



Detail

Complaint Number: 777

Immigration Judge: (b)(6)

Complaint Received Date: 05/23/13

Current ACIJ
Davis, John W.

Base City
(b)(6)

Status
CLOSED

Final Action
Complaint dismissed because it
cannot be substantiated

Final Action Date
07/01/13

Past ACIJ:

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	In-court conduct	Anonymous

Complaint Narrative: The essence of the anonymous complaint is that the IJ is heavy handed in court and displays a bias toward private attorneys that (b)(6) intimidates respondents; that (b)(6) believes the contract interpreters without question, and that (b)(6) denies unopposed motions for continuances.

Complaint History

07/01/13	Complaint dismissed because it cannot be substantiated
07/10/13	Database entry created

EOIR FOIA Processing (EOIR)

From: Scheinkman, Rena (EOIR)
Sent: Wednesday, May 29, 2013 8:42 AM
To: Keller, Mary Beth (EOIR)
Cc: Kidd, Larry (EOIR)
Subject: Complaint re: IJ (b) (6)
Attachments: 2013.5.28_Complaint re IJ (b) (6).pdf

MaryBeth:

We received this anonymous complaint yesterday re: IJ (b) (6). Please let me know if there is anything you need from ELR on this. I have not shared with ACIJ Davis. Wanted to give it to you first.

Regards,
Rena

Rena Scheinkman
Acting Chief Counsel, Employee and Labor Relations Unit
Executive Office for Immigration Review
Office of the General Counsel
Ph: (703) 605-0442
Fax: (703) 605-0491

We, (practicing attorneys) are filing an anonymous complaint about the conduct of Judge (b) (6), a presiding Judge at the Executive Office Of Immigration Review in (b) (6). We fear our livelihood would be at risk if we were not to remain anonymous given the fact that we continue to appear before Immigration Judge (b) (6). Consequently, we can only discuss general issues of inappropriate behaviour rather than offer specific details of the countless times said Judge has acted inappropriately on the bench to counsel and their clients.

During several discussions, some attorneys have stated that they all have experienced similar bias towards them by Judge (b) (6) but are afraid to file a complaint for fear of reprisal due to (b) (6)'s vindictive nature.

We acknowledge that judges need to be firm but Judge (b) (6) takes it too far by treating the clients and counsel with hostility and bias and often lacks impartiality in (b) (6) decision making. Unfortunately, Judge (b) (6) is known for his heavy handed tactics against individuals in Immigration Court.

Immigration Judge (b) (6) consistently takes on a prosecutorial role and has reprimanded attorneys as well as the clients, without due cause, multiple times during hearings. Two Assistant Chief Counsels of the Department of Homeland Security have stated to us in confidence that they believe that Judge (b) (6) is biased towards most of the attorney's that practice in this Court, and they have witnessed Judge (b) (6) belittle attorneys (b) (6) dislikes in (b) (6) courtroom. Consequently, respondents that appear before said Judge are substantially prejudiced especially those clients that retain attorneys that Judge (b) (6) dislikes.

The following scenarios have been replayed numerous times:

Please keep in mind that many respondents are not native English speakers, and lack any meaningful education. Many respondents communicate through an interpreter. Much of their testimony and emotion may simply be "lost in translation". Judge (b) (6) seems to not be mindful of this communication gap and lack of education. (b) (6) believes that the words of the interpreter are the only true reflection of the respondent's testimony. Sometimes the witness may recite an entire sentence or two, and the interpreter may simply translate the English equivalent in one or two words. Judge (b) (6) has never questioned the interpreter as to the fullness and accuracy of such a truncated translation.

Said Judge also takes on the role of an overzealous prosecutor waiting to pounce on the respondent when they have difficulty remembering the details and dates during their testimony while they are being interrogated by him. Often times (b) (6) badgers the witness until they break down in tears.

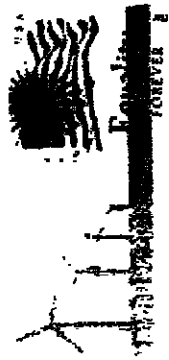
For instance, when we are examining our witness, Judge (b) (6) will interrupt us, take over the examination, and interrogate the witness. Sometimes this is to the point where the witness is completely confused. In addition, Judge (b) (6) will admonish the witness and has done so on numerous occasions, with the ominous declaration: "Sir Ma'am- your credibility is being diminished because you are not answering the question". Another favorite phrase is "the witness is being unresponsive". Oftentimes, the witness HAS answered the question-it is simply Judge (b) (6) who has not heard the answer. On other occasions, (b) (6) fails to acknowledge cultural and language barriers. (b) (6) also unfairly expects the respondent to possess the same level of education and thought processes as (b) (6).

It is well known that Judge (b) (6) does not like being interrupted-for example, when he has not finished, but has taken a pause, and counsel begins to talk. Judge (b) (6) will admonish counsel. However, Judge (b) (6) does not extend the same level of courtesy to counsel as (b) (6) continuously interrupts attorneys while they are questioning the witness as well as during opening and closing arguments.

