



Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

September 21, 2018

Jacqueline Stevens
Northwestern University
Dept. of Political Science
601 University Place
Evanston, IL 60208

Re: FOIA 2015-27249

Dear Prof. Stevens,

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) in which you seek investigatory materials relating to certain complaints against immigration judges (IJs). We apologize for the delay in providing this response; the response was delayed both by the complexity of the request, and the litigation surrounding *AILA v. EOIR*.

Responsive documents are enclosed. Portions of the enclosed documents have been redacted in accordance with 5 U. S.C. § 552(b)(6) to avoid a clearly unwarranted invasion of personal privacy, and/or 5 U. S.C. § 552(b)(5) to protect privileged information. The reason for redaction is clearly marked on each redacted portion. Additionally, each complaint was evaluated for release in conformity with *AILA v. EOIR*, No. 13-840 (D.D.C. filed June 6, 2013). In each case, it was determined that the public interest in release did not outweigh the privacy interest of the immigration judge.

There will be no charge for the enclosed documents.

Please note that the following complaint numbers did not contain any responsive records: 253, 513, 678, 682, and 718. These complaints may have been combined with other complaints, or may have been expunged from the record pursuant to an agreement or order.

In the following cases, documents not created or maintained by EOIR were referred to other agencies for direct response to you:

#789: Report of Investigation (Office of the Inspector General)
#770: Memorandum of 6/4/2013 w/attachment (Office of the Inspector General)
#731: Report of Investigation (Office of the Inspector General)

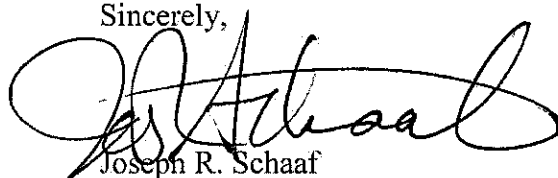
#762: E-mails and documents Oct 2012 (ICE)
E-mail of 2/11/2013 (Office of Professional Responsibility)
Letter of 8/8/2014 (Office of Professional Responsibility)
E-mail of 7/12/2012 (ICE)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. *See* <http://www.justice.gov/oip/foiapost/2012foiapost9.html>.

You may contact our FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

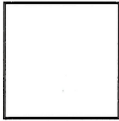
A handwritten signature in black ink, appearing to read "J. Schaaf", written over a horizontal line.

Joseph R. Schaaf

Chief Counsel for Administrative Law

Enclosure:

EOIR FOIA# 2015-27249



Single Complaint Detail

Complaint Number: 789

Immigration Judge: (b) (6)

Complaint Date: 06/20/13

Current ACIJ
Dufresne, Jill H.

Base City
(b) (6)

Status
CLOSED

Final Action
Decision - suspension

Final Action Date
11/05/14

A-Number(s)	Complaint Nature(s)	Complaint Source(s)
	Out-of-court conduct	Anonymous

Complaint Narrative: Abuse of leave

Complaint History	
08/12/13	Awaiting OIG investigation
08/26/13	Database entry created
06/27/14	OIG issued report
09/04/14	Proposed suspension - 2 Days
11/05/14	Decision - suspension 2 days
12/10/14	Subsequent action filed - (b) (6)
01/20/15	Decision subsequently upheld
04/01/15	Decision - suspension 2 days From: 2015-04-20 To: 2015-04-20 - Dates are: 4/20/15 & 5/4/15

Processing, FOIA (EOIR)

From: Scheinkman, Rena (EOIR)
Sent: Wednesday, September 24, 2014 3:48 PM
To: Dufresne, Jill (EOIR); Keller, Mary Beth (EOIR)
Cc: Reilly, Katherine - OGC (EOIR); Rosenblum, Jeff (EOIR)
Subject: RE: (b) (6) - investigation

Jill – Can we meet at 10:30 on 10/2? If that time doesn't work, maybe later that same day?

Thanks,
Rena

From: Dufresne, Jill (EOIR)
Sent: Wednesday, September 24, 2014 1:02 PM
To: Scheinkman, Rena (EOIR); Keller, Mary Beth (EOIR)
Cc: Reilly, Katherine - OGC (EOIR); Rosenblum, Jeff (EOIR)
Subject: RE: (b) (6) - investigation

How about 9ish on 10/2? Thanks again for the help. Jill.

