

REDACTED IMMIGRATION JUDGE COMPLAINT FILED AUG 19, 2014

Dear Judge Keller:

Monday, August 17, 2014, I attended a Hearing before Immigration Judge [REDACTED] [REDACTED] for review of a negative credible fear finding on for [REDACTED], [REDACTED], and her daughter.

I believe the conduct of IJ [REDACTED] was unprofessional and unbefitting of an immigration judge. During the course of the hearing, the record will reflect that IJ [REDACTED] was rude, demeaning, condescending, and combative. The record will also reflect that she questioned my professional integrity, attempted to interfere with my attorney client relationship, and otherwise failed to maintain an appropriate judicial demeanor.

In nearly twenty years of practice, I have never observed, much less been the target of such grossly inappropriate conduct by an immigration judge. Although I am in the process of attempting to obtain a copy of the record, I am submitting the following request for a formal investigation into the behavior, actions and comments of IJ [REDACTED], immediately so that appropriate disciplinary action can be taken without delay.

The hearing in question was for a Negative Credible Fear Review via VTC from Artesia, New Mexico where I and other AILA members have been volunteering since July. As this was a last minute assignment from the AILA Pro Bono Project, I had yet to present my E-28 to the court when the hearing began.

When the IJ appeared on the VTC screen, I had just passed my entry to the ICE officer, who faxed the E-28 to the court. He presented me with a copy of the transmission page. That occurred at approximately 8:15 this morning, but the fax machine date is not set (it reflects a transmission time of 3:49 pm, on February 21, 2013).

The IJ confirmed receipt and without any preliminary statements or further comments noted that she had already gone on the record in the case. She noted she had received my entry and indicated that ICE had declined to have anyone observe or participate in the proceedings. A colleague in the courtroom took notes and will be submitting a separate declaration of her observations; I have not been able to request a copy of the ROP.

Without any preliminary discussion, the IJ swore in both my client and the interpreter. She mentioned that she thought she had some "interaction" with me previously, and wanted clarification as to my representation. I am not aware that I have ever appeared before or even met Judge [REDACTED], though it is possible she has seen me present on an EOIR panel or attend an EOIR liaison meeting over the last 15 years. I informed the IJ that I was appearing pro bono for the AILA Pro Bono Project. The IJ stated that she wanted to make the record clear, that her reading of the Immigration Court Practice Manual only obligated her to confirm that I had sufficient

time to “consult” with my client in advance of the review.

I confirmed that I had and noted for the record that AILA believes the Practice Manual is in conflict with the statute and that a wider role for attorneys in such proceedings is not only allowed, but necessary. I explained that the immigration judge did not have the benefit of asylum application outlining the case, only a limited of information from asylum office. In contrast, I observed, as her attorneys, AILA volunteers have interacted with her and are familiar with her case; the court simply hasn’t, and cannot know her case only from the documents provided by DHS.

To put my concerns in context, I advised the IJ that AILA volunteers had observed several cases where an individual had been denied by both the asylum office and IJ, only to meet with attorney and find out there was a textbook asylum case.

At this point, the IJ interrupted me (or more accurately, cut me off). She stated that she will follow procedure and chastised me for talking in “generalities” and told me “don’t talk in generalities.” The only question for her was, did you consult or not, yes or no? She also stated that this was not the forum for me to advocate for one position over the other.

The IJ attempted to start the questioning in of my client, but I continued to try to respond and present two limited issues for the record. The IJ continued to talk over me—and it was clear she was aware that she was doing so.

The IJ announced that her position is the practice manual position, that there is “no role” for attorney at all in the proceedings, and continued to talk over me, trying to continue with interviewing my client, and denying me the opportunity to raise these purely procedural issues prior to her review of my client’s negative credible fear finding.

In fact, the IJ was so determined to continue that she was unaware that I was repeatedly trying to get her attention. I tried saying “hello? hello? hello”? multiple times, but the IJ merely continued speaking over me. It was clear that the IJ either could not hear or was deliberately ignoring my attempts to communicate so I got half out of my seat to wave broadly across the video feed, a tactic which got her attention, but also had her to ask angrily why I was waving.

I explained that I needed to respond to what she had said earlier, and that it was clear that we were not being heard. The IJ, again, angrily stated that I should not “interrupt” her and that I should have some respect for the court. I informed the court that due to the VTC audio (which appears to be “one way” with only one speaker’s voice audible at a time) there were unresolved matters that needed to be addressed before the IJ began questioning my client.

