OFFICE OF PROFESSIONAL RESPONSIBILITY (OPR) AND THE OFFICE OF THE INSPECTOR GENERAL (OIG)

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Office of Professional Responsibility (OPR)
and
The Office of the Inspector General (OIG)

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Objectives:

After this session, you should be able to:

1. Identify OPR's jurisdiction.
2. Describe the sources of OPR complaints.
3. Summarize OPR's investigative process.
4. Distinguish between OPR and OIG

Office of Professional Responsibility (OPR) and the Office of the Inspector General (OIG)

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QUI PRO DOMINA JUSTITIA SEQUITUR

INTRODUCTION

After this session, you will be able to:

1. Identify OPR's jurisdiction;
2. Describe the sources of OPR complaints;
3. Understand OPR's investigative process; and
4. Distinguish between OPR and OIG.

Office of Professional Responsibility (OPR) Jurisdiction

OPR has jurisdiction to investigate allegations of misconduct by Department of Justice (DOJ) attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice. This includes the adjudication function performed by Immigration Judges (IJs).

Professional Misconduct Based on Intentional Violation of Law Rule or Standard of Conduct

OPR will find an intentional violation when:

(1) the IJ purposefully engaged in conduct that was unambiguously prohibited by an obligation, standard, or rule; or

(2) the IJ engaged in conduct knowing that its natural or probable consequence is a result that is unambiguously prohibited by an obligation, standard, or rule.

Professional Misconduct Based on Reckless Disregard of an Obligation, Standard or Rule

OPR will find reckless disregard when:

(1) the [illegible] or should have known of the obligation, standard, or rule;

(2) the IJ should have known, based on her experience and the unambiguous application of the obligation, standard, or rule, that there was a [illegible] likelihood of a violation; and

(3) the IJ nonetheless engaged in the conduct which [illegible] nable under all of the circumstances.

Poor Judgment or Mistake

OPR will find poor judgment when, in the absence of professional misconduct, there are [illegible]ive courses of action, and the IJ did not [illegible] course of action the DOJ may reasonably [illegible]om an IJ exercising good judgment.

A mistake is the result of excusable human error despite the exercise of reasonable care.

An OPR finding that an IJ used poor judgment or made a mistake does **not** constitute a finding of professional misconduct.

Sources of Complaints to OPR

(1) self-reporting;

(2) other DOJ employees (including the Office of General Counsel on behalf of EOIR management);

(3) practitioners in our courts (the private bar, accredited representatives, and staff of the Department of Homeland Security (DHS));

(4) the public (including spectators in the court);

(5) the media;

(6) Congress.

Sources of Complaints to OPR Continued

OPR also conducts periodic searches of legal databases to identify opinions containing judicial findings of misconduct or statements suggesting misconduct by DOJ attorneys.

These opinions are an additional source for OPR investigations.

OPR Complaint Process - Inquiry

OPR conducts an inquiry to determine whether the matter can be closed without the need for additional information because, for example, the complaint is frivolous on its face, it is vague and unsupported by any evidence, or it is not within OPR's jurisdiction.

If OPR closes a matter without investigation, this fact is recorded in OPR's files.

The IJ alleged to have engaged in misconduct receives no notice of the complaint.

OPR Complaint Process - Investigation

If OPR determines that further information is needed to resolve the matter, OPR notifies EOIR with a request to notify the IJ involved in the allegation and to solicit a written response from the IJ. The Office of General Counsel transmits the OPR request to the IJ.

OPR will ask the IJ for each jurisdiction in which he or she has bar membership in order to determine which rules of professional conduct apply.

OPR Complaint Process - Investigation Continued

OPR conducts a full investigation if the complaint and response are not enough. Case files, investigative files, and other relevant documents may be reviewed, and witnesses will be interviewed. The IJ's interview may be recorded or conducted in the presence of a court reporter.

OPR will permit the IJ to have counsel present at an interview if OPR is satisfied that the attorney will not interfere with or delay the process.

Finding of No Misconduct or Poor Judgment

If OPR determines that no misconduct or poor judgment occurred, the IJ who was investigated, the complainant, and other appropriate parties are notified of that result.

A copy of the report of investigation is provided to the Deputy Attorney General as well as to the Director of the EOIR but **not** to the Immigration Judge or to the complainant.

Finding of Professional Misconduct or Poor Judgment

If OPR finds professional misconduct or poor judgment, it provides a report of findings and conclusions to the Deputy Attorney General as well as the Director of the EOIR.

PR finds professional misconduct, it nds a range of disciplinary actions for consideration by the judge's supervisors. The IJ will be allowed to see enough of the report to respond to the proposed discipline.

A finding of poor judgment can lead to training, reassignment, or disciplinary action.

Referral of Findings of Professional Misconduct to Bar Disciplinary Authorities

After the conclusion of all proceedings related to discipline by the DOJ, the OPR provides notice of its finding of professional misconduct to bar disciplinary authorities in the jurisdiction where the attorney is licensed, unless the matter involves purely federal or Department concerns and no basis for bar discipline is apparent.

Office of the Inspector General (OIG) Jurisdiction

The OIG audits DOJ programs and investigates non-frivolous allegations of waste, fraud and abuse in DOJ programs.

The OIG investigates non-frivolous allegations of criminal wrongdoing or serious administrative misconduct by DOJ employees.

Serious administrative conduct can include violations of the Standards of Ethical Conduct for Employees of the Executive Branch, such as misuse of position, accepting certain gifts, and inappropriate financial dealings.

Office of the Inspector General (OIG) Jurisdiction Continued

Section 1001of the USA PATRIOT Act directs the IG to investigate alleged violations of civil rights or civil liberties by the DOJ.

The OIG refers to the OPR all allegations of <u>misconduct within OPR's jurisdiction.</u>

OIG Procedures

OIG has access to all records, reports, documents, and other material within the DOJ.

OIG's Investigations Division has Special Agents in 15 geographic locations throughout the U.S. They can subpoena documents from persons outside the federal government.

OIG's investigation may include witness interviews, including a sworn statement from the IJ.

If criminal activity is suspected, the OIG works with the Public Integrity Section of the Criminal Division.

OIG Referral or Recommendation to the EOIR

After review, the OIG may refer an allegation of non-criminal minor misconduct by an IJ to the EOIR for investigation and action.

After investigation, the OIG issues a Report of Investigation (ROI) to the EOIR which includes evidence pertaining to the charges and a synopsis of the evidence.

If disciplinary action is proposed based on the ROI, the EOIR will provide the IJ with copies of any evidence from the OIG ROI that was relied upon in the proposal.

IJs Are Vulnerable to Frivolous Complaints But Serious Misconduct Will Result in Discipline

The nature of the Immigration Judge position makes you vulnerable to complaints by the parties who appear before you.

Routine and frivolous complaints which do not involve allegations of professional misconduct or criminal behavior will be resolved within OCIJ.

[illegible] where the facts show abusive [illegible] denial of due process cause harm to [illegible]ion of the Immigration Courts and will [illegible] discipline of the IJ.

CONCLUSION

So, What Should a New IJ Do?

[illegible] ou act or speak. If matters in the courtroom are tense or heated and you are involved, take a break. Ask yourself:

(1) Is this how I want the public to see me?

(2) Is this how the Attorney General would want me to act on his behalf?

(3) Is this how I want my friends and family to find me portrayed in the news media?

Best wishes and good luck in your new career on the bench!