

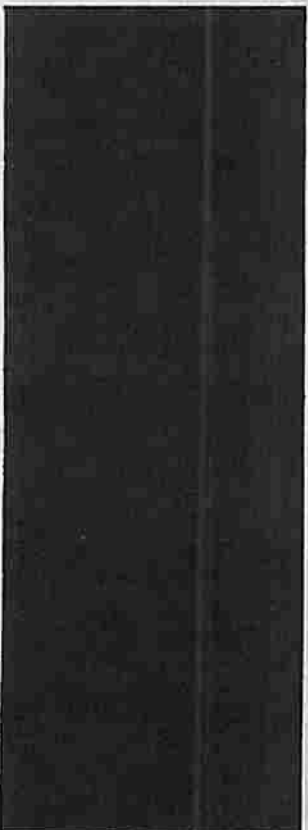
**1. Power point presentations titled “USCIS Adjudicator  
Interaction with Private Attorneys and  
Representatives.**

**FOIA response pp. 8-56**



**U.S. Citizenship  
and Immigration  
Services**

**USCIS Adjudicator Interaction  
with  
Private Attorneys and Representatives**



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# Training Objectives

- I. Review eligibility rules for private attorneys, accredited representatives and others permitted to represent petitioners/applicants.
- II. Help adjudicators handle situations involving difficult or challenging behavior by an attorney or other representative.
- III. Provide an overview of the process for reporting misconduct by private attorneys and other representatives.



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# I. Eligibility Rules for Attorneys and Representatives

## Outline of topics for this section:

- Representation before USCIS
- The Rules of Professional Conduct for Practitioners
- Unauthorized Practice of Law
- Future USCIS Operational and regulatory changes



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# Representation Before USCIS

What constitutes “representation”?

- 8 C.F.R. § 1.1 (i) – Defines representation in terms of “practice” as follows:
  - “[A]n act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the Service, or any officer of the Service, or the Board.”



# Representation – cont'd

- 8 C.F.R. § 1.1 (k) – Defines “preparation” as follows:
  - “[t]he study of the facts of a case and applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers.”
  - Representation “does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure.”



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# Who May Be a Representative?

8 C.F.R. §103.2(a)(3)

An applicant or petitioner may be represented by:

- 1) an attorney in the United States (8 C.F.R. §1.1(f));
- 2) an attorney outside the United States (8 C.F.R. §292.1(a)(6)); or
- 3) an accredited representative of a recognized organization (8 C.F.R. §292.1(a)(4)).



How do I verify that an attorney is eligible to appear as a representative before USCIS?

- National Organization of Bar Counsel (NOBC)  
<http://www.nobc.org/>
- Executive Office for Immigration Review (EOIR)  
<http://www.usdoj.gov/eoir/profcond/chart.htm>



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NOBC - National Organization of Bar Counsel

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# National Organization of Bar Counsel

HOME CONTACT SITEMAP

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Bar Associations

## NOBC 2008 Annual Meeting

The 2008 Annual Meeting will be held at the Roosevelt Hotel in New York City from August 6-9 2008. Look for additional details and registration information under the Meetings tab in the Members' Section.

## Welcome to NOBC.org!

The National Organization of Bar Counsel (NOBC) is a non-profit organization of legal professionals whose member enforce ethics rules that regulate the professional conduct of lawyers who practice law in the United States, Canada and Australia.

This Web site is intended as a resource facility for NOBC members, the legal community, and the general public.

## Announcements

NOBC's Emergency Committees List updated!



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**NOBC - The National Organization of Bar Counsel-Bar Associations and Disciplinary Authorities**

Page 2 of 4

**Bar Associations and Disciplinary Authorities**

Alabama State Bar  
Alaska Bar Association

State Bar of Arizona  
Arkansas Bar Association  
Office of the Arkansas Supreme Court - Committee on Professional Conduct

The State Bar of California  
Colorado Bar Association

Colorado Supreme Court - Offices of Attorney Regulation

Connecticut Bar Association  
Connecticut Statewide Grievance Committee

Delaware State Bar Association  
Office of Disciplinary Counsel of the Supreme Court of Delaware  
D.C. Bar

The Florida Bar

State Bar of Georgia  
Guam Bar Association  
Hawaii State Bar Association  
Hawaii Office of Disciplinary Counsel  
Idaho State Bar  
Illinois State Bar  
Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois

Indiana State Bar Association

Indiana Supreme Court Disciplinary Commission





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LIST OF SUSPENDED AND BOBBLED PRACTITIONERS

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U.S. Department of Health  
Executive Office for Health  
Review

U.S. Department of Health  
Executive Office for Health  
Review

October 31, 2007

LIST OF DISCIPLINED PRACTITIONERS

\* - denotes practitioner(s) most recently disciplined

The Executive Office for Health Review (EOHR) has recently taken certain disciplinary actions against its attorneys after charging them with violations of the Rules of Professional Conduct for Investigation practitioners. Disciplinary proceedings against one attorney were not held. Another attorney's proceedings were terminated. The Rules of Professional Conduct appear in Title 8 of the Code of Federal Regulations (45 CFR Parts 1001 and 1101). In most cases, the disciplinary action is included as a result of sanctions imposed by other jurisdictions or a criminal conviction.

Although the disciplinary process may vary according to the specific circumstances of each case, generally it includes the following steps:

Disciplinary proceedings begin with a Notice of Intent to Discipline filed with the Board of Investigation Appointed (BIA) by the Office of the General Counsel of either EOHR or U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS). The BIA requires the attorney to respond to the alleged violation. In some cases, a Petition for Immediate Suspension also is filed and the BIA orders the attorney to be suspended immediately from practice before the Immigration courts, the BIA, and the DHS. DHS posts EOHR in taking the disciplinary action. Disciplinary attorneys are directed to notify generally, in writing, their clients with pending Immigration cases that they may no longer represent them before the BIA, the Immigration courts, or the DHS. Disciplined attorney's name and the date of the BIA before they can resume the practice of law before the BIA, the Immigration courts, and the DHS.

For more information about a practitioner's disciplinary history, click on the date highlighted in blue.

For more information about the Executive Office for Immigration Review's Attorney Discipline Program click on these links: [Index for Professional Counsel & Federal Counsel for Immigration Reviewers](#); [Feedback](#)

<http://www.uscis.gov/ehp/professionals/index.htm>

11/15/2008

October 2008



| NAME                          | CITY/STATE                      | DATE<br>IMMED.<br>SUSPENSION<br>IMPOSED | FINAL<br>DISCIPLINE<br>IMPOSED | EFFECTIVE<br>DATE OF<br>DISCIPLINE | REINSTATED?   |
|-------------------------------|---------------------------------|---|--------------------------------|------------------------------------|---------------|
| Philip Dennis<br>Abramowitz   | Los Angeles, CA                 |   | Expelled                       | 9/26/02                            | No            |
| Mohamed<br>Alamgir            | District of Columbia            |   | Expelled                       | 7/9/04                             | No            |
| Walker Burrier                | Connecticut/ Los<br>Angeles, CA | 5/13/05                                 | Suspended - 1<br>year          | 5/13/05                            | No            |
| Paul Ira<br>Freedman          | New York                        | 9/18/01                                 | Expelled                       | 9/18/01                            | No            |
| Miguel Gadda                  | San Francisco, CA               | 10/2/01                                 | Expelled                       | 7/8/03                             | No            |
| Virginia Gago                 | New York                        | 2/28/06                                 | Expelled                       | 2/2/06                             | No            |
| Maria L<br>Gonzalez           | New Jersey/New<br>York          | 3/18/07                                 | Suspended - 3<br>months        | 2/24/07                            | Yes - 6/14/07 |
| Jeffrey<br>Gonzalez-<br>Perez | Virginia                        | 8/4/04                                  | Suspended - 2<br>years         | 8/4/04                             | No            |
| Jusita Edward<br>Gould        | Florida                         | 2/5/07                                  | Suspended - 90<br>days         | 11/7/06                            | Yes - 3/7/07  |



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Office of the Chief Counsel - October 2008



How do I verify that an accredited representative is eligible to appear as a representative before USCIS?



# United States Department of Justice Executive Office for Immigration Review



## Immigration Court Practice Manual

**REMINDER: Immigration Court Practice Manual Is Effective July 1**

**El Centro Immigration Court Temporarily Closed**

**San Pedro Immigration Court Update**

### What's New at EOIR

- Immigration Court Practice Manual (02/27/08)
- OIPM 08-03 (06/20/08)
- **REMINDER:** Immigration Court Practice Manual Is Effective July 1 (06/16/08)
- AG Appoints 5 New Members to the BIA (05/30/08)
- Latest Disciplinary Release (05/23/08)

- ★ Background Information
- ★ Organizational Breakdown and Information
- ★ EOIR Legal Orientation and Pro Bono Program
- ★ Immigration Courts Nationwide
- ★ Statistics and Publications
- ★ Contact Information
- ★ Responsibilities
- ★ News, Information & FOIA
- ★ EOIR Forms
- ★ Virtual Law Library
- ★ Employment Opportunities

**REGULATIONS**

**USA.gov**



- Immigration Benefits in EOIR Removal Proceedings
- Notice to Individuals Granted Immigration Relief/Benefits by EOIR
- ★ List of Disciplined Practitioners - updated June 12, 2008
- Barahona-Gomez v. Ashcroft Class Action Settlement - posted December 21, 2007
- NOTICE of Proposed Settlement Agreement in Asylum Adjustment Class Action *Ngwanyia v. Gonzales*, No. 02-502 (RHK) (D. Minn)
- Notice of Proposed Settlement Agreement and Hearing in *Santillan, et al. v. Mukasey*, et al., No. C-04-2686-MHP and *Padilla, et al. v. Ridge, et al.*, No. C-08-1531-MHP in U.S. District Court for the Northern District of California

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### EOIR Virtual Law Library (VLL)

Welcome. This site serves as a complement to the Law Library and Immigration Research Center (LLIRC) located within the headquarters complex of the Executive Office for Immigration Review (EOIR).

#### New Additions to the VLL Last Update: July 3, 2008 10:46 AM

(To be placed on an emailing list for AG/BIA Precedent Decisions, please visit the sign-up page.)

- **Matter of EAC, INC., 24 I&N Dec. 563 (BIA 2008) (Accreditation)**
- **Matter of EAC, INC., 24 I&N Dec. 556 (BIA 2008) (Recognition)**
- **Matter of GONZALEZ-ZOQUIAPAN, 24 I&N Dec. 549 (BIA 2008)**
- **For Federal Register notices regarding the Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act, please see the 2008 Federal Register page**
- **Federal Register: Board of Immigration Appeals: Affirmance Without Opinion, Referral for Panel Review, and Publication of Decisions as Precedents June 18, 2008**
- **Federal Register: Board of Immigration Appeals: Composition of Board and Temporary Board Members June 16, 2008**
- **Federal Register: Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program; June 9, 2008**
- **Matter of HINES, 24 I&N Dec. 554 (BIA 2008)**
- **Federal Register: Submission of Revised Form I-82, Application for Temporary Protected Status; May 28, 2008**
- **Federal Register: In the Matter of the Amended Designations of Islamic Jihad Group (IJG), as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act and Pursuant to Section 1(b) of Executive Order 13224; May 27, 2008**
- **Federal Register: Safe-Harbor Procedures for Employers Who Receive a No-Match Letter: Clarification; Initial Regulatory Flexibility Analysis; March 26, 2008**
- **Matter of J-S, 24 I&N Dec. 520 (AG 2008) (reposted to recognize counsel)**
- **Matter of VELAZQUEZ-HERRERA, 24 I&N Dec. 503 (BIA 2008)**
- **Federal Register Notice: Period of Admission and Stay for Canadian and Mexican Citizens Engaged in Professional Business Activities—TIF-Nonimmigrants; May 9, 2008**

#### Related Links

- U. S. Department of State
  - Visa Bulletin
  - 2007 Country Reports
  - Foreign Affairs Manual
  - 2007 Report on International Religious Freedom

US Commission on Religious Freedom 2007 Report

Interim Decisions/Headnote Chart

Board Precedents and Related Court Decisions: June 25, 2008

Immigration Courts
• Administrative Control List
• Local Operating Procedures

Practitioners
• Recognition and Accreditation R&A Roster
• Disciplined Practitioners List

Please send comments or suggestions regarding this site to the VLL Staff



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# Professional Conduct for Practitioners

## Rules and Procedures



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## Who Is Subject to Sanction?

- Persons subject to sanction include any practitioner. In application and petition proceedings, a practitioner is:
  - an attorney as defined in 8 CFR §1.1(f) who does not represent the federal government; or
  - an accredited representative.



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# Review of Complaints of Professional Misconduct





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# Grounds of Discipline

- Criminal conduct;
- Unethical conduct;
- Unprofessional conduct; or
- Frivolous behavior



# Practitioner Discipline Proceedings

- Conducted by Bar counsel
- Preliminary inquiry to determine if complaint has merit.
- USCIS can issue private sanction, refer complaint to federal, state or local enforcement authorities, or initiate practitioner disciplinary proceeding before EOIR.





# Complaints of Professional Misconduct by Immigration Practitioners

Contact:

Rachel A. McCarthy, USCIS Bar Counsel

802-660-1779 (phone)

802-660-5067 (facsimile)

[rachel.mccarthy@dhs.gov](mailto:rachel.mccarthy@dhs.gov)



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# Notarios and Immigration Consultants

- USCIS does not have UPL enforcement authority
- USCIS does have authority to regulate those who seek to appear as representatives (8 C.F.R. §103.2(a)(3))
- Review G-28s for eligibility
- Review Internal List of Ineligible Individuals
- Contact USCIS counsel for advice if individual does not appear to be eligible
- Contact Bar Counsel and send copy of G-28



# COMING SOON . . .

- Revised Form G-28
- New Form G-281
- AFM, Chapter 12
- DOJ Proposed revisions to 8 CFR § 1003.102
- DHS Proposed revisions to 8 CFR § 1 and § 292



## II. Handling Difficult Situations Involving Private Attorneys

Topics covered in this section:

- General Principles
- Explanations for attorney behavior
- Adjudicator tips for handling difficult situations
- Suggested responses for common attorney objections
- Hypothetical examples/scenarios



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# General Principles

- (1) Attorneys are permitted and expected to zealously represent their clients, which includes voicing comments or objections. You would expect no less if they were representing you.
- (2) Yet the interview must remain free from undue interference by the attorney, who is not a witness or party to the petition/application.
- (3) USCIS Adjudicators should strive to conduct an effective interview, as well as permit the attorney an opportunity to be heard (suggestions for performing this “balancing act” are provided later in this training).





# Adjudicator's Field Manual (AFM) – Chapter 12

- Currently under revision
- Sets forth eligibility requirements for appearing before USCIS.
- Chapter 12 will include a sample Declaration for use by law students, law graduates and reputable individuals. The Declaration will be reviewed by the DHS official to make the discretionary determination as to whether to permit the request to appear at the interview with the applicant/petitioner.
- The Declaration will be filed in the A file. These individuals do NOT submit a G-28 and USCIS does not communicate with them.



# AFM – cont'd

## AFM Ch. 15.8 - Role of Attorney or Representative in the Interview Process.

- The attorney's role at an interview is to ensure that the subject's legal rights are protected. An attorney may advise his client(s) on points of law but he/she cannot respond to questions the interviewing officer has directed to the subject. The attorney's role is even more restricted with regard to a sworn statement taken from an applicant for admission in conjunction with removal proceedings to determine admissibility, where the alien has not yet legally entered the United States (i.e. – no right to counsel in inspection or refugee interviews).
- Officers should not engage in personal conversations with attorneys during the course of an interview.



# Attorneys - Professional Duties and Obligations

- Rules of Professional Conduct for Practitioners – 8 C.F.R. §292.3
- Grounds of Professional Misconduct – 8 C.F.R. §1003.102
- Attorneys are also subject to State Bar Ethics Rules



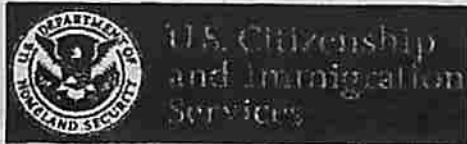


# Misconduct - Enforcement

Adjudicators should report professional misconduct by Practitioners to their supervisors.

In consultation with supervisors, adjudicators should report professional misconduct by practitioners to USCIS Bar Counsel.

Adjudicators may remind Practitioners of the Rules of Professional Conduct.



# Explanations for Attorney Conduct

Why attorneys use confrontational or belligerent behavior:

- Misguided understanding of what it means to zealously represent a client;
- To fluster or intimidate adjudicators into giving up a line of questioning;
- To give their clients time to develop an answer to your question;
- To impress clients and justify legal fees.



## Are there limits to zealous representation?

- Yes: You are a professional and so is the practitioner. You should treat each other as professionals.
- Remember that the interview is for USCIS to make a determination on an immigration application.
- The integrity of the adjudicative process must be preserved and the interview must be controlled by USCIS.
- Particularly egregious conduct can be reported to USCIS Bar Counsel.



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# Techniques for Handling Difficult Attorneys

- Do not engage in an argument with a practitioner over “objections” to your questions;
- Do not threaten the attorney with reporting him/her to supervisors or attorney licensing authorities;
- Do remind them that there are Rules of Professional Conduct in 8 C.F.R. §292.4 and 1003.102;
- Remember that attorneys have a duty to zealously represent the interests of their clients;



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## Techniques – cont'd

- Maintain your composure and professionalism;
- Act as if the attorney has said nothing. Do not address an outburst at all and repeat your question firmly and immediately to the applicant. This is particularly effective if you do it repeatedly. Ignoring the attorney diffuses the reason for the behavior;





## Techniques – cont'd

- After a couple of outbursts, let the attorney know that you will record any objection they may have, but that comments like “You’ve already made up your mind,” or “You already asked that,” are not objections;
- Remind the attorneys that it is their client’s burden to establish eligibility, and that the regulations give you the right to interview the applicant. Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966); 8 C.F.R. §§ 103.2(b)(1); (b)(7); (b)(9);



## Techniques – cont'd

- Inform the attorney that if the client refuses to answer, such failure to respond is grounds for denial. 8 C.F.R. § 103.2(b)(13);
- An adverse inference can be made. INS v. Lopez-Mendoza, 468 U.S. 1032, 1043 (1984) (quoting United States ex rel. Bilokumsky v. Tod, 263 U.S. 149, 153-54 (1923) (Brandeis, J.)); Matter of Guevara, 20 I&N Dec. 238, 241-42 (BIA 1991);



## Techniques – cont'd

- If the attorney continues to interrupt and make it impossible for you to complete the interview, you can:
  - Tell the attorney that further interruptions will result in termination of the interview, risking a conclusion that his client has not met the requisite burden of proof;
  - Call in a supervisor;
  - Call in your section chief;
  - Report it to local USCIS counsel (OCC); or
  - Terminate the interview.





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# Suggestions for Avoiding Difficult Situations

- Adjudicators can sometimes diffuse difficult situations at the beginning of the interview by:
  - sitting the attorney behind the parties (so that they cannot give visual signals);
  - informing the attorney that they will be permitted 5 minutes at the end of the interview to voice any objections or make any comments on the record; and
  - asking the attorney to submit any supporting documents or paperwork at the beginning of the interview (this prevents surprises and may also reveal issues that can be included in the questioning, like the need for an I-601 waiver, e.g.)



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# Responses for Common Attorney Objections

1. Invasion of Privacy – an objection raised in response to questions about marital relations and contraception in spousal or related petitions
  - BIA nonprecedent decisions have repeatedly permitted such questions.
  - Adjudicators should not pursue such questions in a way that can be construed as embarrassing or as harassment. Reserve such questioning for situations that require it.
  - Questions about reproduction and contraception are not prohibited.
  - If attorneys cite Grisswold v. Conn. (U.S. Supreme Court case establishing a right to marital privacy), adjudicators should explain that the question relates to proof of a bona fide marriage, which is a central requirement for approval of a spousal petition.



## Common Objections – cont'd

2. “Asked and Answered” (i.e., an objection that implies that the Adjudicator has already asked the question)

- Adjudicators are permitted to revisit areas previously questioned.
- USCIS interviews are not a court of law, and the standard rules of evidence or court procedure do not apply (i.e., there is no limitation under the INA or 8 CFR regarding the number of times a question can be asked).



