



Detail

Complaint Number: 705

Immigration Judge: (b)(6)

Complaint Received Date: 11/14/12

Current ACIJ
Bartolomei, Richard J.

Base City
(b) (6)

Status
CLOSED

Final Action
Complaint dismissed as merits-
related

Final Action Date
12/03/12

Past ACIJs:

A-Numbers(s)	Complaint Nature(s)	Respondent Atty	Complaint Source(s)
(b)(6)	In-court conduct Legal	(b) (6)	(b) (6)

Complaint Narrative: IJ acted improperly in not ruling on a motion to withdraw as attorney of record and in expecting the attorney to represent when she believed that the respondent did not wish her to represent her in the matter.

Complaint History

11/15/12	Listen to DAR recording
12/03/12	Complaint dismissed as merits-related
01/07/13	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 type="checkbox"/> BIA
<input checked="" type="checkbox"/> respondent's attorney	<input type="checkbox"/> respondent
<input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.)	<input type="checkbox"/> other: _____
<input type="checkbox"/> ___ Circuit	<input type="checkbox"/> EOIR
<input type="checkbox"/> OIL	<input type="checkbox"/> OPR
<input type="checkbox"/> DHS	<input type="checkbox"/> Main Justice
<input type="checkbox"/> OIG	<input type="checkbox"/> media
complaint receipt method	
<input checked="" type="checkbox"/> letter	<input type="checkbox"/> IJC memo (BIA)
<input type="checkbox"/> fax	<input type="checkbox"/> unknown
<input type="checkbox"/> email	<input type="checkbox"/> phone (incl. voicemail)
<input type="checkbox"/> other: _____	<input type="checkbox"/> in-person
date of complaint source	complaint source contact information
(i.e., date on letter, date of appellate body's decision) November 14, 2012	name: _____ address: _____ email: _____ phone: _____ fax: _____
additional complaint source details	
(i.e., DHS component, media outlet, third party details, A-number) A: (b) (6)	

IJ name	base city	ACIJ
Immigration Judge (b) (6)		Rico J. Bartolomei/Print Maggard
relevant A-number(s)	date of incident	
A: (b) (6)	November 5, 2012	
allegations		
Judge (b) (6) acted improperly in not ruling on her motion to withdraw as attorney of record and in expecting her to appear in Court to represent the respondent when she believed that the respondent did not wish her to represent her in the matter.		
nature of complaint		
<input checked="" type="checkbox"/> in-court conduct	<input type="checkbox"/> out-of-court conduct	<input type="checkbox"/> due process
<input type="checkbox"/> incapacity	<input type="checkbox"/> other: _____	<input type="checkbox"/> bias
		<input checked="" type="checkbox"/> legal
		<input type="checkbox"/> criminal

(b) (6)

(b) (6)

DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW

(b) (6)

November 13, 2012

NOV 14 2012

Honorable Richard J. Bartolomei, Jr.
401 West "A" Street, Suite 800
San Diego, CA 92101
&
Honorable Print Maggard
120 Montgomery Street, Suite 800
San Francisco, CA 94104

(b) (6)

Re: (b) (6)

Honorable Richard J. Bartolomei, Jr. & Honorable Print Maggard:

Please find a courtesy copy of a motion I filed on November 5, 2012 with the (b) (6) Immigration Court. I am writing to both of you in your capacities as Chief Immigration Judges since I do not know where else to address my concerns. Honorable Bartolomei, I am the woman who approached you after your presentation at the AILA conference last Friday. I understand that you are both very busy and I respect your time and dedication to your work. I thank you in advance for taking time to read this letter.

I have been an attorney practicing immigration law exclusively for about 10 years. I have never written a letter of complaint or concern against any of the immigration judges I have appeared in front of during my entire career.

As you can see by the title of the motion, I truly cannot find any logic or legal basis as to why Immigration Judge (b) (6) will not grant my motion to withdraw. The Respondent no longer wishes for me to represent her. DHS does not oppose me withdrawing from representing her. The Respondent is currently detained. The remaining reasons supporting my motions to withdraw are included in the motion I have attached. I have filed four unopposed motions to withdraw. Three have been denied so far.

