



Detail

Complaint Number: 701

Immigration Judge: (b)(6)

Complaint Received Date: 12/04/12

Current ACIJ
Fong, Thomas Y. K.
Past ACIJ(s):

Base City
(b) (6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
12/13/12

A-Numbers(s)	Complaint Nature(s)	Respondent Atty	Complaint Source(s)
(b)(6)	Due process Legal	(b)(6)	(b)(6)

Complaint Narrative: In a complaint, R's attorney alleges that the IJ improperly requested that she enter pleadings at the first master calendar hearing.

Complaint History

12/13/12 ACIJ provided copy of the complaint to the IJ
12/13/12 Oral counseling
12/18/12 Database entry created

Immigration Judge Complaint Intake Form

HQ Use Only:
complaint #: _____
source: first / subsequent

Date Received at OCIJ: _____

complaint source type	
<input type="checkbox"/> anonymous <input checked="" 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) Letter dated Nov 26, 2012 received by ACIJ Dec 4, 2012.	name: _____ address: _____ email: _____ phone: _____ fax: _____
additional complaint source details	<div style="background-color: black; color: white; font-size: 48px; text-align: center; padding: 20px;"> (b) (6) </div>
(i.e., DHS component, media outlet, third party details, A-number) In re (b) (6)	

IJ name	base city	ACIJ
(b) (6)	(b) (6)	Thomas Y.K. Fong
relevant A-number(s)	date of incident	
A (b) (6)	November 26, 2012	
allegations		
In a complaint dated November 26, 2012, Attorney (b) (6) alleges that Immigration Judge (b) (6) improperly requested that she enter pleadings at the first master calendar hearing. Attorney (b) (6) further alleges that Judge (b) (6) practice of taking pleadings at the initial master calendar hearing is an abuse of discretion, violates the due process of detainees, and could cause Attorney (b) (6) to violate the (b) (6) Rules of Professional Conduct. Complaint asserts (b) (6) cites only one case, but alleges this is Judge (b) (6) normal practice.		
nature of complaint		
<input type="checkbox"/> in-court conduct <input type="checkbox"/> incapacity	<input type="checkbox"/> out-of-court conduct <input type="checkbox"/> other: _____	<input checked="" type="checkbox"/> due process <input type="checkbox"/> bias <input checked="" type="checkbox"/> legal <input type="checkbox"/> criminal

[illegible]

Response Letter to Complainant:

U.S. Department of Justice

Executive Office for Immigration Review

Immigration Court

Thomas Y. K. Fong
Asst. Chief Immigration Judge

606 S. Olive Street, 15th Floor
Los Angeles, California 90014

December 14, 2012

(b) (6)

In re: (b) (6). Complaint against
Immigration Judge (b) (6)

Dear (b) (6)

In a complaint letter dated November 26, 2012, you asserted that Immigration Judge (b) (6) improperly requested that you enter pleadings at the first Master Calendar hearing for your above named client. You further alleged that this usual practice in taking pleadings at the initial Master Calendar hearing is an abuse of discretion, violates the due process of detainees, and could cause you to violate the (b) (6) Rules of Professional Conduct if followed.

I. Summary of the DAR

A review of the Digital Audio Recording (DAR) of the hearing, Monday, November 26, 2012, indicated that you appeared at a Master Calendar hearing before Judge (b) (6) in the detained matter of (b) (6). At the hearing, after

conceding service of the charging document (NTA), you stated that you were recently retained and had not had an opportunity to yet meet with Respondent, and was not prepared to enter pleadings. Judge (b) (6) asked you if you had "any evidence that he is not a native and citizen of Mexico and that he is a citizen and national of the United States," and then indicated that (b) (6) "take[s] pleadings usually the first day."

You responded by asking for time to meet and confer with your client. Judge (b) (6) gave a continuance for that purpose for the following day's detained docket. When you stated that you were unavailable the next day, Judge (b) (6) offered another Master Calendar date of November 28, and you accepted that alternate date. On November 28, you returned to Court for the continued matter. At that hearing, you admitted the allegations contained in the NTA, conceded removability, and asserted that Respondent entered the United States at (b) (6) in 1989. You indicated that Respondent would apply for relief in the form of Cancellation of Removal for Certain Non-permanent Resident aliens.