# Common Objections – cont'd

## 3. Objections relating to a Violation of Religious Freedoms:

- Adjudicators should be sensitive to religious practices while also performing their adjudicative function.
- However, if adjudicators are not able to conduct the interview and determine eligibility, the adjudicator should inform the attorney and petitioner/applicant, and seek another way to conduct the interview.
- Example: If a female is wearing religious head coverings due to her Muslim faith, and the head coverings prevent confirmation of her identity, see if a female adjudicator is available to conduct the interview.



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# Post-Interview Options

After the interview – if the behavior was extremely egregious (threatening, physically intimidating, etc.):

- Make notes outlining the practitioner's behavior; and
- Report the behavior to your section chief
- Report the professional misconduct to USCIS Bar Counsel





# Make a Record of the Incident

- Steps to take if you encounter an attorney whose conduct you feel should be reported:
  - Write down the specific conduct during, or right after, the event
  - Report the event to your supervisor
  - Draft a memo or email to USCIS Bar Counsel outlining the conduct
  - Include any prior experiences with that particular attorney
  - Include the purpose of the interview/examination and the outcome of the adjudication
  - Forward relevant documents, including the G-28 to USCIS Bar Counsel
  - Do not contact AILA or State Disciplinary Authorities on your own.





# Practical Exercises

- The following are some hypothetical scenarios drawn from real cases.
- Think about how would you handle these situations, and then review the recommended course of action.



# Hypothetical Scenario #1

- Petitioner's attorney tells the Adjudicator that the questioning is unfair and that they want to terminate the interview.
- Adjudicator objects to the attorney's authority to terminate.
- Adjudicator speaks directly to the petitioner, asking them if they want to terminate the interview or continue without their attorney present.
- Adjudicator informs the petitioner that any rescheduling of the interview will likely be 12-18 months later.
- Did the Adjudicator handle this situation appropriately?



# Hypo #1 – Recommendation

- Adjudicator should probably not have addressed the petitioner directly.
- Most attorneys and their clients have an interest in getting the interview completed and moving forward.
- If the attorney is seeking termination based on your questioning, the likelihood of fraud has increased, and the case would probably be better off referred to FDNS.
- Or alternatively, the Adjudicator can reply that the case will be decided based on the evidence currently in the record, and proceed accordingly.



## Hypothetical Scenario #2

- Adjudicator attempts to conduct interview, but petitioner's attorney keeps interrupting the questioning with long statements about the case.
- Adjudicator decides that the attorney is really attempting to testify on the petitioner's behalf.
- Adjudicator informs the attorney his interruptions are really statements of testimony, and that attorneys are not permitted to testify as a witness.
- Adjudicator informs attorney that he can withdraw as petitioner's representative and testify as a witness if desired, but that he may not continue to interfere with the interview.



## Hypo #2 – Recommendation

- Adjudicator handled the situation appropriately.
- Attorneys are not permitted to testify on behalf of their client.
- Objections should point to a specific legal issue.
- Objections that stretch on into statements could constitute testimony or could be suggesting answers to their clients.
- Attorneys should not be permitted to make statements about the facts of the case during the interview process.
- Remind the attorney that they will have the opportunity at the end of the interview to make their arguments or statements.





# Hypothetical Scenario #3

- The applicant arrives on time for a 9:00 AM interview.
- A G-28 is on file, but attorney absent at 9:00 AM when applicant is called in.
- Applicant is asked if he wishes to sign a waiver of the attorney's presence or get re-scheduled for a time when the attorney can be present.
- Applicant signs waiver, and interview proceeds without attorney.
- Attorney comes 10 minutes later and the DAO is notified.
- DAO asks the applicant if they want to let the attorney in to the interview. Applicant replies "no" since the interview seems to be going well, so why should he let the attorney in and then have to pay his fee?
- Attorney is angry at USCIS. The supervisor explained that the applicant signed the waiver and then declined to let the attorney in.
- Did USCIS handle the situation properly? Thoughts? Comments?





## Hypo #3 – Recommendation:

- Adjudicator should have waited more than 10 minutes.
- Did they try to contact the attorney (or have the client contact the attorney) to see if he or she was delayed in traffic, or in the building security line?
- The DAO probably moved too quickly to seek a waiver - and USCIS has to be extremely careful, because a waiver must be clearly voluntary.
- Controversy is sure to erupt if the case is denied (less likely in an approved case), but the DAO is now a potential witness in a fee dispute between the lawyer and the applicant.
- In addition, a supervisor should be the one to explain the options to the applicant, so that there is a "neutral" individual assessing the voluntariness of the waiver of counsel.



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# Questions?

## Thank you.



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- 1. Power point presentations titled “USCIS Adjudicator  
Interaction with Private Attorneys and  
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**FOIA response pp. 119-218**



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**USCIS Adjudicator Interaction  
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- I. Review eligibility rules for private attorneys, accredited representatives and others permitted to represent petitioners/applicants.
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- III. Provide an overview of the process for reporting misconduct by private attorneys and other representatives.





# Introduction

- Emphasize the value of representation by private attorneys
- The basic professional courtesy due members of the bar
- Key points for adjudicators in terms of how to respect/understand the role of private practitioners.



# I. Eligibility Rules for Attorneys and Representatives

## Outline of topics for this section:

- Representation before USCIS
- The Rules of Professional Conduct for Practitioners
- Unauthorized Practice of Law
- Future USCIS Operational and regulatory changes



# Representation Before USCIS

What constitutes "representation"?

- 8 C.F.R. 1.1 (i) – Defines representation in terms of "practice" as follows:
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# Representation – cont'd

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# Who May Be a Representative?

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**<http://www.nobc.org/>**
- **Executive Office for Immigration Review (EOIR)**  
**<http://www.usdoj.gov/eoir/profcond/chart.htm>**





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NOBC - National Organization of Bar Counsel

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# National Organization of Bar Counsel

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Bar Associations

## Welcome to NOBC.org!

**NOBC 2008 Annual Meeting**  
 The 2008 Annual Meeting will be held at the Roosevelt Hotel in New York City from August 6 - 9, 2008. Look for additional details and registration information under the Meetings tab in the Members' Section.

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This Web site is intended as a resource facility for NOBC members, the legal community, and the general public.

## Announcements

NOBC Officers & Committees Elected



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NOBC - The National Organization of Bar Counsel-Bar Associations and Disciplinary Authorities

Bar Associations and Disciplinary Authorities

Alabama State Bar  
Alaska Bar Association

State Bar of Arizona  
Arkansas Bar Association  
Office of the Arkansas Supreme Court - Committee on Professional Conduct

The State Bar of California  
Colorado Bar Association

Colorado Supreme Court - Offices of Attorney Regulation

Connecticut Bar Association  
Connecticut Statewide Grievance Committee

Delaware State Bar Association  
Office of Disciplinary Counsel of the Supreme Court of Delaware  
D.C. Bar

The Florida Bar

State Bar of Georgia  
Guam Bar Association  
Hawaii State Bar Association  
Hawaii Office of Disciplinary Counsel  
Idaho State Bar

Illinois  
Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois

Indiana State Bar Association

Indiana Supreme Court Disciplinary Commission

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LIST OF SUSPENDED AND EXPIRED PRACTITIONERS

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U.S. Department of Justice  
Executive Office for Immigration Review

21st Learning File, Migration of the General Case  
Fall Case, Fiscal Year 2007

October 31, 2007

LIST OF DISCIPLINED PRACTITIONERS

\* - denotes practitioner(s) most recently disciplined

The Executive Office for Immigration Review (EOIR) has recently taken certain disciplinary action against the attorneys under charging items with violations of the Rules of Professional Conduct for Immigration practitioners. Disciplinary proceedings against such attorneys were not held. Another attorney's proceedings were terminated. The Rules of Professional Conduct apply to Title 8 of the Code of Federal Regulations (8 CFR Parts 1003 and 1202). In most cases, the disciplinary action is imposed as a result of practices imposed by other practitioners or a criminal conviction.

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In some cases, a Petition for Immigrant Suspension also is filed and the BIA orders the attorney to be suspended immediately from practice before the federal courts, the BIA, and the DHS. (848 listing EOIR in taking the disciplinary action.) Disciplinary attorneys are directed to notify promptly, in writing, their clients with pending immigration cases that they may no longer represent them before the BIA, the immigration courts, or the DHS. Disciplinary attorneys may petition and be reinstated by the BIA before they can resume the practice of law before the BIA, the immigration courts, and the DHS.

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<http://www.asisof.gov/foia/disciplinary.html>

11/13/200



Office of the Chief Counsel - December 2009

| NAME                      | CITY/STATE                   | DATE IMMED. SUSPENSION IMPOSED | FINAL DISCIPLINE IMPOSED | EFFECTIVE DATE OF DISCIPLINE | REINSTATED?   |
|---------------------------|------------------------------|--------------------------------|--------------------------|------------------------------|---------------|
| Phillip Dennis Abramowitz | Los Angeles, CA              | .....                          | Expelled                 | 9/26/07                      | No            |
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Office of the Chief Counsel - December 2009

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How do I verify that an accredited representative is eligible to appear as a representative before USCIS?



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**United States Department of Justice  
Executive Office for Immigration Review**



Immigration Court Practice Manual

**REMINDEr:** Immigration Court Practice Manual Is Effective July 1

El Centro Immigration Court Temporarily Closed

San Pedro Immigration Court Update

**What's New at EOIR**

- Immigration Court Practice Manual (02/27/08)
- REMINDER: Immigration Court Practice Manual Is Effective July 1 (06/14/08)
- AC Appoints 5 New Advisors to the IIA (02/26/08)
- Latest Disciplinary Release (05/23/08)

- ✦ Background Information
- ✦ Organizational Breakdown and Information
- ✦ EOIR Legal Orientation and Pro Bono Program
- ✦ Immigration Courts Nationwide
- ✦ Statistics and Publications
- ✦ Contact Information
- ✦ Responsibilities
- ✦ News, Information & FOIA
- ✦ EOIR Forms
- ✦ Virtual Law Library
- ✦ Employment Opportunities



[usa.gov](http://usa.gov)

- Immigration Benefits in EOIR Removal Proceedings
- Notice to Address Criminal Immigration Relief Benefits by EOIR
- List of Disciplined Practitioners - updated June 17, 2008
- Barabona-Garcia v. Ashcroft Case Action Settlement - posted December 11, 2007
- NO HCE of Proposed Settlement Agreement in Asylum Adjudication Case, *Alfonso v. Utreras*, No. 02-392 (RIR HRC Milan)
- Notice of Proposed Settlement Agreement and Hearing in *Santillan, et al. v. Makassy, et al.*, No. C-04-2086-MHP and *Padilla, et al. v. Ridge, et al.*, No. C-06-151-MHP in U.S. District Court for the Northern District of California

Please read the DOJ Privacy Policy and Legal Policies & Disclaimers Return to the Department of Justice Homepage

<http://www.usdoj.gov/eoir>

1/7/08



**U.S. Citizenship and Immigration Services**





# Professional Conduct for Practitioners — Rules and Procedures

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Office of the Chief Counsel - December 2009

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# Who Is Subject to Sanction?

- Persons subject to sanction include any practitioner. In application and petition proceedings, a practitioner is:
  - an attorney as defined in 8 CFR 1.1(f) who does not represent the federal government; or
  - an accredited representative.



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# Review of Complaints of Professional Misconduct



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# Grounds of Discipline

- Criminal conduct;
- Unethical conduct;
- Unprofessional conduct; or
- Frivolous behavior



# Practitioner Discipline Proceedings

- Conducted by Bar counsel
- Preliminary inquiry to determine if complaint has merit.
- USCSIS can issue private sanction, refer complaint to federal, state or local enforcement authorities, or initiate practitioner disciplinary proceeding before EOIR.



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# Complaints of Professional Misconduct by Immigration Practitioners

**Contact:**

Rachel A. McCarthy, USCIS Bar Counsel

802-660-1779 (phone)

802-660-5067 (facsimile)

[rachel.mccarthy@dhs.gov](mailto:rachel.mccarthy@dhs.gov)



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# Notarios and Immigration Consultants

- USCIS does not have UPL enforcement authority
- USCIS does have authority to regulate those who seek to appear as representatives (8 C.F.R. 103.2(a)(3))
- Review G-28s for eligibility
- Review Internal List of Ineligible Individuals
- Contact USCIS counsel for advice if individual does not appear to be eligible
- Contact Bar Counsel and send copy of G-28



# COMING SOON . . .

- Revised Form G-28
- New Form G-28I
- AFM, Chapter 12
- DOJ Proposed revisions to 8 CFR 1003.102
- DHS Proposed revisions to 8 CFR 1 and 292



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## II. Handling Difficult Situations Involving Private Attorneys

Topics covered in this section:

- General Principles
- Explanations for attorney behavior
- Adjudicator tips for handling difficult situations
- Suggested responses for common attorney objections
- Hypothetical examples/scenarios



# General Principles

- (1) Attorneys are permitted and expected to zealously represent their clients, which includes voicing comments or objections. You would expect no less if they were representing you.
- (2) Yet the interview must remain free from undue interference by the attorney, who is not a witness or party to the petition/application.
- (3) USCIS Adjudicators should strive to conduct an effective interview, as well as permit the attorney an opportunity to be heard (suggestions for performing this “balancing act” are provided later in this training).





# Adjudicator's Field Manual (AFM) – Chapter 12

- Currently under revision
- Sets forth eligibility requirements for appearing before USCIS.
- Chapter 12 will include a sample Declaration for use by law students, law graduates and reputable individuals. The Declaration will be reviewed by the DHS official to make the discretionary determination as to whether to permit the request to appear at the interview with the applicant/petitioner.
- The Declaration will be filed in the A file. These individuals do NOT submit a G-28 and USCIS does not communicate with them.





# AFM – cont'd

## AFM Ch. 15.8 - Role of Attorney or Representative in the Interview Process.

- The attorney's role at an interview is to ensure that the subject's legal rights are protected. An attorney may advise his client(s) on points of law but he/she cannot respond to questions the interviewing officer has directed to the subject. The attorney's role is even more restricted with regard to a sworn statement taken from an applicant for admission in conjunction with removal proceedings to determine admissibility, where the alien has not yet legally entered the United States (i.e. – no right to counsel in inspection or refugee interviews).
- Officers should not engage in personal conversations with attorneys during the course of an interview.



# Attorneys - Professional Duties and Obligations

- Rules of Professional Conduct for Practitioners – 8 C.F.R. 292.3
- Grounds of Professional Misconduct – 8 C.F.R. 1003.102
- Attorneys are also subject to State Bar Ethics Rules



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# Misconduct - Enforcement

Adjudicators should report professional misconduct by Practitioners to their supervisors.

In consultation with supervisors, adjudicators should report professional misconduct by practitioners to USCIS Bar Counsel.

Adjudicators may remind Practitioners of the Rules of Professional Conduct.



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# Explanations for Attorney Conduct

Why attorneys use confrontational or belligerent behavior:

- Misguided understanding of what it means to zealously represent a client;
- To fluster or intimidate adjudicators into giving up a line of questioning;
- To give their clients time to develop an answer to your question;
- To impress clients and justify legal fees.



# Are there limits to zealous representation?

- Yes. You are a professional and so is the practitioner. You should treat each other as professionals.
- Remember that the interview is for USCIS to make a determination on an immigration application.
- The integrity of the adjudicative process must be preserved and the interview must be controlled by USCIS.
- Particularly egregious conduct can be reported to USCIS Bar Counsel.



# Techniques for Handling Difficult Attorneys

- Do not engage in an argument with a practitioner over “objections” to your questions;
- Do not threaten the attorney with reporting him/her to supervisors or attorney licensing authorities;
- Do remind them that there are Rules of Professional Conduct in 8 C.F.R. 292.4 and 1003.102;
- Remember that attorneys have a duty to zealously represent the interests of their clients;





# Techniques – cont'd

- Maintain your composure and professionalism;
- Act as if the attorney has said nothing. Do not address an outburst at all and repeat your question firmly and immediately to the applicant. This is particularly effective if you do it repeatedly. Ignoring the attorney diffuses the reason for the behavior;



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## Techniques – cont'd

- After a couple of outbursts, let the attorney know that you will record any objection they may have, but that comments like “You’ve already made up your mind,” or “You already asked that,” are not objections;
- Remind the attorneys that it is their client’s burden to establish eligibility, and that the regulations give you the right to interview the applicant. Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966); 8 C.F.R. §§ 103.2(b)(1); (b)(7); (b)(9);



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# Techniques – cont'd

- Inform the attorney that if the client refuses to answer, such failure to respond is grounds for denial. 8 C.F.R. § 103.2(b)(13);
- An adverse inference can be made. INS v. Lopez-Mendoza, 468 U.S. 1032, 1043 (1984) (quoting United States ex rel. Bilokumsky v. Tod, 263 U.S. 149, 153-54 (1923) (Brandeis, J.)); Matter of Guevara, 20 I&N Dec. 238, 241-42 (BIA 1991);



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## Techniques – cont'd

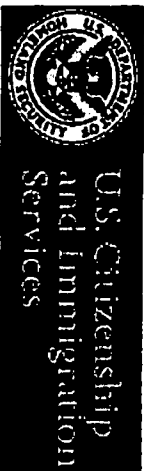
- If the attorney continues to interrupt and make it impossible for you to complete the interview, you can:
  - Tell the attorney that further interruptions will result in termination of the interview, risking a conclusion that his client has not met the requisite burden of proof;
  - Call in a supervisor;
  - Call in your section chief;
  - Report it to local USCIS counsel (OCC); or
  - Terminate the interview.



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# Suggestions for Avoiding Difficult Situations

- Adjudicators can sometimes diffuse difficult situations at the beginning of the interview by:
  - informing the attorney that they will be permitted 5 minutes at the end of the interview to voice any objections or make any comments on the record; and
  - asking the attorney to submit any supporting documents or paperwork at the beginning of the interview (this prevents surprises and may also reveal issues that can be included in the questioning, like the need for an I-601 waiver, e.g.)



# Responses for Common Attorney Objections

1. Invasion of Privacy – an objection raised in response to questions about marital relations and contraception in spousal or related petitions
  - BIA nonprecedent decisions have repeatedly permitted such questions.
  - Adjudicators should not pursue such questions in a way that can be construed as embarrassing or as harassment. Reserve such questioning for situations that require it.
  - Questions about reproduction and contraception are not prohibited.
  - If attorneys cite Griswold v. Conn. (U.S. Supreme Court case establishing a right to marital privacy), adjudicators should explain that the question relates to proof of a bona fide marriage, which is a central requirement for approval of a spousal petition.





## Common Objections – cont'd

2. “Asked and Answered” (i.e., an objection that implies that the Adjudicator has already asked the question)

- Adjudicators are permitted to revisit areas previously questioned.
- USCIS interviews are not a court of law, and the standard rules of evidence or court procedure do not apply (i.e., there is no limitation under the INA or 8 CFR regarding the number of times a question can be asked).



# Common Objections – cont'd

## 3. Objections relating to a Violation of Religious Freedoms:

- Adjudicators should be sensitive to religious practices while also performing their adjudicative function.
- However, if adjudicators are not able to conduct the interview and determine eligibility, the adjudicator should inform the attorney and petitioner/applicant, and seek another way to conduct the interview.
- Example: If a female is wearing religious head coverings due to her Muslim faith, and the head coverings prevent confirmation of her identity, see if a female adjudicator is available to conduct the interview.



# Post-Interview Options

After the interview – if the behavior was extremely egregious (threatening, physically intimidating, etc.):

- Make notes outlining the practitioner's behavior; and
- Report the behavior to your section chief
- Report the professional misconduct to USCIS Bar Counsel



# Make a Record of the Incident

- Steps to take if you encounter an attorney whose conduct you feel should be reported:
  - Write down the specific conduct during, or right after, the event
  - Report the event to your supervisor
  - Draft a memo or email to USCIS Bar Counsel outlining the conduct
  - Include any prior experiences with that particular attorney
  - Include the purpose of the interview/examination and the outcome of the adjudication
  - Forward relevant documents, including the G-28 to USCIS Bar Counsel
  - Do not contact AILA or State Disciplinary Authorities on your own.



