



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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April 23, 2008

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: David L. Neal 
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 08-03:
Application of the Immigration Court Practice Manual to Pending Cases

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I. Introduction

In August 2006, the Attorney General instructed the Executive Office for Immigration Review (EOIR) to publish a Practice Manual to provide guidance to the public on immigration court practice and to establish uniform procedures nationwide. On February 28, 2008, the Immigration Court Practice Manual was officially launched when it became publicly available on the EOIR internet homepage. The Practice Manual goes into effect on July 1, 2008.¹ The purpose of this

¹ The Immigration Court Practice Manual was initially set to go into effect on April 1, 2008. The effective date was reset to July 1, 2008, in order to afford the public additional time to become familiar with the Practice Manual.

Operating Policies and Procedures Memorandum (OPPM) is to address the application of the Practice Manual's filing deadlines to non-detained cases pending on July 1, 2008.²

II. General principles

Once the Practice Manual goes into effect, judges, court administrators, and court staff should be mindful of the following:

- The public will need time to become familiar with the Practice Manual. While the parties who appear before the courts are becoming familiar with the Practice Manual, judges should be flexible in applying the provisions of the manual and are encouraged to accommodate appropriate requests regarding scheduling and deadlines on a case-by-case basis.
- Filings are *not* to be rejected at the front desk on the grounds of untimeliness. Only the judge has the authority to make determinations regarding timeliness. *See* Chapters 3.1(d)(ii) (Untimely filings), 3.1(d)(iii) (Motions to accept untimely filings).
- The Practice Manual does not affect judges' authority to set and extend filing deadlines in any given case. *See* Chapters 3.1(b) (Timing of submissions), 3.1(c)(iv) (Motions for extensions of filing deadlines).
- Judges should be cognizant of the unique scheduling needs of law school clinics operating on an academic calendar and pro bono programs which require sufficient time to recruit and train representatives. Because clinics and pro bono entities often face special staffing and preparation constraints, judges should be flexible and are encouraged to accommodate appropriate requests regarding scheduling and deadlines.

III. Pending non-detained cases in which the judge *did* set a filing deadline

The Practice Manual does not supersede any filing deadlines specifically set by the judge in a particular case.

Example: At a non-detained Master Calendar hearing in January 2008, the judge set a filing deadline of August 20, 2008, for the submission of evidence. Is August 20, 2008, still the filing deadline or does the Practice Manual create a new deadline?

Answer: The filing due date remains August 20, 2008, because it was specifically set by the judge in that case.

² The Practice Manual's deadlines for filings submitted while proceedings are pending before the Immigration Court apply only to cases involving non-detained respondents. For cases involving detained respondents, "filing deadlines are as specified by the Immigration Court." Chapters 3.1(b)(i)(B), 3.1(b)(ii)(B).

IV. Pending non-detained cases in which the judge *did not* set a filing deadline

The Practice Manual does not create any deadlines that pre-date July 1, 2008. In other words, the 30-day Practice Manual filing deadline for Individual Calendar hearings applies only to cases where the Individual Calendar hearing is scheduled on or after July 31, 2008. Similarly, the 15-day Practice Manual filing deadline for Master Calendar hearings applies only to cases where the Master Calendar hearing is scheduled on or after July 16, 2008.

Examples:

1. A non-detained case is scheduled for an Individual Calendar hearing on July 11, 2008. The judge did not set a specific filing deadline. Under that court's local operating procedures (which include a 10-day filing deadline), filings would be due on July 1, 2008. Is July 1, 2008, still the filing deadline or does the Practice Manual create a new deadline?

Answer: The filing will still be due on July 1, 2008. The Practice Manual 30-day deadline *does not* apply.

2. A non-detained case is scheduled for an Individual Calendar hearing on July 24, 2008. The judge did not set a specific filing deadline. Under that court's local operating procedures (which include a 10-day filing deadline), filings would be due on July 14, 2008. Is July 14, 2008, still the filing deadline or does the Practice Manual create a new deadline?

Answer: The filing will still be due on July 14, 2008. The Practice Manual 30-day deadline *does not* apply.

3. A non-detained case is scheduled for an Individual Calendar hearing on July 31, 2008. The judge did not set a specific filing deadline. Under that court's local operating procedures (which include a 10-day filing deadline), filings would be due on July 21, 2008. Is July 21, 2008, still the filing deadline or does the Practice Manual create a new deadline?

Answer: Unless the judge grants a request for an extension, the filing will now be due on July 1, 2008. The Practice Manual 30-day filing deadline *does* apply.

4. A non-detained case is scheduled for an Individual Calendar hearing on August 22, 2008. The judge did not set a specific filing deadline. Under that court's local operating procedures (which include a 10-day filing deadline), filings would be due on August 12, 2008. Is August 12, 2008, still the filing deadline or does the Practice Manual create a new deadline?

Answer: Unless the judge grants a request for an extension, the filing will now be due on July 23, 2008. The Practice Manual 30-day filing deadline *does* apply.

V. Comments and questions

The Immigration Court Practice Manual is a “living document” and will be modified based on feedback and the comments we receive from EOIR judges and staff, as well as the parties that appear before the courts. Suggestions, comments, and concerns should be submitted to an Assistant Chief Immigration Judge, a court administrator, or to Scott Rosen, Chief Counsel, Office of the Chief Immigration Judge.