

AILA Chicago, Indiana, and Wisconsin Chapters and ICE Office of Chief Counsel
DECEMBER 2018
UNOFFICIAL MEETING MINTUES

1. Staffing and Contacting OCC

- a. Have there been any recent staffing changes at OCC?
- ACC Janelle Oyekan left. OCC is seeking a replacement.
 - ACC Justin Burrows has transferred to Chicago from the New Orleans office.
 - ACC William Padish is retiring in February 2019.
 - Deputy John Gountanis has been detailed to the Secretary's Office for 3 months.
 - Daniel Rah is acting Deputy in his absence.
 - The Assistant Deputy Chief position is being filled by local ACCs on a rotating basis (every two weeks) until John's return.
- b. At the last meeting your office indicated that OPLA is in the process of hiring additional attorneys at the Kentucky office. How many ACCs currently are on staff in Kentucky?
- The Louisville OCC office is open and staffed in Louisville, KY.
 - The Deputy position is open. Assistant Deputy Gary Martin is serving an interim Acting Deputy until the position is filled.
 - The office is staffed with 5 full time attorneys.
 - As of December 2018, the Louisville Court had 3 active immigration judges.
- c. Does your office anticipate any further staffing changes in the near future?
- No new positions are anticipated. Vacancies will be filled as they arise.
- d. Do you anticipate any turnover in the near future?
- See above.* We anticipate filling the vacancy upon ACC Padish's departure.
- e. Are there any new fact sheets or updated team information regarding team assignments?
- We anticipate more permanent team assignments in the New Year. New fact sheets will distributed.

2. Service

- a. We have advised our membership of your preference for e-filings. Has there been any change in the number of e-filings your office has received?

We have seen in an increase in the use of e-service.

- b. Members have reported that ACCs have either not received e-filings at all or are reporting in court that they haven't received them but are later able to locate them after additional searching.

We have looked into the issue and have not seen an issue with e-filings reaching OCC when properly filed by practitioners. The files we did not receive were rejected by the e-service platform because they were not properly named. We recommend that practitioners check for confirmation of receipt. Filings that are difficult to locate are often saved without identifying language. For example, they are sent directly from a scanner and saved as a series of numbers rather than, "motion to reopen".

- c. What action, if any, can members take to ensure e-filings are routed to the file expeditiously? Would including certain language in the subject field be helpful?

Yes, we recommend that you save e-filings clearly to indicate what you are seeking. For example, "motion to ad close", "motion to terminate for AOS", etc. Practitioners may prefer to include the A number in the file name; however, this is not necessary for OCC as the file is automatically routed to the appropriate file.

- d. As of July 2018 your office no longer accepts hand-delivered filings. Are ACCs reporting issues with receiving filings by U.S. mail or courier service?

No issues have been reported. In fact, limiting service to courier and U.S. post has reduced misplaced filings and is easier to manage for staff. To ensure your filing is easily routed to the A file, we recommend that practitioners stop using cover letters altogether (or, at a minimum, refrain from placing them on top of the filing). The mailroom staff route filings to the A-file based on the information on the cover sheet required by the practice manual. Please put this cover sheet –indicating the name, A number, Judge, hearing date, and whether it is a detained or non-detained hearing– on top of ALL filings.

- e. Are there any updates regarding a separate mailing address for detained filings?

OCC does not presently have an office at the detained court. There are plans to open an office on site; however, it is not projected to open in the near future. Until then, all filings should be directed to the non-detained court at 525 W. VanBuren.* *(as of this writing, all filings should be sent via US post or courier to*

*OCC at the non-detained court. Should this change, the Chapter will be alerted via a blast e-mail) **

- f. Are there any updates regarding OCC office space at the detained court?

See above. In cases where there is a Motion to Reopen *In Absentia* filed with the Chicago Immigration Court invoking an automatic stay, notify Team D via e-mail. The ACC will then notify the deportation officer and make a notation on the cover page that the automatic stay is invoked.

3. Motions to Terminate

While the Attorney General limited immigration judge's ability to terminate or dismiss cases in *Matter of S-O-G- & F-D-B-*, he confirmed the continued viability of 8 C.F.R. §239.2(c), which permits DHS to move for dismissal when, *inter alia*, continuation is no longer in the interests of the government." Therefore, immigration judges retain the ability to dismiss cases on prudential grounds based on an ICE motion, presumably including to permit adjudication of benefits by USCIS.

- a. While recognizing ICE's current policy of litigating cases to completion, would it be appropriate for attorneys to approach OCC for a possible motion to dismiss under 8 C.F.R. §239.2(a)(7) and (c)?

OCC uses motions to dismiss when the proceedings are not proper from the onset. For example, the Respondent is a U.S. citizen or the Respondent's prior order should have been reinstated. OCC does not currently interpret the regulation to allow for the "prosecutorial discretion" used under the Obama administration.

