

## TIPS FOR A CIJS ON HANDLING SPEAKING REQUESTS FROM IJS

1. **Supervisory approval and ethics approval:** Remember that all Immigration Judges (IJ), as is true for all EOIR employees, need both ethics approval as well as supervisory approval for each and every speaking engagement. Ethics approval ensures that any potential ethics concerns are identified and resolved before they occur. It also provides the immigration judge with the opportunity to protect him or herself by seeking ethics advice prior to taking action.

2. **Order of requests:** First, Immigration Judges contact you and provide you with all relevant materials. You then evaluate the request from a supervisory perspective.

Then, if you approve of the Immigration Judge's attendance from a supervisory perspective, you forward to the Ethics Program the materials and your approval. As the attached outline describes, the vast majority of IJ speaking engagements will occur in the IJs' personal capacity, frequently with title and disclaimer if appropriate.

If there is some significant Department interest which would trigger official capacity, please let the Ethics Program know what that interest is so that we can evaluate the speaking capacity. Otherwise, we will approve nearly all requests in the PTD capacity.

3. **Necessary materials:** In addition to your approval, two other items are necessary.

First, a copy of the invitation.

Second, information from the *Participation in Speaking Engagements* form. The IJ has several options of how to provide the necessary information. What is important is that Ethics receive the information sought in all the questions, not necessarily that we have the original form in hand. Accordingly, the IJ can:

- complete the form itself and fax it to Ethics at (703) 305-0443, or
- provide all the information in an email, or
- save the form to their computer, complete the information on the computer, save, and send to Ethics as an attachment.

The *Participation in Speaking Engagements* form is available on the EOIR Ethics Program Intranet page under the link for "Forms."

4. **Timely requests:** Encourage your IJs to initiate approval for speaking requests as soon as possible. Timeliness is important for several reasons. Ethics concerns can take some time to resolve, depending on the complexity of the issue. In particular, events involving fund-raising, reimbursement of travel expenses, or prohibited sources can require a complicated ethics analysis. On occasion, IJs have not been permitted to speak at the event, or organizers of an event have had to make changes in their agenda. Moreover, whenever an IJ appears in personal capacity with title and disclaimer (PTD), any written materials must note they are appearing in their personal capacity. The IJ needs time to coordinate this requirement with the organization.

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**SPEAKING APPEARANCES:**  
**OFFICIAL CAPACITY VS. PERSONAL WITH TITLE & DISCLAIMER**

There are three capacities in which an IJ may speak: official, personal with title and disclaimer, and purely personal.

When an IJ is invited to speak at an event, the query is in what capacity *should* the individual speak, not whether or not the IJ *may* speak. Various consequences flow from that determination.

**ANALYSIS:** case by case, fact-specific determination by the supervisor that requires a balancing of the factors set out below and consultation with the ethics officer.

**A. Appropriate for official capacity?**

1. Is this an issue that the Department has an interest in? What is the benefit to the Department?

-For the person to attend in their official capacity, you must articulate some particular reason; the Dept must gain some benefit other than building basic community relationships or cultivating a more efficient court. Is this an event for which the government should incur the costs of the IJ's attendance?

2. If yes, consider the following: Who is speaking? Who is the audience? What is the setting? What is the topic of the speech?

-Analysis will be different for high-level officials or program heads than for line immigration judges. It will also differ depending on the setting of the event and the particular relationship of the proposed speaker to the event.

In other words, is this the right person and the right context for speaking on behalf of the Department? Is this person going because the Department wants him to be there to speak *on behalf of the Department*? Is he going as an emissary for the Department, a spokesperson for the Department?

If yes → official capacity

Bottom line: There are very few occasions where IJs will act in their official capacity. Component heads and ACIJs always speak in an official capacity regarding immigration.

If no → look to **B. personal capacity with use of title and disclaimer (PTD)**

1. Is this person being invited *because of* his position as an IJ?
2. Is this person speaking to a non-governmental organization?

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If yes → personal capacity with title and disclaimer (PTD)

3. If it's appropriate for PTD, consider whether it's a purely commercial setting vs. non-profit entity such as a university, state bar, or non-profit organization.

Examples of appropriate PTD events:

- a state bar organizes a brown bag lunch discussion on immigration
- a social services organization arranges for a moot court to train pro bono practitioners on asylum cases
- a law school journal holds a symposium on an immigration-related topic.

