ATTACHMENT 1

U.S. Department of Justice

Executive Office for Immigration Review

Office of the Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Director

September 1, 2017

MEMORANDUM TO: All of EOIR

FROM: James R. McHenry III
Acting Director

SUBJECT: Speaking Engagement Policy for EOIR Employees

Introduction

Interest in immigration law has grown exponentially over the past ten years. As a result, the public has become increasingly interested in hearing about, and understanding, what the agency does and specifically how Immigration Courts operate. Our Immigration Judges (IJs), along with senior EOIR officials and other staff, are frequently invited to speak on immigration law and policy at different events across the country. Depending on who is invited, who has issued the invitation, the forum and the topic of the discussion or presentation, a management determination must be made as to which capacity is most appropriate for the employee's participation on that specific occasion.

This Speaking Engagement Policy (Policy) and its attachment are intended to clarify the approval process an EOIR employee must follow to speak at an event, when a request or invitation for an appearance has been received by the employee or the Agency, including the proper determination of speaking engagement capacity. To that end, the following sets forth EOIR's policy on speaking engagements and the procedures employees must follow when requesting approval to speak at an event.

Approval Process

There are only two capacities in which an employee may participate in a speaking engagement: (1) official capacity; or (2) personal capacity. The agency will no longer use the status of "personal capacity with use of title and disclaimer," otherwise known as "PTD." An employee must first request and receive supervisory approval before participating in a speaking engagement. Supervisors will determine the capacity in which an employee is speaking.

After obtaining supervisory approval, all requests to speak in official capacity, and/or to speak about immigration-related topics must be reviewed by the Office of General Counsel (OGC) and the Office of Communications and Legislative Affairs (OCLA) via the headquarters speaking engagement team (SET). EOIR personnel should submit requests to the SET by completing the Speaking Engagement Form (see Appendix) and sending the completed form to EOIRspeakers@usdoj.gov. The form should be submitted no later than seven days before the scheduled event. For official capacity speaking engagements, submissions include presentation slides, hand out materials and talking points. This process not only ensures compliance with agency policies, but also allows OCLA to ensure that EOIR's messaging is consistent across official engagements.

I. Speaking in an Official Capacity

When an EOIR employee is assigned to participate as a speaker or panel participant or otherwise present information on behalf of the agency at a conference or other event, they are doing so in their official capacity. Any EOIR employee speaking at an event hosted by a Federal Department, Office, or Agency must speak in an official capacity. This includes speaking at naturalization ceremonies even when not administering the naturalization oath. Certain EOIR personnel may only speak in their official capacity. Those personnel include component heads and other senior EOIR officials, members of the Board of Immigration Appeals ("Board Members"), Deputy Chief Immigration Judges ("DCIJs") and Assistant Chief Immigration Judges ("ACIJs"). In contrast, some Immigration Judges may or may not be expected to speak in their official capacity, depending on the particulars of the speaking engagement. For IJs, they shall only engage in a speaking engagement in their official capacity if it involves a certain activity (See Attachment A) or if another Department of Justice or EOIR employee or official is appearing at the same event in an official capacity. Other employees may appear, and speak, at an event in their official capacity if it is part of their official duties or they have been assigned to do so by their supervisor.

If travel is required for an employee to speak in an official capacity, generally the employee may not accept reimbursement for travel and related expenses from any source other than the government. However, 41 C.F.R. Chapter 304 authorizes the Department (or the employee on the Department's behalf) to accept payment of travel expenses from a non-Federal source," but only "when specifically authorized to do so" and "only for official travel to a meeting."[1] Please note that EOIR has determined, as a matter of policy, that it will not accept any payment for the official travel of its employees by a non-Federal source that is considered a prohibited source for EOIR. A prohibited source is considered a person or entity who seeks official action from the agency, does business with the agency, appears before the agency, or is

[1] 41 C.F.R. § 304-5.3 further provides that reimbursement for travel from outside sources must not be authorized if the approving official determines that acceptance of the payment under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. An employee who accepts travel from a non-Federal source in violation of 41 C.F.R. § 304-1.2 may be required to repay the amount of payment accepted from the non-Federal source and could be subject to additional penalties.

an organization a majority of whose members are described in this section.[2] As an adjudicatory body, EOIR should expect to be under constant scrutiny. EOIR employees must avoid all improprieties and the appearance of impropriety to ensure complete public confidence in the integrity of our agency. The acceptance of travel reimbursement for official duties from prohibited sources could undermine the public's confidence in the impartiality of EOIR's adjudicators. Likewise, under no circumstances may an EOIR employee receive a supplementation of salary (i.e. honorarium) from a non-Federal source for a speaking activity that is done in their official capacity.[3]