From: Scheinkman, Rena (EOIR)
Sent: Wednesday, September 24, 2014 12:42 PM
To: Dufresne, Jill (EOIR); Keller, Mary Beth (EOIR)
Cc: Reilly, Katherine - OGC (EOIR); Rosenblum, Jeff (EOIR)
Subject: (b) (6) - investigation

Jill:

I think you said you would be available to meet next Thursday to discuss the process for your investigation in (b) (6). Please let me know if there is a particular time (or times) that works well for you.

Thanks,
Rena

Rena Scheinkman
Associate General Counsel, Employee and Labor Relations Unit
Office of the General Counsel
Executive Office for Immigration Review
Ph: (b) (6)
Fax: (b) (6)

Processing, FOIA (EOIR)

From: Dufresne, Jill (EOIR)
Sent: Tuesday, November 18, 2014 11:23 AM
To: Keller, Mary Beth (EOIR)
Subject: FW: Decision
Attachments: 2014.11.5_Suspension Decision.pdf; Decision - Attachment 1.pdf; Decision - Attachment 2.pdf

fyi

From: Scheinkman, Rena (EOIR)
Sent: Wednesday, November 05, 2014 3:39 PM
To: Dufresne, Jill (EOIR); Keller, Mary Beth (EOIR); Reilly, Katherine - OGC (EOIR)
Subject: FW: Decision

Fyi.

From: McGoings, Michael (EOIR)
Sent: Wednesday, November 05, 2014 3:12 PM
To: Scheinkman, Rena (EOIR)
Subject: FW: Decision

From: McGoings, Michael (EOIR)
Sent: Wednesday, November 05, 2014 3:11 PM
To: (b) (6) (EOIR)
Cc: Dufresne, Jill (EOIR)
Subject: Decision

Judge (b) (6) :

Please see the attached decision in your disciplinary matter.

Michael C. McGoings
Deputy Chief Immigration Judge



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 20530

November 5, 2014

BY ELECTRONIC MAIL

Immigration Judge (b) (6)
(b) (6)

Re: Suspension Decision

Dear Judge (b) (6):

By letter dated September 4, 2014, (“Proposal”) Assistant Chief Immigration Judge (“ACIJ”) Jill Dufresne proposed that you be suspended without pay for two calendar days from your position as an Immigration Judge. Attachment 1. The proposal was based on the charge of unprofessional conduct, resulting from you recording work time when you were not in the office. On September 18, 2014, you provided your written response, Attachment 2, and on September 29, 2014, you presented your oral response to me by telephone (collectively, “Response”).

In making my decision, I have fully considered the Proposal, its attachments, and your Response. For the reasons explained below, I find that preponderant evidence supports the charge, and I therefore uphold it. Based upon my consideration of the relevant factors, I also find that a two-day suspension is reasonable under the circumstances, and I therefore sustain the proposed penalty.

I. CHARGE – UNPROFESSIONAL CONDUCT

The Proposal charged you with inappropriate conduct based on at least 24 instances where you incorrectly reported your time worked. The charge was based on the findings by the Office of Inspector General (“OIG”) that you reported working approximately 26 hours for which you were not present at the workplace. OIG Report of Investigation (“ROI”) at 3 (included as Attachment A to Proposal). Specifically, the ROI identified 24 instances of discrepancies between your time reported and the time you were actually in the office. ROI at 4. These discrepancies were significant in each instance—ranging from 50 minutes to over five hours of time reported as worked on any given day, when you were not in the office. *Id.* at 5-4;

see generally ROI, Ex. 6. In your response, you admitted the facts underlying the charge. See Response (Att. 2) (“I admit to the wrongdoing outline in the letter.”). Accordingly, preponderant evidence supports the charge of inappropriate conduct.

II. PENALTY

In determining an appropriate penalty, I considered the information set forth in the Proposal and your Response, and I also considered the applicable factors enumerated in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981). As Judge Dufresne noted, mitigating factors that weigh in your favor include your satisfactory performance; your many years of service in the Federal government, including your more than (b) (6) years as an Immigration Judge; and that this is your first disciplinary action. The fact that you have admitted your wrongdoing and apparently reformed your behavior after your OIG interview also weigh in your favor.

However, I find that your misconduct in this instance is quite serious. The efficient operation of the immigration courts requires Immigration Judges to be performing official duties when they are on official time. This requirement is detailed in the governing regulations, 5 C.F.R. §2635.705, and in the Ethics and Professionalism Guide for Immigration Judges, <http://www.justice.gov/eoir/sibpages/IJConduct/EthicsandProfessionalismGuideforIJs.pdf>. Notably, the time discrepancies the OIG uncovered were in increments of more than an hour in most instances, not simply minutes here and there. Accordingly, this is not time that can or should be overlooked or excused. As noted in the Proposal, you are aware of OCIJ’s leave policies, and, in fact, you frequently request and are granted leave. See, e.g., Proposal at 2; ROI, Ex. 5 at 28, 41. Your decision to deviate from OCIJ’s leave policies was misguided.

