



---

Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

---

## DOJ May Allow Attys To Help Pro Se Immigrants With Docs

By **Suzanne Monyak**

Law360 (September 29, 2020, 11:10 PM EDT) -- The U.S. Department of Justice may soon allow immigration attorneys to help people facing deportation fill out briefs and forms without representing the immigrants for the rest of the proceedings, a change that could increase access to counsel in immigration court.

In a Tuesday filing, the DOJ's Executive Office for Immigration Review, which oversees the U.S. immigration courts, proposed permitting attorneys to assist immigrants who are representing themselves in court with writing and filing certain briefs and applications for relief.

Under the proposal, those attorneys would be required to disclose their assistance to the court, but they could not be required to commit to representing the immigrant for the rest of the immigration court proceedings, which can last months or years.

The proposal comes as the immigration courts face a ballooning backlog, with more than 1.2 million immigration cases in the pipeline, according to a Syracuse University research center, and in-person hearings at some courts are put on pause during the coronavirus pandemic.

In response, the EOIR has worked to expand video teleconference technology for hearings — which has **raised due process concerns** — and to pressure immigration judges to **meet certain case quotas**.

The proposal also comes more than a year after the federal government agreed to change its policy on representation in immigration court as part of a **federal court settlement** with the Northwest Immigrant Rights Project, which had **sued the government** after it sent the nonprofit a cease-and-desist letter for helping pro se immigrants without filing a formal notice to appear in court.

In the settlement agreement, the nonprofit agreed to dismiss its lawsuit if the DOJ issues a rule that scraps penalties for lawyers who do not file a formal notice of appearance when their participation in immigration court is limited to helping prepare or file certain documents or pleadings.

As part of that litigation, the EOIR **also publicly disclosed** that it was considering expanding access to limited representation in immigration court last year, when it posted a notice requesting public feedback on questions on whether certain degrees of limited representation in immigration court should be permitted.

Representation rules in immigration court — where, unlike in criminal trials, immigrants are not guaranteed a lawyer at the government's expense — had already loosened slightly under the Obama administration, which issued a regulation in 2015 separating out custody and bond proceedings.

That allowed lawyers to represent foreign citizens in bond proceedings, helping immigrants avoid detention, without requiring those attorneys to stay involved for the rest of the case.

The EOIR's 2019 notice asked stakeholders if lawyers should be allowed to appear on behalf of immigrants in open court without formally agreeing to represent them for the whole case, and if people should be permitted to ghostwrite briefs for pro se immigrants without disclosing their involvement.

In comments filed since then, immigrant advocates generally supported expanding forms of limited representation, but stressed that people should not be allowed to ghostwrite briefs anonymously.

The American Immigration Lawyers Association, which represents 15,000 immigration lawyers and law professors, urged the EOIR to allow lawyers to help with filings and to represent immigrants for single hearings, stressing that immigration court proceedings can be lengthy, and many immigrants facing deportation can't afford the attorney fees.

"Many individuals in removal proceedings are of limited financial means," the association wrote in a public comment. "A large swath of respondents cannot afford to pay to retain a lawyer for years of potential representation, so they appear pro se, which slows down case processing in court."

The Florence Immigrant & Refugee Rights Project, which provides free legal services to foreign citizens detained in Arizona, also said that allowing lawyers to help with document preparation without formally appearing would allow similar nonprofits with limited resources to help immigrants fill out forms in English and meet required deadlines.

The nonprofit also pushed for attorneys to be permitted to make limited appearances in immigration court as well, citing examples of individuals attempting to make more technical legal arguments and immigrants who relocate after they are released from detention.

However, the National Association of Immigration Judges, the immigration judges' union, had submitted comments opposing allowing limited representation, warning that it could confuse clients, who misunderstand their lawyer's role, and make it harder for judges "to hold attorneys and representatives accountable."

"Less docket control by judges will become inevitable, and respondents' cases will be litigated in a piecemeal fashion as different attorneys can potentially become involved in the same case by permitting limited representation and appearances," wrote Ashley Tabaddor, president of the union.

Taking those concerns into account in Tuesday's proposal, the EOIR stopped short of allowing attorneys to make appearances in court without formally representing the immigrant, limiting the expanded representation to document preparation to avoid an "increased likelihood of fraud, abuse, and confusion."

"The inherently limited nature of written assistance and the greater transparency involved in preparing written documents lessen the above concerns sufficiently that the department feels limited written assistance, if properly disclosed as provided in the proposed rule, is appropriate in

immigration proceedings," the department wrote in the filing.

A spokesperson for the EOIR did not respond to a request for comment on the proposed change.

--Editing by Abbie Sarfo.

---

All Content © 2003-2020, Portfolio Media, Inc.