# Practical Exercises

- The following are some hypothetical scenarios drawn from real cases.
- Think about how would you handle these situations, and then review the recommended course of action.





# Hypothetical Scenario #1

- Petitioner's attorney tells the Adjudicator that the questioning is unfair and that they want to terminate the interview.
- Adjudicator objects to the attorney's authority to terminate.
- Adjudicator speaks directly to the petitioner, asking them if they want to terminate the interview or continue without their attorney present.
- Adjudicator informs the petitioner that any rescheduling of the interview will likely be 12-18 months later.
- Did the Adjudicator handle this situation appropriately?





# Hypo #1 – Recommendation

- Adjudicator should probably not have addressed the petitioner directly.
- Most attorneys and their clients have an interest in getting the interview completed and moving forward.
- If the attorney is seeking termination based on your questioning, the likelihood of fraud has increased, and the case would probably be better off referred to FDNS.
- Or alternatively, the Adjudicator can reply that the case will be decided based on the evidence currently in the record, and proceed accordingly.



## Hypothetical Scenario #2

- Adjudicator attempts to conduct interview, but petitioner's attorney keeps interrupting the questioning with long statements about the case.
- Adjudicator decides that the attorney is really attempting to testify on the petitioner's behalf.
- Adjudicator informs the attorney his interruptions are really statements of testimony, and that attorneys are not permitted to testify as a witness.
- Adjudicator informs attorney that he can withdraw as petitioner's representative and testify as a witness if desired, but that he may not continue to interfere with the interview.



## Hypo #2 – Recommendation

- Adjudicator handled the situation appropriately.
- Attorneys are not permitted to testify on behalf of their client.
- Objections should point to a specific legal issue.
- Objections that stretch on into statements could constitute testimony or could be suggesting answers to their clients.
- Attorneys should not be permitted to make statements about the facts of the case during the interview process.
- Remind the attorney that they will have the opportunity at the end of the interview to make their arguments or statements.



# Hypothetical Scenario #3

- The applicant arrives on time for a 9:00 AM interview.
- A G-28 is on file, but attorney absent at 9:00 AM when applicant is called in.
- Applicant is asked if he wishes to sign a waiver of the attorney's presence or get re-scheduled for a time when the attorney can be present.
- Applicant signs waiver, and interview proceeds without attorney.
- Attorney comes 10 minutes later and the DAO is notified.
- DAO asks the applicant if they want to let the attorney in to the interview. Applicant replies "no" since the interview seems to be going well, so why should he let the attorney in and then have to pay his fee?
- Attorney is angry at USCIS. The supervisor explained that the applicant signed the waiver and then declined to let the attorney in.
- Did USCIS handle the situation properly? Thoughts? Comments?





## Hypo #3 – Recommendation:

- Adjudicator should have waited more than 10 minutes.
- Did they try to contact the attorney (or have the client contact the attorney) to see if he or she was delayed in traffic, or in the building security line?
- The DAO probably moved too quickly to seek a waiver - and USCIS has to be extremely careful, because a waiver must be clearly voluntary.
- Controversy is sure to erupt if the case is denied (less likely in an approved case), but the DAO is now a potential witness in a fee dispute between the lawyer and the applicant.
- In addition, a supervisor should be the one to explain the options to the applicant, so that there is a "neutral" individual assessing the voluntariness of the waiver of counsel.



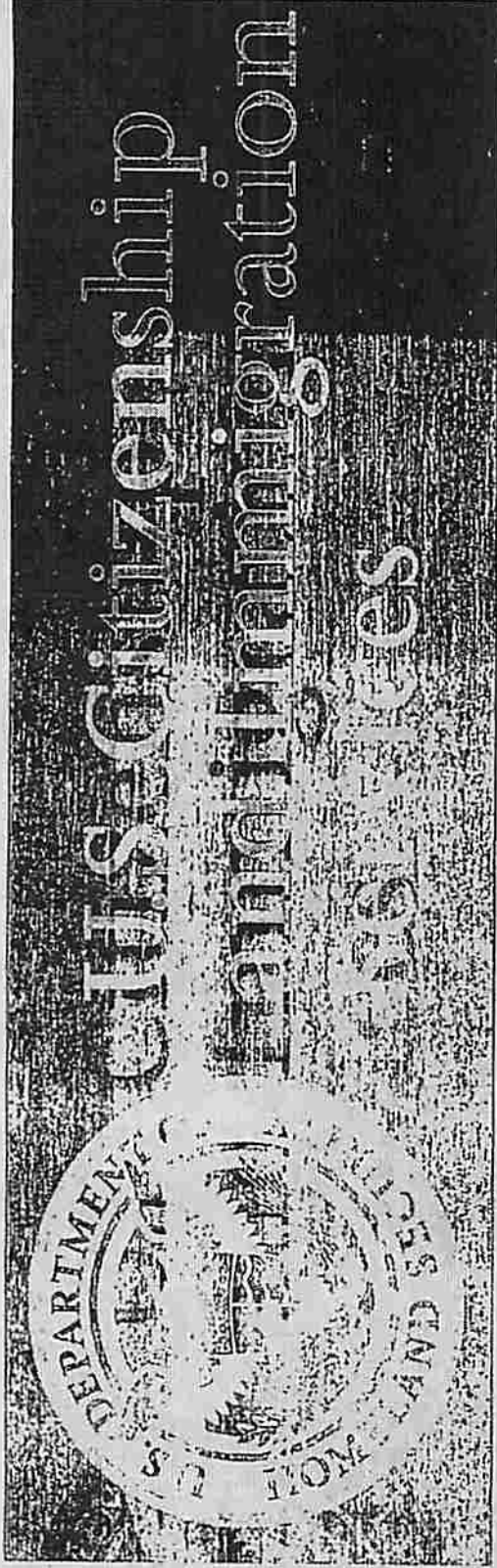
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# U.S. Citizenship and Immigration Services







**USCIS Adjudicator Interaction**  
**with**  
**Private Attorneys and Representatives**



of the Chief Counsel

# Training Objectives

- I. Review eligibility rules for private attorneys, accredited representatives and others permitted to represent petitioners/applicants.
- II. Help adjudicators handle situations involving difficult or challenging behavior by an attorney or other representative.
- III. Provide an overview of the process for reporting misconduct by private attorneys and other representatives.



# Introduction

- **Emphasize the value of representation by private attorneys**
- **The basic professional courtesy due members of the bar**
- **Key points for adjudicators in terms of how to respect/understand the role of private practitioners.**



# **I. Eligibility Rules for Attorneys and Representatives**

## **Outline of topics for this section:**

- **Representation before USCIS**
- **The Rules of Professional Conduct for Practitioners**
- **Unauthorized Practice of Law**
- **Future USCIS Operational and regulatory changes**



# Representation Before USCIS

## What constitutes "representation"?

- 8 C.F.R. 1.1 (i) -- Defines representation in terms of "practice" as follows:
  - "[A]n act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the Service, or any officer of the Service, or the Board."



# Representation – cont'd

- **8 C.F.R. 1.1 (k) – Defines “preparation” as follows:**
  - “[t]he study of the facts of a case and applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers.”
  - Representation “does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure.”



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# Who May Be a Representative?

8 C.F.R. §103.2(a)(3)

An applicant or petitioner may be represented by:

- 1) an attorney in the United States (8 C.F.R. 1.1(f));
- 2) an attorney outside the United States (8 C.F.R. 292.1(a)(6)); or
- 3) an accredited representative of a recognized organization (8 C.F.R. 292.1(a)(4)).



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# How do I verify that an attorney is eligible to appear as a representative before USCIS?

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NOBC - National Organization of Bar Counsel

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National Organization of Bar Counsel

HOME CONTACT SITEMAP



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Bar Associations

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Office of the Chief Counsel - October 2008

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**NOBC - The National Organization of Bar Counsel, Bar Associations and Disciplinary Authorities**

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**Bar Associations and Disciplinary Authorities**

- Alabama State Bar
- Alaska Bar Association
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- Hawaii State Bar Association
- Hawaii Office of Disciplinary Counsel
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LIST OF SUSPENDED AND EXPELLED PRACTITIONERS

Page 1 of 11



U.S. Department of Justice  
Executive Office for Immigration Review

For Current

1107 Kentucky Ave., Suite 816 of the General Court  
Fall Church, Virginia 22071

October 31, 2007

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<http://www.azsdbf.gov/foia/profconduct/chart.htm>

11/11/2009



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| NAME                     | CITY/STATE                   | DATE IMMED. SUSPENSION IMPOSED | FINAL DISCIPLINE IMPOSED | EFFECTIVE DATE OF DISCIPLINE | REINSTATED?   |
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How do I verify that an  
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representative before USCIS?



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## United States Department of Justice Executive Office for Immigration Review



### Immigration Court Practice Manual

REMINDER: Immigration Court Practice Manual Is Effective July 1

El Centro Immigration Court Temporarily Closed

San Pedro Immigration Court Update

#### What's New at EOIR

- Immigration Court Practice Manual (02/27/08)
- OIPM 08-03 (06/20/08)
- REMINDER: Immigration Court Practice Manual Is Effective July 1 (06/16/08)
- AG Appoints 5 New Members to the OIA (05/30/08)
- Latest Disciplinary Release (05/23/08)



Background Information



Responsibilities



Organizational Breakdown and Information



News, Information & FOIA



EOIR Legal Orientation and Pro Bono Program



EOIR Forms



Immigration Courts Nationwide



Virtual Law Library



Statistics and Publications



Employment Opportunities



Contact Information



USA.gov

- Immigration Benefits in EOIR Removal Proceedings
- Notice to Individuals Granted Immigration Relief/Benefits by EOIR
- List of Disciplined Practitioners - updated June 12, 2008
- Barahona-Gomez v. Ashcroft Class Action Settlement - posted December 31, 2002
- NOTICE of Proposed Settlement Agreement in Asylum Adjustment Class Action Ngwanya v. Gonzalez, No. 02-502 (RIK) (D. Minn)
- Notice of Proposed Settlement Agreement and Hearing in Santillan, et al. v. Mukasey, et al., No. C-04-2686-MHP and Padilla, et al. v. Ridge, et al., No. C-08-1551-MHP in U.S. District Court for the Northern District of California



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EOIR Virtual Law Library (VLL) Home Page

Page 1 of 2

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## Navigation Bar

VLL Home Page

## Law

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AG/BIA Decisions

OCAHD Decisions

8 C.F.R. 2008

Federal Register TPS

Legislation/IIIA

## Attorney Resources

Disciplined Practitioner  
Decisions

Streaming

OCIS Practice Manual

BIA Practice Manual

Library Information

FAQs

## EOIR Virtual Law Library (VLL)

Welcome. This site serves as a complement to the Law Library and Immigration Research Center (LLIRC) located within the headquarters complex of the Executive Office for Immigration Review (EOIR).

New Additions to the VLL  
Last Update: July 3, 2008 10:46 AM

(To be placed on an emailing list for AG/BIA Precedent Decisions,  
please visit the sign-up page.)

- **Matter of EAC, INC.**, 24 I&N Dec. 563 (BIA 2008) (Accreditation)
- **Matter of EAC, INC.**, 24 I&N Dec. 556 (BIA 2008) (Recognition)
- **Matter of GONZALEZ-ZOQUIAPAN**, 24 I&N Dec. 549 (BIA 2008)
- For Federal Register notices regarding the Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act, please see the 2008 Federal Register page
- **Federal Register: Board of Immigration Appeals: Affirmance Without Opinion, Referral for Panel Review, and Publication of Decisions as Precedents** June 18, 2008
- **Federal Register: Board of Immigration Appeals: Composition of Board and Temporary Board Members** June 16, 2008
- **Federal Register: Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program**; June 9, 2008
- **Matter of HINES**, 24 I&N Dec. 554 (BIA 2008)
- **Federal Register: Submission of Revised Form I-521, Application for Temporary Protected Status**; May 28, 2008
- **Federal Register: In the Matter of the Amended Designations of Islamic Jihad Group (IJG), as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act and Pursuant to Section 1(b) of Executive Order 13224**; May 27, 2008
- **Federal Register: Safe-Harbor Procedures for Employers Who Receive a No-Hatch Letter: Clarification: Initial Regulatory Flexibility Analysis**; March 26, 2008
- **Matter of J-5**, 24 I&N Dec. 520 (AG 2008) (reposted to recognize counsel)
- **Matter of VELAZQUEZ-HERRERA**, 24 I&N Dec. 503 (BIA 2008)
- **Federal Register Notice: Period of Admission and Stay for Canadian and Mexican Citizens Engaged in Professional Business Activities—III Nonimmigrants**; May 9, 2008
- **Federal Register Notice: Customs Control for United States**

## Related Links

U. S. Department of State  
• Visa Bulletin  
• 2007 Country Reports  
• Foreign Affairs Manual  
• 2007 Report on International Religious Freedom

US Commission on  
Religious Freedom 2007  
Report

Interim  
Decisions/Headnote Chart;

Board Precedents and  
Related Court Decisions;  
June 25, 2008

Immigration Courts  
• Administrative Control List  
• Local Operating Procedures

★ Practitioners  
• Recognition and  
Accreditation RBA Roster  
• Disciplined Practitioners List

Please send comments or  
suggestions regarding this  
site to the VLL Staff

USA.gov  
U.S. GOVERNMENT PRINTING OFFICE: 2007-01-10



# Professional Conduct for Practitioners Rules and Procedures



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## Who Is Subject to Sanction?

- Persons subject to sanction include any practitioner. In application and petition proceedings, a practitioner is:
  - an attorney as defined in 8 CFR 1.1(f) who does not represent the federal government; or
  - an accredited representative.



U.S. Citizenship  
and Immigration  
Services

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# Review of Complaints of Professional Misconduct



Office of the Chief Counsel - October 2008



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# Grounds of Discipline

- Criminal conduct;
- Unethical conduct;
- Unprofessional conduct; or
- Frivolous behavior



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# Practitioner Discipline Proceedings

- Conducted by Bar counsel
- Preliminary inquiry to determine if complaint has merit.
- USCIS can issue private sanction, refer complaint to federal, state or local enforcement authorities, or initiate practitioner disciplinary proceeding before EOIR.



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# Notarios and Immigration Consultants

- USCIS does not have UPI enforcement authority
- USCIS does have authority to regulate those who seek to appear as representatives (8 C.F.R. 103.2(a)(3))
- Review G-28s for eligibility
- Review Internal List of Ineligible Individuals
- Contact USCIS counsel for advice if individual does not appear to be eligible
- Contact Bar Counsel and send copy of G-28



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# COMING SOON . . . .

- Revised Form G-28
- New Form G-28I
- AFM, Chapter 12
- DOJ Proposed revisions to 8 CFR 1003.102
- DHS Proposed revisions to 8 CFR 1 and 292



## II. Handling Difficult Situations Involving Private Attorneys

Topics covered in this section:

- General Principles
- Explanations for attorney behavior
- Adjudicator tips for handling difficult situations
- Suggested responses for common attorney objections
- Hypothetical examples/scenarios



# General Principles

- (1) Attorneys are permitted and expected to zealously represent their clients, which includes voicing comments or objections. You would expect no less if they were representing you.
- (2) Yet the interview must remain free from undue interference by the attorney, who is not a witness or party to the petition/application.
- (3) USCIS Adjudicators should strive to conduct an effective interview, as well as permit the attorney an opportunity to be heard (suggestions for performing this "balancing act" are provided later in this training).





# Adjudicator's Field Manual (AFM) – Chapter 12

- Currently under revision
- Sets forth eligibility requirements for appearing before USCIS.
- Chapter 12 will include a sample Declaration for use by law students, law graduates and reputable individuals. -The Declaration will be reviewed by the DHS official to make the discretionary determination as to whether to permit the request to appear at the interview with the applicant/petitioner.
- The Declaration will be filed in the A file. These individuals do NOT submit a G-28 and USCIS does not communicate with them.



# AFM – cont'd

## AFM Ch. 15.3 - Role of Attorney or Representative in the Interview Process.

- The attorney's role at an interview is to ensure that the subject's legal rights are protected. An attorney may advise his client(s) on points of law but he/she cannot respond to questions the interviewing officer has directed to the subject. The attorney's role is even more restricted with regard to a sworn statement taken from an applicant for admission in conjunction with removal proceedings to determine admissibility, where the alien has not yet legally entered the United States (i.e. – no right to counsel in inspection or refugee interviews).
- Officers should not engage in personal conversations with attorneys during the course of an interview.



# Attorneys - Professional Duties and Obligations

- Rules of Professional Conduct for Practitioners – 8 C.F.R. 292.3
- Grounds of Professional Misconduct – 8 C.F.R. 1003.102
- Attorneys are also subject to State Bar Ethics Rules



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# Misconduct - Enforcement

Adjudicators should report professional misconduct by Practitioners to their supervisors.

In consultation with supervisors, adjudicators should report professional misconduct by practitioners to USCIS Bar Counsel.

Adjudicators may remind Practitioners of the Rules of Professional Conduct.



# Explanations for Attorney Conduct

Why attorneys use confrontational or belligerent behavior:

- Misguided understanding of what it means to zealously represent a client;
- To fluster or intimidate adjudicators into giving up a line of questioning;
- To give their clients time to develop an answer to your question;
- To impress clients and justify legal fees.





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# Are there limits to zealous representation?

- Yes. You are a professional and so is the practitioner. You should treat each other as professionals.
- Remember that the interview is for USCIS to make a determination on an immigration application.
- The integrity of the adjudicative process must be preserved and the interview must be controlled by USCIS.
- Particularly egregious conduct can be reported to USCIS Bar Counsel.



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# Techniques for Handling Difficult Attorneys

- Do not engage in an argument with a practitioner over “objections” to your questions;
- Do not threaten the attorney with reporting him/her to supervisors or attorney licensing authorities;
- Do remind them that there are Rules of Professional Conduct in 8 C.F.R. 292.4 and 1003.102;
- Remember that attorneys have a duty to zealously represent the interests of their clients;



## Techniques – cont'd

- Maintain your composure and professionalism;
- Act as if the attorney has said nothing. Do not address an outburst at all and repeat your question firmly and immediately to the applicant. This is particularly effective if you do it repeatedly. Ignoring the attorney diffuses the reason for the behavior;



## Techniques – cont'd

- After a couple of outbursts, let the attorney know that you will record any objection they may have, but that comments like “You’ve already made up your mind,” or “You already asked that,” are not objections;
- Remind the attorneys that it is their client’s burden to establish eligibility, and that the regulations give you the right to interview the applicant. Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966); 8 C.F.R. §§ 103.2(b)(1); (b)(7); (b)(9);



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## Techniques – cont'd

- Inform the attorney that if the client refuses to answer, such failure to respond is grounds for denial. 8 C.F.R. § 103.2(b)(13);
- An adverse inference can be made. INS v. Lopez-Mendoza, 468 U.S. 1032, 1043 (1984) (quoting United States ex rel. Bilokumsky v. Tod, 263 U.S. 149, 153-54 (1923) (Brandeis, J.)); Matter of Guevara, 20 I&N Dec. 238, 241-42 (BIA 1991);



## Techniques – cont'd

- If the attorney continues to interrupt and make it impossible for you to complete the interview, you can:
  - Tell the attorney that further interruptions will result in termination of the interview, risking a conclusion that his client has not met the requisite burden of proof;
  - Call in a supervisor;
  - Call in your section chief;
  - Report it to local USCIS counsel (OCC); or
  - Terminate the interview.





# Suggestions for Avoiding Difficult Situations

- Adjudicators can sometimes diffuse difficult situations at the beginning of the interview by:
  - sitting the attorney behind the parties (so that they cannot give visual signals);
  - informing the attorney that they will be permitted 5 minutes at the end of the interview to voice any objections or make any comments on the record; and
  - asking the attorney to submit any supporting documents or paperwork at the beginning of the interview (this prevents surprises and may also reveal issues that can be included in the questioning, like the need for an I-601 waiver, e.g.)





