

LOCAL OPERATING RULES
UNITED STATES IMMIGRATION COURT
ULSTER CORRECTIONAL FACILITY
NAPANOCH, NEW YORK

Rules of Procedure for Immigration Judge Proceedings are contained in 8 CFR, Part 3, Subsection C. The following Local Operating Rules are established as provided by these regulations. These Local Operating Rules apply to Immigration Judge Proceedings at the above referenced office, as well as to any other hearing locations assigned to this office by the Chief Immigration Judge. The Local Operating Rules apply in addition to all provisions of the Rules contained in 8 CFR, Part 3, Subsection C.

Rule 1: Pre-Hearing Motions Practice

All written pre-hearing motions shall be accompanied by a proposed order for signature by the Immigration Judge. Proposed orders must be in the format outlined in Appendix E. All written pre-hearing motions will be decided on the basis of the written record unless the Immigration Judge determines that oral argument is necessary.

Written motions must be responded to by the opposing party within ten (10) days of being served in person, or within thirteen (13) days if served by mail, by filing the response with the Immigration Court in Napanoch, New York. Upon order of the Court, for good cause shown, a different time may be set for responses to pre-hearing motions. All pre-hearing motions not responded to will be deemed unopposed pursuant to 8 CFR 3.23.

Rule 2: Hearings

a. All hearings shall proceed promptly on the date and time scheduled. Any delay caused by the respondent/applicant in appearing for such a hearing may result in the hearing being held in absentia. Any delay in the appearance of the attorney/representative of either party without satisfactory notification to the Immigration Court may, in the discretion of the Immigration Judge, result in the hearing being held in the absence of the attorney/representative. Attorney/representatives should be especially aware that public transportation to the Ulster Correctional Facility is sporadic and unreliable. Reliance by the attorney/representative on public transportation will not, in the absence of emergency situations, be a satisfactory excuse for nonappearance by the attorney/representative.

b. Telephonic Hearings are allowed at the master Calendar proceeding in the discretion of the Immigration Judge, and upon the request of the Respondent/Applicant's attorney. Telephonic hearings at the master Calendar are encouraged, and such requests will normally be granted in the absence of any contested matters to be resolved. Examples of contested matters with will not normally be litigated telephonically are denials of allegations or charges contained in the Order to Show Cause. Contested matters of this kind will best be handled by in-person appearances at the Immigration Court.

Rule 3: Motions

a. General: Except as otherwise directed by the Immigration Judge, or as specified herein in connection with the Motions for Continuance, Withdrawal or Substitution, motions shall be filed as soon as the reason for such request becomes known to the movant, but not less than thirty (30) days prior to the scheduled Individual Calendar hearing date, with certification of service upon the opposing party.

b. Change of Venue: A motion for a change of venue may contain the respondent/applicant's plea to the allegations and charge(s) contained in the charging document, and the relief(s) sought by the respondent/applicant. The Motion shall state the specific reasons for the request and include supporting documents, if any. The Motion shall state the location of the requested venue.

c. Opposition to motions other than motions for continuance: Except as ordered by the Immigration Judge, any party opposing a motion shall file a written response with the Immigration Court no later than ten (10) days after submission of such motion. It shall be presumed that the motion is unopposed if a timely response is not filed with the Immigration Court.

Rule 4: Continuances

Parties seeking a continuance of any scheduled hearing before the Immigration Court shall file a written motion for continuance no less than fifteen (15) calendar days prior to the scheduled hearing. The motion shall set forth the reason(s) that the continuance is requested. Unless notified by the Immigration Court that the motion for continuance has been granted, all parties must attend the hearing and be prepared to proceed. Motions for Continuance within the fifteen (15) day period prior to the hearing will be considered in cases of emergency or unusual circumstance, and then, only with the consent, and in the discretion of the Immigration Judge for good cause shown.

