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EOIR Sets Out Rules To Streamline Changes Of Venue

By Kelly Knaub

Law360, New York (January 18, 2018, 4:25 PM EST) -- The Executive Office for Immigration Review has issued new guidelines to reduce challenges that arise when immigration judges grant motions to change venue in a proceeding, including an instruction that motions to change venue after a merits hearing is already underway are "strongly disfavored."

Tuesday's document states that other than clerical transfers in limited circumstances, immigration judges only have the power to grant a change of venue when a party has filed a motion for one and the other party has been notified and given a chance to respond to it, noting that more than two motions to change venue by the same party are also disfavored.

EOIR issued the guidelines with the aim of dealing with the "problems in caseload management and operational inefficiencies" that result when immigration cases change venue.

"This Operating Policies and Procedures Memorandum sets forth guidance to mitigate these challenges," the EOIR document states. "These policies and procedures, however, require that every immigration judge, in fairness to the receiving immigration court, ensures that 'good cause has been shown' before granting a motion for COV."

It also states that the receiving judge must "follow the law of the case doctrine," or in other words, cannot hear the case de novo or ignore any orders issued by the previous judge except in certain exceptional circumstances. This guideline does not appear to have changed from the previous guidelines the EOIR issued in 2001.

Both the 2001 and the current memorandum state that exceptional circumstances may include "a supervening rule of law; 2) compelling or unusual circumstances; 3) new evidence available to the second judge; and 4) such clear error in the previous decision that its result would be manifestly unjust."

In the absence of any of these circumstances, a receiving immigration judge does not have the power to return a case to the sending court on the basis that it was improper, both memoranda note.

Under the new guidelines, immigration judges must record any oral motions for change of venue on the court's digital audio recording system and issue a written order in response to it.

The new memorandum also states that the assigned immigration judge must do everything in his or her power to complete as much of the case as possible before granting a motion to change venue, such as obtaining pleadings, resolving the issue of deportability, removability or inadmissibility, determining what kind of relief will be sought and setting a due date for any relief application.

When an immigration judge has completed all of these actions but hasn't yet scheduled the case for an individual merits hearing, the judge must also decide whether the case should be scheduled for a master calendar hearing or an individual merits hearing at the new court.

No master calendar hearing should be scheduled at the new venue in non-detained cases in which an individual merits hearing is already scheduled and a change of venue is granted later, freeing up time in the receiving court, the guidelines say.

Immigration judges are also required to advise the respondent in the case to make arrangements to retain existing counsel or find new lawyers well before the hearing takes place in the new venue to make sure that it proceeds on schedule.

The new memorandum also states that in detained cases, the immigration court doesn't change venue automatically if the U.S. Department of Homeland Security relocates a detained individual to a location that falls outside of the administrative control of the court where the case is pending. Additionally, if the agency produces the individual at a different court without a valid order to change venue or new charges, the new court does not have venue and administrative control other than for bond determination requests.

Lastly, the guidelines tell judges to keep in mind that asylum cases that change venue may have "asylum-clock implications" and to be "mindful of the one-year asylum filing deadline."

--Editing by Marygrace Murphy.