# Responses for Common Attorney Objections

1. Invasion of Privacy – an objection raised in response to questions about marital relations and contraception in spousal or related petitions
  - BIA nonprecedent decisions have repeatedly permitted such questions.
  - Adjudicators should not pursue such questions in a way that can be construed as embarrassing or as harassment. Reserve such questioning for situations that require it.
  - Questions about reproduction and contraception are not prohibited.
  - If attorneys cite Griswold v. Conn. (U.S. Supreme Court case establishing a right to marital privacy), adjudicators should explain that the question relates to proof of a bona fide marriage, which is a central requirement for approval of a spousal petition.



## Common Objections – cont'd

2. "Asked and Answered" (i.e., an objection that implies that the Adjudicator has already asked the question)

- Adjudicators are permitted to revisit areas previously questioned.
- USCIS interviews are not a court of law, and the standard rules of evidence or court procedure do not apply (i.e., there is no limitation under the INA or 8 CFR regarding the number of times a question can be asked).



## Common Objections – cont'd

### 3. Objections relating to a Violation of Religious Freedoms:

- Adjudicators should be sensitive to religious practices while also performing their adjudicative function.
- However, if adjudicators are not able to conduct the interview and determine eligibility, the adjudicator should inform the attorney and petitioner/applicant, and seek another way to conduct the interview.
- Example: If a female is wearing religious head coverings due to her Muslim faith, and the head coverings prevent confirmation of her identity, see if a female adjudicator is available to conduct the interview.



## Post-Interview Options

After the interview -- if the behavior was extremely egregious (threatening, physically intimidating, etc.):

- Make notes outlining the practitioner's behavior; and
- Report the behavior to your section chief
- Report the professional misconduct to USCIS Bar Counsel



# Make a Record of the Incident

- **Steps to take if you encounter an attorney whose conduct you feel should be reported:**
  - *Write down the specific conduct during, or right after, the event*
  - **Report the event to your supervisor**
  - **Draft a memo or email to USCIS Bar Counsel outlining the conduct**
  - **Include any prior experiences with that particular attorney**
  - **Include the purpose of the interview/examination and the outcome of the adjudication**
  - **Forward relevant documents, including the G-28 to USCIS Bar Counsel**
  - **Do not contact AILA or State Disciplinary Authorities on your own.**



# Practical Exercises

- The following are some hypothetical scenarios drawn from real cases.
- Think about how would you handle these situations, and then review the recommended course of action.





# Hypothetical Scenario #1

- Petitioner's attorney tells the Adjudicator that the questioning is unfair and that they want to terminate the interview.
- Adjudicator objects to the attorney's authority to terminate.
- Adjudicator speaks directly to the petitioner, asking them if they want to terminate the interview or continue without their attorney present.
- Adjudicator informs the petitioner that any rescheduling of the interview will likely be 12-18 months later.
- Did the Adjudicator handle this situation appropriately?



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## Hypo #1 -- Recommendation

- Adjudicator should probably not have addressed the petitioner directly.
- Most attorneys and their clients have an interest in getting the interview completed and moving forward.
- If the attorney is seeking termination based on your questioning, the likelihood of fraud has increased, and the case would probably be better off referred to FDNS.
- Or alternatively, the Adjudicator can reply that the case will be decided based on the evidence currently in the record, and proceed accordingly.



## Hypothetical Scenario #2

- Adjudicator attempts to conduct interview, but petitioner's attorney keeps interrupting the questioning with long statements about the case.
- Adjudicator decides that the attorney is really attempting to testify on the petitioner's behalf.
- Adjudicator informs the attorney his interruptions are really statements of testimony, and that attorneys are not permitted to testify as a witness.
- Adjudicator informs attorney that he can withdraw as petitioner's representative and testify as a witness if desired, but that he may not continue to interfere with the interview.



## Hypo #2 – Recommendation

- Adjudicator handled the situation appropriately.
- Attorneys are not permitted to testify on behalf of their client.
- Objections should point to a specific legal issue.
- Objections that stretch on into statements could constitute testimony or could be suggesting answers to their clients.
- Attorneys should not be permitted to make statements about the facts of the case during the interview process.
- Remind the attorney that they will have the opportunity at the end of the interview to make their arguments or statements.



## Hypothetical Scenario #3

- The applicant arrives on time for a 9:00 AM interview.
- A G-28 is on fire, but attorney absent at 9:00 AM when applicant is called in.
- Applicant is asked if he wishes to sign a waiver of the attorney's presence or get re-scheduled for a time when the attorney can be present.
- Applicant signs waiver, and interview proceeds without attorney.
- Attorney comes 10 minutes later and the DAO is notified.
- DAO asks the applicant if they want to let the attorney in to the interview. Applicant replies "no" since the interview seems to be going well, so why should he let the attorney in and then have to pay his fee?
- Attorney is angry at USCIS. The supervisor explained that the applicant signed the waiver and then declined to let the attorney in.
- Did USCIS handle the situation properly? Thoughts? Comments?



## Hypo #3 -- Recommendation:

- Adjudicator should have waited more than 10 minutes.
- Did they try to contact the attorney (or have the client contact the attorney) to see if he or she was delayed in traffic, or in the building security line?
- The DAO probably moved too quickly to seek a waiver - and USCIS has to be extremely careful, because a waiver must be clearly voluntary.
- Controversy is sure to erupt if the case is denied (less likely in an approved case), but the DAO is now a potential witness in a fee dispute between the lawyer and the applicant.
- In addition, a supervisor should be the one to explain the options to the applicant, so that there is a "neutral" individual assessing the voluntariness of the waiver of counsel.





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Last Revised:

November 25, 2008

Authors:

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Peter Schmalz, Training and Knowledge Management Division



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1. **Power point presentations titled “USCIS Adjudicator  
Interaction with Private Attorneys and  
Representatives.**

**FOIA response pp. 1923-1928**

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**U.S. Citizenship and Immigration Services**

**USCIS Adjudicator Interaction with Private Attorneys and Representatives**

U.S. Citizenship and Immigration Services

**Training Objectives**

• Review USCIS policies and procedures regarding the interaction between attorneys and representatives and USCIS adjudicators.

• Identify the role of attorneys and representatives in the adjudication process.

• Explain the importance of proper representation in the adjudication process.

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**I. Eligibility Rules for Attorneys and Representatives**

Outline objectives for this session:

- Representing Eligibility
- The Role of Professional Fees and Practices
- Unauthorized Practice of Law
- Future USCIS Questions and Opportunities

U.S. Citizenship and Immigration Services

**Representation Before USCIS**

What is representation before USCIS?

- Representation before USCIS is the act of appearing on behalf of another person before USCIS.
- Representation before USCIS is a privilege that is not granted to all individuals.
- Representation before USCIS is a privilege that is granted to certain individuals.

U.S. Citizenship and Immigration Services

**Representation – cont'd**

- A U.S. citizen or lawful permanent resident may represent another person before USCIS.
- A U.S. citizen or lawful permanent resident may represent another person before USCIS if they are a member of a recognized bar association.
- A U.S. citizen or lawful permanent resident may represent another person before USCIS if they are a member of a recognized bar association and are in good standing.

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**Who May Be a Representative?**

Who is eligible to represent?

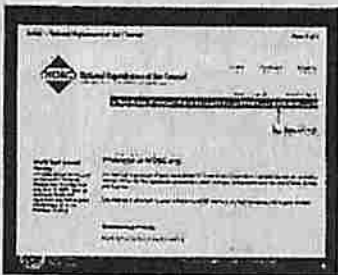
- U.S. citizens and lawful permanent residents who are members of a recognized bar association and are in good standing.
- U.S. citizens and lawful permanent residents who are members of a recognized bar association and are in good standing and are also members of a recognized bar association in their home country.

U.S. Citizenship and Immigration Services

**How do I verify that an attorney is eligible to appear as a representative before USCIS?**

- National Organization of Bar Councils (NOBC)
- American Bar Association (ABA)
- American College of Trial Lawyers (ACTL)
- American Immigration Lawyers Association (AILA)
- American Immigration Lawyers Association (AILA)

U.S. Citizenship and Immigration Services



**National Organization of Bar Councils**

**Verify Bar Status**

• This tool allows you to verify the status of a lawyer's membership in a recognized bar association.

• You can verify the status of a lawyer's membership in a recognized bar association by entering their name and the name of the bar association.

• The results of the verification will be displayed on the screen.

U.S. Citizenship and Immigration Services



**American Bar Association**

**Verify Bar Status**

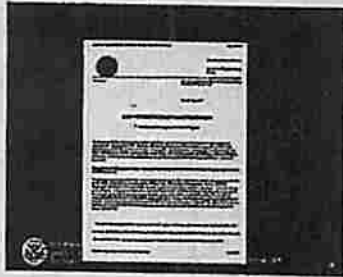
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U.S. Citizenship and Immigration Services

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A thumbnail of a table with multiple columns and rows of data, possibly a checklist or a data table.

How do I verify that an accredited representative is eligible to appear as a representative before USCIS?



Professional Conduct for Practitioners  
Rules and Procedures

Who Is Subject to Sanction?

- Foreign and domestic individuals who are not properly licensed to practice law in their home country
- Individuals who are not properly licensed to practice law in their home country
- Individuals who are not properly licensed to practice law in their home country

Review of Complaints of Professional Misconduct

Grounds of Discipline

- Incompetence
- Negligence
- Professional conduct
- Immoral conduct

**Practitioner Discipline Proceedings**

- Conduct by the licensee
- Conduct by the licensee's family or household
- Conduct by the licensee's partner, spouse, or dependent child
- Conduct by the licensee's partner, spouse, or dependent child
- Conduct by the licensee's partner, spouse, or dependent child

**Complaints of Professional Misconduct by Immigration Practitioners**

Case 1: *Harold A. Mirsky, Jr. and Barbara A. Mirsky, Jr.*

Case 2: *Harold A. Mirsky, Jr. and Barbara A. Mirsky, Jr.*

Case 3: *Harold A. Mirsky, Jr. and Barbara A. Mirsky, Jr.*

**Notaries and Immigration Consultants**

- Notary Public
- Notary Public
- Notary Public
- Notary Public
- Notary Public

**COMING SOON ...**

- New Form 1224
- New Form 1225
- New Form 1226
- New Form 1227
- New Form 1228
- New Form 1229

**II Handling Difficult Situations Involving Private Attorneys**

Types of difficult situations:

- Conflict of interest
- Confusion
- Confusion
- Confusion
- Confusion

**General Principles**

1. The licensee must be a member of the profession.
2. The licensee must be a member of the profession.
3. The licensee must be a member of the profession.

**Adjudicator's Field Manual (AFM) - Chapter 12**

- Adjudicator's Field Manual (AFM) - Chapter 12
- Adjudicator's Field Manual (AFM) - Chapter 12
- Adjudicator's Field Manual (AFM) - Chapter 12

**AFM - cont'd**

- Adjudicator's Field Manual (AFM) - Chapter 12
- Adjudicator's Field Manual (AFM) - Chapter 12
- Adjudicator's Field Manual (AFM) - Chapter 12

**Attorneys - Professional Duties and Obligations**

- Adjudicator's Field Manual (AFM) - Chapter 12
- Adjudicator's Field Manual (AFM) - Chapter 12
- Adjudicator's Field Manual (AFM) - Chapter 12



**Misconduct - Enforcement**

Attorneys should understand their conduct by reference to their jurisdiction.

Most jurisdictions have adopted the Model Rules of Professional Conduct as a starting point for their own rules of conduct.


Each jurisdiction has its own procedures for enforcement of the Rules of Professional Conduct.



**Explanations for Attorney Conduct**


Why are you providing this information to your client?

- Is it in the client's best interest to know this information?
- Is there a duty to disclose this information to the client?
- Is there a duty to disclose this information to the court?
- Is there a duty to disclose this information to the public?



**Are there limits to zealous representation?**

- Are there any circumstances where representation is not required?
- Are there any circumstances where representation is required?
- Are there any circumstances where representation is required, but the attorney must not take any action that would constitute the crime or tort of fraud?
- Are there any circumstances where representation is required, but the attorney must not take any action that would constitute the crime or tort of perjury?



**Techniques for Handling Difficult Attorneys**

- Do not engage in the "game" of "out-guessing" the difficult attorney.
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**Techniques - cont'd**

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**Techniques - cont'd**

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**Techniques - cont'd**

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**Suggestions for Avoiding Difficult Situations**

- Do not engage in the "game" of "out-guessing" the difficult attorney.
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- Do not engage in the "game" of "out-guessing" the difficult attorney.
- Do not engage in the "game" of "out-guessing" the difficult attorney.



### Responses for Common Attorney Objections

- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.

### Common Objections - cont'd

- If you are a witness, you are not required to answer questions if you do not know the answer.
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- If you are a witness, you are not required to answer questions if you do not know the answer.

### Common Objections - cont'd

- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.

### Post-Interview Options

- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.

### Make a Record of the Incident

- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.

### Practical Exercises

- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.

### Hypothetical Scenario #1

- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.

### Hypo #1 - Recommendation

- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.

### Hypothetical Scenario #2

- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.
- If you are a witness, you are not required to answer questions if you do not know the answer.

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### Hypo #2 - Recommendation

- [Illegible text]
- [Illegible text]
- [Illegible text]
- [Illegible text]
- [Illegible text]



U.S. Citizenship and Immigration Services

### Hypothetical Scenario #3

- [Illegible text]
- [Illegible text]
- [Illegible text]
- [Illegible text]
- [Illegible text]



U.S. Citizenship and Immigration Services

### Hypo #3 - Recommendation

- [Illegible text]
- [Illegible text]
- [Illegible text]
- [Illegible text]
- [Illegible text]



U.S. Citizenship and Immigration Services

Questions?

Thank you



U.S. Citizenship and Immigration Services



U.S. Citizenship and Immigration Services

**1. Power point presentations titled “USCIS Adjudicator  
Interaction with Private Attorneys and  
Representatives.**


**FOIA response pp. 1949-1954**

(b)(5)

### USCIS Adjudicator Interaction with Private Attorneys and Representatives

OSC-093401-INTP


January 2010



U.S. Citizenship and Immigration Services

### Training Objectives


- Review eligibility rules for private attorneys, accredited representatives, and others permitted to represent others before USCIS.
- Identify appropriate USCIS instructions regarding difficult or challenging matters by an attorney or other representative.
- Provide an overview of the process for reporting misconduct by private attorneys and other representatives.



U.S. Citizenship and Immigration Services

### Introduction

- Emphasize the value of representation by private attorneys.
- The basic qualifications for private attorneys and other representatives.
- Highlight the qualifications in terms of education, training, and the role of private practitioners.




U.S. Citizenship and Immigration Services

### I. Eligibility Rules for Attorneys and Representatives

Outline of topics for this section:

- Representation before USCIS
- The Rules of Professional Conduct for Practitioners
- Unauthorized Practice of Law
- Future USCIS Questions and Regulatory Changes




U.S. Citizenship and Immigration Services

### Representation Before USCIS

What constitutes representation?

- 8 C.F.R. § 1.101 - Defines representation in terms of "practice" as follows:
  - ... the act of representing another person in connection with the application of the laws, rules, regulations, and policies of the Department of Homeland Security...



U.S. Citizenship and Immigration Services

### Representation - cont'd

- 8 C.F.R. § 1.101 - Defines "practice" as follows:
  - ... the act of representing another person in connection with the application of the laws, rules, regulations, and policies of the Department of Homeland Security...
- How to verify - What to look for in the background of an attorney or other representative:
  - Check for any disciplinary actions or sanctions.
  - Check for any criminal convictions.
  - Check for any other relevant information.




U.S. Citizenship and Immigration Services

### Who May Be a Representative?

8 C.F.R. § 103.2(a)(3)

An applicant or petitioner may be represented by:


- an attorney in the United States; (8 C.F.R. § 103.2(a)(3)(i))
- an attorney outside the United States; (8 C.F.R. § 103.2(a)(3)(ii))
- an accredited representative of a recognized organization; (8 C.F.R. § 103.2(a)(3)(iii))



U.S. Citizenship and Immigration Services

### How do I verify that an attorney is eligible to appear as a representative before USCIS?


- National Organization of Bar Counsel (NOBC)
  - 407 Massachusetts Ave.
- Executive Office for Immigration Review (EOIR)
  - 1275 Massachusetts Ave., N.W.



U.S. Citizenship and Immigration Services

NOBC - National Organization of Bar Counsel

Page 1 of 1



National Organization of Bar Counsel

1275 Massachusetts Avenue, N.W.  
Washington, D.C. 20004-4302


Phone: (202) 462-1000  
Fax: (202) 462-1001  
Website: www.nobc.org

NOBC 2009 Sponsor

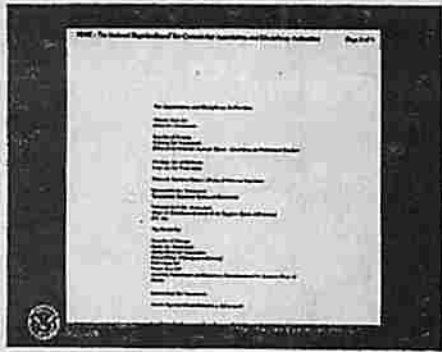
The National Organization of Bar Counsel (NOBC) is a national organization of legal professionals devoted to the highest standards of ethics and integrity in the legal profession. NOBC is a non-profit organization and is not affiliated with any bar association.

To verify an attorney's eligibility to appear as a representative of a petitioner before USCIS, please contact NOBC at the above address or phone number.

Additional contacts:  
U.S. Citizenship and Immigration Services

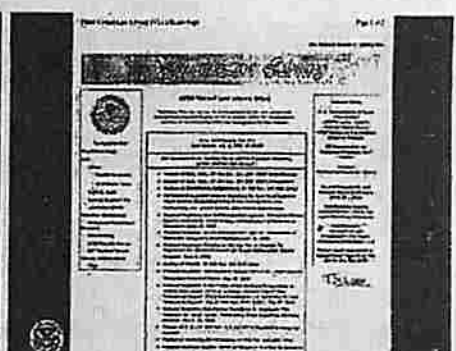


U.S. Citizenship and Immigration Services



| NAME              | CITY/STATE        | DATE INITIAL SUPERVISOR SERVICE | FINAL SUPERVISOR SERVICE | SPECIFIC DATE OF RECEIPT | COMPLETION |
|-------------------|-------------------|---------------------------------|--------------------------|--------------------------|------------|
| John Smith        | Los Angeles, CA   |                                 | 2008                     | 2008                     | Yes        |
| Jane Doe          | San Francisco, CA |                                 | 2008                     | 2008                     | Yes        |
| Mike Brown        | Chicago, IL       | 2008                            | 2008                     | 2008                     | Yes        |
| Pat Green         | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Robert White      | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| Laura Black       | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |
| David Gray        | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Michelle King     | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| James Lee         | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |
| Emily Hall        | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Christopher Young | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| Amanda Scott      | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |
| Benjamin Adams    | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Sarah Baker       | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| Kevin Carter      | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |
| Olivia Evans      | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Lucas Foster      | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| Isabella Garcia   | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |
| Matthew Hernandez | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Abigail Ibarra    | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| Ethan Jones       | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |
| Sophia King       | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Julian Lee        | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| Madison Miller    | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |
| Leo Nguyen        | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Chloe Ortiz       | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| Isaac Parker      | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |
| Grace Quinn       | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Samuel Ramirez    | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| Madelyn Santos    | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |
| Wyatt Taylor      | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Skylar Thomas     | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| Maxwell Turner    | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |
| Josephine Vance   | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Grayson Webb      | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| Alaina White      | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |
| Robert Wilson     | New York, NY      | 2008                            | 2008                     | 2008                     | Yes        |
| Isabella Young    | Los Angeles, CA   | 2008                            | 2008                     | 2008                     | Yes        |
| Julian Zayas      | San Francisco, CA | 2008                            | 2008                     | 2008                     | Yes        |

How do I verify that an accredited representative is eligible to appear as a representative before USCIS?



Professional Conduct for Practitioners  
Rules and Procedures

Who Is Subject to Sanction?

