



Detail

Complaint Number: 729

Immigration Judge: (b)(6)

Complaint Received Date: 02/20/13

Current ACIJ
McGinns, Michael C.

Base City
(b)(6)

Status
CLOSED

Final Action
Complaint dismissed because it
cannot be substantiated

Final Action Date
03/11/13

Past ACIJ:

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Out-of-court conduct	Respondent Atty (b)(6)
		(b)(6)

Complaint Narrative: Attorney complains about tone and nature of phone conversation with ACIJ in which complaint about the conduct of a (b)(6) JJ was being addressed. Attorney claims ACIJ was focused on issues irrelevant to the complaint, namely, the attorney's experience in immigration court.

Complaint History

03/11/13	Complaint dismissed because it cannot be substantiated
03/11/13	Discussed with ACIJ and reviewed (b)(6) MFR created at the time of the call
03/11/13	Discussed with CIJ and reviewed DAR
03/11/13	Responded to the complainant via letter
03/12/13	Database entry created

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: 2/20/2013

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) 2/19/2013	name: _____ address: _____ email: _____ phone: _____ fax: _____ <div style="background-color: black; color: white; font-size: 48px; text-align: center; padding: 20px;">(b) (6)</div>
additional complaint source details	
(i.e., DHS component, media outlet, third party details, A-number) Addressed to CIJ	

IJ name	base city	ACIJ
(b) (6)	(b) (6)	McGoings
relevant A-number(s)	date of incident	
(b) (6)	2/14/2013	
allegations		
Attorney complains about tone and nature of phone conversation with ACIJ in which complaint about the conduct of a (b) (6) IJ was being addressed. Attorney claims ACIJ was focused on issues irrelevant to the complaint, namely, the attorney's experience in immigration court.		
nature of complaint		
<input type="checkbox"/> in-court conduct <input type="checkbox"/> incapacity	<input checked="" 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

007177

(b) (6)

EOIR
O.C.J.

RECEIVED
2013 FEB 20 PM 1:01

VIA CRRR

February 19, 2013

Brian M. O'Leary
Chief Immigration Judge
5107 Leesburg Pike, Ste. 2500
Falls Church, VA 22041

RE: Complaint Regarding Immigration Judge's Conduct
Immigration Judge: (b) (6)

Chief Immigration Judge Brian M. O'Leary,

This letter is in reference to a letter complaining about professional misbehavior on the part of Judge (b) (6) from the (b) (6) Immigration Court, behavior that I believe shows a lack of respect for the court and its participants and tends to damage the reputation of the EOIR. In my letter I respectfully asked that the two incidents reported in the letter be reviewed. A copy of my letter is attached and it was e-mailed to EOIR.IJConduct@usdoj.gov on February 11, 2013. My letter was confirmed as having been received by Judge (b) (6) on February 12, 2013. On my letter I explained how Judge (b) (6) conducts casts a stain on the court and that the behavior of Judge (b) (6) is unbecoming of a U.S. government official expected to handle cases and proceedings that are sensitive and life-changing.

In reference to my letter of concern, Judge (b) (6) e-mailed me asking that I call (b) (6). We spoke on Thursday, February 14, 2013. The tone and nature of the call left me perplexed and disappointed. During the phone conversation, the incidents that I referred to in my letter were not mentioned. Judge (b) (6) sounded unfocused—(b) (6) just wanted to talk exclusively about my “background.” (b) (6) also

insisted and demanded that I tell (b) (6) how many years I have been practicing immigration law. That was all. The questions by Judge (b) (6) however, were irrelevant to Judge (b) (6) unbecoming behavior. More important, the questions were irrelevant on how that behavior on the part of Judge (b) (6) shows in my opinion a lack of respect for the court, its procedures, and its participants. Further, Judge (b) (6) questions were irrelevant on how Judge (b) (6) conduct may affect or even diminish the reputation of the (b) (6) Immigration Court, its leadership, and that of Immigration Judges as a whole. Judge (b) (6) just wanted to know how many years I had been practicing immigration law.

Thus, I am respectfully directing this letter to you as the Chief Immigration Judge, hoping, and respectfully asking once again, that the audio on both incidents and my letter be reviewed.

(b) (6)



U.S. Department of Justice
Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

March 11, 2013

(b) (6)

Dear (b) (6)

Your February 19, 2013 letter received in this office on February 20, 2013 has been referred to me for response. In your letter, you request further review of a complaint filed by you on February 11, 2013, regarding Judge (b) (6) of the (b) (6) immigration court. Your complaint was initially reviewed and addressed by Assistant Chief Immigration Judge (ACIJ) (b) (6) who has supervisory responsibility for the (b) (6) court.

