

ADOPTED**AMERICAN BAR ASSOCIATION****COMMISSION ON IMMIGRATION****REPORT TO THE HOUSE OF DELEGATES****RECOMMENDATION**

1 RESOLVED, That the American Bar Association
2 supports the creation of an Article I court, with both trial
3 and appellate divisions, to adjudicate immigration cases,
4 which should have features substantially consistent with
5 the following guidelines:

6
7 1. Selection of Judges

- 8 (a) A Standing Referral Committee should be
9 created to screen and recommend candidates for
10 judicial appointments. The Committee should
11 include certain appellate judges and trial judges
12 from the Article I court. Other governmental and
13 non-governmental stakeholders would be
14 represented on the Committee or have an
15 opportunity to comment on candidates before they
16 are recommended for appointment.
- 17 (b) The Chief Trial Judge, Chief Appellate Judge,
18 and other appellate judges should be appointed by

19 the President and with the advice and consent of
20 the U.S. Senate.

21 (c) The trial judges should be appointed by the Chief
22 Trial Judge or by the Assistant Chief Trial Judges
23 with the approval of the Chief Trial Judge.

24 2. Tenure

25 (a) Appellate and trial judges should have fixed
26 terms, which should be relatively long as in other
27 Article I courts (e.g., 8 to 10 years for trial judges
28 and 12 to 15 years for appellate judges).

29 3. Removal

30 (a) Judges may be removed by the appointing
31 authority only for incompetency, misconduct,
32 neglect of duty, malfeasance, or disability.

33 4. Supervision and Evaluation

34 (a) Each trial immigration judge would be
35 supervised by the Assistant Chief Trial Judge
36 responsible for the local court on which the judge
37 serves. Each appellate judge would be under the
38 supervision of the Chief Appellate Judge.

39 (b) Performance would be reviewed based on a
40 system using the ABA's Guidelines for the
41 Evaluation of Judicial Performance and the model
42 for judicial performance evaluation proposed by
43 the Institute for Advancement of the American
44 Legal System.

45 5. Discipline

46 (a) Judges would be subject to a code of ethics and
47 conduct based on the ABA Model Code of Judicial
48 Conduct, tailored as necessary to take into account
49 any unique requirements for the immigration
50 judiciary.

51 (b) Complaints against immigration judges at the
52 trial or appellate level would be made directly to a
53 reviewing body established specifically for this
54 purpose. The final decision on disciplinary action
55 would rest with the Chief Appellate Judge as to
56 appellate judges and the Chief Trial Judge as to
57 trial judges. A trial judge would have the right to
58 appeal the adverse action to the court of appeals
59 for the circuit in which he presides, while an
60 appellate judge could appeal to the DC Circuit.

61 6. Transition

62 (a) Existing judges would serve out the remainder of
63 the new fixed terms, which are deemed to have
64 begun at the time of their prior appointment to
65 current positions, and are eligible for
66 reappointment thereafter.

67 (b) The Chair of the Board of Immigration Appeals
68 (“BIA” or “Board”) would serve as Chief
69 Appellate Judge of the Article I court until
70 replaced by Presidential appointment.

71 (c) The current members of the BIA would become
72 the appellate judges of the Article I court and
73 would serve out the recommended fixed terms,
74 which would be deemed to have begun at the time
75 of their prior appointment to the BIA. Thereafter,
76 these judges would be eligible for reappointment
77 by the President with the advice and consent of the
78 Senate.

79 (d) The Chief Immigration Judge in Executive
80 Office of Immigration Review (“EOIR”) would
81 serve as Chief Trial Judge of the new Article I
82 court until replaced by Presidential appointment.

83 (e) The current Assistant Chief Immigration Judges
84 would serve as Assistant Chief Trial Judges in the
85 Article I court until replaced by the new method of
86 appointment.

87
88 FURTHER RESOLVED, That as an alternative to an
89 Article I court, the American Bar Association supports the
90 creation of an independent agency for both trial and
91 appellate functions. Such an agency should include an
92 Office of Immigration Hearings (“OIH”) at the trial level
93 and a Board of Immigration Review for administrative
94 appeals, and should have features substantially consistent
95 with the following guidelines:

96
97 1. Selection of Judges

- 98 (a) A Standing Referral Committee should be
99 created to screen and recommend candidates for
100 judicial appointments. The Committee would
101 consist of certain members of the Board and
102 certain immigration judges. Other governmental
103 and non-governmental stakeholders would be
104 represented on the Committee or have an
105 opportunity to comment on candidates before they
106 are recommended for appointment.
- 107 (b) The Chair and members of the Board and the
108 Chief Immigration Judge should be appointed by
109 the President with the advice and consent of the
110 Senate.
- 111 (c) Trial judges should selected through a
112 competitive, merit-based appointment process,
113 similar to the one used for Administrative Law
114 Judges (“ALJs”) but administered through the
115 personnel office of the independent agency.

116

116 2. Tenure

- 117 (a) The Chair of the Board would be appointed for a
118 single, relatively short term (e.g., 5 to 7 years). At
119 the end of this term, the Chair would be eligible to
120 continue to serve the Board as one of its members
121 for a term of similar length.
- 122 (b) Other Board members would be appointed for
123 fixed, renewable terms (e.g., 5 to 7 years).
- 124 (c) The Chief Immigration Judge would be
125 appointed for a relatively short term (e.g. 5 to 7
126 years) and would be eligible to continue as an
127 immigration judge at the end of this term for a new
128 term of similar length.
- 129 (d) Other immigration judges would not be limited
130 to fixed terms

131 3. Removal

- 132 (a) Members of the Board and Chief Immigration
133 Judge would be subject to removal prior to the end
134 of their terms by the President for inefficiency,
135 neglect of duty or malfeasance in office.
- 136 (b) Other immigration judges would be subject to
137 removal only for good cause after an opportunity
138 for a hearing before the Merit Systems Protection
139 Board (“MSPB”) under the same procedures that
140 apply to removal of an ALJ. Any removal would
141 be subject to judicial review.

142 4. Supervision and Evaluation

143 (a) Immigration judges would be supervised by the
144 Assistant Chief Immigration Judge responsible for
145 the local court on which the judge served; each
146 appellate judge would be supervised by the Chair
147 of the Board.

148 (b) Immigration judges would be exempt from the
149 use of performance appraisals as a basis for
150 training, rewarding, reassigning, promoting,
151 reducing in grade, retaining or removing them.
152 Performance would be reviewed based on a system
153 using the ABA's Guidelines for the Evaluation of
154 Judicial Performance and the model for judicial
155 performance evaluation proposed by the Institute
156 for Advancement of the American Legal System.

157 5. Discipline

158 (a) The agency would have a separate office
159 responsible for receiving, reviewing and
160 investigating complaints filed against Board
161 members and immigration judges.

162 (b) The Chair of the Board and the Chief
163 Immigration Judge would have final authority to
164 act.

165 (c) Any discipline would be subject to review by the
166 MSPB and subsequent judicial review.