II. Analysis

Judge (b) (6) confirmed that it is (b) (6) general practice when possible to take pleadings at the first Master Calendar hearing. But contrary to your assertion, this does not per se violate an alien's due process rights or constitute an abuse of discretion. The Immigration Court Practice Manual (ICPM) clearly states that at the Master Calendar hearing, the respondent "should be prepared...to admit or deny the charges and factual allegation in the Notice to Appear (Form I-862)." ICPM § 4.15 (i)(i) (2012). Judge (b) (6) did not require or force you or your client to do so at this first Master Calendar, when you reiterated that you were unprepared to do so. (b) (6) ultimately granted you a continuance as you requested.

Specifically, Judge (b) (6) in an even tone asked if you were prepared to enter pleadings after you conceded service of the NTA. You stated that you needed time to confer with your client. At that point Judge (b) (6) did not "exert judicial pressure" that caused you to violate your duty to competently represent Respondent. See Cal. Rules of Prof'l Conduct 3-110 (requiring attorneys to provide competent representation) and 3-500 (requiring attorneys to keep clients reasonably informed about significant developments relating to representation). Instead, Judge (b) (6) continued the matter, and reset the case to a date and time when you indicated you would be ready and available to plead. Therefore, your allegation that Judge (b) (6) actions could cause you to violate the (b) (6) Rules of Professional Conduct is unfounded.

However, despite neither of you raising your voices above a normal volume, both Judge (b) (6) and you quickly shifted from normal tones of voice during this portion of the Master Calendar hearing. Specifically, Judge (b) (6) used a concerned tone of voice when (b) (6) informed you that (b) (6) usually takes pleadings at the first hearing. Despite this concern, (b) (6) provided you with time to meet with your client to discuss pleading, and reset the Master Calendar hearing to a date when you were available, namely Wednesday, November 28. Your client in this matter is detained, and it is understandable that Judge (b) (6) would want to reschedule the hearing to the shortest date possible because of his custody situation. This concern could have been conveyed in clearer terms to you, although obviously known to you. Judges are always concerned that Respondents in custody be expeditiously heard and that attorneys make concerted efforts to proceed with minimal delay.

But it is also noteworthy that you sounded defensive in your interactions with Judge (b) (6) at this November 26 hearing. Although you did not raise your voice, you began speaking rapidly and in a defensive tone when Judge (b) (6) asked for pleadings, rather than calmly explaining that you needed additional time to meet with your client before doing so. You also sounded aggravated when you told Judge (b) (6) that you were not available for a hearing the following day, November 27.

Finally, I also reviewed the subsequent reset Master Calendar hearing that took place on November 28, and it is notable that both Judge (b) (6) and you remained calm, even toned of voice and spoke in normal, measured manners. A filing date was then set for your client's application for relief, and the recorded hearing that day revealed no conflicts of any kind.

III. Conclusion

Overall, while there were some instances where both Judge (b) (6) and you could have avoided confrontational tones and manners during the November 26 hearing, (b) (6) did not engage in any behavior or conduct that violated your client's rights or caused you to violate your obligations under the (b) (6) Rules of Professional Conduct. Judge (b) (6) ultimately granted your request for additional time to meet with your client before pleading which was your paramount concern.

Sincerely,

Thomas Y. K. Fong
Asst. Chief Immigration Judge

MEMORANDUM

To: ACIJ Mary Beth Keller
From: ACIJ Thomas Y.K. Fong
Date: December 12, 2012 (updated Dec 13, 2012)
Re: (b) (6)
Complaint by Attorney (b) (6)

I. Issue

In a complaint dated November 26, 2012, Attorney (b) (6) alleges that Immigration Judge (b) (6) improperly requested that she enter pleadings at the first master calendar hearing. Attorney (b) (6) further alleges that Judge (b) (6)'s practice of taking pleadings at the initial master calendar hearing is an abuse of discretion, violates the due process of detainees, and could cause Attorney (b) (6) to violate the (b) (6) Rules of Professional Conduct.

II. Short Answer

Attorney (b) (6) claim appears to lack merit. Judge (b) (6) ultimately granted Attorney (b) (6) request for additional time to meet with her client although grudgingly doing so. It is important to note that the Immigration Court Practice Manual (ICPM) provides that "[a]t the master calendar hearing, the parties should be prepared to plead as follows: The respondent should be prepared: ... to admit or deny the charges and factual allegations in the Notice to Appear (Form I-862)." ICPM § 4.15(i)(i)(2012). But it is further notable that both Judge (b) (6) and Attorney (b) (6) used sharper-than-normal tones of voice at various points during the hearing.

