



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

April 19, 2019

SUBMITTED VIA REGULATIONS.GOV

Ms. Lauren Alder Reid
Assistant Director
Executive Office for Immigration Review
Office of Policy
5107 Leesburg Pike, Suite 2616
Falls Church, VA 22041

RE: EOIR Docket No. 18-0301: Professional Conduct for Practitioners, Scope of Representation and Appearances, 84 Fed. Reg. 11,446 (Mar. 27, 2019)

Dear Ms. Reid:

I offer the following comments in response to the above-named advance notice of proposed rulemaking (ANPRM) on behalf of the Office of the Chairman of the Administrative Conference of the United States (ACUS).

ACUS is an independent federal agency dedicated to improving the administrative process. ACUS conducts studies of administrative procedure, convenes experts from the public and private sectors, and makes recommendations promoting efficiency, participation, and fairness in the administration of federal programs to administrative agencies, the President, Congress, and the Judicial Conference of the United States. ACUS's recommendations can be found in the *Federal Register* and at www.acus.gov.

The Department of Justice (DOJ) is evaluating the possibility of revising the rules and procedures governing representation and appearance during proceedings before the immigration courts and Board of Immigration Appeals of the Executive Officer for Immigration Review (EOIR). Specifically, DOJ is considering whether to amend its rules to allow for, and identify the nature and scope of, authorized practitioners' limited representation of aliens before EOIR.

In June 2012, the ACUS Assembly adopted Recommendation 2012-3, *Immigration Removal Adjudication*.¹ This Recommendation is directed at reducing the caseload backlog, increasing and improving representation, and making the immigration removal adjudication procedures more modern, functional, effective, transparent, and fair. A pervading objective is to enhance the immigration courts' ability to dispose of cases fairly and efficiently.

¹ Admin. Conf. of the U.S., *Immigration Removal Adjudication*, 77 Fed. Reg. 47,800, 47,804 (Aug. 10, 2012).

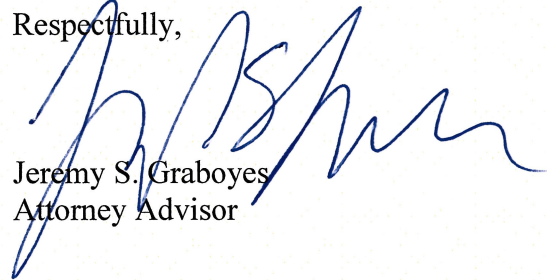
In relevant part, ACUS recommended that EOIR “study and develop the circumstances where the use of limited appearances . . . is appropriate” and consider taking appropriate action, such as modifying its regulations as necessary; issuing an Operating Policies and Procedure Memorandum (OPPM) to explain to immigration judges the circumstances in which they may wish to permit limited appearances and the necessary warnings and conditions they should establish; and amending the Office of the Chief Immigration Judge’s Practice Manual to reflect this modified policy.

In arriving at its recommendation, ACUS considered a report by consultants Lenni Benson, Professor of Law at New York Law School, and Russell Wheeler, formerly the Deputy Director of the Federal Judicial Center and now a Visiting Fellow at the Brookings Institute. Professors Benson and Wheeler suggested that EOIR “encourage a more flexible approach to limited appearances” to increase representation and reported that “[p]ro bono counsel and some judges to whom we spoke said that limited appearances within the representation-deprived removal adjudication system may be better than no representation, if the respondent understands the limits it entails.”²

For purposes of this ANPRM and other rulemakings, we encourage DOJ and EOIR to consult Recommendation 2012-3, the report of Professors Benson and Wheeler, and other ACUS materials as appropriate. Please note that while the report of Professors Benson and Wheeler was prepared for the ACUS’s consideration, the views it expresses are those of the authors and do not necessarily reflect those of the members of ACUS or its committees. ACUS’s views reside only in the formal recommendations adopted by its Assembly, including Recommendation 2012-3.

Thank you for providing the opportunity for the public to comment on this important subject. Please contact me at jgraboyes@acus.gov or (202) 480-2095 if you have any questions or would like further information.

Respectfully,



Jeremy S. Graboyes
Attorney Advisor

² Lenni B. Benson & Russell R. Wheeler, Enhancing Quality and Timeliness in Immigration Removal Adjudication 66 (June 7, 2012) (report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/immigration-removal-adjudication-report>.