In your sworn statement to the OIG, you attributed the time discrepancies to your attempt to juggle your work and family. In short, when you had weeks with lighter workloads, you left early or came in late. Specifically, in acknowledging the time discrepancies identified by the OIG were accurate, you explained: “No, I don’t dispute it. I mean, these were times that were, like, easy weeks. . . . But, like I said, I’ve been so slammed lately, I think if you looked at me from, like, the fall now, you will see I’m there every day.” ROI, Ex. 5 at 44-45. And when the OIG asked you to reconcile your conduct with OCIJ’s policies and procedures, you explained: “I mean, I guess I should have talked to [ACIJ] Jill [Dufresne] about if I take something home is that okay. You know. . . . (b) (6)” *Id.* at 48. Later, you explained: “You know, and I thought this, you know, this is like a career that I will have probably until the end of my career, and . . . (b) (6) and I’m juggling a little more, but . . . you know, like (b) (6) and (b) (6) staying later, and I kind of figured it would all balance out.” *Id.* at 50-51.

In your written response to the Proposal, however, you raised for the first time the “intimidating atmosphere” in the (b) (6) court “created by Judge (b) (6), and you gave some specific examples of (b) (6) conduct toward you and how it made you feel. You explained that you brought it to my attention so that I can understand your misconduct in the “context of your work environment.” Response (Att. 2). In your oral response, you made a direct link between your

work environment and your misconduct, explaining that you did your in-court work and then took your remaining work home because of a “demoralizing situation” at work.

The Agency takes seriously your allegations of intimidation and hostility in the workplace. I have asked your first-line supervisor, ACIJ Dufresne, to look into those allegations, and she is doing so separate and apart from this disciplinary action.

With regard to the disciplinary action, I have considered your Response carefully, but it does not warrant a reduction in your penalty. First, your sworn statement to the OIG is notably absent of any allegation of intimidation or hostility in the workplace that attributed to your underlying misconduct. This is true, despite your references to Judge (b) (6) as the alleged source of the complaint to the OIG and your description of (b) behavior toward you and your colleagues. *See, e.g.*, ROI, Ex. 5 at 37-41, 46-47. Accordingly, in the context of this disciplinary action, I find your sworn statement to the OIG more credible than your after-the-fact explanation in your Response. Regardless, even assuming that you felt like you could not work in the office because of Judge (b) (6) behavior, the appropriate response would have been to bring the problem to the attention of management to address the situation, not simply leave the office without notifying your supervisor or requesting the appropriate leave.

I also considered your argument in your Response that the proposed two-day suspension is inconsistent with a penalty imposed on Judge (b) (6) for purportedly similar misconduct. Without going into the details of the personnel actions of other employees, I note that any penalty imposed on Judge (b) (6) was from a different supervisor—not ACIJ Dufresne, and there are distinct differences between the two, particularly inasmuch as your disciplinary action is the result of an OIG investigation with adverse findings. I recognize that you believe that it was Judge (b) (6) who reported your misconduct to OIG.¹ Even assuming that is true, you do not dispute the OIG’s findings of your misconduct, upon which this disciplinary action is based.

Based on the factors discussed herein, I find that a two-day suspension is reasonable under the circumstances and promotes the efficiency of the Federal service. Therefore, I uphold the proposed two-day suspension.

While this disciplinary action is meant to correct your misconduct, you should be cautioned that further instances of such behavior could result in more severe disciplinary action, up to and including removal from the Federal service.

III. GRIEVANCE

You may file a grievance of this disciplinary action. As a member of the bargaining unit represented by the National Association of Immigration Judges (“NAIJ”), you are subject to the grievance procedures set forth in Article 8 of the collective bargaining agreement between the NAIJ and the Office of the Chief Immigration Judge, Executive Office for Immigration Review.

¹ EOIR is not aware of the source of the OIG complaint.