III. Summary of Facts

On Monday, November 26, 2012, Attorney (b) (6) appeared at a Master Calendar hearing before Judge (b) (6) in the detained matter of (b) (6). At the hearing, after conceding service of the NTA, Attorney (b) (6) stated that she was recently retained and had not had an opportunity to meet with Respondent, and was not prepared to enter pleadings. Judge (b) (6) asked Attorney (b) (6) if she had "any evidence that he is not a native and citizen of Mexico and that he is a citizen and national of the United States,"¹ and told Attorney (b) (6) that she "take[s] pleadings usually the first day."²

Attorney (b) (6) asked for time to meet and confer with her client. Judge (b) (6) told Attorney (b) (6) to "come back tomorrow." When Attorney (b) (6) stated that she was not available the next day, Judge (b) (6) offered a master calendar date of November 28, 2012, and Attorney (b) (6) stated "that's fine."

On November 28, 2012, Attorney (b) (6) returned to Court for a continued master calendar hearing. At the hearing, Attorney (b) (6) admitted the allegations contained in

¹ DAR, November 26, 2012 at 00:01:09-15.

² Id. at 00:01:21-24.

the NTA, conceded removability, and asserted that Respondent entered the United States at (b) (6) in 1989. Attorney (b) (6) indicated that Respondent would apply for relief in the form of cancellation of removal for certain nonpermanent residents.

IV. Analysis

First, Judge (b) (6) general practice of taking pleadings at the first master calendar hearing does not violate an alien's due process rights or constitute an abuse of discretion. The ICPM plainly states that at the master calendar hearing, the respondent "should be prepared...to admit or deny the charges and factual allegation in the Notice to Appear (Form I-862)." ICPM § 4.15 (i)(i) (2012). However, it would have been better for Judge (b) (6) to have informed Attorney Arroyo that the ICPM states that respondent's counsel should be prepared to enter pleadings, rather than telling her "I take pleadings usually on the first day" and thus remove the personal nature of the confrontation.

In the present matter, Judge (b) (6) asked Attorney (b) (6) if she was prepared to enter pleadings after she conceded service of the NTA in an even tone. When Attorney (b) (6) defensively stated that she needed time to confer with her client, Judge (b) (6) did not "exert judicial pressure" which would cause Attorney (b) (6) to violate her duty to competently represent Respondent. (b) (6) (requiring attorneys to provide competent representation) and 3-500 (requiring attorneys to keep clients reasonably informed about significant developments relating to representation). Instead, Judge (b) (6) continued the matter, and reset the case at a date and time when Attorney (b) (6) was available. Therefore, it appears that Attorney (b) (6)'s allegation that Judge (b) (6) actions will cause her to violate the (b) (6) Rules of Professional Conduct is unfounded.

However, both Judge (b) (6) and Attorney (b) (6) quickly shifted from normal tones of voice during the master calendar hearing, although neither individual raised their voice above a normal volume. Specifically, Judge (b) (6) used an impatient tone of voice when (b) (6) informed Attorney (b) (6) that (b) (6) usually takes pleadings at the first hearing, and (b) (6) sounded irritated when (b) (6) told Attorney (b) (6) to "come back tomorrow."³ Despite this irritated tone, Judge (b) (6) did provide Attorney (b) (6) with time to meet with her client, and reset the master calendar hearing to a date when Attorney (b) (6) was available, namely Wednesday, November 28, 2012. Additionally, because the respondent in this matter is detained, it is understandable that Judge (b) (6) would want to reschedule the hearing to the soonest possible date and (b) (6) should have pointed this out to counsel, although this concern was not well-conveyed through Judge (b) (6) annoyed tone of voice. Again, I counseled that (b) (6) should have communicated that counsel's client's custody situation called for (b) (6) to be expeditious in pleading and preparing her case.

Judge (b) (6) also sounded annoyed when she asked Attorney (b) (6) whether she had any evidence that her client "is not a native and citizen of Mexico and that he is a citizen and national of the United States."⁴ Further, while Attorney (b) (6) did not raise

³ Id. at 00:01:28.

