



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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March 10, 2008

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: David L. Neal 
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 08-01: Guidelines for
Facilitating Pro Bono Legal Services

This Operating Policies and Procedures Memorandum (OPPM) replaces the guidance contained in the February 22, 1995 memorandum entitled “Pro Bono Activities.”

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I. Introduction

Pro bono representation benefits both the respondent and the court, providing respondents with welcome legal assistance and the judge with efficiencies that can only be realized when the respondent is represented. A capable pro bono representative can help the respondent navigate court rules and immigration laws and thereby assist the court in understanding the respondent's circumstances and interests in relief, if any is available. Pro bono representation in immigration court thus promotes the effective and efficient administration of justice. This Interim OPPM provides guidance on how immigration courts and court administrators can encourage and facilitate pro bono legal services for respondents.¹

II. Meaning of “Pro Bono”

As a general rule, a “pro bono representative” is an attorney or other representative specified in 8 C.F.R. § 1292.1 who provides legal representation without any present or future expectation of remuneration from the respondent (other than filing fees and nominal costs). Uncompensated initial consultations or initial court appearances, with the ultimate intention or goal of compensation by the respondent, are contrary to the spirit of pro bono representation. While an attorney or representative may be regularly compensated by an employing firm or organization, representation should be provided solely and honestly for the public good.

III. Facilitating Pro Bono Representation

A. Pro Bono Liaison Judge and Pro Bono Committee

A judge in each court should be designated the “pro bono liaison judge,” who represents the judges of that court in interactions with outside entities regarding matters involving pro bono representation.

In addition to designating a pro bono liaison judge, courts of appropriate size and location should consider creating a pro bono committee. Committees may include, as appropriate, other judges, the court administrator, attorney advisors, judicial law clerks, and/or other interested court staff. Each court with a pro bono committee should consult its Assistant Chief Immigration Judge (ACIJ) regarding the judge and staff composition of its committee and the length of each committee member’s term. For continuity’s sake, the pro bono liaison judge and/or committee members should serve terms of one year or longer. Ideally, the pro bono liaison judge position (and the pro bono

¹ This Interim OPPM was generated from the recommendations by the EOIR Committee on Pro Bono, which consisted of immigration judges, court administrators, the Acting Chairman of the Board of Immigration Appeals, the Coordinator of the Legal Orientation and Pro Bono Program, and other EOIR staff. The committee met with non-profit organizations, bar associations, private law firms, the Department of Homeland Security, the Office of Refugee Resettlement in the Department of Health and Human Services, and the United Nations High Commissioner for Refugees. The Office of the Chief Immigration Judge expresses its gratitude for the committee’s hard work and dedication.

committee membership as well) should rotate between judges, but the decision to rotate a liaison judge or committee member is left to the ACIJ and that court.

The pro bono liaison judge, together with the court administrator, should meet regularly with local pro bono legal service providers to discuss improving the level and quality of pro bono representation at the court. Such meetings should be used to develop and refine local procedures to encourage pro bono representation, bearing in mind the particular needs and circumstances of each court. Pro bono liaison judges should encourage and, insofar as appropriate, facilitate discussion between government and pro bono counsel. They should also consult with the EOIR Legal Orientation & Pro Bono Program (LOPBP) to strengthen the agency's public outreach and to better coordinate the agency's support of pro bono representation.

B. Training for Pro Bono Counsel

Pro bono training conferences, the Model Hearing Program (coordinated through the LOPBP), and similar efforts are effective ways to increase the available pool of pro bono representatives. Judges and pro bono committee members are encouraged to play an active part in pro bono training programs on immigration courtroom practice and procedure, where appropriate and authorized. When a judge is interested in participating in such a program, the judge must promptly forward the invitation (and any additional information) to his or her ACIJ for supervisory authorization and thereafter request approval from the EOIR Ethics Office. Judges should not accept invitations prior to receiving authorization and approval.

C. Courtroom Practices

Although EOIR is committed to completing cases promptly, the particular needs of pro bono representatives who appear before the immigration courts should also be taken into consideration. Judges are strongly encouraged to be flexible with pro bono representatives, particularly in the scheduling of hearings and in the setting of filing deadlines.

1. Pro Bono Appearances

Judges should ask representatives appearing pro bono to identify themselves as such. Pro bono representatives should be asked to annotate the Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28) to reflect pro bono representation. Absent that annotation, judges should ask representatives to identify themselves orally on the record as appearing pro bono (e.g., "Jane Doe, appearing pro bono on behalf of John Smith").

When a pro bono representative enters an appearance, the court should enter the words "pro bono" in the comments field in CASE. An accurate electronic record is critical to track and to verify genuine pro bono representation.

2. Scheduling of Pro Bono Cases

Judges should be mindful of the inherent difficulties in the recruiting of pro bono representatives and the burdens pro bono representatives assume for the public good. To facilitate pro bono representation, judges are encouraged to give pro bono representatives priority scheduling at master calendars when requested.

With respect to individual calendars, judges should be cognizant of the unique scheduling needs of law school clinics operating on an academic calendar and pro bono programs which require sufficient time to recruit and train representatives. Because clinics and pro bono entities often face special staffing and preparation constraints, judges should be flexible and are encouraged to accommodate appropriate requests for a continuance or to advance a hearing date.