Judge (b) (6) often intimidates respondents during testimony, through the tone of (b) (6) voice, and (b) (6) demeanour. (b) (6) also frequently makes sarcastic comments and makes mocking faces to both counsel and respondents during hearings. For instance, (b) (6) will make incredulous faces or facial contortions that seem to signify his disdain for the witness's story. In doing so (b) (6) casts a chilling effect on the witness's testimony. This demeanour is indicative of the dismissive way in which Judge (b) (6) appears to hold most respondents appearing before (b) (6), and appears to predispose the outcome of the case, however meritorious

Another example of Judge (b) (6) bias is that (b) (6) regularly denies respondent's unopposed motions for continuances for attorneys (b) (6) personally dislikes

Finally, it is important to note that most of us practice in other Immigration Courts around the country, and we have never experienced this type of behaviour with any other judges or adjudicators.



(b) (6)

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Executive Office of Immigration Review
Ethics Office
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

22041324950



Date Received at OCIJ: 23 May 2013

complaint source type	
<input checked="" type="checkbox"/> anonymous <input type="checkbox"/> respondent's attorney <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	<input type="checkbox"/> BIA <input type="checkbox"/> respondent <input type="checkbox"/> OIL <input type="checkbox"/> Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> OPR <input type="checkbox"/> DHS <input type="checkbox"/> OIG <input type="checkbox"/> Main Justice <input type="checkbox"/> media
complaint receipt method	
<input checked="" type="checkbox"/> letter <input type="checkbox"/> fax <input type="checkbox"/> IJC memo (BIA) <input type="checkbox"/> unknown <input type="checkbox"/> email <input type="checkbox"/> other: _____ <input type="checkbox"/> phone (incl. voicemail) <input type="checkbox"/> in-person	
date of complaint source	complaint source contact information
(i.e., date on letter, date of appellate body's decision) No date – received at OCIJ 23 May 2013	name: _____ Anonymous _____ address: _____ _____ _____ email: _____ phone: _____ fax: _____
additional complaint source details	
(i.e., DHS component, media outlet, third party details, A-number)	

IJ name	base city	ACIJ
(b) (6)	(b) (6)	John W. Davis
relevant A-number(s)	date of incident	
None provided	Recurring	
allegations		
<p>The essence of the anonymous complaint is that the IJ is heavy handed in court and display a bias toward private attorneys; that (b) (6) intimidates respondents; that (b) (6) believes the contract interpreters without question; and that (b) (6) denies unopposed motions for continuances.</p> <p>I do not find that any of these allegations have substance or merit.</p>		
nature of complaint		
<input checked="" type="checkbox"/> in-court conduct <input type="checkbox"/> incapacity <input type="checkbox"/> out-of-court conduct <input type="checkbox"/> other: _____ <input type="checkbox"/> due process <input type="checkbox"/> bias <input type="checkbox"/> legal <input type="checkbox"/> criminal		

EOIR FOIA Processing (EOIR)

From: Davis, John (EOIR)
Sent: Monday, July 01, 2013 5:54 PM
To: (b) (6)
Subject: Complaint
Attachments: Control No 2593- Complaint against U (b) (6) pdf
Importance: High

Good Afternoon Judge (b) (6)

Last week I spoke with you regarding an anonymous complaint that OCIJ had received regarding your in court conduct. Chief Immigration Judge Brian O'Leary tasked me with investigating this complaint, and I will be providing him with a copy of the information herein.

The essence of this anonymous complaint is that you are heavy handed in court and display a bias toward private attorneys; that you intimidate respondents; that you believe the contract interpreters without question; and that you deny unopposed motions for continuances. As part of my investigation into this matter I listened to randomly selected DAR recordings from your court hearings. I do not find that any of these allegations have substance or merit.

Anonymous complaints are very difficult to defend against, but as I stated I am finding this allegations unsubstantiated; not only due to the fact that they are anonymous, but also because my listening to randomly selected cases that you have done over the past several months does not illustrate any of the alleged conduct. Additionally, the anonymous complaint(s) is simply mistaken in some areas. For instance, they suggest that an interpreter will listen to a lengthy statement by a respondent and then only interpret the answer in a word or two. There is a process for objecting to an interpreter's translation and it does not have anything to do with the length of a response or any *sua sponte* action by the judge. Further regarding continuances the standard for granting a motion to continue is not whether or not it is opposed, but whether the requesting party has shown good cause for a continuance.

In addition to the random DAR cases I have observed your demeanor in court on my visits to the (b) (6) Immigration Court, and I find this allegation inconsistent with you behavior. Also on each of my visits to the (b) (6) Immigration Court I meet with AILA representatives and on each occasions they complemented you on being an outstanding jurist!

Nonetheless, you may wish to remain mindful of the fact that as a judge in immigration court you may well be the only contact that a respondent will have with any portion of our judicial system, and that you represent the face of American justice and the attorney general to the respondent's and as such our conduct should also be above reproach and may not have even the appearance of impropriety.

If you would like to discuss this matter further please feel free to give me a call at your convenience. However I am not requiring a response from you as I have concluded that this complaint is unsubstantiated. In the meantime keep up the good work!

Warmest Regards,

John W. Davis
Assistant Chief Immigration Judge
Executive Office for Immigration Review
United States Immigration Court
3130 North Oakland Street
Aurora, CO 80010
(303) 739-5203