⁴ Id. at 00:01:09-15.

this issue in her complaint, the Department bears the burden of establishing the alienage of the respondent, and Judge (b) (6) statement could have been interpreted as improperly shifting the burden from the Department to the Respondent. 8 C.F.R. § 1240.8(c). We discussed how Judge (b) (6) should have couched this statement as one of whether a "contested hearing on the NTA" was being considered that called for a continuance before pleading. The way it was couched, it could give the appearance that (b) (6) was shifting the burden upon Respondent to disprove the NTA allegations and charges.

It is also noteworthy that Attorney (b) (6) sounded defensive in her interactions with Judge (b) (6) at the November 26, 2012 master calendar hearing. Attorney (b) (6) did not raise her voice, but she began speaking rapidly and in a defensive tone when Judge (b) (6) asked for pleadings, rather than calmly explaining that she needed additional time to meet with her client. Attorney (b) (6) also sounded aggravated when she told Judge (b) (6) that she was not available for a hearing the following day, November 27, 2012.

Finally, while there has been no complaint about the conduct of the master calendar hearing that subsequently took place on November 28, 2012, it is notable that both Judge (b) (6) and Attorney (b) (6) used calm, even tones of voice and spoke in a normal, measured manner at the subsequent master calendar hearing. A filing date was set for Respondent's application for relief, and the recorded hearing does not reveal any conflicts from that hearing.

III. Conclusion

Overall, while there were some instances where Judge (b) (6) used an impatient and annoyed tone of voice with a clearly confrontational attorney during the November 26, 2012 hearing, (b) (6) did not engage in any behavior or conduct that violated the Respondent's rights or would cause Attorney A (b) (6) to violate the (b) (6) Rules of Professional Conduct.

IV. Discussion with IJ (b) (6)

ACIJ went over the above DAR hearing and especially the underlined ways IJ (b) (6) could have avoided confrontation with the attorney and still achieved (b) (6) goal of expeditiously taking pleadings and proceeding with a detained alien's case. A response letter will be prepared and sent to counsel.

FAX TRANSMISSION



EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

THE IMMIGRATION COURT

606 S. OLIVE STREET, 15TH FLOOR
LOS ANGELES, CALIFORNIA 90014

TEL: (213) 534-4474

FAX: (213) 534-3300

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To: Sabirah Moutfah

Date: DEC 17 2012

Fax #: 703-305-1448

Pages (Including this cover sheet): 2

From: Thomas Y.K. Fong
Asst. Chief Immigration Judge

Subject: Complaint IJ - (b) (6)
(IJ (b) (6))

Comments: _____

(b) (6)

11/26/2012

Re: Immigration Judge (b) (6) — JUDICIAL COMPLAINT

received
DEC - 4 2012

Honorable Immigration Judge Fong,

I am writing to make the Executive Office of Immigration Review aware of Immigration Judge (b) (6) abuse of discretion and due process violation of several of my clients in the detained docket. Typically, Immigration Judge (b) (6) will want attorneys to enter pleadings on the first master calendar hearing without exceptions. Today, November 26, 2012 I appeared before IJ (b) (6) for an initial master calendar hearing in the matter of (b) (6). I was recently hired by my clients family and I had never met my client before today's hearing. For that purpose I asked for attorney preparation time to conduct a jail visit in (b) (6) and review the Notice to Appear with him. Immigration Judge adamantly denied my request initially stating that (b) (6) always enters pleadings in the first appearance. In a heated exchange of words, attempting to persuade IJ (b) (6) that it was necessary for me to talk to my client before entering pleadings, (b) (6) unwillingly granted my request by stating "then come back tomorrow".

The reason this needs to be brought to your attention is because IJ (b) (6) is exerting judicial pressure and compelling me, the attorney, to engage in violations of the (b) (6) Rules of Professional conduct that could result in a bar complaint for entering pleadings without interviewing my client. Additionally, Respondent has the right to have his attorney properly explain to him his rights before the Executive Office of Immigration Review, a due process protection I was judicially pressured into failing to address. It is noteworthy to state that I have several other clients in the past where IJ (b) (6) has pursued the same court practices above mentioned, which I am willing to bring to your attention if necessary.

I am deeply dissatisfied with the manner this Immigration Judge deals with initial master calendar hearing and I will continue to bring to your attention any future judicial misconduct from IJ (b) (6). I thank you for your attention and I respectfully request this is brought to her attention. If you have any questions please feel free to contact my office at (b) (6) or e-mail me at (b) (6) @gmail.com.

(b) (6)