Sincerely,

Michael C. McGoings

Michael C. McGoings
Deputy Chief Immigration Judge

Attachments

cc: Jill Dufresne, ACIJ

Attachment 1



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 20530

September 4, 2014

BY ELECTRONIC MAIL

Immigration Judge (b) (6)

(b) (6)

Re: Proposed Two-day Suspension

Dear Judge (b) (6):

This letter is notice that I propose that you be suspended from your position as an Immigration Judge with the Executive Office for Immigration Review (EOIR) for a period of two calendar days. This proposal is in accordance with 5 C.F.R. Part 752 and Department of Justice Order 1200.1 (Human Resources), Part 3, Chapter 1, and is taken to promote the efficiency of the Federal service. This action is based on the charge outlined herein.

Part I identifies the charge and explains the evidence upon which this proposed suspension is based. Part II discusses the factors that I considered in proposing the penalty for your misconduct. Part III outlines the procedures for responding to this notice of proposed suspension.

I. CHARGE – UNPROFESSIONAL CONDUCT

On May 20, 2014, the Department of Justice, Office of the Inspector General (OIG) issued a Report of Investigation (ROI)¹ concluding that on at least 24 occasions during a one-and-a-half year period, you incorrectly reported your time worked. Specifically, you reported working approximately 26 hours for which you were not present at the workplace. ROI at 3. As a basis of its findings, OIG compared GSA Access and Control records against webTA Certified Time and Attendance submissions you made for the period July 2012 to December 2013. *Id.* OIG found 24 instances of discrepancies. *Id.* at 4. These discrepancies were significant in each instance—ranging from 50 minutes to over five hours of time reported as worked on any given day, when you were not in the office. *Id.* at 5-4; *see generally* ROI, Ex. 6. You do not dispute

¹ The ROI is attached to this proposal letter as Attachment A.

the accuracy of the discrepancies OIG identified. ROI, Ex. 5 at 44. The ROI notes that you acknowledged having affirmed and submitted inaccurate hours in webTA, and further that you acknowledged leaving the office earlier than the end of your tour of duty once or twice per pay period. ROI at 5-6; ROI, Ex. 5 at 35. Your behavior in these documented instances reflects unprofessional conduct.

II. PENALTY

In determining an appropriate penalty, I considered the applicable factors enumerated in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981). Mitigating factors in your favor are your satisfactory performance and your many years of service in the Federal government, including your more than (b) (6) years as an Immigration Judge, beginning in (b) (6). In addition, you have no known prior disciplinary history.

I weighed these factors, however, against the seriousness of your misconduct. At best, you made inappropriate assumptions about my boundaries in terms of leave allowances; at worst, you knew OCIJ's leave policies, and my application of them, and you chose to ignore them. In either case, you took advantage of the flexibilities and courtesies afforded to you as a professional, as well as the fact that we work in different physical locations. You do not dispute that you are aware of OCIJ's leave policies.² See, e.g., ROI, Ex. 5 at 41 (admitting you received the policies). And based on your more than five years as an Immigration Judge, and your prior service within OCIJ, I have no reason to doubt your knowledge of the applicable leave policies. As you know, I am reasonable in granting you leave when you request it. See, e.g., ROI, Ex. 5 at 28 (claiming you take a lot of leave). Your lapse of judgment, here, however, is that you did not request leave, even when your time out of the office was significant—generally more than one hour, and in one case, more than five hours. See ROI, Ex. 6.

It is crucial to the efficient operation of the immigration courts that Immigration Judges perform their job duties when on official time. Use of official time to perform official duties is a fundamental requirement of all Federal employees. See 5 C.F.R. §2635.705. Immigration Judges are no exception. See Ethics and Professionalism Guide for Immigration Judges, Section XV, <http://www.justice.gov/eoir/sibpages/IJConduct/EthicsandProfessionalismGuideforIJs.pdf> (“An Immigration Judge shall use official time in an honest effort to perform official duties. Generally, personal activities should not be conducted during duty hours.”). Although you claim that your time away from the office did not interfere with your time on the bench or with your docket, I must remind you that your job duties extend beyond your time on the bench. You are not permitted to arrive late or leave early simply because you have open time on your docket. As a professional, you are expected to use your time appropriately and for the efficient operation of the immigration court.

In determining the appropriate penalty, I also considered your potential for rehabilitation. Based on my review of your sworn statement to OIG, and on my understanding of your leave habits since OIG's investigation, it appears that you have learned from your mistake and understand that you must ask for leave, or at least speak with me about anticipated absences, to ensure you are following the leave procedures and properly accounting for your time. See, e.g., ROI, Ex. 5 at 49-50 (noting the OIG investigation was an “uncomfortable situation” for you and

² Policies are included at ROI, Ex. 3.

indicating that you plan to “take leave for every minute” in the future). Accordingly, I have considered your potential for rehabilitation as a mitigating factor in your favor.