II. Speaking in a Personal Capacity

When an EOIR employee participates in a speaking engagement in a personal capacity, they are not appearing at an event as part of their official duties or on behalf of the agency. Therefore, they may not imply that EOIR is endorsing or sanctioning the speaking engagement, as it is considered an outside speaking activity. An EOIR employee may not use or permit the use of their official title or position to identify themselves in connection with the speaking activity unless it is included as one of several biographical details when such information is given to identify the individual in connection with the activity, provided that their title or position is given no more prominence than other significant biographical details. When one's official title is used in this manner, as part of an overall biographical sketch, a disclaimer is not required. Alternatively, in limited circumstances where an introduction does not include an overall biographical sketch, an IJ may be introduced using their title so long as they use an appropriate disclaimer at the beginning of their remarks in order to avoid the perception that they are appearing on behalf of the agency. Additionally, they may not permit the sponsoring organization to use their official title in the promotion of the event in which they are invited to speak.

The Speaking Engagement Form is not required to be submitted for an EOIR employee who is invited to discuss, in their personal capacity, a topic that is unrelated to immigration law issues, their official EOIR duties or position, or any agency programs and policies. Additionally, the issuer of the invitation cannot be a prohibited source. The form is required, however, for an EOIR employee who has been invited to discuss immigration related issues. Additionally, the employee must obtain supervisory approval to engage in the outside speaking activity before the form is submitted. As a reminder, no EOIR employee may receive compensation for any outside speaking activity that relates to their official duties.

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[2] 5 C.F.R. § 2635.203(d).

[3] 18 U.S.C. § 209.

If an EOIR employee is traveling to speak at an event in a personal capacity, the employee is not entitled to travel reimbursement by the agency. However, when traveling in a personal capacity, an EOIR employee may accept reimbursements for travel expenses from the entity that is sponsoring the activity.[4] On the other hand, employees offered travel reimbursement for mere attendance (as opposed to speaking on a panel) at a conference in a personal capacity must contact the Office of the General Counsel for a determination as to whether accepting the reimbursement of travel expenses is appropriate. OGC will apply the gift rules in deciding whether such employee may accept payment of these expenses. Factors that must be taken into consideration when applying the gift rules include the source and value of the reimbursement.[5]

Conclusion

This policy does not necessarily address every situation that may arise related to speaking engagements. It is intended to create a standard by which events may be evaluated. If questions arise regarding the application of this policy or the proper determination of a speaking capacity, please contact the Ethics Office at EOIR.Ethics@usdoj.gov or (703) 305-0322.

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[4] *Sanjour v. Environmental Protection Agency*, 56 F.3d 85 (D.C. Cir. 1995); 5 C.F.R. § 2635.807(a)(2)(iii)(D).
[5] 5 C.F.R. § 2635.201-205.

Attachment A

The Speaking Engagement Policy identifies the two capacities in which an EOIR employee may speak, when they are invited to participate in an event that involves immigration issues, relates to their official duties, or invited because of their official position at the agency. Because PTD will no longer be used, only Official and Personal Capacity are provided below with examples of appropriate events found within each category. Note that this is not an exclusive list, as some events, activities and forums may not be listed below.

Official Capacity

1. All senior EOIR officials, BIA Board Members, DCIJs and ACIJs shall only participate in speaking engagements in their official capacity.
2. For any event where at least one DOJ or EOIR official is participating officially, all EOIR participants must speak in their official capacity.
3. For any event where an inviter is a Federal government agency and the employee is asked to speak or present at a government event, the EOIR employee must speak in their official capacity.
4. National Conferences (e.g. AILA, FBA, etc.).
5. Regional Conferences.
6. Naturalization Ceremony, as guest speaker or to administer the oath.
7. Court Visit – when an outside group visits the Immigration Court and an IJ/EOIR official meets with the group at the court.
8. Any event where the topic of the discussion is the subject of pending litigation.
9. Pro Bono training – in association with EOIR's Office of Legal Access Programs.
10. EOIR Mock Hearing Program.
11. Recruiting for EOIR internship program.

Personal Capacity

1. Moot Court judge – not immigration related.
2. Commencement Speaker.
3. Career Day/Alumni Career Panel – to discuss full career path and experience.
4. Pro-bono training – not associated with EOIR's Office of Legal Access Programs.
5. Meeting with boy scouts or girl scouts.
6. Interview based on book written in personal capacity.
7. Teach university or law school immigration classes.