- b. Are there circumstances in which ICE is more likely than others to consider such a request?

In the rare case where OCC is amenable to considering an exercise of discretion, the case must be "clean"; meaning, no criminal history, including DUI arrests and/or convictions.

- c. Is ICE continuing to agree to terminate after a U visa grant?

OCC will agree terminate upon a U visa. OCC will oppose termination upon a grant of deferred action only. Where the immigration judge grants a Form I-192 U visa waiver but the underlying U visa petition remains pending with Vermont, OCC will oppose termination.

- d. We have distributed the updated JMTR fact sheet to Members. Have ACCs reported that practitioners appear to be following this procedure?

Yes, practitioners have been following the procedure. ACC Jessica Galassi is currently assigned these requests.

- e. Members continue to report that ACCs are declining to terminate for adjustment in cases with no apparent criminal or negative discretionary factors. Is there new internal guidance concerning termination?

OCC will consider terminating for AOS if the case is “totally clean.” No arrests. No derogatory information. There is no bright line test. Each matter is reviewed on a case by case basis. An ACC cannot agree to terminate for AOS on without supervisor approval. Where a motion to terminate is requested due to the need for expeditious processing, we recommend that practitioners clearly explain that in their request.

4. Post Hearing Services

- a. This week the USCIS Chicago District Office announced that in two weeks they will stop scheduling InfoPass appointments and accepting walk-in requests for information services. Was OCC notified of this change?

The Immigration Service provided notice regarding the change and post notice instructions at www.uscis.gov.

- b. Members utilize InfoPass and walk-in appointments to schedule biometrics for removal cases where the application has no fee and to facilitate post hearing LPR (I-551) card production (also known as ADIT processing). Have USCIS and OCC communicated regarding these issues? Is there a new process in place for production of the I-551 after an IJ has granted LPR status? In not, can OCC raise this issue or facilitate a solution with USCIS Chicago?

Whenever an application conferring status is granted by the court OCC e-mails an internal routing sheet to USCIS within 24 hours. OCC routes the A-file to USCIS.

- c. Members have reported that LPR cards are not being issued post-grant, or that there is a months-long delay in some cases. The local USCIS office usually attributes these delays and issues to OCC, stating that OCC has not “finalized” the file for card production. What actions do ACCs or staff have to take to ensure the file has been “finalized” for card production post IJ grant? How can Respondents’ attorneys ensure these steps have been taken?

We will look into this matter and meet with USCIS.

5. NTA Issuance and Calendaring

On October 31, 2018 respondents across the country appeared for their scheduled court dates as listed on the NTAs only to discover that their NTAs had not been filed with the court or that their hearings were scheduled for different dates. This has created substantial confusion for the court and recipients of the notices. The concern is exacerbated by the fact attorneys cannot enter their appearance in immigration court until the NTA is filed with the court.

- a. Please explain generally procedures for scheduling Master Calendar Hearings after an NTA is issued by ICE or other agencies;

EOIR national schedules hearing dates. OCC is not involved in scheduling. OCC is provided a date from EOIR national and has been directed to process NTAs expeditiously

- b. Please explain the reasons for the number of discrepancies between the hearing dates printed on the NTA and the 1800 EOIR hotline;

See above. We recommend that practitioners confirm by checking the I-800 number and confirming the date with the local court.

- c. What access does ICE/OCC have to EOIR scheduling, and what steps are taken to ensure that a listed hearing date and time will be accurate;

See above.

- d. What is the expected timeframe for filing of the NTA with the court after an NTA has been issued?

Generally, non-detained NTAs are filed within 10 business days. Detained NTAs are typically filed in one day.

- e. May we request expedited processing of NTAs where circumstances may call for it?

There should not be significant delays in NTAs being filed with the Court. Such requests will be considered on a case by case basis.

- f. If an NTA was issued, and months have passed without it being filed on the court, with whom should attorneys speak to learn whether it is being reviewed and will be filed?

We recommend practitioners call the front desk at OCC to determine whether OCC has filed the NTA with EOIR. The front desk can provide the date OCC filed the NTA with the Court.

6. Recalendaring Administratively Closed Cases

The Attorney General's decision in *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018) states that administratively closed cases will remain closed unless DHS or respondents move to recalendar them. Following this decision, ICE issues guidance to local OPLA offices in June of 2018 stating that it "is DHS's intention to recalendar all cases that were previously administratively closed for reasons other than authorization by a regulation or judicially approved settlement agreement."

- a. Please confirm whether this June 2018 guidance remains in effect.

This guidance remains in effect.

- b. At our most recent liaison meeting, Chicago OCC confirmed that it continues to focus on cases where there were criminal convictions or arrests as a first priority. Is this still accurate? Understanding there are limits to OCC's resources, are there other types of administratively closed cases which are now considered a priority?

All admin based cases are assessed on a case-by-case basis. Cases with criminal arrests or convictions remain a priority. These cases will be recalendered.