IJ (b) (6) has threatened me twice that (b) (6) will report me to the Bar if I do not appear before (b) (6). The first time (b) (6) threatened to report me. I hired local counsel, (b) (6) to cover the matter on November 5, since I was already scheduled for a merits hearing before IJ (b) (6) in (b) (6) at the exact same time. This information was included in my motion (which (b) (6) denied). I have requested the tapes to listen to exactly what was said at this hearing on November 5, 2012. I will explain my understanding of how the hearing went since I am still waiting for the tapes.

(b) (6) told me that IJ (b) (6) informed him that (b) (6) does not allow "appearances on behalf of"

Thanksgiving. I also have familial obligations that prevent me from traveling to (b) (6) on November 20, 2012. I am worried that IJ (b) (6) will refuse to make a ruling or deny my fourth motion and then report both myself and (b) (6) to the Bar when neither of us will be present at the Master on November 20, 2012. I have never had a complaint filed with the Bar and take these threats very seriously. I have worked very hard to establish my practice and have been proud to have the respect of my peers and community service agencies with which I provide pro bono representation.

I simply cannot comprehend IJ (b) (6) actions. I have spoken to trusted colleagues, both in (b) (6) and (b) (6) to gain perspective. Every attorney I have spoken with, who has had experience appearing before IJ (b) (6), has had their own personal example of IJ (b) (6) abuse of power and unprofessionalism, either in (b) (6) legal decision-making skills or courtroom demeanor.

Please help me understand how IJ (b) (6) behavior in this case is not abusive and extremely unprofessional. It seems that (b) (6) decisions have been as a result of a misunderstanding of the EOIR Practice Manual. Due to (b) (6) failure to grant my motion, (b) (6) has single handedly prejudiced the Respondent as her case is languishing. She is currently in custody. She has not been able to advance to even take pleadings in her case and her first master was scheduled on June 20, 2012. IJ (b) (6) continues to threaten that (b) (6) will report me to the Bar should I not appear. For the reasons set forth in all four of my motions to withdraw, I believe that there is no ethical or disciplinary violation that has occurred. There is no legal basis for IJ (b) (6) to deny my pending motion. I understand that you are unable to force IJ (b) (6) rule in my favor. I am simply writing to report how terrible this entire experience has been for me, (b) (6) and the Respondent for absolutely no reason.

IJ (b) (6) conduct seems to have violated the Ethics and Professionalism Guide for Immigration Judges, particularly Section IX.

As this is my first time writing to Chief Immigration Judges, please let me know if there is anything I can do or if there will be any further action I need to take.

(b) (6)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE

(b) (6)

In the matter of:

) File No. A# (b) (6)

)

)

(b) (6)

)

)

Respondent

)

)

)

)

UNOPPOSED

FOURTH

MOTION TO WITHDRAW AS ATTORNEY OF RECORD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE

(b) (6)

In the Matter of:

) File No. A# (b) (6)

) **UNOPPOSED FOURTH**

(b) (6)

) **MOTION TO WITHDRAW AS**
) **ATTORNEY OF RECORD**

Respondent

) Judge: (b) (6)

) Hearing Date: 11/20/2012 at 1:00 PM

UNOPPOSED MOTION TO WITHDRAW AS ATTORNEY OF RECORD

Respondent's counsel would like to request the Honorable Judge to allow counsel to withdraw from representing the Respondent in these proceedings. Respondent's counsel hereby incorporates by reference all statements that were made in the first three motions to withdraw. Counsel hereby respectfully moves the Court to withdraw as Attorney of Record for the above named Respondent in removal proceedings, pursuant to 8 C.F.R. § 3.16 and 3.17(b).

Respondent's counsel's primary place of business is in (b) (6). Respondent's family does not live in (b) (6) but in (b) (6) and made arrangements for current counsel to represent the Respondent in these proceedings. Respondent was hired to facilitate the Respondent's request for Parole from ICE and to appear telephonically while that request was pending. Counsel is not financially able to represent this Respondent on a pro bono basis.

When Counsel's initial motion to withdraw was denied by the Court, on October 9, 2012, Counsel took the threat of being reported to the Disciplinary Committee very seriously and hired substitute local counsel to appear on

work for my immigration law firm.

