



Detail

Complaint Number: 395

Immigration Judge: Cassidy, William A.

Complaint Date: 10/19/10

Current ACIJ
Smith, Gary W.

Base City
ATL

Status
CLOSED

Final Action
Oral counseling

Final Action Date
10/20/10

| A-Number(s) | Complaint Nature(s) | Complaint Source(s) |
|-------------|----------------------|---------------------|
| (b) (6) | Out-of-court conduct | DHS (b) (6) |

Complaint Narrative: Ex parte conversation with Assistant Chief Counsel on pending case with pressure to agree to a grant of relief by stipulation.

| Complaint History | |
|-------------------|--|
| 10/20/10 | Forwarded email onto IJ and told him to return the case for reassignment |
| 10/20/10 | Oral counseling |
| 10/21/10 | Contacted CA to ensure case was reassigned |
| 10/21/10 | Database entry created |

EOIR FOIA Processing (EOIR)

From: Smith, Gary (EOIR)
Sent: Wednesday, October 20, 2010 8:40 AM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: FW: Judge Cassidy duty att'y request

MaryBeth: This message came in to me late yesterday. I checked the case in the database and familiarized myself with it. I sent a copy of the substance of (b) (6) note below to Judge Cassidy this morning, had him read it and asked him to call me back this morning. He called me back a few minutes later. He quickly denied discussing the merits of the case and instructing her to reach an agreement with the other attorney. I told him that this is a case which has not even yet been assigned to him (it is a Judge (b) (6) case set for individual hearing in December 2011), the government attorney perceived that he was pressuring her to agree to a grant, his discussion should have been with both parties (not one) and that it appeared he was prejudging the case. He again denied discussing the merits of the case, but simply scheduling, and changed the subject to other situations not related to this case. He said he had his robe on when discussing the case with (b) (6). I focused him again on this case (Matter of (b) (6) A(b) (6)). I told him that he should have either put the case on for a prehearing conference or a master calendar where both parties were present and that he had set himself up for just such criticism. He apologized for being defensive and said that he understood. I told him the best approach would be to give the case to another judge to hear and he said he would do that. I will follow up to see that that is done.

I can log this one as a complaint if you think it appropriate. With his history of ruminating on issues, I expect that he will come back with something else on this.

From: Smith, Gary (EOIR)
Sent: Tuesday, October 19, 2010 5:51 PM
To: (b) (6)
Subject: Re: Judge Cassidy duty att'y request

(b) (6) thanks for bringing it to my attention and I will look into it. By the way, (b) (6) and (b) (6) will probably start hearings on November 29, rather than December 1. Thanks again.

From: (b) (6)
To: Smith, Gary (EOIR)
Sent: Tue Oct 19 17:25:14 2010
Subject: FW: Judge Cassidy duty att'y request
Hi Judge Smith (Gary),

Please see the below email and tell me what you think. I think this inappropriate of the IJ. I am not trying to get anyone in trouble but I don't want complaints that the ACCs are being non-responsive.

Please feel free to call me. (b) (6)

Thanks,

(b) (6)

Chief Counsel

(b) (6)

Department of Homeland Security
Immigration and Customs Enforcement
Office of Principal Legal Advisor

(b) (6)

Confidentiality Notice and Warning.

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From: (b)(6) & (b)(7)(C)
Sent: Tuesday, October 19, 2010 3:45 PM
To: (b) (6)
Subject: Judge Cassidy duty att'y request

Hi (b)(6) and (b) (6)

I am sorry to bother you. I am duty att'y today. I went to the EOIR window to make a filing. Judge Cassidy saw me and asked who the duty attorney was. I told him that I was a duty att'y, and he asked me to come to his courtroom.

When I got there, he handed me the ROP and the Respondent's motion for an expedited hearing on her LPR COR application. Her mother is suffering from dementia in Germany, and she wants her case adjudicated as soon as possible.

I told him that I could not stipulate to anything at this time. I told him that we would not oppose an earlier hearing date, but that we would need an opportunity to get the file and prepare for the case.

