one of our staff members in the case of a timely appeal. Mark each piece of evidence with your evidence stamp. Carefully note whether it is marked for identification and/or admitted to the record. It is suggested that you use a two hole punched sheet of paper titled "Evidence" and place it in the left side of the ROP for cases that have a number of exhibits. This will help you keep the proper numbering order for the exhibits that you have received. Please see the attachment from a decision to note how important organization of evidence is. The method of maintaining an evidence list is helpful when rendering your oral decision.
8. ROP's should not be taken home by you. They are the official record of proceedings and should be guarded and treated with the utmost care. For judges visiting detail cities and IHP facilities some exceptions to this rule do apply. The IJ is generally responsible for ROP's in their detail sites. The author makes certain that ROP's are shipped in an appropriate manner to their base city.
9. Generally items and writings on the left side of the ROP will not be seen by persons other than court staff and other judges. There are two views regarding Freedom of Information Act (FOIA) requests. Judges should be careful not to write anything on the left side of the ROP or on any worksheet that they do not want out in public, such as "big fat lady in a dirty blue dress", or other inappropriate descriptions of persons. It is permissible to write "lady with two small children whose presence is waived at future hearings". Notice of Appearance (EOIR-28) forms are also properly placed on the left side of the ROP under the worksheet. Do not place it there until you are certain that it has been entered in the ANSIR system. During a master calendar hearing, turn it sideways under the left side of the ROP so that the clerk/interpreter cannot miss entering it into the system.

10. Use the worksheet to help you recall the case and the issues at hand. If you run out of room on a worksheet, take a piece of notepaper, two hole punch at the top and include it on the left side of the ROP.
11. Ask your clerk to print a new worksheet each time that you have a hearing that is adjourned. The ANSIR guidelines require that a new worksheet be printed each time and at the completion of the case. Work with new clerks to help them along. Use your worksheet as a memorandum of what happened on a particular hearing day. Always on the bottom left side of the worksheet note the name of the assistant district counsel, the date of the hearing, a brief description of what happened on that date, and stamp or write any advisals and the date that they were given. A page with impressions of rubber stamps used by the author is attached to this section.
12. A few extra minutes of attention to each ROP you handle makes the lives of all of us in the organization better off. This is especially important in detail cities where another judge may come behind you when a case has been adjourned for one reason or another. It is also encouraged that you write any additional notes to the next judge and advise the court administrator that you have done so.

## **II. SPECIFIC ROP EXAMPLES**

### **A. ROP #1**

1. This is an actual case handled by the author on 11/6/1998. The case was closed in-absentia after the respondent failed to appear after having had proper notice for the removal hearing.
2. You do not know which cases will appear or not appear for scheduled hearings. It is suggested that you review each case at least once prior to the initial master calendar hearing. Review the matter while you are thinking. Was notice personal or by mail? Was the charging document served personally or by mail? If by mail does the address and zip code look correct? Is there an apartment number? Is there a telephone number with the correct area code? Don't dwell, but do be aware of details should an alien not show. There may be a legitimate reason for the non-appearance of an alien.
3. This case is a "no clock" case as the asylum application was filed before 1/4/1995. These cases are still around and in some

jurisdictions our courts are receiving a great number of them. This does not obviate the need for the respondent to appear timely even if the INS took a number of years to adjudicate the asylum claim. The law requires that you proceed in-absentia if the respondent does not appear after proper notice.

4. In this case, you will note that the author has a rubber stamp for both the order and the worksheet that the order is final and not subject to appeal.

**B. ROP #2**

1. This is an "expedited" case handled by the author on 11/6/1998 that was referred by the asylum unit with 63 days on the clock. It appears from the record that the respondent is ineligible for asylum as she exceeded the time required to apply for asylum. The author makes asylum eligibility determinations at the master calendar hearing. This issue will be covered as well in the asylum and master calendar lectures. The proper use of adjournment codes is crucial in this case as the case has come to you on the expedited calendar.
2. In this case, there was personal service of the notice to appear, as well as a post 1/4/1995 asylum application should the respondent not have appeared to use as evidence of alienage for in-absentia hearing purposes.
3. Note the checkmarks on the worksheet for name, address, telephone number and best language.
4. The respondent wanted an opportunity to seek counsel at her own expense. Note that continuances are not automatic although there appears to be some conflict between the BIA and the statute. Generally, the author grants any reasonable request for continuance on the first appearance unless the respondent wants to go forward and/or simply does not want to avail themselves of counsel at no expense to the government. For adjournments in excess of two, the IJ must note the reason on the IJ worksheet pursuant to a directive from the Chief Immigration Judge.
5. Note that written notice of the date, time and place of the rescheduled hearing as well as advisals for failing to appear were both read and issued to the respondent in writing and that the record is clear regarding it. Should you be the judge following the author, should the respondent not appear, there should be no question or hesitation regarding closing the matter in-absentia and