The EOIR Practice Manual Chapter 2.3 (j) reads as follows: "*Appearances "on behalf of."* — Appearances "on behalf of" occur when a second attorney appears on behalf of the attorney of record at a specific hearing before the Immigration Court. The attorney making the appearance need not work at the same firm as the attorney of record. Appearances "on behalf of" are distinct from limited appearances, which are discussed in Chapter 2.3(d) (Limited appearances). Appearances "on behalf of" are permitted as described below. First, the attorney making the appearance must notify the Immigration Judge on the record that he or she is appearing on behalf of the attorney of record. Second, the attorney making the appearance must file a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) with the Immigration Court and serve it on the opposing party. The Form EOIR-28 must be clearly annotated on the front page to reflect that the attorney is making an appearance on behalf of the attorney of record for a specific hearing. In addition, the date and time of the hearing must be listed. Third, the appearance on behalf of the attorney of record must be authorized by the Immigration Judge. At the hearing, the attorney making the appearance may file documents on behalf of the alien. The attorney making the appearance cannot file documents on behalf of the alien at any other time. See Chapters 3.3(b) (Signatures), 3.2 (Service on the Opposing Party). The attorney of record need not file a new Form EOIR-28 after the hearing." EOIR Practice Manual Chapter 2.3 (j).

Attorney (b) (6) attempted to renew my motion to withdraw but was told by the Court that my motion would be granted "only if" Attorney (b) (6) would substitute in as attorney of record on this case. When Attorney (b) (6) objected, the Court denied Counsel's motions to withdraw, as well as the motion to appear telephonically and threatened Attorney (b) (6) that if neither Counsel nor Attorney (b) (6) appeared at the next scheduled master hearing on November 20, 2012, that both parties would be reported to the disciplinary committee. Attorney (b) (6) in a separate motion, is unavailable on November 20, 2012 due to a prior scheduled trip to the east coast.

As stated in the three prior motions, Counsel is requesting that the Court grant her leave from representing this particular Respondent. Attorney (b) (6) was only making an appearance on behalf of Counsel. He in no way made any motion, oral or written to substitute as counsel of record. Nowhere in the Practice Manual is it stated that in order

2. I am the Respondent's Attorney of Record.
3. The Respondent is currently detained in ICE custody.
4. Counsel last spoke with the Respondent on November 5, 2012 and the Respondent informed Counsel that she no longer wishes for Counsel to continue representing her.
5. Counsel cannot provide a written statement, signed on behalf of the Respondent because she cannot read or write.
6. Counsel had a lengthy conversation with the Respondent and since she has been languishing in ICE custody for over a year now, she is very motivated to have these proceedings continue without Attorney (b) (6).
7. Counsel spoke with DHS Attorney (b) (6), who was present at the master on October 9, 2012, who informed Counsel that he stated, on the record, that he did not oppose my previously filed motion to withdraw.
8. Counsel spoke with DHS Counsel (b) (6), who was present at the hearing on November 5, 2012, who also stated that "DHS will not file an opposition to Counsel's motion."
9. Counsel also supports Attorney (b) (6) motion to withdraw since he has had no contact whatsoever with the Respondent.
10. Counsel confirmed with the Respondent that she does not wish for Attorney (b) (6) to represent her either.
11. Counsel is the mother of two young children.
12. Counsel has only recently returned to work on a more full time basis since giving birth to my second child.
13. I only recently stopped breastfeeding my youngest and do not take the decision to travel away from family lightly.
14. Counsel is not in the economic or personal position to take an uncompensated trip from (b) (6) to (b) (6). Counsel would incur significant travel expenses to travel to (b) (6).
15. Counsel would incur significant child care expenses if this motion is not granted since Counsel would be forced to leave her home very early in the morning and return after her children have gone to sleep if it is even possible to avoid spending the night in (b) (6).
16. Due to the geographic distance, lack of compensation and complete disregard to the agreement that was signed, Counsel cannot represent the Respondent without enduring a tremendous hardship herself and begs the Court to allow her permission to withdraw.
17. A copy of this motion has been mailed to the Respondent.

Dated: November 5, 2012

Signed: _____
(b) (6)

In the Matter of:

(b) (6)

A#

(b) (6)

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Respondent's **UNOPPOSED FOURTH MOTION TO WITHDRAW AS ATTORNEY OF RECORD**, it is HEREBY ORDERED that the motion be **GRANTED** ☐ **DENIED** ☐ because:

DHS does not oppose the motion.

The respondent does not oppose the motion.