3. Pre-Hearing Statements and Conferences

Pursuant to 8 C.F.R. § 1003.21, judges may require pre-hearing statements, including stipulations of fact. Pre-hearing statements can be especially valuable in pro bono cases, where the representative's time and resources might be limited. Judges should also encourage pre-hearing conferences between the parties to narrow the issues and to prompt the timely submission of evidence, which foster both more efficient proceedings and more efficient use of limited pro bono resources.

4. Appearance by Telephone or Video Conference

As discussed above, judges should be mindful of the difficulties and burdens facing pro bono representatives. Accordingly, judges should be flexible when a pro bono representative seeks to appear telephonically or through video conferencing (also known as televideo and VTC).

As respondents are often detained in locations that are not readily accessible, video conferencing is an attractive means for a pro bono representative to communicate with his or her client. Where EOIR video conferencing is available in conjunction with a scheduled hearing and the request to use the equipment is reasonable, courts may allow representatives to use EOIR video conferencing equipment to communicate briefly with respondents. However, courts should be careful that the use of video conferencing by representatives not disrupt court operations, and courts must be vigilant and responsible regarding the expenses associated with the use of any telecommunication equipment.

D. Legal Orientations and Group Rights Presentations

Judges and courts are encouraged to support legal orientations and group rights presentations, whether or not funded by the LOPBP. Non-profit organizations that provide such programs can greatly assist local pro bono efforts to disseminate critical legal information, prepare respondents for master calendar hearings, screen respondents for eligibility for relief, and identify cases for referral to pro bono counsel. These programs serve a vital role in providing detained respondents with access to basic legal services. They also provide a benefit to the court in that respondents better understand the proceedings when they enter the courtroom.

Judges and court administrators can facilitate orientation and rights presentations in a variety of ways. For example, liaison judges and court administrators should be attentive to operational issues for the presenters of these programs. Also, where appropriate, reasonable, and available, immigration courtrooms and EOIR video conferencing equipment may be made available to pro bono organizations to conduct presentations. Furthermore, within the bounds of reason and propriety, courts could share information that will help presenters to assemble detainees and to tailor their presentation to the specific audience.

Given the value of such programs, courts should encourage and facilitate the development of orientation and rights presentations for non-detained respondents as well.

E. Access to Respondent Information

Upon reasonable request, immigration court records should be made available to pro bono organizations and representatives, where court resources allow and the sharing of information is not prohibited by law (e.g., attorney-client privilege, the Privacy Act, 8 C.F.R. § 1208.6). Courts should support pro bono operations in their efforts to identify potential pro bono cases and, with respondents' written authorization, may share non-classified information prior to a formal entry of appearance.

If a court is concerned that an organization or representative is requesting information for a motive or purpose other than the identification of pro bono clients, the court should consult its supervising ACIJ and, as appropriate, the LOPBP Coordinator.

F. Self-Help Legal Materials

Self-help legal materials prepared by the LOPBP are valuable to anyone appearing without counsel. These materials, which are regularly reviewed and updated by the LOPBP contractor staff and EOIR's Office of the General Counsel, have the ability to increase respondents' understanding of immigration laws, removal proceedings, and the implications of their pleadings.

Approved materials are available from the LOPBP and, insofar as it is practical, courts should make these available to the public as well. Courts could make materials available upon request at the filing window and/or, if the materials are available electronically, distribute or post flyers specifying where those materials are located on the Internet.

Please note that the LOPBP welcomes comments and suggestions from judges, court administrators, attorney advisors, judicial law clerks, and other court staff on how to improve existing self-help legal materials. However, anyone in the courts who develops self-help legal materials for their location must first provide a draft to the LOPBP and the appropriate ACIJ for approval.

G. Minor Respondents

Given the particular vulnerability of minor respondents, judges are strongly encouraged to facilitate pro bono representation whenever minors are involved. Judges are reminded to employ the child-friendly practices described in OPPM 07-01 (Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children). Many of those practices can and should be applied to any case involving a minor, whether unaccompanied, accompanied, detained, or non-detained.

IV. Handling Pro Bono Cases Ethically

It is incumbent on every judge to facilitate pro bono representation. Equally important, however, is that every judge must be careful to stay within the bounds of ethics and propriety.

When encouraging pro bono representation, judges should be mindful neither to pressure representatives to appear pro bono nor to penalize representatives who do not wish to handle pro bono cases. Pro bono representation should be truly voluntary, and attorneys and other representatives should not feel compelled to appear on specific cases.

As issues regarding Department ethics and agency policy frequently arise in this area, individual judges, pro bono liaison judges, and pro bono committees should consult their supervising ACIJ and the EOIR Ethics Office. Such consultations will ensure that new programs and/or new practices are permissible. Judges are also encouraged to review their current practices and consult headquarters personnel as appropriate.

V. Conclusion

The best practices listed above are certainly not exhaustive. Judges, court administrators, attorney advisors, judicial law clerks, and all court staff are invited to submit suggestions — both to the Office of the Chief Immigration Judge and to the LOPBP — on how to encourage and facilitate pro bono representation.