- Practitioners subject to sanction include any practitioner in application and petition proceedings, a practitioner is
- is attorney as defined in 8 CFR 1.101 and does not
- represent the Federal Government or
- an accrediting representative


Review of Complaints of Professional Misconduct



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### Grounds of Discipline

- Criminal conduct
- Immoral conduct
- Unprofessional conduct or
- Professional malpractice



### Practitioner Discipline Proceedings


- Conduct by a licensee
- Primarily seeking to determine if discipline is warranted
- EBC's can also provide assistance, refer complaints to local or state professional disciplinary authority or file a complaint with the appropriate professional disciplinary authority



### Complaints of Professional Misconduct by Immigration Practitioners


Contact:

Rebecca K. Mowbray, MSJIS Bar Council  
 810-200-1774 (toll-free)  
 202-331-5177 (toll-free)  
 rebecca.mowbray@sbmic.org



### Notarios and Immigration Consultants

- EBC's does not have a jurisdictional authority
- EBC's does have authority to discipline those who seek to represent immigrants in the U.S. (28 USC 5372)
- Ready to file complaints
- Review referral list of notarios and consultants
- Support in U.S. courts if someone is involved who does not appear to be a lawyer
- Contact and discipline a notario if possible



### COMING SOON . . .


- Revised Form 1-28
- New Form O-28
- AFM, Chapter 12
- EBC's Practice Reviews for E-ADP's 100, 100
- Draft Proposed Rules for E-ADP's 100, 100, 250



### II. Handling Difficult Situations Involving Private Attorneys


Topics covered in this section:

- General Principles
- Expansions to attorney behavior
- Additional specific provisions of that will cover
- Suggestions for a communication attorney discipline
- Handling difficult situations




### General Principles

- 1) Attorneys are permitted and expected to discipline employees who are involved in disciplinary matters or allegations. You should discipline as if they were representing you.
- 2) The attorney should consider the discipline imposed by the discipline authority in the context of the discipline imposed by the discipline authority.
- 3) EBC's will take a "strong" stance to ensure that the discipline imposed by the discipline authority is not undermined by the discipline authority's discipline imposed by the discipline authority.



### Adjudicator's Field Manual (AFM) – Chapter 12


- Chapter 12 will be revised
- Chapter 12 will include a sample Discipline for cause by the discipline authority imposed by the discipline authority. The Discipline will be imposed by the discipline authority. The Discipline will be imposed by the discipline authority. The Discipline will be imposed by the discipline authority.
- The Discipline will be imposed by the discipline authority. The Discipline will be imposed by the discipline authority. The Discipline will be imposed by the discipline authority.



### AFM – cont'd

AFM De. 15 is a rule of attorney discipline in the discipline process.


- The attorney AFM De. 15 is a rule of attorney discipline in the discipline process. The attorney AFM De. 15 is a rule of attorney discipline in the discipline process. The attorney AFM De. 15 is a rule of attorney discipline in the discipline process.
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### Attorneys - Professional Duties and Obligations

- Rules of Professional Conduct for Practitioners - 5 C.F.R. 1342.3
- Guidelines for Practitioners - 5 C.F.R. 1342.4(a)
- Attorneys are subject to Ethics Bar Disciplinary Rules




### Misconduct - Enforcement

• 5 C.F.R. 1342.3(a) - subject to disciplinary action by Practitioners to their respective agencies

• in conjunction with provisions, 5 C.F.R. 1342.3(a) and 1342.4(a) - subject to disciplinary action by Practitioners to their respective agencies


• 5 C.F.R. 1342.3(a) - subject to disciplinary action by Practitioners to their respective agencies



### Explanations for Attorney Conduct


• 5 C.F.R. 1342.3(a) - subject to disciplinary action by Practitioners to their respective agencies

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### Are there limits to zealous representation?

- 5 C.F.R. 1342.3(a) - subject to disciplinary action by Practitioners to their respective agencies
- 5 C.F.R. 1342.3(a) - subject to disciplinary action by Practitioners to their respective agencies
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- 5 C.F.R. 1342.3(a) - subject to disciplinary action by Practitioners to their respective agencies




### Techniques for Handling Difficult Attorneys

- Do not engage in a verbal sparring with a difficult attorney
- Do not engage in a verbal sparring with a difficult attorney
- Do not engage in a verbal sparring with a difficult attorney
- Do not engage in a verbal sparring with a difficult attorney




### Techniques - cont'd

- Maintain your composure and professionalism
- Address the attorney's concerns and questions
- Address the attorney's concerns and questions
- Address the attorney's concerns and questions




### Techniques - cont'd

- Do not engage in a verbal sparring with a difficult attorney
- Do not engage in a verbal sparring with a difficult attorney
- Do not engage in a verbal sparring with a difficult attorney
- Do not engage in a verbal sparring with a difficult attorney




### Techniques - cont'd

- Do not engage in a verbal sparring with a difficult attorney
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### Techniques - cont'd

- Do not engage in a verbal sparring with a difficult attorney
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- Do not engage in a verbal sparring with a difficult attorney
- Do not engage in a verbal sparring with a difficult attorney



### Suggestions for Avoiding Difficult Situations

- Anticipate and sometimes identify difficult situations in the beginning of an interview.
- Inform the interviewee of the interviewee's rights at the beginning of the interview and make any adjustments to the interview.
- Ask the interviewee if they have any questions or concerns about the interview process. (Do not ask the interviewee to sign a waiver of rights or a statement of consent.)



### Responses for Common Attorney Objections

1. In a **search of privacy** or **an attempt to elicit a confession** that is not a **testimonial** or **testimonial evidence**, the interviewee is not required to answer questions.
  - Do not ask questions that are not relevant to the investigation.
  - Do not ask questions that are not asked of other witnesses.
  - Do not ask questions that are not asked of other witnesses.
2. In a **search of privacy** or **an attempt to elicit a confession** that is not a **testimonial** or **testimonial evidence**, the interviewee is not required to answer questions.
  - Do not ask questions that are not relevant to the investigation.
  - Do not ask questions that are not asked of other witnesses.
  - Do not ask questions that are not asked of other witnesses.



### Common Objections – cont'd

3. **Officer's duty** is not a **testimonial** or **testimonial evidence** that is not a **testimonial** or **testimonial evidence**.
  - Do not ask questions that are not relevant to the investigation.
  - Do not ask questions that are not asked of other witnesses.
  - Do not ask questions that are not asked of other witnesses.
4. **Officer's duty** is not a **testimonial** or **testimonial evidence** that is not a **testimonial** or **testimonial evidence**.
  - Do not ask questions that are not relevant to the investigation.
  - Do not ask questions that are not asked of other witnesses.
  - Do not ask questions that are not asked of other witnesses.



### Common Objections – cont'd

5. **Officer's duty** is not a **testimonial** or **testimonial evidence** that is not a **testimonial** or **testimonial evidence**.
  - Do not ask questions that are not relevant to the investigation.
  - Do not ask questions that are not asked of other witnesses.
  - Do not ask questions that are not asked of other witnesses.
6. **Officer's duty** is not a **testimonial** or **testimonial evidence** that is not a **testimonial** or **testimonial evidence**.
  - Do not ask questions that are not relevant to the investigation.
  - Do not ask questions that are not asked of other witnesses.
  - Do not ask questions that are not asked of other witnesses.



### Post-Interview Options

- After the interview, the interviewee may be asked to sign a statement.
- The interviewee may be asked to sign a statement.
- The interviewee may be asked to sign a statement.
- The interviewee may be asked to sign a statement.



### Make a Record of the Incident

- Make a record of the incident on a form and a separate record of the incident.
- Make a record of the incident on a form and a separate record of the incident.
- Make a record of the incident on a form and a separate record of the incident.
- Make a record of the incident on a form and a separate record of the incident.



### Practical Exercises

- Use the following scenarios to identify difficult situations and then discuss the recommended course of action.
- Use the following scenarios to identify difficult situations and then discuss the recommended course of action.



### Hypothetical Scenario #1

- Refuse to answer questions that are not relevant to the investigation.
- Refuse to answer questions that are not relevant to the investigation.
- Refuse to answer questions that are not relevant to the investigation.
- Refuse to answer questions that are not relevant to the investigation.



### Hypo #1 – Recommendation

- Advise the interviewee of their rights and the consequences of not answering questions.
- Advise the interviewee of their rights and the consequences of not answering questions.
- Advise the interviewee of their rights and the consequences of not answering questions.
- Advise the interviewee of their rights and the consequences of not answering questions.



### Hypothetical Scenario #2

- Reviewer anticipates to conduct interview but get letter of attorney's refusal to participate in an interview with long statement about the case
- Any of the scenarios that the attorney is really attempting to testify on the evidence's facts
- Ask the attorney to provide the information directly to you or if you are not able to get that information is a third party to testify for you
- A question remains after that is with the lawyer as to whether or not they can testify or if they are not allowed to testify



### Hypo #2 – Recommendation

- Advocate has to be the decision maker
- Attorney's role is to provide a factually accurate statement
- Questions should be asked by a specific legal issue
- Questions that are not relevant to the case should be avoided
- Reviewer should not be misled by the attorney's statements about the facts of the case during the interview process
- Remind the attorney that they will have the opportunity at the end of the interview to make their arguments or statements



### Hypothetical Scenario #3

- The attorney's role is to provide a factually accurate statement
- Reviewer should not be misled by the attorney's statements about the facts of the case during the interview process
- Reviewer should not be misled by the attorney's statements about the facts of the case during the interview process
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- Reviewer should not be misled by the attorney's statements about the facts of the case during the interview process



### Hypo #3 – Recommendation:

- Reviewer should not be misled by the attorney's statements about the facts of the case during the interview process
- Reviewer should not be misled by the attorney's statements about the facts of the case during the interview process
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- Reviewer should not be misled by the attorney's statements about the facts of the case during the interview process



### Last Revised

November 25, 2014

### Author

Rick Alford, Bar Counsel  
 Deborah Givens, Advisory Council, San Francisco  
 Peter Schmidt, Training and Knowledge Management Division



U.S. Citizenship  
 and Immigration  
 Services

**2. Representation of an Applicant for admission to the  
U.S. as a Refugee During an Eligibility Hearing.**

**FOIA response pp. 63-66**

## Memorandum

J. C.  
G. B.  
K. T.  
D. B.



ORIG → J. T.

|  |                             |
|--|-----------------------------|
| <b>Subject</b><br>Representation of an Applicant for Admission to the United States as a Refugee During an Eligibility Hearing | <b>Date</b><br>NOV - 9 1992 |
|--|-----------------------------|

|   |  |
|---|--|
| <b>To</b><br><br>Jan C. Ting<br>Office of International Affairs | <b>From</b><br><br>Grover Joseph Rees III<br>General Counsel |
|---|--|

A January 14, 1986 memorandum from this office to the Assistant Commissioner for Refugees, Asylum, and Parole set out the conclusion that 8 C.F.R. § 292.5(b) entitles a person applying abroad for admission to the United States as a refugee to be represented at the hearing to determine the person's eligibility. A copy of that memorandum is attached. That conclusion appears, after careful consideration, to be incorrect.

The Immigration and Naturalization Service (INS) regulations provide at 8 C.F.R. § 292.5(b) that "whenever an examination is provided for in this chapter," the person involved shall have the right to representation. A proviso follows that "nothing in this chapter shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody." Id.

Although a § 207.2(b) refugee inquiry is not clearly a "primary or secondary inspection," the subject of the inquiry is clearly an "applicant for admission." Indeed, Part 207 by its heading governs the "admission of refugees." A person seeking the benefits of this part may "apply for admission to the United States." 8 C.F.R. § 207.1(a). Such a person is referred to throughout the part as an applicant for admission. See, e.g., 8 C.F.R. §§ 207.2, 207.3. Thus the plain language of § 292.5(b)(2) seems to exclude applicants for admission as refugees from the class of persons to whom the regulation does give a right to representation.

One could argue that the "primary or secondary inspection" language is meant to limit the category of "applicants for admission" who do not have the right to representation under § 292.5(b)(2). Under this reasoning, the phrase "whenever an examination is provided" would include any person not specifically described by the narrow limiting language that




follows. That is, only an applicant for admission who is in primary or secondary inspection does not have the right to representation under § 292.5(b)(2). The far better reading, however, is that the second sentence of the subsection is meant to exclude any applicant for admission from the scope of the category described in the first sentence. That is, no applicant for admission -- even one who is in secondary inspection, which in many ways resembles an examination -- has a right to representation under § 292.5(b)(2) merely by virtue of having applied for admission. Since even an applicant for admission being inspected on United States shores does not have the right to representation under § 292.5(b)(2), clearly that section does not furnish such a right to an applicant for admission who is outside United States territory.

If the refugee eligibility hearing set out in § 207.2(b) were an "examination" within the meaning of § 292.5(b), then all the attributes of the right to representation spelled out in § 292.5(b) would be available. That is, the applicant's attorney or representative would be entitled to examine or cross-examine the applicant and witnesses, to introduce evidence, to make objections and have them entered on the record, and to submit briefs. A § 207.2(b) hearing would thus take on the character of a full, adversarial evidentiary adjudication. Part 207, however, which generally governs procedures for the admission of refugees, does not itself appear to contemplate that these procedures would be features of the "inquiry under oath" held to determine eligibility. Nor does the INS appear to have understood § 207.2(b) to provide such procedures when it wrote internal guidelines to implement that section. (See the INS Examinations Handbook, p.IV-5, discussing the INS "policy" to permit the "non-participatory" observation of refugee interviews by persons "with a legitimate interest in the refugee program.")

The limited scope of the right to representation under § 292.5(b)(2) was emphasized in Ali v. Immigration and Naturalization Service, 661 F. Supp. 1234 (D. Mass. 1986). There an alien and citizen spouse challenged INS marriage petition procedures. They argued that their marriage petition proceedings were conducted by INS examiners and that § 292.5(b)(2), creating the right to representation "whenever an examination is provided," furnished them the right to counsel and the attendant procedural opportunities. For reasons equally apt here, the court held that, despite its apparent breadth, the right to representation under § 292.5(b)(2) is a limited right. This regulation implements § 292 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1362, which ensures the right to counsel in exclusion and deportation hearings and in appeals from decisions in such proceedings. Given its limited purpose, 8 C.F.R. § 292.5(b)(2) could not properly be read to provide a right to counsel in marriage petition proceedings conducted by INS examiners. Id. at 1248-49.

The conclusion in the 1986 Office of General Counsel memorandum was based on premise that, whenever an appearance before an immigration officer can be characterized as an "examination," § 292.5(b)(3) gives the right to representation in that appearance. This premise, along with the view that a refugee eligibility hearing is an "examination," is inconsistent with the principles discussed above. First, it would conflict with the clear purpose of the regulation not to extend the right to counsel generally to "applicants for admission." Second, it would turn the refugee eligibility hearing into a full evidentiary adjudication -- with briefing, cross examination, and recorded objections -- of a kind not apparently contemplated by part 207. Finally, it would conflict with the limited scope of § 292.5(b)(2) and of the statutory authority it exercises.<sup>1</sup>

For these reasons, § 292.5(b) does not appear to entitle an applicant for admission as a refugee to be represented in the inquiry that takes place under § 207.2(b). This memorandum supersedes the January 14, 1986 conclusion of this office to the contrary.

  
Grover Joseph Rees III  
General Counsel

---

<sup>1</sup> Indeed, taken to its conclusion, the reasoning of the 1986 memorandum would arguably lead to the conclusion that the right to counsel under 8 C.F.R. § 292.5(b)(2) exists even in the early stages of an arrest. Section 287(a)(1) of the INA permits an INS officer to make a warrantless arrest of an alien violating the entry laws and to present the alien without unnecessary delay for an "examination." Specific regulatory power to exercise this authority is provided to immigration officers by 8 C.F.R. § 287.1(a)(2)(c). Yet § 292.5(b)(2) could not properly be read to create a right to representation -- including the right to file briefs and cross-examine -- at this early stage of the arrest process.

A person applying outside the United States for refugee protection under U.S. law does not have a right to representation by counsel where conditions permit. This has allowed lawyers or other individuals with a legitimate interest in the refugee program to observe the interview, if requested by the applicant or with the express permission of the applicant. Access to the interview is provided as a courtesy with the observer's understanding that his or her presence is to be nonparticipatory in nature and nonintrusive of the conduct of the interview. Whether it is possible to extend the privilege of access to the interview is decided by the officer-in-charge, in coordination with appropriate Embassy officials. A variety of factors must be taken into consideration, including security concerns, the ability to protect the privacy of other applicants, the physical space of the facility, and the volume of the demand for access.

Can refugees applicants be accompanied by lawyers or advisors at their interviews?

(Question for Department of State from Senator DeConcini)

**2. Representation of an Applicant for admission to the  
U.S. as a Refugee During an Eligibility Hearing.**

**FOIA response pp. 470-473**

09/11/06 MON 16:27 FAX

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(b)(5)

Memorandum

J.C.  
G.B.  
K.T.  
D.B.



ORIG - J.T.

Subject: Representation of an Applicant for Admission to the United States as a Refugee During an Eligibility Hearing

Date: NOV - 9 1992

To: Jan C. Ting  
Office of International Affairs

From: Grover Joseph Rees III  
General Counsel

A January 14, 1986 memorandum from this office to the Assistant Commissioner for Refugees, Asylum, and Parole set out the conclusion that 8 C.F.R. § 292.5(b) entitles a person applying abroad for admission to the United States as a refugee to be represented at the hearing to determine the person's eligibility. A copy of that memorandum is attached. That conclusion appears, after careful consideration, to be incorrect.

The Immigration and Naturalization Service (INS) regulations provide at 8 C.F.R. § 292.5(b) that "whenever an examination is provided for in this chapter, the person involved shall have the right to representation. A proviso follows that "nothing in this chapter shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody." Id.

Although a § 207.2(b) refugee inquiry is not clearly a "primary or secondary inspection," the subject of the inquiry is clearly an "applicant for admission." Indeed, Part 207 by its heading governs the "admission of refugees." A person seeking the benefits of this part may "apply for admission to the United States." 8 C.F.R. § 207.1(a). Such a person is referred to throughout the part as an applicant for admission. See, e.g., 8 C.F.R. §§ 207.2, 207.9. Thus the plain language of § 292.5(b)(2) seems to exclude applicants for admission as refugees from the class of persons to whom the regulation does give a right to representation.

One could argue that the "primary or secondary inspection" language is meant to limit the category of "applicants for admission" who do not have the right to representation under § 292.5(b)(2). Under this reasoning, the phrase "whenever an examination is provided" would include any person not specifically described by the narrow limiting language that

(b)(6)

follows. That is, only an applicant for admission who is in primary or secondary inspection does not have the right to representation under § 292.5(b)(2). The far better reading, however, is that the second sentence of the subsection is meant to exclude any applicants for admission from the support category described in the first sentence. That is, no applicant for admission -- even one who is in primary inspection, which in many ways resembles an examination -- has a right to representation under § 292.5(b)(2) merely by virtue of having applied for admission. Since even an applicant for admission being inspected on United States shores does not have the right to representation under § 292.5(b)(2), clearly that section does not furnish such a right to an applicant for admission who is outside United States territory.

If the refugee eligibility hearing set out in § 207.2(b) were an "examination" within the meaning of § 292.5(b), then all the attributes of the right to representation spelled out in § 292.5(b) would be available. That is, the applicant's attorney or representative would be entitled to examine or cross-examine the applicant and witnesses, to introduce evidence, to make objections and have them entered on the record, and to submit briefs. A § 207.2(b) hearing would thus take on the character of a full, adversarial evidentiary adjudication. Part 207, however, which generally governs procedures for the admission of refugees, does not itself appear to contemplate that these procedures would be features of the hearing. The hearing is to determine eligibility. Nor does the INS appear to have understood § 207.2(b) to provide such procedures when it wrote internal guidelines to implement that section. (See the INS Examination Handbook, p. IV-5, discussing the INS "policy" to permit the "non-participatory" observation of refugee interviews by groups with a legitimate interest in the refugee program.)

The limited scope of the right to representation under § 292.5(b)(2) was emphasized in *All v. Immigration and Naturalization Service*, 501 F.2d 1006 (9th Cir. 1974), where an alien and citizen spouse challenged INS marriage petition procedures. They argued that their marriage petition proceedings were conducted by INS examiners and that § 292.5(b)(2) created the right to representation "whenever an examination is provided," furnished them the right to counsel and the attendant procedural opportunities. For reasons equally apt here, the court held that, despite its apparent breadth, the right to representation under § 292.5(b)(2) is a limited right. This regulation implements § 292 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1352, which guarantees the right to counsel in exclusion and deportation hearings and in appeals from decisions in such proceedings. Given its limited purpose, § 292.5(b)(2) could not properly be read to provide a right to counsel in marriage petition proceedings conducted by INS examiners. *All v. INS*, 501 F.2d 1006 (9th Cir. 1974).