A response to the motion has not been filed with the court.

Good cause has been established for the motion.

The court agrees with the reasons stated in the opposition to the motion.

The motion is untimely per _____.

Other:

Date: _____

Immigration Judge: _____

(b) (6)

Certificate of Service

This document was served by: ☐ Mail ☐ Personal Service

To: ☐ Alien ☐ Alien c/o Custodial Officer ☐ Alien's Atty/Rep ☐ DHS

Date: _____ By: Court Staff _____

I hereby certify that I served a copy of the attached documentation by mail delivery:

**UNOPPOSED FOURTH
MOTION TO WITHDRAW AS ATTORNEY OF RECORD**

Upon:

The Executive Office for Immigration Review
Office of the Immigration Judge

(b) (6)

AND

Office of the Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

(b)(6) & (b)(7)(C)

AND

(b) (6)

In ICE Custody

(b) (6)

Dated: November 5, 2012

By: _____

(b) (6)

EOIR FOIA Processing (EOIR)

From: Bartolomei, Jr. Rico (EOIR)
Sent: Monday, November 19, 2012 7:26 PM
To: Keller, Mary Beth (EOIR)
Cc: Maggard, Print (EOIR); Moutinho, Deborah (EOIR); Viray, Glenda (EOIR)
Subject: FW: Letter of complaint from Atty (b) (6)
Attachments: Letter of complaint_U (b) (6).pdf

Good Afternoon Mary Beth,

I have reviewed the letter of complaint against the Immigration Judge and I have listened to the audio portions for the 7 hearings thus far. Also, I have touched base with Print. I will be composing a letter in response to the attorney but I will not take any action before the scheduled master calendar hearing tomorrow. In her complaint, the attorney informs me that neither she nor Attorney (b) (6) will be there tomorrow. My review of the audio portion of the November 5th hearing shows that the Immigration Judge expects one of the two attorneys to appear for a respondent who has been detained for a long time.

Given that there is a hearing on the matter tomorrow, I just wished to report to you that I will take no action before then. The nature of the complaint does not rise to the level where an ACIJ should get involved at this stage of the matter. Regards, Rico

-----Original Message-----

From: (b) (6) (EOIR)
Sent: Thursday, November 15, 2012 4:23 PM
To: Bartolomei, Jr. Rico (EOIR)
Subject: Letter of complaint from Atty (b) (6)

Hello Judge Bartolomei,

RE: A (b) (6)

Attached is the scanned letter from Attorney (b) (6) regarding her complaint against Judge (b) (6). There are a total of 9 pages.

Thanks,

(b) (6)

EOIR FOIA Processing (EOIR)

From: Bartolomei, Jr. Rico (EOIR)
Sent: Friday, December 14, 2012 2:32 PM
To: Moutinho, Deborah (EOIR)
Cc: Keller, Mary Beth (EOIR); Maggard, Print (EOIR); (b) (6) (EOIR)
Subject: (b) (6) Complaint
Attachments: (b) (6)_complaint_form.doc; (b) (6)_Complaint.docx

Good Afternoon Deborah,

I am attaching the completed Complaint Form on the (b) (6) Complaint. I am completing on behalf of myself and Judge Maggard as we were both provided the same letter. I am also including my response. I believe that this will close out the matter for Judge Maggard and me. If you need anything else, please let me know. Regards, Rico

December 4, 2012

(b) (6)

Dear (b) (6)

This is to acknowledge your letter of complaint, dated November 13, 2012. I am writing on behalf of myself and Judge Maggard. In your letter you allege that Immigration Judge (b) (6) has acted inappropriately with respect to your motions to withdraw as attorney of record.

I have reviewed the current record carefully and discussed the matter with Judge Maggard. Your concerns reflect decisions made by an Immigration Judge during the course of proceedings. The appropriate forum to challenge such determinations is by appeal to the Board of Immigration Appeals. Those types of rulings can be challenged by taking an interlocutory appeal to the Board of Immigration Appeals.

In sum, while you challenge the rulings (or lack thereof) of Judge (b) (6) the case remains pending. Any challenges to (b) (6) determinations can only be addressed by the Board of Immigration Appeals.

Sincerely,

Rico J. Bartolomei
Assistant Chief Immigration Judge

Copy furnished: Assistant Chief Judge Print Maggard