

Summary of EOIR Procedure for Handling Complaints Concerning Immigration Adjudicators

last updated October 15, 2018

The Executive Office for Immigration Review (EOIR) is responsible for adjudicating immigration cases by conducting immigration court proceedings, appellate reviews, and administrative hearings. EOIR regularly monitors the performance and conduct of its adjudicators through daily supervision by EOIR's three adjudicating components: the Office of the Chief Immigration Judge (OCIJ), the Board of Immigration Appeals (BIA), and the Office of the Chief Administrative Hearing Officer (OCAHO). In instances where concerns regarding the conduct of an immigration judge, board member, or administrative law judge (collectively, adjudicator) arise, EOIR is committed to ensuring that any allegations of judicial misconduct are investigated and resolved in a fair and expeditious manner.

Definitions and Summary

Judicial misconduct is conduct by an adjudicator that may adversely affect the fair, effective, or expeditious administration of the work of EOIR's adjudicating components. A complaint is information that comes to the attention of EOIR suggesting that an EOIR adjudicator may have engaged in judicial misconduct.

Complaints concerning EOIR adjudicators may originate in one of three ways:

1. *Formal Written Complaint.* An individual or group may file a formal written complaint with EOIR's Judicial Conduct and Professionalism Unit (JCPU).¹ Once docketed, formal written complaints shall not be confidential, unless required by law or policy.
2. *Governmental Referral.* An EOIR component, another Department of Justice (DOJ) component, or another U.S. government agency, such as the Department of Homeland Security, may refer information to the JCPU that suggests that an adjudicator may have engaged in judicial misconduct. Except where required by law or agency-wide policy, governmental referrals shall not be confidential.
3. *Information from Any Source.* When information suggesting that an adjudicator may have engaged in judicial misconduct comes to the attention of any EOIR management official, that official shall bring the information to the attention of the JCPU for identification of a complaint. Such information may arise through a variety of channels including, but not limited to, news reports, federal court decisions, or routine reviews of agency proceedings and decisions.

¹ The contact information for the Judicial Conduct and Professionalism Unit is as follows:

Executive Office for Immigration Review
attn.: Judicial Conduct and Professionalism Unit
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
EOIR.JudicialConduct@usdoj.gov.

Complaints filed directly with an adjudicating component, including those filed with an adjudicator's supervisor, will ordinarily be forwarded to the Judicial Conduct and Professionalism Unit for processing.

Requirements and Intake

Formal Written Complaints and Governmental Referrals

Any group or individual may file a formal written complaint alleging that an EOIR adjudicator engaged in judicial misconduct. The complaint must be sent by email or postal mail to EOIR's Judicial Conduct and Professionalism Unit.²

An EOIR component,³ another DOJ component, or another U.S. government agency may initiate a governmental referral to convey to the JCPU information suggesting that an adjudicator engaged in judicial misconduct.⁴

To qualify as a formal written complaint or a governmental referral, a communication must include:

1. The name of the adjudicator;
2. A statement describing the conduct at issue;
3. The time and place of the conduct, if known;
4. Any associated A-numbers or other information to permit identification of the proceedings in question; and
5. Any witnesses to the conduct.

Formal written complaints must contain adequate contact information for the complainant, such as name, address, telephone number, and email address. Governmental referrals must identify the referring individual and agency.

Formal written complaints and governmental referrals are limited to those involving active EOIR employees currently engaged in adjudicating cases in one of EOIR's adjudicating components.

A formal written complaint or governmental referral is not a means to:

1. Challenge an unfavorable decision;
2. Challenge general misconduct unrelated to an adjudicator's judicial role;
3. Request that an adjudicator withdraw from hearing a case;
4. Express disapproval of or disagreement with the outcome of an adjudicator's decision, unless that outcome reflects alleged judicial misconduct; or
5. Criticize or express political disagreement with established law or policy or an adjudicator's adherence to such law or policy.

² See footnote 1, above, for contact information.

³A supervisor should report suspected judicial misconduct of an EOIR adjudicator discovered during the normal course of supervisory duties.

⁴A governmental referral by one EOIR component about an adjudicator in a different EOIR component must be made by the referring component's head or his or her designee.

A formal written complaint or governmental referral should not be filed to harass, threaten, intimidate, or retaliate against an adjudicator.⁵

Upon receiving a formal written complaint concerning an adjudicator from an identifiable complainant, the JCPU will acknowledge receipt of the complaint. For formal written complaints and government referrals, the JCPU will determine whether the alleged conduct, if true, states a claim of judicial misconduct. If not, the JCPU will make a recommendation to the adjudicator's supervisor that the allegations not be docketed as a complaint. If the supervisor concurs, the JCPU will close the matter without docketing it.

Information from Any Source

Information from any source suggesting that an EOIR adjudicator engaged in judicial misconduct, which does not meet the requirements of a formal written complaint or a governmental referral, may be identified and docketed as a complaint by the JCPU. Such information may come to the attention of EOIR through a variety of channels including, but not limited to, news reports, federal court decisions, or routine reviews of agency proceedings and decisions.

The JCPU, in consultation with the adjudicator's supervisor, will make a determination whether information that has come to EOIR's attention suggests that an adjudicator has engaged in judicial misconduct and whether the information warrants being docketed as a complaint.