Based on my consideration of all of the relevant factors, I believe that a two-day suspension is fully warranted and promotes the efficiency of the Federal service. I have considered whether a lesser sanction would be appropriate, and, in my judgment, it would not.

III. PROCEDURE

Michael C. McGoings, Deputy Chief Immigration Judge (DCIJ), will make the final decision regarding this proposal. Within 20 calendar days from the date that you receive this letter, you may respond to DCIJ McGoings orally and/or in writing. Consideration will be given to extending the time for your reply, if you submit a written request to DCIJ McGoings within 10 calendar days after receipt of this letter stating your reasons for your request. No final decision on this proposal will be made until after your reply, if any, is received and considered. Your present duty and pay status are not affected by this letter.

You also have the right to have an attorney or other representative of your choice assist you in preparing and presenting your reply. If you choose to retain a representative and he or she is a Department of Justice (“DOJ”) employee, the representative must confer with his or her supervisor to ensure that there is no conflict of interest caused by the representation or that the representation will not interfere with the efficiency of the service. You and your representative, if a Department of Justice employee in an active duty status, will be allowed a reasonable amount of time to review the material on which this notice is based and present your reply. All of the material on which this proposal is based has been provided to you.

If you have any questions regarding the rules or procedures governing this action, you may contact Alita Bonhomme, Paralegal Specialist, at (b) (6)

Sincerely,



Jill Dufresne
Assistant Chief Immigration Judge

Attachment – OIG Report of Investigation
cc: Deputy Chief Immigration Judge Michael C. McGoings

ATTACHMENT A

McGoings, Michael (EOIR)

From: (b) (6) (EOIR)
Sent: Thursday, September 18, 2014 4:50 PM
To: McGoings, Michael (EOIR)
Cc: (b) (6) (EOIR);
Dufresne, Jill (EOIR)
Subject: response to ACIJ Jill Dufresne's proposal, dated 9/4/2014

Good Afternoon Judge McGoings,

Thank you for the opportunity to respond to ACIJ Dufresne's proposal. I admit to the wrongdoing outlined in the letter. I also feel Judge Dufresne offered a fair proposal based on the factors before her.

I do, however, wish to mention two factors which Judge Dufresne may not have been aware of and therefore not weighed.

First, the proposed penalty is not consistent with the penalty imposed upon another immigration judge for a similar offense. As noted in the report of investigation, Judge (b) (6) was given only a verbal reprimand for similar misconduct. This can be verified by retired ACIJ (b) (6)

Second, I have experienced tremendous tension at the (b) (6) Immigration Court due to an intimidating atmosphere created by Judge (b) (6). In short, I have experienced harassment and hostility. Judge (b) (6) has slammed doors in my face, given me menacing looks, and generally tried to intimidate me for an extended period. (b) (6) has tried to degrade me by telling staff members that (b) (6) interviewed me for a position with (b) (6) but rejected my application. (b) (6) has asked staff members about my whereabouts. I had to move my office because I felt as if (b) (6) was stalking me. I have felt in fear of (b) (6) particularly in the parking garage. On one occasion Judge (b) (6) was in (b) (6) vehicle and (b) (6) passed me by while I was walking to my car. (b) (6) then waited somewhere and exited the garage immediately behind me. I felt this was a direct attempt to intimidate me. The (b) (6) Immigration Judge at the (b) (6) Immigration Court has also been subjected to harassment and hostility by Judge (b) (6). (b) (6) has told me that (b) (6) would be willing to confirm this if you would like to speak with (b) (6)

I bring this to your attention only so that you can put my misconduct into the context of my work environment. I have never mentioned this to Judge Dufresne so, of course, she could not have taken these factors into consideration in reaching her decision. Rather, I conferred with my mentor Judge (b) (6) and other colleagues who have noticed Judge (b) (6)'s hostility toward me. Together we have come up with viable (to date) solutions, such as my switching offices with Judge (b) (6), not using the same (interior) restroom, altering the path I walk from my office to the courtroom, and not exiting the garage at the same time as Judge (b) (6). I am now concerned that if my record includes a two-day suspension I will not be able to successfully seek employment elsewhere should the situation become untenable.

In any event, I acknowledge my wrongdoing. I would welcome the opportunity to discuss this with you further if you feel it appropriate. I have also cc'ed my colleagues (b) (6). (b) (6) They are aware of the proposed penalty and the hostility and intimidation described above.

Best regards,

(b) (6)