I suggested that it was very difficult to communicate, and the IJ’s response was “you can come here if you want; you have that option.” I explained that I am pro bono on site and,

in fact, could not appear in Arlington. I asked that the judge please provide me the opportunity to address two preliminary, procedural matters before she began the review and to let me know when that time is so that she will not think I am “interrupting.” IJ stated that she will not allow me this time to “criticize this process” and then stated in front of my client and other colleagues in the courtroom that I was not giving my client appropriate representation because I was “talking in generalities.” She stated that she is reading the ICPM and that is “reading the law,” and if I didn’t like it, I could try to deal with it later on. The rules she outlined from the ICPM to barred me from presenting evidence or documents, making an opening or closing statement, questioning my client or other witnesses.

She again admonished me for speaking in generalities, but eventually indicated that I could address these procedural issues. I asked two questions: (1) could the court confirm what documentary evidence is being considered in this review, and (2) what case law/legal standards are being applied or relied on in her review of credible fear. I noted that we had not been advised or served any documents and wished to have the opportunity to review any items provided to the IJ by DHS. Given that this was purely a matter of a threshold procedural issue, this inquiry was not disallowed by practice manual. The IJ eventually responded as to which documents DHS had provided (and had not provided), but she did not address the question of what case law she was applying in her review. The IJ had not responded as to case law, and appeared to be starting the review. As a result, I raised my hand like a schoolgirl to indicate that I needed to say something. The IJ then stated “we will do this my way.” And then very tersely, “What do you want?”

I asked if she could address the question of case law. The IJ stated that she didn’t want to speak about her case theory right now, but would speak about it after her decision, that was her policy. I responded that I didn’t need or expect her to address case theory, but specifically asked what circuit court precedent was being applied.

She then, quite condescendingly, asked me what circuit I thought my client was sitting in. I noted we are in the 10<sup>th</sup>, but that at the credible fear stage, no particular circuit controls; instead the IJ should be evaluating the case under the most generous standards. The IJ said I could bring that up as the case “goes along” but given the lack of judicial review, that made no sense.

The IJ was visibly angry and her tone was rough, condescending, and sarcastic. She stated that I “can’t take over this courtroom. If you want to continue to be belligerent, I’m going to ask you to step out.” She then told me to look at my client, (which I had been doing throughout the interaction since I was concerned how Ms. [REDACTED] was taking the judge’s clearly disrespectful, angry and dismissive tone). Fortunately, I had told my client before the hearing that I wanted the judge to discuss some items about her case, and told her to expect some back and forth. She was fine. She was not visibly upset. If anything, she looked tired and a bit bored. The IJ again stated that my client looked anxious, and repeatedly told me to look at her and stated I was not appropriately

representing her.

The IJ still had not responded on the question of case law, and I attempted again to be heard on the issue. In response, the IJ stated the following, without interruption (or opportunity to interject):

I don't work for you.

I don't answer to you.

You are here at the discretion of the judge.

If you keep going...

I know what you're doing.

You decided that today is the day you're going to do it to me.

Look at your client, she is crying now. [Ms. [REDACTED] was not crying, nor in the least upset, a fact I stated for the record]

You are not doing any good here.

You will not keep questioning me.

You don't have the floor.

I am going to move forward with your clients case.

She is distraught.

If you keep going forward I will need to ask you to step out.

Are you going to keep interrupting or are you going to step out?

[I noted for record that my client was not crying or upset.]

The IJ continued, saying "This is my courtroom. I am going to ask the attorney to step out." She then directed the ICE officer, "Officer, please remove the attorney." She repeated this request but no officer was present in the court at the time, thus no action was taken.

At that point I asked if were still on the record. The IJ said "that is none of your business."

I asked again whether we were off the record. The IJ said we are actually on the record still. She stated that I had "no right" to ask threshold questions in this. She stated that "the IJs are not going to allow this." Then she kept repeating that my client was crying, which she was not, a fact I again noted for the record.

The IJ then gathered her file, got up from her desk and walked off camera without any explanation. Her clerk left as well, also without comment. The interpreter remained, as did my client and I.

We waited in courtroom for the judge or clerk to appear for approximately 15 minutes. After unsuccessfully trying to find a phone number so someone could call the court to find out what was going on, the interpreter volunteered to get the clerk. The clerk came in response to the interpreter and simply stated that the case "was continued" and would be transferred to another judge.

While IJ [REDACTED] and others believe the attorney's role in a negative credible fear

review is more limited than the private bar does, the record is clear that I was not attempting to argue that issue on the record. Instead, I asked the court to address two procedural, threshold issues, which only asked the IJ to state her chosen position. She refused to identify to me or my client which precedent she would apply in her review. She refused to answer the question of law, which was a violation of my client's right to a fair review of her credible fear.

I and others observing her conduct found it to be rude, unprofessional and unbecoming of an immigration judge. Please excuse my submitting this via email, but as I am here in Artesia, I do not have access to letterhead and I did not want to delay in making this request. Please feel free to email me or call me if you have any questions regarding this matter