Rule 5: Filing Procedure

a. In addition to complying with 8 CFR 3.32, all documents and applications submitted for consideration by an Immigration Judge shall be two-hole punched at the top of the page with holes 2 3/4 inches apart. All exhibits and documents in support of a motion or claim shall be paginated and shall have as a first page, a table of contents with page number identification. The use of exhibit tabs with letter designations is recommended.

b. In addition to complying with 8 CFR 3.31 and 3.32, all proposed exhibits and briefs must be filed with the Immigration Court no later than ten (10) calendar days prior to the scheduled Individual Calendar hearing. Exceptions may be authorized by the Immigration Judge on a case-by-case basis.

c. Parties seeking to submit documents during a hearing shall appear at the hearing with sufficient copies of such documents for the Record of Proceeding, and for service upon the opposing party. Copies will not normally be provided by the Immigration Court.

d. Each party shall submit a list of proposed witnesses whom they intend to bring to court, and provide a brief offering as to each witnesses testimony. The name, age, and relationship to the respondent/applicant should be provided for each proposed witness. All proposed witness lists, along with the offer, must be filed with the Immigration Court no later than ten (10) days prior to the Individual Calendar hearing, unless otherwise modified by the Immigration Judge, or for good cause shown. Failure to submit the proposed witness list could result in denial of clearance for entry of the witnesses by the New York Department of Corrections officials at the Ulster Correctional facility.

e. Failure to comply with these rules, and those listed in 8 CFR sections 3.31 and 3.32, could result in the documents being returned to the party for noncompliance with the Court rules.

Rule 6: Notices of Appearance

Notices of Appearance shall be entered on Form EOIR-28. All information required on form EOIR-28 including the date, shall be typed or clearly printed. A fixed address where the alien may be reached must be provided. If the alien is detained, a fixed address where the alien may be reached if released from custody must be provided if known. Addresses must include ZIP Codes, and where applicable, apartment numbers. If the alien's address is "in care of" another person's residence, this must also be specified.

An individual attorney or accredited representative will be recognized as attorney or representative of record in his/her own capacity. Attorneys acting "of counsel" to a firm or organization, or accredited representatives of organizations, shall provide the name and address of the firm or organization at which all notices affecting that case will be received, and the name of the person to whom such notices shall be directed.

Rule 7: Withdrawal/Substitution of Representation

a. Withdrawal of representation shall be by written or in-court oral motion to withdraw. Written requests shall be addressed to the Immigration Judge to whom the matter is assigned, or his/her substitute, and shall be served on the respondent, and the Service, and shall set forth:

1. The reason(s) for the request to withdraw;
2. The current or last known address of the client, and efforts made to notify the client of the motion to withdraw; and
3. That the client was notified of the scheduled hearing before the Immigration Judge: of the necessity of appearing at such hearing; and the consequences of any failure to appear; or, the efforts made to notify the client of the scheduled hearing and the results thereof.

b. Substitution of representation shall be requested by written or oral motion, accompanied by a Form EOIR-28, Notice of Entry of Appearance, completed by the attorney or the representative to be substituted.

c. Withdrawal and Substitution of Representations are not final until acted upon by the Immigration Judge. Parties are considered to continue to represent the Respondent/Applicant until officially excused by the Immigration Judge.

Rule 8: Trial Preparation

a. At the Master Calendar hearing, the parties shall be prepared as follows:

1. Respondent/Applicant shall be prepared to respond to the allegations contained in the charging documents.
2. Respondent/Applicant shall be prepared to indicate all applications sought for relief from deportation.
3. Respondent/Applicant shall be prepared to state (in hours) the estimated time needed to present the case at the Individual Calendar hearing.
4. The Immigration and Naturalization Service (INS) shall be prepared to state its position on all issues and applications for relief from deportation.

b. In lieu of a personal appearance at the Master Calendar hearing, a written pleading by the Respondent/Applicant containing the information in a. 1-3 above, may be filed with the Immigration Court. The written pleading must be in compliance with the written pleading format in Appendix A of the Local Operating Rules. When such a pleading is filed sufficiently in advance to be acted upon by the Immigration Judge, it may be coupled with a motion to waive presence at the Master Calendar hearing, pursuant to 8 CFR 3.25. Such motion must be accompanied by a proposed order in compliance with the Order Format in Appendix C of the Local Operating Rules. Unless such order is signed by the Immigration Judge, the Respondent/Applicant's presence is required.

c. At the Individual Calendar hearing, both parties shall be prepared to present all remaining testimony and evidence on all the issues, including rebuttal.

Rule 9: Attendance at the Hearing

a. A photo-identification is required for entry into the Correctional Facility grounds. Attorney/Representatives are reminded that gate clearances must be obtained from the Facility officials before entry will be permitted. A request for a gate clearance for the attorney or representative may be included on the same document used to provide the list of proposed witnesses.

b. Due to the policy of the New York Department of Corrections denying children under the age of fourteen (14) access to the general prison population sections, children under the age of fourteen (14) will not be admitted to the Immigration Court at the Ulster Correctional Facility, Napanoch, New York.

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