He told me that he wanted me or someone in the office to contact the Respondent's attorney and have a pretrial discussion to see if we could agree on a grant. I asked him to set it for a hearing at a date convenient to the Court, but he would not do so, instead instructing me to reach an agreement with the attorney.

The A number is A (b) (6) I am not sure what I should do in this case. I think we should have an opportunity to cross examine the witness.

Thanks!

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

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

Assistant Chief Counsel
DHS/ICE/OPLA

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

EOIR FOIA Processing (EOIR)

From: Smith, Gary (EOIR)
Sent: Wednesday, October 20, 2010 5:03 PM
To: Cassidy, William A. (EOIR)
Subject: RE:

Thanks, Bill.

From: Cassidy, William A. (EOIR)
Sent: Wednesday, October 20, 2010 12:48 PM
To: Smith, Gary (EOIR)
Subject: RE:

Upon further review, I will treat all requests with WRITTEN responses to both sides so as to avoid any Misunderstandings or suggestions of impropriety.

It still remains a sad state of affairs that OPLA would not seek clarification first before going to you with this matter. Unfortunately, I must expect that this rush to judgment will continue and it appears indicative of the lack of respect accorded the IJ's by (b) (6) OPLA, and the common courtesy normally provided legal professionals.

Hope springs eternal in the human breast, and I personally hope this period of our discontent passes.

Bill

From: Smith, Gary (EOIR)
Sent: Wednesday, October 20, 2010 9:05 AM
To: Cassidy, William A. (EOIR)
Subject: RE:

Thanks, Bill.

From: (b) (6) (EOIR)
Sent: Wednesday, October 20, 2010 8:43 AM
To: Smith, Gary (EOIR)
Subject: RE:

Dear Gary:

I am troubled that a simple request to have a duty attorney to discuss a case to see if an agreement could be met would generate such a complaint. If any confusion did occur, a supervisor, (b) (6) could have called me to clear it up before proceeding further.

I am unaware of the merits of this case, I only shared the file and the letter that the court had received. My intention was to see, if after a proper review and discussion between both parties, it was agreed that it would be uncontested that I could somehow squeeze it on my already full docket. If it were to be contested, I would have given it to Judge (b) (6) I have no room to but on a contested hearing.

I have never demanded or required stipulations nor have I ever demand that DHS forgo questioning in a contested hearing. I have however encouraged cooperation

and the use of prosecutorial discretion where appropriate. An authority that they may chose to exercise but I have no authority to demand.

I question seriously why this matter was treated in this way. However, unfortunately, it is consistent with the antagonistic attitude I am seeing with the DHS attorneys

In (b) (6) Funny, I made an informal comment to (b) (6) about my concerns a day or two before this matter.

I have given the case to (b) (6) to be reassigned. I thank you for your wise advice and best practices suggestions.

I will put them into practice.

Bill

From: Smith, Gary (EOIR)
Sent: Wednesday, October 20, 2010 7:35 AM
To: Cassidy, William A. (EOIR)
Subject:

Bill: please review this:

I am duty att'y today. I went to the EOIR window to make a filing. Judge Cassidy saw me and asked who the duty attorney was. I told him that I was a duty att'y, and he asked me to come to his courtroom. When I got there, he handed me the ROP and the Respondent's motion for an expedited hearing on her LPR COR application. Her mother is suffering from dementia in Germany, and she wants her case adjudicated as soon as possible. I told him that I could not stipulate to anything at this time. I told him that we would not oppose an earlier hearing date, but that we would need an opportunity to get the file and prepare for the case. He told me that he wanted me or someone in the office to contact the Respondent's attorney and have a pretrial discussion to see if we could agree on a grant. I asked him to set it for a hearing at a date convenient to the Court, but he would not do so, instead instructing me to reach an agreement with the attorney. The A number is A(b) (6) I am not sure what I should do in this case. I think we should have an opportunity to cross examine the witness.