Northwest IMMIGRANT RIGHTS Project

Limited Legal Assistance in Removal Proceedings: A Primer on EOIR Forms 60 & 61
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Pursuant to *NWIRP and Yuk Man Maggie Cheng v. Sessions, III, et al.*, 2:17-cv-00716-RAJ (W.D. Wash.), the Executive Office for Immigration Review (EOIR) published a rule that expressly allows immigration practitioners to provide limited legal services to unrepresented individuals in removal proceedings (respondents). The rules previously required practitioners to submit an E-27 or E-28, which in turn require the practitioner to represent the client for the duration of the proceedings, effectively precluding limited representation. Now, the new rule, which went into effect on November 14, 2022, explicitly permits the provision of limited legal services to pro se respondents. When those services involve *any* type of document assistance, practitioners need to file a Notice of Entry of Limited Appearance before either the immigration court (Form E-61) or the Board of Immigration Appeals (Form E-60). This advisory is for practitioners and explains the contours of the new rule.

For additional information, practitioners can review EOIR's FAQs on the topic.

Q: What types of legal assistance may practitioners provide without having to become the practitioner of record?

Practitioners may provide limited legal assistance to pro se respondents, including providing legal advice and assistance with filings for the court or the Board of Immigration Appeals (BIA). The practitioner must file an E-60 or E-61 for *any* document assistance. This rule does not allow a practitioner to appear in court in a limited capacity.

You are a "practitioner"[1] if you are:

(a) a (non-government) attorney[2] or

(2) a representative,[3] including fully accredited representatives and law students and law graduates working under the supervision of an attorney or accredited representative. If you are only *partially* accredited, you are not a practitioner.

"Document assistance" refers to drafting or helping to draft, complete, or fill in blank spaces on any motion, brief, form, application, or other document or set of documents that will be filed by the pro se respondent with EOIR.[4] You are required to file an E-60 or E-61 even if you do not exercise any type of legal judgment or provide any type of legal advice in connection with the document assistance.[5] Essentially, whenever a practitioner helps a pro se respondent complete *any* piece of paper that will be filed with EOIR—regardless of complexity, and even if the practitioner only completes part of it—the practitioner needs to submit an E-60 or E-61 to go

[1] 8 C.F.R. § 1001.1(ff)
[2] 8 C.F.R. § 1001.1(f)
[3] 8 C.F.R. § 1001.1(j)
[4] 8 C.F.R. §§ 1003.17(b) (before the immigration court), 1003.38(g)(2) (BIA)
[5] *See* 8 C.F.R. § 1001.1(k) ("The term *preparation* means the act or acts consisting solely of filling in blank spaces on printed forms with information provided by the applicant or petitioner…where such acts do not include the exercise of professional judgment to provide legal advice or legal services.")

along with the filing.[6] This includes change of address forms, motions to change venue, motions to reopen, asylum applications, etc.

Where you are providing another form of legal service but you are *not* helping someone complete a form or document that will be filed with EOIR, you do not need to file a notice of appearance, limited or otherwise. This includes conducting an intake with an unrepresented noncitizen to assess their eligibility for relief, advising them on how to apply for relief, or providing legal advice regarding an upcoming hearing. This also includes know-your-rights presentations or workshops where the practitioner is not helping to fill out forms. Notably, simply translating a form for a pro se respondent, or giving them a template you drafted but are not helping them fill out, does not require a practitioner to file an E-60 or E-61. But if the practitioner assists in filling out the form, they must submit an E-60 or E-61.[7]

In sum, the new rules clarify that a practitioner is free to engage in "practice" without entering a notice of appearance, so long as that practice does not involve document assistance. As soon as any form of document assistance is involved—even if it is simply reviewing a document a non-practitioner helped complete—a practitioner needs to submit an E-60 or E-61.[8]

Q: How do I submit an E-60 or E-61?

The forms are on the EOIR website and are quite short and straightforward. Only the practitioner needs to sign the form—not the pro se respondent—and the signature can be original or digital.[9] You may assist the respondent remotely, so long as you send them the signed E-60 or E-61 for them to submit to EOIR along with the prepared document.[10]

The limited appearance notice must be filed at the same time as the filing you helped complete,[11] and may be submitted either by you or the pro se respondent.[12] At this point, it may not be filed electronically.[13] It must be filed in person or by mail.

If the filing contains multiple documents you helped with, you need only submit one notice of appearance for the entire package, so long as you specify each document on the E-60 or E-61.[14]

Every time you provide an individual with document assistance, even if you've helped them in the past, you need to file a new notice.[15]

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[6] *See* EOIR, *Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances (RIN 1125-AA83), Frequently Asked Questions*, at 5, 8 (Nov. 2022), https://www.justice.gov/eoir/page/file/1551476/download (hereinafter, "EOIR FAQs")
[7] *See* EOIR FAQs at 9-10
[8] *See* EOIR FAQs at 5, 7
[9] *See* EOIR FAQs at 13
[10] *See* EOIR FAQs at 15
[11] 8 C.F.R. §§ 1003.17(b)(1), 1003.38(g)(2)(i)
[12] See EOIR FAQs at 13
[13] *See* EOIR FAQs at 12
[14] *See* EOIR FAQs at 15
[15] 8 C.F.R. §§ 1003.17(b)(1), 1003.38(g)(2)(i)

In addition to submitting an entry of limited appearance, you must continue to complete the "preparer" section of any application you are helping with.[16] You must also provide your name and signature on any motion or other document that you help prepare or complete.[17]

Q: What if I decide to fully represent someone for whom I submitted an E-60 or E-61 in the past?