Intra-EOIR Referrals

An immigration judge may raise issues with the conduct of a board member to the chief immigration judge or his or her designee, who, following an independent assessment, will make a determination whether OCIJ should initiate a governmental referral to the JCPU. Similarly, a board member may raise issues with the conduct of an immigration judge to the chairman or his or her designee, who, following an independent assessment, will make a determination whether the BIA should initiate a governmental referral to the JCPU. If an immigration judge and a board member raise reciprocal issues concerning the same case or matter, the JCPU will coordinate with the component heads to determine whether the allegations warrant being docketed as complaints and to ensure that the allegations are resolved consistently.

Docketing

If the JCPU determines that a formal written complaint, governmental referral, or information received suggests judicial misconduct, it will docket the complaint by assigning a unique number to the complaint and creating an entry for it in EOIR's judicial complaint tracking system.

However, if the formal written complaint, governmental referral, or information received does not state a claim of judicial misconduct, suggests general misconduct that is unrelated to the adjudicator's judicial role, or concerns issues that do not amount to judicial misconduct but that

⁵ EOIR takes very seriously claims of retaliation by its adjudicators against complainants. Similarly, it closely scrutinizes formal written complaints or government referrals that attempt to harass, threaten, intimidate, or retaliate against its adjudicators.

may be appropriate for management action, it will be handled appropriately outside of the judicial complaint process.

Agency Investigation

Once a complaint is docketed, the JCPU will review the complaint and any attachments, together with relevant agency records such as electronic records of proceeding, digital audio recordings, electronic docket entries, and electronic decisions. The JCPU will then forward the complaint, any attachments, and a summary of the JCPU's preliminary fact-gathering to the adjudicator's supervisor for further processing.⁶ The Employee Labor Relations Unit (ELR) in EOIR's Office of the General Counsel will receive a copy of this communication.

Unless notification would compromise an ongoing investigation or is contrary to law or agency-wide policy, the supervisor will notify the adjudicator in a timely fashion that a complaint has been docketed concerning him or her, and the adjudicator will be given an opportunity to respond. For governmental referrals, the supervisor will also provide the adjudicator with the identity of the individual and organization making the referral and an identification of the conduct at issue. However, if a docketed complaint is able to be dismissed or concluded without the adjudicator's input and does not result in corrective or disciplinary action, the adjudicator will be informed of the existence of the docketed complaint at the same time he or she is notified that it has been resolved.

If the allegations appear to fall under the jurisdiction of Office of Professional Responsibility (OPR), Office of the Investigator General (OIG), or the Office of the Special Counsel (OSC),⁷ EOIR will refer the complaint to those components for further investigation.

As necessary and appropriate, the supervisor or his or her designee will continue the investigation concerning the alleged judicial misconduct. In doing so, the supervisor or designee may review agency records and solicit statements from the complainant and any witnesses. In cases of substantiated complaints, the supervisor, will determine whether and what type of corrective or disciplinary action is warranted and may consult with ELR as appropriate.⁸

⁶ Complaints concerning EOIR adjudicators are typically handled by the adjudicator's direct supervisor. For example, complaints against immigration judges are handled by the appropriate assistant chief immigration judge, complaints against board members are handled by the vice chairman, and complaints against OCAHO administrative law judges are handled by the chief administrative hearing officer. Complaints against component heads who are adjudicators are handled by EOIR's deputy director.

⁷ OPR has jurisdiction over Department attorneys concerning allegation of professional misconduct, which includes judicial misconduct. OIG has jurisdiction over allegations of criminal activity, waste, fraud, abuse, and serious administrative misconduct. OSC has jurisdiction over complaints of prohibited personnel practices in the federal government or Hatch Act violations relating to partisan political activity.

⁸ Any adverse action taken against an administrative law judge will be done in compliance with 5 C.F.R. § 930.211.

Actions and Resolution

Each docketed complaint will be resolved via one of the following types of actions.

Dismissal

If the supervisor determines that the allegations in a docketed complaint do not constitute judicial misconduct, the complaint will be dismissed. A dismissed complaint may be categorized as frivolous, not substantiated, merits-related, disproven, or fails to state a claim of misconduct.

Conclusion

If the supervisor determines that intervening events, such as the adjudicator's retirement or resignation, make further action unnecessary, or if corrective action has already been taken on the matter, the docketed complaint will be concluded on that ground.

Corrective Action

If the supervisor determines that the conduct implicates an issue that may be appropriate for general training, the supervisor will consult with EOIR's Office of Policy. Any such general training will be developed separate and apart from this complaint process.

If the supervisor determines that non-disciplinary corrective action is appropriate, the supervisor may consult with the ELR to determine the appropriate action. Such action may include counseling the adjudicator orally or in writing, consulting with the Office of Policy to arrange for individualized training, and/or initiating a performance-based action.

Disciplinary Action

If the supervisor determines that disciplinary action is required, the supervisor may consult with ELR regarding the appropriate action. Such action may include a written reprimand, suspension, or removal from federal service.

Dismissal and Conclusion

Once a docketed complaint is resolved via a final action, the final action will be recorded and the matter will be marked as closed in EOIR's judicial complaint tracking system. The supervisor will notify the adjudicator once the matter is closed. When an identifiable complainant files a formal written complaint, the JCPU will notify the complainant in writing once the matter is closed. Such notification to the complainant will not violate the privacy rights of the adjudicator.

To promote transparency and accountability, EOIR will periodically publish statistics on its website concerning the number of formal written complaints, government referrals, and reviews of information from any source received, the number of those not docketed as complaints, the number of those docketed as complaints, and the final actions taken on docketed complaints. Such publication will be consistent with the Privacy Act, 5 U.S.C. § 552a.