09/11/08 MON 16:29 FAX

1000

(Question for Department of State re: Senator's Security)

Can refugee applicants be accompanied by lawyer or relative at their interview?

A person applying outside the United States for refugee protection under U.S. law does not have a right to representation by counsel or a right to have counsel present during interview. In practice, most conditions permit DHS to allow lawyer or other individuals with a legitimate interest in the refugee program to observe the interview, if requested by the applicant or visa and express permission of the applicant. Access to the DHS interview is provided as a courtesy with the observer's understanding that his or her presence is to be unobtrusive in nature and non-disruptive of the conduct of the interview. Whether it is possible to extend the privilege of access to the interview is decided by the INS officer in charge, in consultation with appropriate embassy officials. A variety of factors must be taken into consideration, including security concerns, the ability to protect the privacy of DHS applicants, the physical space of the facility, and the volume of the demand for access.

**2. Representation of an Applicant for admission to the  
U.S. as a Refugee During an Eligibility Hearing.**

**FOIA response pp. 1503-1504**

OCT. 23. 2000 11:14PM

## MEMORANDUM

(b)(5)

NO. 755

P. 2/5

J. C.  
G. B.  
K. T.  
D. B.

ORIG → J.T.

|   |                                    |
|---|------------------------------------|
| <b>Subject</b><br><b>Representation of an Applicant for Admission to the United States as a Refugee During an Eligibility Hearing</b> | <b>Date</b><br><b>NOV - 9 1992</b> |
|---|------------------------------------|

To

From

Jan C. Ting  
Office of International Affairs

Grover Joseph Raes III  
General Counsel

A January 14, 1986 memorandum from this office to the Assistant Commissioner for Refugees, Asylum, and Parole set out the conclusion that 8 C.F.R. § 292.5(b) entitles a person applying abroad for admission to the United States as a refugee to be represented at the hearing to determine the person's eligibility. A copy of that memorandum is attached. That conclusion appears, after careful consideration, to be incorrect.

The Immigration and Naturalization Service (INS) regulations provide at 8 C.F.R. § 292.5(b) that "whenever an examination is provided for in this chapter," the person involved shall have the right to representation. A proviso follows that "nothing in this chapter shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody." *Id.*

Although a § 207.2(b) refugee inquiry is not clearly a "primary or secondary inspection," the subject of the inquiry is clearly an "applicant for admission." Indeed, Part 207 by its heading governs the "admission of refugees." A person seeking the benefits of this part may "apply for admission to the United States." 8 C.F.R. § 207.1(a). Such a person is referred to throughout the part as an applicant for admission. See, e.g., 8 C.F.R. §§ 207.2, 207.3. Thus the plain language of § 292.5(b)(2) seems to exclude applicants for admission as refugees from the class of persons to whom the regulation does give a right to representation.

One could argue that the "primary or secondary inspection" language is meant to limit the category of "applicants for admission" who do not have the right to representation under § 292.5(b)(2). Under this reasoning, the phrase "whenever an examination is provided" would include any person not specifically described by the narrow limiting language that

OCT. 23. 2000 11:15PM

(b)(5)

NO. 755 P. 3/5

follows. That is, only an applicant for admission who is in primary or secondary inspection does not have the right to representation under § 292.5(b)(2). The far better reading, however, is that the second sentence of the subsection is meant to exclude any applicant for admission from the scope of the category described in the first sentence. That is, no applicant for admission -- even one who is in secondary inspection, which in many ways resembles an examination -- has a right to representation under § 292.5(b)(2) merely by virtue of having applied for admission. Since even an applicant for admission being inspected on United States shores does not have the right to representation under § 292.5(b)(2), clearly that section does not furnish such a right to an applicant for admission who is outside United States territory.

If the refugee eligibility hearing set out in § 207.2(b) were an "examination" within the meaning of § 292.5(b), then all the attributes of the right to representation spelled out in § 292.5(b) would be available. That is, the applicant's attorney or representative would be entitled to examine or cross-examine the applicant and witnesses, to introduce evidence, to make objections and have them entered on the record, and to submit briefs. A § 207.2(b) hearing would thus take on the character of a full, adversarial evidentiary adjudication. Part 207, however, which generally governs procedures for the admission of refugees, does not itself appear to contemplate that these procedures would be features of the "inquiry under oath" held to determine eligibility. Nor does the INS appear to have understood § 207.2(b) to provide such procedures when it wrote internal guidelines to implement that section. (See the INS Examinations Handbook, p. IV-5, discussing the INS "policy" to permit the "non-participatory" observation of refugee interviews by persons "with a legitimate interest in the refugee program.")

The limited scope of the right to representation under § 292.5(b)(2) was emphasized in Ali v. Immigration and Naturalization Service, 661 F. Supp. 1234 (D. Mass. 1986). There an alien and citizen spouse challenged INS marriage petition procedures. They argued that their marriage petition proceedings were conducted by INS examiners and that § 292.5(b)(2), creating the right to representation "whenever an examination is provided," furnished them the right to counsel and the attendant procedural opportunities. For reasons equally apt here, the court held that, despite its apparent breadth, the right to representation under § 292.5(b)(2) is a limited right. This regulation implements § 292 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1362, which ensures the right to counsel in exclusion and deportation hearings and in appeals from decisions in such proceedings. Given its limited purpose, 8 C.F.R. § 292.5(b)(2) could not properly be read to provide a right to counsel in marriage petition proceedings conducted by INS examiners. Id. at 1248-49.

**3. Email between USCIS staff discussing internal procedures when attorneys have double N-400 appointments.**

**FOIA response pp. 1916-1917. Note there is no page 1918. This was a misprint on the Vaughn Index.**



**Wicks, Joyce M**

---

**From:** Jacqueline D. Bucar [jbucar@murthalaw.com]  
**Sent:** Tuesday, May 27, 2008 3:53 PM  
**To:** Enzer, Ethan  
**Cc:** Wicks, Joyce M; Keck, Peggy M; Person, James H; Dyer, Amanda  
**Subject:** RE: follow up on policy

I'm giving you the feed back. Unfortunately, the good attorneys who try wind up getting penalized by the bad ones.

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**From:** Enzer, Ethan [mailto:ethan.enzer@dhs.gov]  
**Sent:** Tuesday, May 27, 2008 3:51 PM  
**To:** Jacqueline D. Bucar  
**Cc:** Wicks, Joyce M; Keck, Peggy M; Person, James H; Dyer, Amanda  
**Subject:** RE: follow up on policy

This is in place because some attorneys play the system ad nauseam on cases that are not approvable. I have seen instances where a lawyer expects a 2<sup>nd</sup> reschedule request to be granted ½ hour after the client was already due, stating that they were in touch by cell phone and that the client could not find the building. We've had other instances where the lawyer claims that the client "could not get out of work" or "couldn't get a ride to the office" but when we called the employer we find out that this is not the case. CIS can not hold decisions in abeyance when resources are so thinly stretched. Remember we do accept one request for rescheduling provided it meets national policy standards.

---

**From:** Jacqueline D. Bucar [mailto:jbucar@murthalaw.com]  
**Sent:** Tuesday, May 27, 2008 2:43 PM

1/5/2012

To: Enzer, Ethan  
Subject: follow up on policy

Ethan, I can't even begin to tell you about the reaction to the announcement concerning rescheduling of appointments. I'm watering down the description here but basically they feel the policy is too restrictive, is unreasonable in light of people's schedules, distance from CIS, client's obligations and professional conflicts such as other cases and court appearances. While CIS may not care about this reaction, I am alerting you to the fact that many are up in arms and quite angry. Stay tuned.

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Counsel  
jrbucar@murthalaw.com

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- 3. Email between USCIS staff discussing internal procedures when attorneys have double N-400 appointments.**

**FOIA response pp. 1908-1915**

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---

**From:** Enzer, Ethan [mailto:ethan.enzer@dhs.gov]  
**Sent:** Wednesday, March 05, 2008 12:14 PM  
**To:** Enzer, Ethan; Jacqueline D. Bucar  
**Cc:** Keck, Peggy M; Wicks, Joyce M; Person, James H  
**Subject:** RE: rumors / met with staff

Jacqui,

I have some solutions for the double scheduling concerns that were raised last week, and also for the seating arrangements at interviews.

If an attorney is scheduled for more than one appointment at the same time (or less than a half-hour away from a preceding or succeeding appointment) they should contact this office as soon as possible so we can reschedule. We currently schedule out between 45-60 days in advance. If the attorney wishes to keep the two slots then we of course will honor the past practice of the member getting coverage for one of the interviews. If Info Pass is set up in conflict with a merits interview in adjudications then I would strongly recommend keeping the merits undisturbed. Info Pass is more flexible and we have capacity. If the attorney does not contact us in advance to request rescheduling and does not move to arrange timely coverage for the interviews as above, we will have one calendar set aside in each schedule (this could be again 60 days out) where we will re-schedule the case that is not seen on the same day as originally scheduled. We can no longer squeeze in double bookings the same day because the staff has scheduled interviews well into the afternoons or the officers are assigned review work that has typically been pending far longer than a case for interview.

On the seating arrangement, I have again repeated that attorneys are not to expect to be placed at the back of the room. Officers do have discretion as to where individuals are to take seats. Instructions are in circulation to ensure that proper representation of clients can continue.

Ethan

---

**From:** Enzer, Ethan  
**Sent:** Wednesday, February 27, 2008 4:07 PM  
**To:** 'Jacqueline D. Bucar'  
**Cc:** Keck, Peggy M; Wicks, Joyce M; Person, James H  
**Subject:** RE: rumors?

Jacqui,

On the first case, if the issue was brought forward by Michael Boyle, I did speak to him about the double-scheduling. It turns out he had two complex cases either at the same time or just a few minutes apart. Only one of the cases had a G-28 however. We have to overcome a backlog in particular of N-400 cases that this office has never seen before. We have to keep to our schedules moving. We expect to be interviewing over 1100 N-400's per month from March until the end of the fiscal year. The attorneys need to understand this. We do not have staff waiting in reserve to pick up cases and hold them until the attorney is free from prior appointments. By the time that happens the officer will be addressing the rest of his/her calendar. We have at times set cases aside and if resources permit we will interview that day, if we can do it. People who are here on time and are prepared to go forward need to be seen. What do you suggest?

On the second issue, the AO's should not require the attorney to sit in the back of the interview room. Which supervisor was contacted when this supposedly occurred?

Ethan

**From:** Jacqueline D. Bucar [mailto:jbucar@murthalaw.com]  
**Sent:** Wednesday, February 27, 2008 3:35 PM  
**To:** Enzer, Ethan  
**Subject:** rumors?

Ethan, we have a couple of issues which are of concern, if these complaints are indeed true.

1. It has been reported by at least 3 AILA attorneys that they have been told if they have more than one interview at or around the same time, they are required to ask for a postponement of one of them i.e. they cannot keep both. Obviously this is a huge problem as we already have a taxed problem case issue. If this is indeed the case, we would like to discuss with CIS a mutually satisfactory solution such as having CIS reschedule the interview with a date certain at that time. One DAO stated that this is a policy that has been in effect for a while and that it was discussed at the last liaison meeting. However, this was not discussed at the liaison meeting and no announcement of a change in policy was made to AILA.

2. It has also been reported that at least 2 DAOs will not prohibit the attorney to sit anywhere near the client. In one case, the attorney was instructed to sit at the back of the office, behind his clients. One DAO stated that this is a new policy. However, I had an interview yesterday and was able to sit on the side with no problem so I doubt this is true.

I'm not sure if this is just a renegade policy made by a couple of examiners or if in fact it is a new policy. However, it is important to remember that our clients have retained us to represent them and as professionals, we are well aware of our role and our position. If CIS has a problem with an attorney who does not adhere to the rules of professional responsibility, there are ways to deal with that but to have a wholesale exclusion of an attorney from the process would violate the client's right to be represented.

Again, I emphasize that these two items have been "reported" and we don't know if this is a new office policy, the particular preference of a couple of examiners, or even completely false. But whether it's rumor or truth, I think it is a good idea to get this straightened out quickly.

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**Wicks, Joyce M**

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**From:** Enzer, Ethan  
**Sent:** Friday, March 07, 2008 8:25 AM  
**To:** Wicks, Joyce M; Person, James H; Keck, Peggy M  
**Subject:** FW: [connecticut] New HAR CIS policies re: multiple appointments/seating arrangements  
**Attachments:** MCLogogreen.jpg

Here is the follow up acknowledgement from AILA yesterday.

Ethan

---

**From:** Jacqueline D. Bucar [mailto:jbucar@murthalaw.com]  
**Sent:** Thursday, March 06, 2008 9:52 AM  
**To:** Enzer, Ethan  
**Subject:** FW: [connecticut] New HAR CIS policies re: multiple appointments/seating arrangements

Let the fireworks begin! Luckily I won't be in the office tomorrow. :-)

**Jacqueline D. Bucar**  
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**From:** Kristin Hoffman [mailto:Kristin@khoffmanlaw.com]  
**Sent:** Thursday, March 06, 2008 9:47 AM  
**To:** AILA Connecticut Chapter Distribution List  
**Subject:** [connecticut] New HAR CIS policies re: multiple appointments/seating arrangements

Recently several members noted two new policies at Hartford CIS. The first dealt with attorneys who had more than one appointment scheduled at the same time. The other policy, implemented inconsistently, had to do with where in the DAO's office the

1/5/2012



attorney was allowed to sit during an interview. Our liaison chair, Jacqueline Bucar, clarified these issues with Ethan Enzer, who answered as follows on the first issue:

*If an attorney is scheduled for more than one appointment at the same time (or less than a half-hour away from a preceding or succeeding appointment) they should contact this office as soon as possible so we can reschedule. We currently schedule out between 45-60 days in advance. If the attorney wishes to keep the two slots then we of course will honor the past practice of the member getting coverage for one of the interviews. If Info Pass is set up in conflict with a merits interview in adjudications then I would strongly recommend keeping the merits undisturbed. Info Pass is more flexible and we have capacity. If the attorney does not contact us in advance to request rescheduling and does not move to arrange timely coverage for the interviews as above, we will have one calendar set aside in each schedule (this could be again 60 days out) where we will re-schedule the case that is not seen on the same day as originally scheduled. We can no longer squeeze in double bookings the same day because the staff has scheduled interviews well into the afternoons or the officers are assigned review work that has typically been pending far longer than a case for interview.*

*For purposes of a smooth operation, it is not up to the AO to "skip over the case and come back to it." That skews any semblance of a schedule if their next due case is not early. We set the schedule with limited information because cases are not always sent to us in perfect order from the service center. If one case is for N-400 and the next is for I-751, and next comes an EOIR I-130 we cannot anticipate attorney call-in's. Additionally, cases have G-28's filed right at interview. As for the past practices mentioned, perhaps that was for a brief period under Boston when the office tried their "first come first served" work day. It was not effective here. Practitioners (generally solo types I would think) who cannot get coverage will be accommodated within reason on their interview dates by walking out of CIS (Exams, not Infopass) with a reschedule notice, again keeping the 60-90 days provision in mind. When we say in reason it is because there are some attorneys who provide us no notice and hurriedly write a note at the reception window claiming a conflict.*

Ethan's reply to the second concern is as follows:

*On the seating arrangement, I have again repeated that attorneys are not to expect to be placed at the back of the room. Officers do have discretion as to where individuals are to take seats. Instructions are in circulation to ensure that proper representation of clients can continue. However, some DAO offices are more generously laid out than others, square footage-wise. If an officer says that he wants to have the applicant(s) right up front and the attorney to be seated immediately behind, or just off to the side, then that is his/her call.*

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**Wicks, Joyce M**

---

**From:** Wicks, Joyce M  
**Sent:** Thursday, March 20, 2008 12:20 PM  
**To:** Kunver, Raj; Enzer, Ethan  
**Subject:** FW: G-28

Raj,

As per our discussion with Ethan this morning, it is acceptable to provide info to an attorney or his/her known paralegal if:

1. there is an indication in an electronic system the he/she is the attorney of record, or
2. the attorney/paralegal presents a photocopy of a properly completed G-28 that he/she claims is on file with CIS

Ethan,

Can you advise AILA?

Joyce

---

**From:** Enzer, Ethan  
**Sent:** Thursday, March 20, 2008 11:29 AM  
**To:** Wicks, Joyce M  
**Subject:** RE: G-28

Understood.

I think we get to know the paralegal regulars as associates of a firm even if they are not members of the bar. I don't expect clerks or runners to shuttle files for information and we had covered this in prior discussions with Fausto. I would recognize G-28's only with required signatures but if the attorney says that they have already properly submitted to the file, and we have no electronic record, and he/she cannot proceed because the parties are not present then the supervisor should be engaged. Like you said, most of the time the NFTS screen will give all the status we can divulge anyway.

How often is this occurring?

---

**From:** Wicks, Joyce M  
**Sent:** Thursday, March 20, 2008 11:21 AM  
**To:** Enzer, Ethan  
**Subject:** RE: G-28

I didn't know with our current clerical situation whether it was advisable to be asking Exams to bring files over to verify whether a G-28 was in the file. Often an IIO can provide status based on NFTS info alone. If the G-28 requires the signature of a USC or LPR petitioner, a G-28 couldn't be filed out at Info.

Can an IIO expect to be able to differentiate attorneys' paralegals from other employees? Does letterhead mean a letter from the attorney introducing the inquirer, or is it just blank letterhead meant to show that the inquirer has access to a certain attorney's letterhead and so therefore must be a paralegal employed by the attorney?

Joyce

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**From:** Enzer, Ethan  
**Sent:** Thursday, March 20, 2008 11:12 AM  
**To:** Wicks, Joyce M  
**Subject:** RE: G-28

1/5/2012

Joyce, 4 . . .

How will we know without a file review whether or not a G-28 has been recorded if the system says no and the inquirer says yes? I have been approached by upset attorneys saying that they have numerous G-28's submitted to CIS, and not just in connection with EAD applications. I think that it is due diligence to verify that act by file review, or the attorney can fill one out at Information.

In the past I believe we have given out information to paralegals with letterhead. I would not extend this information to runners or secretaries.

Does this help?

Ethan

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**From:** Wicks, Joyce M  
**Sent:** Thursday, March 20, 2008 10:58 AM  
**To:** Enzer, Ethan  
**Cc:** Kurver, Raj  
**Subject:** FW: G-28

Ethan,

I believe if we can verify through an electronic case management system that there is an attorney of record on file we are safe to give case info to that attorney.

- If someone else associated with that attorney asks for info, is it permissible to give it?

If there is no indication of a G-28 in an electronic system –

- Does the IIO require a G-28 at time of inquiry?
- Is the IIO obligated to obtain the A-file to verify whether there is a G-28 on file?

Joyce

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**From:** Kurver, Raj  
**Sent:** Thursday, March 20, 2008 9:42 AM  
**To:** Wicks, Joyce M  
**Subject:** G-28

Joyce,

What is our office policy in regards to an attorney requesting information with no G-28 and no identification? Can officers refuse to give out any information unless a G-28 and an attorney card are presented to them?

Please advise..

Raj

**Wicks, Joyce M**

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**From:** Jacqueline D. Bucar [jbucar@murthalaw.com]  
**Sent:** Thursday, March 20, 2008 12:35 PM  
**To:** Enzer, Ethan  
**Cc:** Person, James H; Keck, Peggy M; Wicks, Joyce M  
**Subject:** RE: 2 Issues to share with Membership

Ethan I will send your message out to the membership. My only concern regarding G-28s is we can reach only CT AILA members. We have no way of knowing which out of state attorneys or worse yet, which CT attorneys, not members of AILA, are involved. We'll definitely get the word out to our members though. Thanks, Jacqui

Jacqueline D. Bucar  
Counsel  
jbucar@murthalaw.com

**MURTHA CULLINA LLP**  
ATTORNEYS AT LAW

Murtha Cullina LLP  
Whitney Grove Square, Two Whitney Avenue  
New Haven, CT 06510-1220  
Direct: 203-772-7773  
Direct Fax: 860-240-5753  
Main: 203-772-7700  
Main Fax: 203-772-7723

[www.murthalaw.com](http://www.murthalaw.com)  
[www.murthaimmigration.com](http://www.murthaimmigration.com)

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**From:** Enzer, Ethan [mailto:ethan.enzer@dhs.gov]  
**Sent:** Thursday, March 20, 2008 12:32 PM  
**To:** Jacqueline D. Bucar  
**Cc:** Person, James H; Keck, Peggy M; Wicks, Joyce M  
**Subject:** 2 Issues to share with Membership

Jacqui,

Please see the information below regarding G-28's and our Information Center.