I have reviewed your prior and recent correspondence in which you raise concern about professional misbehavior on the part of Judge (b) (6) in proceedings conducted on February 8, 2013 and June 27, 2012. I have also reviewed the Digital Audio Recording (DAR) of the relevant proceedings, and conclude that ACIJ (b) (6) resolution provided to you on February 20, 2013 was appropriate.

As noted by ACIJ (b) (6) you are of course able to file motions to recuse with the immigration judge should you wish to do so, or appeal any decisions with which you disagree to the Board of Immigration Appeals.

Regards,

MaryBeth Keller
Assistant Chief Immigration Judge
Immigration Judge Conduct and Professionalism

Immigration Judge Complaint Intake Form

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

Date Received at OCLJ: _____

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 type="checkbox"/> letter <input type="checkbox"/> fax <input type="checkbox"/> IJC memo (BIA) <input type="checkbox"/> unknown	<input checked="" type="checkbox"/> email <input type="checkbox"/> phone (incl. voicemail) <input type="checkbox"/> in-person <input type="checkbox"/> other: _____
date of complaint source (i.e., date on letter, date of appellate body's decision)	complaint source contact information
2/11/2013	name: _____ address: (b) (6) 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)	Santoro
relevant A-number(s)	date of incident	
(b) (6)	1/8/2013 6/27/2012	
Allegations		
Complainant alleges that IJ's in-court conduct was belittling of complainant ((b) (6)) as well as contrary to regulation (b) (6). Nature of allegations more fully described below. Complainant also requests that IJ be forced to recuse (b) (6) from all future cases involving complainant.		
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

Rev. May 2010

date	Action	initials
2/11/13	Complaint received via e-mail to IJC mailbox, forwarded to ACIJ	cas
2/11/13	<p>ACIJ listened to both hearings.</p> <p><u>With respect to (b) (6)</u> complainant correctly states that the IJ refused to grant his unopposed COV motion until respondent filed an I-589 (which counsel said could be completed within a few months). While the IJ erroneously said that the regulations compelled such a result, there is nothing in the record indicating that the IJ's erroneous statement of the law was anything but that. There is no indication of bias against complainant.</p> <p>RESOLUTION: Dismissed/unfounded.</p> <p><u>With respect to (b) (6)</u> the record reflects the judge's increasing frustration with either an unprepared or minimally-competent attorney (complainant) and/or an unprepared respondent. The presentation of evidence in this asylum merits hearing was confusing at best and the IJ correctly and necessarily interceded in an attempt to clarify the testimony. Respondent's counsel/complainant also spoke over the judge, tried to speak with the respondent in Spanish despite the presence of the official court interpreter, and generally seemed to be poorly versed in the relevant law and methods of proof. Examples can be found on the DAR recordings beginning at approximately time stamps 18:50, 30:30, 40:00-45:00, 53:00, 1:25:20, 1:42:00, 1:51:00, and 1:57:00.</p> <p>The heart of the complaint is that the IJ allegedly made "personal comments about the quality of the counsel's presentation" and demeaned him. The IJ's frustration at counsel's presentation is most evident between 56:22 and 59:20. After several rounds of questions and answers that were either unexpected or confusing, the IJ asked complainant whether he knew his client. Complainant quickly took offense and engaged in an inappropriate dialog with the court. While the IJ's initial "do you know your client?" question was not the most effective means to handle the situation, the IJ's demeanor and temperament remained calm throughout, even in the face of complainant's raised voice. The IJ and complainant went back and forth for a few moments and then the IJ took a recess to give complainant "a breather." When court resumed, the acrimony was no longer evident; counsel's performance, however, did not meaningfully improve.</p>	cas
2/11/13	ACIJ requested IJ's comments with regard to (b) (6) only; no mention was made of (b) (6) IJ was given until COB on 2/14/13 to respond if desired.	cas
2/13/13	ACIJ received comments from IJ acknowledging that (b) (6) was "a bit sterner than usual" but that (b) (6) aim was to get complainant to do a better job of direct examination. IJ denied that any conduct was unprofessional and stated that (b) (6) tone was warranted under the situation.	cas
2/14/13	ACIJ spoke via telephone with complainant. Complainant was extremely unprofessional, rude to ACIJ. Told ACIJ that he didn't expect to get a fair review/resolution of his complaint. MFR drafted summarizing telephone call.	cas