Small fees may be charged for attendance. A purely commercial CLE event would not be appropriate for PTD; that speaking event would need to be done in the IJ's purely personal capacity without use of their title.

The vast majority of immigration-related speaking events will be in the person's personal capacity, except for obvious high level officials such as the Director, Chief Immigration Judge, Chairman of the Board of Immigration Appeals, Chief Administrative Hearing Officer, and the General Counsel.

However, each situation is fact specific. One speaking event may be in an IJ's official capacity while another similar event could be in their personal capacity with title and disclaimer. Depends on the audience and purpose. Supervisor's call.

#### C. Lastly, purely personal capacity:

If an IJ appears in their purely personal capacity, use of their title is not appropriate. Their official position is irrelevant to the event.

1. Is this person invited because he is an attorney or other subject matter expert, as opposed to his position as an IJ?

Example: real estate law lecture.

2. Is the setting purely commercial?

3. Does the event have absolutely no connection to his position as an IJ?

Examples of purely personal events:

- boy scout troop leader
- committee member for health care organization
- volunteer work cleaning up a river
- school board

If yes → personal capacity only.

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**CONSEQUENCES**

	<b><u>OFFICIAL CAPACITY</u></b>	<b><u>PERSONAL W/ TITLE &amp; DISCLAIMER</u></b>
<b>TRAVEL</b>	<ul style="list-style-type: none"><li>-EOIR must pay</li><li>-option of 31 USC 1353 or 5 USC 4111 reimbursement</li></ul>	<ul style="list-style-type: none"><li>-individual must incur all expenses (mileage, etc.)</li><li>-reimbursement would be personal gift to individual; requires gift analysis &amp; could be prohibited if from prohibited source</li></ul>
<b>LEAVE</b>	<ul style="list-style-type: none"><li>-no leave is required to be taken</li><li>-can use govt time to prepare</li><li>-can use govt resources to prepare</li></ul>	<ul style="list-style-type: none"><li>-annual leave must be taken, or administrative leave/excused absence possible; managerial discretion</li><li>-no govt time to prepare</li><li>-de minimus use of govt resources</li></ul>
<b>MEALS/INCIDENTS OF ATTENDANCE</b>	<ul style="list-style-type: none"><li>-when furnished as part of event, permitted under 2635.807(a)(2)(iii)(B)</li></ul>	<ul style="list-style-type: none"><li>-permitted if within \$20 exception per event, \$50 annual cap per source under 2635.204(a)</li></ul>
<b>TITLE</b>	<ul style="list-style-type: none"><li>-is used</li></ul>	<ul style="list-style-type: none"><li>-must indicate "personal capacity"</li><li>-if in writing, use of title must be followed by "(personal capacity)"</li><li>-individual's responsibility to contact organization</li></ul>
<b>DISCLAIMER</b>	<ul style="list-style-type: none"><li>-only given if deviate from topic that was cleared by supervisor</li></ul>	<ul style="list-style-type: none"><li>-necessary at beginning of speaking event</li></ul>

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## OFFICIAL VS. PERSONAL WITH TITLE & DISCLAIMER (PTD): EXAMPLES

Note: every event is very fact-specific. These examples are general in nature.

- 1A. Speak at a CLE event on the immigration consequences of criminal convictions
  - PTD, or
  - option of official capacity in some limited situations
- 1B. Speak to group of AUSAs or other DOJ component on the immigration consequences of criminal convictions
  - official capacity
2. Speak at career day at daughter's elementary school
  - personal
  - exception: class is visiting the court - then PTD or official
3. Speak at a law school graduation ceremony
  - PTD or purely personal
4. Speak at pro bono training event sponsored by the state bar
  - PTD, or
  - option of official capacity in some limited situations
5. Ninth circuit brainstorming session
  - official – cultivating relationship between EOIR and the 9<sup>th</sup> Circuit
6. Former national AILA president attending annual AILA conference and participating in panel
  - PTD, or
  - official – cultivating relationship between EOIR and AILA; unique and significant past relationship to organization
7. Attend AILA monthly meeting - meet the judges night
  - PTD
  - never official b/c of appearance of endorsement of entity that appears before the immigration court
  - note: this is different than a stakeholder meeting, which would be official

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