As per our discussion with Ethan this morning, it is acceptable to provide info to an attorney or his/her known paralegal if:

1. there is an indication in an electronic system the he/she is the attorney of record, or

1/5/2012

2. the attorney/paralegal presents a photocopy of a properly completed G-28 that he/she claims is on file with CIS

The reason that this has come up is that information has been seeing a lot of attorneys and/or paralegals in the office who indicate that they have a G-28 on file to represent the client(s). Oftentimes there is no separate confirmation of the existence of the G-28 showing up in our data base. We do not have the ability to pull files instantly as you know and much of the information is data anyway. We ask for AILA's cooperation on this. Most of the time the attorneys have copies of properly signed G-28's with them but we are seeing more and more attorneys coming to our office that we do not recognize and we cannot provide the status on just a verbal.

The other issue is one that I am concerned about. Today we lost productivity on two interview slots because the beneficiaries, both of whom had at one time entered with false documents or obtained false documents on top of an entry without inspection (more false documents).

All attorneys are reminded to be sure to come to CIS with proper, verifiable ID for the clients. We cannot proceed to put someone under oath that we cannot identify. In both cases, these undocumented persons did not enter the US last month. There were literally months, if not years to obtain proper consular documents to present to the authorities. They just did not bother, counting on a continuance to "straighten things out."

Ethan

**5. Internal USCIS policy on interviews and interview techniques.**

**FOIA response pp. 1987-1989.**



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**PRE-INTERVIEW ISSUES:**

Withholding information

CIS is seeing a lot of applications submitted with notations to "see attached" but where no attachment exists. They view this as an intentional withholding of information. AILA noted that while there may be some attorneys who have done this, there are also times when we do submit attachments and they get separated from the file. CIS recommends filing attachments where appropriate, placing the A# on the attachment(s) and bringing extra copies of such items to interview.

Punctuality for interviews

CIS's rule is as follows:

- If you are up to ten minutes late, the DAO will try to fit you in somewhere in his/her schedule.
- If you are over ten minutes late, the case will be automatically rescheduled

AILA asked that the rules be more flexible, e.g., if our client is more than ten minutes late, but the DAO is running late anyway, could the DAO still fit the client in? CIS said they would take the issue under advisement and get back to us.

As a side note, attorneys should not submit the I-797, notice of appointment, until their client is present.

Behavior in waiting room

CIS notes that sometimes attorneys gather in the waiting room and have been overheard to discuss specific DAO's. CIS would appreciate it if we take this type of conversation "outside". AILA agreed to this. Note to members, then: please do not talk about specific DAO's at USCIS.

AILA used this opportunity to mention that occasionally some DAO's have been seen conducting partial interviews in the waiting room, without inviting the applicant into the DAO's office and that this has happened primarily with pro se applicants. CIS agreed this should not happen and will make sure it does not in the future.

CIS also requested we not stop DAO while they are calling into an interview to discuss a case or ask them a question or discuss another DAO.

N-336's

CIS asked that attorneys prepare these forms better. Don't simply fill out a barebones N-336 and then wait for the interview as an opportunity to explain your case. Some N-336's are being

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decided without an interview, particularly where it's a simple issue of missing documents. Failure to explain your case and/or submit documents may unnecessarily delay your case.

### **ISSUES DURING INTERVIEWS:**

#### **Mutual respect**

Attorneys should refrain from discussing other DAO's to the DAO conducting the interview or from trying to elicit an opinion from the DAO in front of them about another DAO's case. AILA agreed this was inappropriate.

CIS also noted some instances of attorneys "bullying" or taking advantage of new officers. No specific examples were provided, but AILA agree that bullying and taking advantage is inappropriate.

CIS notes that some attorneys have answered their cell phones while in interviews. This is completely inappropriate and soon we will see signs posted that cell phones are not permitted in interviews. The inappropriateness of this goes without saying.

CIS asks that attorneys refrain from answering questions for clients. This includes the history exam during naturalization interviews as well as questions asked during Stokes interviews (coaching). AILA agreed that some questions must be answered by the applicant, but pointed out that certain legal questions are better answered by attorneys. There was no disagreement on this issue.

CIS wants DAOs to maintain proper control of an interview. However, it is appropriate for an attorney to ask permission to clarify an issue raised.

AILA pointed out that some officers make inappropriate comments that could be viewed as racist or simply personal opinions that are not relevant to interview. Personal opinions are better left unsaid and CIS agreed.

#### **Interview techniques**

This issue focused solely on whether CIS has the right to inquire about a couple's method of birth control. There was a lot of discussion back and forth with no resolution on the spot. AILA has already responded in writing to CIS, citing the Griswold v. Connecticut case. AILA noted that there are many ways to ascertain whether a marriage is bona fide. CIS countered that it's easy for couples to agree on a story. AILA pointed out that a couple could just as easily agree on a birth control method, so the question is not nearly as probative as CIS thinks. The issue is still in dispute and we are working toward a resolution.

was still pending. CIS will check if the approved I-130s can be sent through the IMS system so we receive a notice even if the I-485 may be denied.

#### **ADHERING TO THE CHAIN OF COMMAND:**

CIS reminds attorneys to follow the chain of command when encountering problematic cases. Speak to the supervisor (DAO or IIO) and only then contact Ethan if the problem cannot be resolved. AILA pointed out that often it's difficult, if not impossible, to speak to a supervisor, such that going up the chain of command makes little sense. CIS will change this, making sure that supervisors are more responsive to attorney inquiries. The best way to reach a supervisor was outlined above, under "improper requests for information".

#### **INFORMATION OFFICE:**

CIS announces that Raj Kunver is now the new Supervisory IIO, replacing Barbara Kelly. CIS acknowledges that some of the IIO's need additional training and this will be forthcoming. CIS requests our patience while Raj becomes accustomed to his new position. One of the office's new policies will be a 15 minute limit on infopass appointments. There are likely to be timers placed at the windows soon to keep track of each person's appointment time.

Hartford will be opening more infopass appointment slots in an effort to assist more people.

AILA voiced concerns over the lack of useful information provided at infopass appointments and requested that if our time is going to be limited, IIO's should make a concerted effort to provide genuinely helpful information, not the typical "it's pending". CIS reiterated its request for AILA's patience while Raj adapts and indicated that they hope to see improvements with the change in personnel.

CIS suggested that to improve service, AILA may want to present a "trouble" file first at an InfoPass.

CIA also stated that Jim Person is the Naturalization Supervisor; Fausto Pimentel is the primary I-485 Supervisor; and, Peggy Keck is the 2<sup>nd</sup> line for I-485s and has a role with clerical oversight as well.

**6. Policy guidance titled Important information for applicants and petitioners know your rights – protect yourself from imposters.**

**FOIA response pp. 1521-1525.**

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**IMPORTANT INFORMATION FOR APPLICANTS AND PETITIONERS**  
**KNOW YOUR RIGHTS - PROTECT YOURSELF FROM IMPOSTERS**

In matters filed with USCIS, you may be represented by an attorney or an accredited representative of a recognized organization. Attorneys may charge legal fees - accredited representatives can only charge a minimal (small) fee as approved by the Board of Immigration Appeals. Immigration Consultants (even if registered under state law) are NOT eligible to represent you before USCIS.

The people and groups on this list are NOT eligible to represent you in matters filed with USCIS. We will not communicate with them in your case, even if they submit a "NOTICE OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE" form (Form G-28).

**DO NOT BE FOOLED BY IMPOSTERS WHO CHARGE EXCESSIVE FEES.**

|                               |          |  |
|-------------------------------|----------|--|
| ABDELJABER, Majed             | (TX)     |  |
| ACCIME, Gomez                 | (FL)     | dba Haitian American Community Help Org.   |
| ALFARO, Frederico             | (MA)     |  |
| ALHALLAQ, Hnan                | (CA)     | dba Gateway Express and AA Gateway Express |
| ALYSHAH, Mahmood I.           | (GA)     | dba Alyshah Immigration Agency, Inc.       |
| AMENT, Lloyd W.               | (Canada) |  |
| American Solutions & Services | (FL)     |  |
| AMILCAR, Pierre Andre         | (NJ)     | dba Amilcar Assistance Center              |
| ANTOINE, Max                  | (NJ)     |  |
| ARMENDARIZ, Hilda             | (TX)     | dba Aplicacion de Oro                      |
| ARMENDARIZ, Marcelino         | (TX)     | dba Aplicacion de Oro                      |
| BARON, Marie                  | (CT)     |  |
| BATEAU, Gerard                | (SAJ)    |  |
| BAUER, R. Reese               | (MN)     |  |
| BEDARD, Marie-Josée H.        | (Canada) | dba Brunet Lawyers in Montreal, Quebec     |
| BEN-SOLOMON, Amir             | (MA)     | dba Solomon & Solomon Consultants, Inc.    |
| BLAKEWAY, Elizabeth Sutfin    | (CA)     | dba Manning & Sutfin                       |
| BLALOCK, Steven               | (CA)     |  |
| CALO, Roberto Santiago        | (SAJ)    |  |
| CARVAJAL, Carlos              | (TX)     |  |
| CASSADY, Glen T. Sr.          | (SC)     |  |
| CEJA, Carmen                  | (TN)     | dba Ceja Enterprises                       |
| CESENA, Jose                  | (CA)     | dba San Diego Legal Services Network       |
| CHAN, Corinna W.K.            | (CA)     | dba Chan and Trust International           |
| COLLADO, Cristobal            | (NJ)     |  |
| CORDONE, Amy                  | (NY)     |  |
| CORR, Patrick                 | (PA)     |  |
| DAVIS, Don L.                 | (CA)     | dba Don y Del Enterprises                  |
| DIAZ, Elvia                   | (TX)     |  |
| CUERO, Luis                   | (NY)     | dba Eduang (herbal remedy store in Queens) |
| DOUGLAS-Gault, Julia          | (SAJ)    |  |

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|                         |          |  |
|-------------------------|----------|--|
| DUPLESSIS, Delia        | (CA)     | dba Manhattan Legal and Business Solutions;<br>Para-Legal Solution; Justice and Re-entry<br>Foundation; Justice Foundation |
| DUTTON, Vernon          | (NY)     |  |
| DZHAMGAROVA, Ilona      | (NY)     |  |
| ESPARZA, Narce          | (CA)     | dba Esparza Immigration Service  |
| FLOOD, Henry            | (FL)     |  |
| FOLEY,                  | (TX)     | dba Foley Enterprises  |
| FRANCO, Ana Maria       | (NY)     |  |
| GALLARDO, Fernando      | (SAJ)    | dba WelcomeUSA   |
| GARCIA, Daniel          | (TX)     |  |
| GERALD, Pastor Emma     | (MA)     |  |
| GIROUX, Sylvain         | (Canada) | dba Work Permits USA, Inc.   |
| HAROON, Naim            | (TX)     | dba Sakhia & Associates  |
| HATCH, Mike             | (VA)     |  |
| HOLIDAY, William        | (CA)     |  |
| HUSIC, Armina           | (CA)     | dba Asian Americans for Community<br>disbarred attorney  |
| JOHNSON-ORTIZ, Michael  | (WA)     | Hispanic Coalition   |
| KASSE, Rosa             | (FL)     | aka Dan Mitchell, Dan Carol  |
| KHYRALLAH, Najee        | (NJ)     | dba Christian Service Center   |
| KIM, Rev. Joshua H.     | (CA)     |  |
| LAI, Kevin              | (MA)     |  |
| LE, Jose Luis           | (MA)     |  |
| LIAO, Larry             | (CA)     | dba Boulders Immigration Services  |
| LOPEZ, Pavlina Dimovski | (UT)     |  |
| LOZANO, Enriqueta       | (TX)     | dba Azteca Organizacion, Vaentino's Law Office<br>and Notary Public, and Azteca & Valentino's                              |
| LYNN, David             | (NY)     |  |
| MAXIMO, Maria Elena     | (NY)     | dba Jamalai Uagueha, Inc.  |
| McDERMOTT, Clementina   | (NY)     | dba Ayuda Internacional Immigrante   |
| MENDEZ, Jose            | (VA)     | dba Global Evangelism Task Force (GETF)  |
| MINNELLA, John L.       | (CA)     |  |
| MONDEL, Alex            | (MA)     |  |
| MORALES, Francisco      | (NY)     | dba Eduang (herbal remedy store in Queens)   |
| NAUMAN, St. Elmo        | (NY)     |  |
| NELSON, Kathy           | (NV)     |  |
| NORMANDEAU, Dianne      | (Canada) | dba Global Transit, Inc.   |
| NUNEZ, Andres           | (SAJ)    |  |
| OWAD, Christine         | (NY)     |  |
| PASQUINO, Angela        | (NY)     | dba Eduang (herbal remedy store in Queens)   |
| PAUL, Niko              | (NY)     | d/b/a ALTRA Consulting Services, LLC   |
| PEREZ, Yolanda          | (TX)     | d/b/a Nueva Unicion  |
| PUENTES, Miguel Angel   | (CO)     | aka Miguel Angel Rosabel   |
| RAMIREZ, Francisco      | (TX)     |  |
| RAMIREZ, Robert         | (TX)     |  |
| RASLAN, S.H.            | (NY)     | dba Raslan Immigration Services  |



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|                        |         |
|------------------------|---------|
| RIVERA, Edwin          | (NY)    |
| RUIZ, Bemilda Linda    | (CA)    |
| SALEEM, Muhammed       | (VA)    |
| SANTOS, Joe            | (NY)    |
| SCHELL, Norka          | (NJ)    |
| SERING, Belen A.       | (NY)    |
| SHAH, J.M.             | (NJ)    |
| SINENING-SMITH, Evelyn | (CA)    |
| SMITH, Fergus          | (NY)    |
| SOLOMON, Amir Ben-     | (NY)    |
| STIRLING, Terry        | (CA)    |
| VALOROZO, Larry        | (NY)    |
| VARELA, Marina         | (FL)    |
| WILLIS, Thomas         | (NJ)    |
| WOZNIAC, John W.       | (IL)    |
| YOUNAN, Danny          | (MI/CA) |

dba San Diego Legal Services Network  
dba Lahore Foundation  
dba Spartan Group

Primary Care Health Management Corp.  
foreign attorney (India) office in NJ

dba Solomon & Solomon Consultants, Inc.  
dba Solomon & Solomon Consultants, Inc.

W. Consulting, Inc., Advocate Group for Immigrants  
Younan Investigative Services  
World Language Translation  
U.S. Investigative Service, Inc.  
Immigration Consulting and Associates  
Confidential Process and Investigative Services  
Confidential Consulting Agency  
Confidential Process Services Company

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*Ethics Counsel*

Department of Homeland Security  
70 Kimball Avenue, Room 103  
S. Burlington, VT 05403



**U.S. Citizenship  
and Immigration  
Services**

## **FACT SHEET**

### **Important Information Regarding Attorneys and Accredited Representatives for Persons Seeking Benefits from USCIS**

An individual or entity in the United States may choose to be represented by an attorney or accredited representative when filing applications or petitions with U.S. Citizenship and Immigration Services (USCIS). The information in this Fact Sheet will help you protect yourself from becoming the victim of fraudulent activities committed by individuals posing as attorneys and accredited representatives.

#### **Know Your Rights**

If you choose to have a representative when filing an application or petition with USCIS, you may be represented by an attorney or an accredited representative of a recognized organization. A representative must also file a "NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE" (Form G-28) along with the application or petition. In matters filed within the United States, only attorneys and accredited representatives may communicate on your behalf to USCIS and receive information from USCIS regarding your application or petition.

#### **Attorneys**

Attorneys must be a member in good standing of the "bar" of a U.S. State (or U.S. possession, territory, Commonwealth, or the District of Columbia) and not be under any court order restricting their practice of law. Attorneys will check the first block on Form G-28 and must provide information regarding their admission to practice. The best way to protect yourself is to ask to see the current attorney licensing document for the attorney, make a note of the admission number if any, and to contact the State bar admission authorities to verify the information. A lawfully admitted attorney should honor your request for this information, as State Bar practice rules require disclosure of this information to clients. You may also access this information through the website located at [www.nobc.org](http://www.nobc.org) (click on the Ethics Link and then click on Bar Associations and Disciplinary Authorities).

#### **Accredited Representatives**

Accredited representatives must work for a Recognized Organization in order to be eligible to represent you before USCIS and file a Form G-28. They may be authorized to practice before the Immigration Courts, the Board of Immigration Appeals (BIA) and/or USCIS. The best way to protect yourself is to ask to see a copy of the BIA decision granting official recognition to the Accredited Representative and Recognized Organization. Recognized organizations may only charge nominal fees, if any, for providing services in immigration matters. An accredited representative of a recognized organization should honor your request. You may also check the lists maintained on the website located at [www.eoir.gov](http://www.eoir.gov).

**Important information regarding Notary Publics and Immigration Consultants**

While other individuals (notary publics and immigration consultants) may assist you by filling in the blanks on pre-printed USCIS forms with information provided by you, these individuals may **NOT** provide legal advice or represent you before USCIS. In addition, notary publics and immigration consultants may only charge nominal fees as regulated by state law. Individuals helping you in this way are required by law to disclose to USCIS their assistance by completing the section at the bottom of a petition or application concerning the "Preparer" of the form.

**How to Protect Yourself from Becoming a Victim**

1. **DO NOT** sign blank applications, petitions or other papers.
2. **DO NOT** sign documents that you do not understand.
3. **DO NOT** sign documents that contain false statements or inaccurate information.
4. **DO NOT** let anyone keep your original documents.
5. **DO NOT** make payments to a representative without getting a receipt.
6. **DO** obtain copies of all documents prepared or submitted for you.
7. **DO** verify an attorney's or accredited representative's eligibility to represent you.
8. **DO** report any representative's unlawful activity to USCIS, State Bar Associations and/or State Offices of Attorneys General.

**8. Interoffice memorandum regarding access to USCIS spaces.**

**FOIA response pp. 1849-1850.**

(b)(5)

District Director

U.S. Department of Homeland Security  
25 Federal Plaza  
New York, NY 10278



U.S. Citizenship  
and Immigration  
Services

## Interoffice Memorandum

To: All District 3 Employees

From: Andrea Quatunillo  
District Director

Date: August 3, 2009

Re: Access to U.S. Citizenship and Immigration Services Spaces/Information.

During the normal course of business, U.S. Citizenship and Immigration Services (USCIS) spaces are visited by individuals and their representatives who have been scheduled for interviews, or who are inquiring about the status of their cases. Such individuals must show proper identification to enter the building, and do not have access to our internal spaces unescorted. Our dealings with members of the public are structured and controlled.

We must likewise control access to USCIS internal spaces as well as case-specific information, from individuals who are seeking access which would be considered beyond our day-to-day scope of operations.

Access to USCIS internal spaces and case-specific information must be controlled as follows:

### (1) Access to Internal Spaces

(a) **Members of the Public:** Members of the public, to include applicants, their representatives, and other previously-scheduled visitors, must be escorted while they are present in USCIS internal spaces. Similarly, such individuals cannot be left unattended.

(b) **Government Personnel, Law Enforcement Officials, Former Contract Employees, and Former USCIS/District Employees:** Access to USCIS internal spaces must first be cleared through Field Office Directors prior to a visit by personnel from other government agencies, law enforcement officials, former contract employees, and former USCIS/District employees. These individuals must then be escorted during their visit. Similarly, such individuals cannot be left unattended.

There are instances where we have arranged for aliens to be taken into custody, or we have already established cooperative relationships with ICE IO and/or DRO, such as with BCAP, CARRP, DCRC, FPNB, etc., and such established practices will remain unchanged; however, Field Office Directors should be continuously notified of these interactions, and Significant Incident Reports must continue to be issued in custody situations.