issuing the appropriate order (ANSIR Form Z1, See ROP#1).

**III.**

**SUMMARY**

**A. REVIEW ROP's CAREFULLY**

1. By carefully reviewing ROP's at least once prior to the first master calendar hearing you will increase both your speed and efficiency greatly.
2. By checking notes in the ROP's prior to giving them to clerks for case scheduling or close out, you will eliminate many common errors that waste both time and money.
3. The proper use of adjournment codes and proper note taking will assist your fellow judges as well as management in tracking valuable and important statistical information required by statute.
4. A case that is closed properly will usually not come back to you by your clerk, the BIA or by management for additional information.

**B. QUESTIONS**

### Working With The ROP

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

### Contact Me Anytime

- Adopt a "Buddy"
- Judging can be lonely
- Communicate with others regularly and not necessarily those around you

### Record of Proceedings (ROP)

- Created by regulation
- The "Collective We"
- Attorneys do not control it
- Judge alone does not control it

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### Why We Start Here

- Creation of the ROP is the first tangible creation of the case (CASE)
- ISS Interactive Scheduling System explained
- Lets look at how and ROP is created
- Example (s)

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### ROP Left Side

- The left side of the ROP belongs to you
- IJ notes
- IJ tracking of case
- This side is not viewed by the public
- IJ responsible for all adjournment codes and use thereof

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### ROP Left Side (Cont'd)

- Accurate notes will help you address your caseload effectively
- Special needs of parties
- Characteristics of individuals
- Notes on this side are critical to those that follow behind you in detail cities

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### ROP Left Side (#3)

- Pre decision notes on findings and testimony are also placed on this side
- You will make findings at a Master Calendar that will need to be incorporated into your dictated decision later
- In-absentia motions to reopen are a breeze if you make proper notes on your worksheet

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### ROP Right Side

- The right side of the ROP is open to public view and subject to FOIA for certain
- Items on this side always consist of a charging document as well as a tape envelope and documentary evidence
- Never forget that everything on the right side is open to public view

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### ROP Right Side (Cont'd)

- Mark all evidence carefully with your evidence stamp
- About rubber stamps...they make your life easier and more consistent
- Write directly on motions that you decide in court what you did and why you did it
- Your notations and the "collective we"

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### Custody of the ROP

- The Court Administrator is the custodian of records of the Immigration Court
- Certifications are "official" only when done by the Court Administrator
- ROP's should not be removed by anyone from the court
- Special cases

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### Custody Of The ROP (Cont'd)

- ROP's must be handled with the utmost care
- Exceptions for Detail and IHP cities
- IJ's are responsible for ROP's in detail cities
- Check with your ACIJ concerning any questions in these situations

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### Do's and Dont's

- Do not make inappropriate notations on the left side of the ROP
- Example (s)
- Do not remove any part of the ROP without immediately putting it back
- Example (s)

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### Helpful Worksheet Notations

- Name and Language
- Address updates including Zip Code
- Telephone number (s)
- Adjourment Code for each entry
- Notation of advisals (Rubber Stamp)
- Date and name of ACC
- Interpreter name and affiliation

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### Let's Review

- ROP creation is how case comes to life
- The creation and control of the ROP is solely within the purview of the Immigration Court
- ALL of EOIR works together to ensure the proper creation and control of the ROP
- Parts of the ROP are open to authorized persons from the public

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### Questions

- You must have some
- Remember that we are here all week and always for questions
- Utilize your discussion groups for this and all presentations

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### Thank You

- Please remember to fill out your course evaluation after this and each session
- Your comments are valuable to each of us to incorporate into future presentations

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