Re: Access to U.S. Citizenship and Immigration Services Spaces/Information  
Page 2 of 2

(c) **Warrants:** In instances where a law enforcement official presents a warrant for access, search, and/or seizure, they must be directed to the Office of the District Director to ensure proper service.

**(2) Access to Case Specific Information**

(a) **Members of the Public:** Members of the public, to include applicants and their representatives, may inquire about the status of their cases, with proper identification, and in the cases of representatives appearing without their clients, with properly executed G-28s.

(b) **Congressional Offices:** Congressional offices may inquire on behalf of applicants concerning the status of their cases, as Congressional Offices are required to obtain permission in advance.

(c) **Government Personnel, Law Enforcement Officials, Contract Employees (Current/Former), and USCIS/District Employees (Current and Former):** When employees from other government agencies, law enforcement officials, contract employees (current/former), and USCIS/District employees (current/former) inquire about a specific cases, or request information regarding a pending application, they must be advised to follow normal inquiry procedures, such as INFOPASS, the 1-800 number, or written inquiries; and they must be advised that only the applicant in question and/or their representative may submit inquiries regarding case status. Should any of these individuals request case specific information, Field Office Directors must be notified through appropriate chains-of-command.

In instances where there is a law enforcement need for case specific information, such individuals must be advised to request said information through supervisory channels. Such requests are processed through the Controlled Application Review & Resolution Program (CARRP) Unit.

(3) All employees are expected to abide by these guidelines to ensure the integrity of USCIS internal spaces and case specific information. Failure to follow these guidelines can result in a compromise of physical and information security and may result in disciplinary action.



**12. Emails among USCIS staff discussing internal procedures regarding the reception window at a field office.**

**FOIA response p. 1929.**

**Wicks, Joyce M**

**From:** Wicks, Joyce M  
**Sent:** Thursday, March 26, 2009 5:21 PM  
**To:** Bell, Sherrie D; Burke, Lisa A; Dorsey, Priscilla; Freeman, Amanda L; Harrington, Michelle L; Johnson, Maria; Longo, Wendy D; Mangliara, Polixeni; Mercado, Hilda; Miller, Catherine M; Peregrin, Matthew M; Rosa, Marli P; Roy, Robert J  
**Cc:** Kunver, Raj; Dyer, Amanda; Keck, Peggy M; Person, James H; Wicks, Joyce M; Ahmed, Shahin; Arnold, Preston F; Bonilla, Iris G; Chapman, Sara S; Dacosta, Gamet; Dixon, Daarina S; Edwards, Lynn A; Fisher, Camille C; Foster, Brenda L; Hoffman, Michael K; Kline, Daniel F; Lavole, Jacqueline; Lombard Jr, Carl C; Lyttle, William H; Magee, Kenneth W; Maturo, Anthony M; Mccarthy, Timothy; Preble, Jennifer L; Presnick, Robert; Ratti, Salvatore A; Reffel, Frank; Rubeo, Stephen D; Segrave, Wayne; Skinner, Robert D; Stuart, James C; Sullivan, Brian J; Tirado, Marco D; Wannagot, Robert D; West, Dawn  
**Subject:** window procedure

Wendy,

Please add this instruction to the Reception window SOP and ensure it is implemented immediately.

- Any applicant who attempts to turn in an appointment notice but claims his or her attorney is not present needs to be asked by the receptionist if he or she wants to proceed without their attorney.
  - If the answer is yes, you must take and notate the appointment letter to indicate this.
  - If the answer is no, you must advise the applicant that
    - You cannot take the appointment notice unless the attorney appears at the window with the client within 20 minutes of the appointment time
    - The appointment slot is open for a period of 20 minutes only
    - After 20 minutes they will be considered as having failed to appear for their appointment and their case will be denied
    - Or
    - Within that 20 minutes they can request rescheduling of their appointment, but there is no guarantee that we will honor their request (i.e., if we have previously rescheduled them, we may not honor a second such request)
- If the attorney appears after the 20 minute slot claiming extenuating circumstances (i.e., hazardous driving conditions, accident on the highway, unexpectedly delayed in court, etc.), refer the matter to an SAO with the attorney's explanation to determine whether the interview will be done despite the delay.

Please let me know if there are any questions about this policy.

This has been put in place because there have been two recent situations where the same attorney has appeared very late for an interview and claimed that her client previously turned in his appointment letter, yet we do not have the client's letter and the client has not been checked off the list.

*Joyce Wicks*

Supervisory Adjudications Officer

USCTS

450 Main St., Hartford, CT 06103

860-728-2362 (voice)

860-728-2355 (fax)

**15. Memorandum entitled Role of Consultants in the  
Credible Fear Interview.**

**FOIA response pp. 103-104.**

(b)(5)

**Memorandum**



HQASM 120/16.12 - P

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| <b>Subject:</b><br><br>Role of Consultants in the Credible Fear Interview | <b>Date:</b><br><br>[signed November 14, 1997] |
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**To:**  
 All Asylum Directors  
 All Supervisory Asylum Officers  
 All Asylum Officers

**From:**  
 Office of International Affairs  
 Asylum Division  
 [Joseph E. Langlois /s/ - see page 2]

The purpose of this memo is to provide additional guidance on the role of consultants during the credible fear interview in the context of expedited removal. We are developing further guidance on working with consultants and representatives, including guidance on the documents that may be released to them. That guidance will follow shortly.

The INS encourages the use of consultants by persons who are subject to expedited removal and have been referred for a credible fear interview. Consultation generally facilitates the credible fear process and helps to ensure that asylum seeker's claims are fully elicited. The role of the consultant in the credible fear interview is basically the same as the role of the representative in the affirmative asylum interview. While the asylum officer maintains control of the interview, the consultant and the asylum officer should share a cooperative role in developing and clarifying the merits of the applicant's claim. The consultant should generally be given the opportunity to make a statement at the end of the interview and to ask the applicant additional questions.

Pursuant to 8 C.F.R. § 208.30, applicants in the credible fear process are entitled to consultation with a person or persons of their choosing:

The alien may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, and may present other evidence, if available. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process. Any person or persons with whom the alien chooses to consult may be present at the interview and may be permitted, in the discretion of the asylum officer, to present a statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of such persons who may be present at the interview and on the length of statement or statements made. 8 C.F.R. §208.30(b)

"Consultant" is not defined in the INA or the regulations. The consultant may be a paid attorney, a *pro bono* attorney, a staff member at a non-government organization, a friend, a relative, or any other person

of the alien's choosing. The alien may have more than one consultant at the interview. However, the asylum officer may reasonably limit the number of consultants present during an interview based on available space considerations and to prevent disruption of the interview.

As noted above, the regulations governing the expedited removal process provide that, *in the asylum officer's discretion*, the consultant may make a statement or comment at the end of the interview. Therefore, the asylum officer has discretion to prevent the consultant from making a statement or comment. However, the asylum officer must have solid reasons to exercise discretion to disallow a consultant from making a statement or comment. Only in extremely unusual circumstances should the asylum officer exercise discretion to prevent the consultant from making a statement or comment.

Generally, the consultant should be allowed to make a closing statement, comment on the evidence presented, and/or ask the asylum seeker additional questions. This should be explained to the consultant and the applicant at the beginning of the interview. The asylum officer may place reasonable limits on the amount of time allotted to the consultant, if it appears that the consultant is using the time in an unhelpful or disruptive manner. It is appropriate for the consultant to clarify issues or statements that were made during the interview, to summarize the case and to make arguments regarding the merits of the case, and to ask additional relevant questions that have not been asked by the asylum officer. It is not appropriate for the consultant to reconduct the interview. The asylum officer must record the consultant's statements in the Q & A's, if the statements are material or relevant to the claim. In some cases, the asylum officer may find it necessary to ask the applicant additional follow-up questions based on issues or information presented by the consultant at the end of the interview. This should also be recorded in the Q & A's.

In most cases, the consultant should hold comments or questions until the end of the interview. In certain instances, however, it will be appropriate for the consultant to comment during the course of the interview to avoid confusion or misunderstandings. Such comments may be helpful and should not be discouraged. At the same time, it is important that the asylum officer retain control of the interview. If the consultant repeatedly interrupts or otherwise disrupts the interview, the asylum officer should ask the consultant to refrain from interrupting the interview and explain that the consultant will be given an opportunity at the end of the interview to ask questions and make comments. Absent unusual circumstances (for example when the asylum seeker has a mental disability), the consultant should not be permitted to answer for the applicant.

There may be times when the asylum officer needs to discuss certain issues with the consultant (e.g., the consultant's role). The asylum officer should ensure that what is discussed is translated to the applicant so that the applicant is aware of all that transpires during the interview.

As noted above, further guidance on this issue will be forthcoming. Please direct any questions you have regarding the role of the consultant during the expedited removal process to Charlie Fillinger or Lorraine Eide.

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Joseph E. Langlois /s/  
Deputy Director

13. Record 13 in full, except the internal meeting minutes.



Welcome to the I-485 team!

Congratulations! You have been identified as an officer who deserves to be given an opportunity to gain valuable experience and expand your knowledge on the I-485 team. This knowledge and experience will serve you well throughout your career.

There are certain expectations in the I-485 program.

During your initial training, you will first sit with other ISOs for background information and to observe file review and interview techniques. Please take thorough notes. After this initial period, you will begin to conduct the file review and interviews, and they will observe. It is expected that they will stop you mid-interview and interject if they believe you are missing something or your approach is off. They will provide you with valuable feedback -- please be open to this and learn from it.

During an interview, you generally need to provide a relaxed atmosphere in order to put the applicant at ease. This will allow you to elicit information more easily. You need to direct your questions to the person seeking the benefit (I-130 to both petitioner and beneficiary in a marriage case; I-485 to applicant). Your interviews need to be flexible enough to direct appropriate follow up questions to the applicant or petitioner, depending on his or her answers to your questions. You will also need to be alert at all times to identify fraud indicators, contradictions in testimony, and contradictions between testimony and the record. If you believe you have a case involving fraud, it is expected you will complete Q & As during your interview.

Because you could be called to testify in court regarding your interview, it is very important that you properly notate the application or petition with corrections to the form and by placing a red checkmark beside each question asked and answer verified as well as complete the adjudicator's area. It is expected that your worksheet notes will legibly reflect all the information elicited and observations made during the interview.

Many applicants bring attorneys. They are not given any special consideration and are not allowed to answer questions for clients or repeatedly interrupt your questioning. They are allowed to object to questions (to which you should tell the attorney his/her objection is noted, notate the worksheet, and repeat the question), advise their clients not to answer questions (to which you should notate the worksheet), and ask you to rephrase the question. If an attorney interrupts repeatedly, tell him or her that s/he will be given an opportunity at the end of the interview to clarify any issues s/he believes needs clarifying.

Once you are assigned bundles (beginning with short bundles), it is expected that you will do your best to maintain timeliness. A morning break is built into the schedule, and it is expected that you will complete your bundle before you break for lunch. You will need to remain somewhat flexible regarding break periods. It is expected you will notify a SISO if you start to run more than one interview behind; we will assess whether to assign one or more interviews to another ISO to help you catch up. Adjudications questions will generally be directed to Dawn, the I-485 training officer, and she will need to review your files with you for a time before you approve or deny any applications or petitions or issue an RFE. We'll let you know when that's no longer necessary.

Thanks for your interest in working with us. We're glad you are here, and we are available to give you any assistance you may need.

Peg and Joyce

*Internal Use Only*

Welcome to the I-485 team!

Congratulations! You have been identified as an officer who deserves to be given an opportunity to gain valuable experience and expand your knowledge by spending time on the I-485 team. This knowledge and experience can serve you well in your permanent position and throughout your career.

There are certain expectations that come with this rotation.

During your training, you will first sit with more senior ISOs for background information and to observe file review and interview techniques. It is expected that you will take thorough notes. After this initial period, you will begin to conduct the file review and interviews, and they will observe. It is expected that they will stop you mid-interview and interject if they believe you are missing something or your approach is off. They will provide you with valuable feedback – it is expected that you will learn from it.

During an interview, you generally need to provide a relaxed atmosphere in order to put the applicant at ease. This will allow you to elicit information more easily. You need to direct your questions to the person seeking the benefit (I-130 to both petitioner and beneficiary in a marriage case; I-485 to applicant). Your interviews need to be flexible enough to direct appropriate follow up questions to the applicant or petitioner, depending on his or her answers to your questions. You will also need to be alert at all times to identify fraud indicators, contradictions in testimony, and contradictions between testimony and the record. If you believe you have a case involving fraud, it is expected you will complete Q & As during your interview.

Because you could be called to testify in court regarding your interview, it is very important that you properly notate the application or petition with corrections to the form and by placing a red checkmark beside each question asked and answer verified as well as complete the adjudicator's area. It is expected that your worksheet notes will legibly reflect all the information elicited and observations made during the interview.

Many applicants bring attorneys. They are not given any special consideration and are not allowed to answer questions for clients or repeatedly interrupt your questioning. They are allowed to object to questions (to which you should tell the attorney his/her objection is noted, notate the worksheet, and repeat the question), advise their clients not to answer questions (to which you should notate the worksheet), and ask you to rephrase the question. If an attorney interrupts repeatedly, tell him or her that s/he will be given an opportunity at the end of the interview to clarify any issues s/he believes needs clarifying.

In this position, you will be asked many questions by applicants and attorneys about the adjudication of their cases. You will not know all the answers. It is expected that you will ask SISOs and ISOs the answers to these questions so that you can provide accurate answers to these questions. If you don't know an answer, you should excuse yourself from the interview and bring the file to a more experienced ISO or SISO. Don't guess at the answer, and don't fail to provide an answer.

Once you are assigned bundles (beginning with short bundles), it is expected that you will do your best to maintain timeliness. A morning break is built into the schedule, and it is expected that you will complete your bundle before you break for lunch. You will need to remain somewhat flexible regarding break periods. It is expected you will notify a SISO if you start to run more than one interview behind; we will assess whether to assign one or more interviews to another ISO to help you catch up. Adjudications questions will generally be directed to Dawn, the I-485 training officer, and she will need to review your files with you before you approve or deny any applications or petitions or issue an RFE. A SISO needs to initial your RFE before it is sent.

Thanks for your interest in working with us. We're glad you are here, and we are available to give you any assistance you may need.

Peg and Joyce

*Internal Use Only*

10. FOIA response pages 1904-1906 of record 10, except for the first two e-mails on page 1904.

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**From:** Jacqueline D. Bucar [mailto:jbucar@murthalaw.com]  
**Sent:** Wednesday, February 27, 2008 5:08 PM  
**To:** Enzer, Ethan  
**Cc:** Keck, Peggy M; Wicks, Joyce M; Person, James H; Kristin Hoffman  
**Subject:** RE: rumors?

Thanks Ethan for the quick response. I did not include the supervisors on my first email because it contained "personnel" issues and I defer to you as to whom to include. Since they are in your email, I am answering to all of you. Let me know in the future if I should just do so or continue to send you the email first.

It's always hard as liaison chair to respond to questions as I do not have first hand knowledge. I received a phone call from the chair of the CT chapter who told me that 3 attorneys (none of them Michael Boyle) were told that it is a new policy of HAR that an attorney with more than one scheduled appointment around the same time would be required to reschedule one of them. While it is understandable that this could cause a problem if either a DAO is late, or the case requires more time etc., the result is that when a case has to be rescheduled, it delays the case for a decent period of time and often it goes into the problem case list. Our suggestion would be that if HAR requests the attorney to reschedule one or more of the cases that before the attorney leaves, he/she has a new date to return. Otherwise, it prejudices the client and it creates more work for your examiners. And I can't really see where it helps your office either as it only creates another pending case, rather than a completed one. Secondly, it shouldn't really be an automatic requirement. It may be possible to get both cases done. One day, while sitting in the waiting room waiting to be called, I watched as one DAO called a case, the clients were there for the translator or the attorney was in another interview. That DAO called the next case and then went back to the first

case afterwards. He got both done. Everyone was happy. One less case on your shelf and a real spirit of cooperation. I was impressed at how smooth things can work when people cooperate. So to answer your question, it was not Michael Boyle. Chris De Luca and Tony Collins were two of the three. I can't remember the third name. A woman.

On the issue of attorneys sitting in the back of the office, again it is second hand but the report is that Lynn was one of the two who said it was a new policy. I'll find out who the other is. One attorney apparently sat in the back of the clients; the other simply continued to sit where she was. I will ask if either of them asked to speak to a supervisor. However, often attorneys are put between a rock and a hard place. If you ask to speak to a supervisor and thus challenge the DAO, you risk having the DAO take it out in some way on the client. We both know that this is not suppose to happen but we also both know realistically that this can happen. So attorneys are left with little choice, especially when they are being told that this is a new HAR policy. That is why I asked you if this could be just a renegade DAO taking things in his/her own hands or whether it was really a new policy. I had an interview yesterday with Bill Lyttle and I sat on the side where I always sit, facing both the examiner and my clients. He said nothing to me about sitting in the back and was professional, efficient and cordial. So this was a surprise to me but one of the attorneys who reported this is a respected member of the bar and is credible.

The history with Hartford has always been when there is a change or a new policy implemented that you let us know and we spread the word. Neither Kristin nor I had any word about a new policy so that is why I brought the issue to your attention. I trust we'll be able to straighten this out for both parties sake.

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**From:** Enzer, Ethan [mailto:ethan.enzer@dhs.gov]  
**Sent:** Wednesday, February 27, 2008 4:07 PM  
**To:** Jacqueline D. Bucar  
**Cc:** Keck, Peggy M; Wicks, Joyce M; Person, James H  
**Subject:** RE: rumors?

Jacqui,

On the first case, if the issue was brought forward by Michael Boyle, I did speak to him about the double-scheduling. It turns out he had two complex cases either at the same time or just a few minutes apart. Only one of the cases had a G-28 however. We have to overcome a backlog in particular of N-400 cases that this office has never seen before. We have to keep to our

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schedules moving. We expect to be interviewing over 1100 N-400's per month from March until the end of the fiscal year. The attorneys need to understand this. We do not have staff waiting in reserve to pick up cases and hold them until the attorney is free from prior appointments. By the time that happens the officer will be addressing the rest of his/her calendar. We have at times set cases aside and if resources permit we will interview that day, if we can do it. People who are here on time and are prepared to go forward need to be seen. What do you suggest?

On the second issue, the AO's should not require the attorney to sit in the back of the interview room. Which supervisor was contacted when this supposedly occurred?

Ethan

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**From:** Jacqueline D. Bucar [mailto:jbucar@murthalaw.com]  
**Sent:** Wednesday, February 27, 2008 3:35 PM  
**To:** Enzer, Ethan  
**Subject:** rumors?

Ethan, we have a couple of issues which are of concern, if these complaints are indeed true.

1. It has been reported by at least 3 AILA attorneys that they have been told if they have more than one interview at or around the same time, they are required to ask for a postponement of one of them i.e. they cannot keep both. Obviously this is a huge problem as we already have a taxed problem case issue. If this is indeed the case, we would like to discuss with CIS a mutually satisfactory solution such as having CIS reschedule the interview with a date certain at that time. One DAO stated that this is a policy that has been in effect for a while and that it was discussed at the last liaison meeting. However, this was not discussed at the liaison meeting and no announcement of a change in policy was made to AILA.

2. It has also been reported that at least 2 DAOs will not prohibit the attorney to sit anywhere near the client. In one case, the attorney was instructed to sit at the back of the office, behind his clients. One DAO stated that this is a new policy. However, I had an interview yesterday and was able to sit on the side with no problem so I doubt this is true.

I'm not sure if this is just a renegade policy made by a couple of examiners or if in fact it is a new policy. However, it is important to remember that our clients have retained us to represent them and as professionals, we are well aware of our role and our position. If CIS has a problem with an attorney who does not adhere to the rules of professional responsibility, there are ways to deal with that but to have a wholesale exclusion of an attorney from the process would violate the client's right to be represented.

Again, I emphasize that these two items have been "reported" and we don't know if this is a new office policy, the particular preference of a couple of examiners, or even completely false. But whether it's rumor or truth, I think it is a good idea to get this straightened out quickly.

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