If you choose to enter a full appearance to become the practitioner of record, you must file an E-27 or E-28.[18] Having previously filed an E-60 or E-61 is no impediment to subsequently becoming the practitioner of record for a given individual.[19] Similarly, if you've previously filed an E-27 or E-28 and are then granted leave to withdraw as the practitioner of record by the immigration judge or the BIA, you are permitted to provide document assistance and note your limited appearance via submission of a form E-60 or E-61.[20]

Q: Can I provide document assistance on any matter before EOIR?

Before the immigration court, you may provide document assistance on behalf of any unrepresented respondent.

Before the BIA, you may provide document assistance on behalf of any unrepresented respondent whose case originated with an immigration court. If, however, the pro se individual is filing a document pertaining to a decision by the Department of Homeland Security, you may not enter a limited appearance—a practitioner who provides document assistance in that context is required to become the practitioner of record by filing an E-27.[21]

Q: How does this rule affect non-practitioners?

The rule does not impose any additional or new obligations on non-practitioners. But it does clarify that non-practitioners may *only* provide document assistance to individuals in removal proceedings if that assistance does not involve providing legal advice or otherwise engaging in the practice of law.[22] That is, the assistance may only consist of filling in blank spaces on a printed form with information that is provided by the pro se respondent.[23]

The rule also sets out the expectation that non-practitioners only charge "nominal" fees for such preparation.[24]

Q: When do I need to file an E-27 or E-28? What conduct triggers my obligation to file it?

You are required to file an E-27 or E-28 when you *intend* to become the practitioner of record, with its attendant obligations and privileges.[25] Those obligations and responsibilities have not

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[16] 8 C.F.R. §§ 1003.17(c), 1003.38(g)(3)
[17] 8 C.F.R. §§ 1003.17(c), 1003.38(g)(3)
[18] 8 C.F.R. §§ 1003.17(a), 1003.38(g)(1)
[19] 8 C.F.R. §§ 1003.17(a)(1), 1003.38(g)(1)(i)
[20] *See* EOIR FAQs at 10-11
[21] *See* EOIR FAQs at 8
[22] *See* EOIR FAQs at 6
[23] 8 C.F.R. § 1001.1(k)
[24] *Id.*
[25] *See* 8 C.F.R. §§ 1003.17(a), 1003.38(g)(1)

changed. Only practitioners of record are allowed to access an individual's record of proceeding. Only practitioners of record can (and must) appear in court or before the BIA on behalf of a respondent. Only practitioners of record must file all documents on behalf of a respondent. Only practitioners of record can (and must) accept mail and service of process for all documents filed in proceedings with EOIR.[26]

Q: Can I file an E-61 to represent a respondent for *just* their hearing?

No. The new rule does not permit limited appearances at master or individual calendar hearings.[27] To represent someone at a hearing, you must file an E-28.

Q: What obligations does submitting an E-60 or E-61 impose on me?

None, beyond ensuring the quality of that specific filing. The rule makes clear EOIR will continue to treat the respondent as unrepresented. You will not receive mail or any response to the filing. You cannot attend court on behalf of the respondent. Filing the E-60 or E-61 simply means you are notifying EOIR you helped with the preparation of that document.[28]

You do, however, continue to have the same ethical obligations to provide competent representation as you did before, even when providing limited legal services. Practitioners continue being subject to EOIR's Rules of Professional Conduct,[29] which means facing sanctions for failing to file the proper appearance notice,[30] for drafting documents that are filed with EOIR "that reflect little or no attention to the specific factual or legal issues applicable to a client's case,"[31] and, now, for failing to sign any document you helped prepare, draft, or file with EOIR.[32] You also continue being subject to discipline for any "practice" you engage in, irrespective of your obligation to enter an appearance,[33] as well as being subject to oversight by your state bar or other local licensing authorities. (And non-practitioners continue being subject to investigation by EOIR's Fraud and Abuse Prevention Program as well as by state authorities for the unauthorized practice of law.)

Q: Do I need to be registered with EOIR to submit an E-60 or E-61?

This is unclear. The EOIR FAQs suggest such registration is not required,[34] but the regulations and forms state that by signing the form, you are representing that you are "authorized and qualified to appear as a practitioner in accordance with [8 CFR] § 1292.1."[35] That regulation requires that attorneys and accredited representatives register with EOIR.[36]

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[26] *See* 8 C.F.R. §§ 1003.17(a)(2), 1003.38(g)(1)(ii)
[27] *See* EOIR FAQs at 8-9
[28] 8 C.F.R. §§ 1003.17(b)(2), 1003.38(g)(2)(ii)
[29] 8 C.F.R. § 1003.101(b); *see also* EOIR FAQs at 3-4, 9-10
[30] 8 C.F.R. § 1003.102(t)
[31] 8 C.F.R. § 1003.102(u)
[32] 8 C.F.R. § 1003.102(w)
[33] *See* EOIR FAQs at 10
[34] *See* EOIR FAQs at 4 (responding "no" to the question whether a "practitioner, who is an attorney or fully-accredited representative…must … be registered with EOIR to enter a limited appearance").
[35] 8 C.F.R. § 1003.17(c); *see also* 8 C.F.R. § 1003.38(g)(3)
[36] 8 C.F.R. §§ 1292.1 (a) & (f)

Q: Does this rule apply to filings before USCIS?

No. This rule only affects assistance to individuals who are in removal proceedings before EOIR and are submitting documents to EOIR.

Q: Can I file an E-60 or E-61 to access the respondent's record of proceeding?

No, only a respondent or their practitioner of record may access a respondent's record of proceeding. You may help a pro se respondent request access to their ROP from EOIR or file a FOIA for their records, including by filing the E-59. But you may not file an E-60 or E-61 to access those directly yourself.[37]

Q: Do I need to file an E-61 to appear as Friend of the Court?

No, practitioners may continue appearing as Friends of the Court without filing an E-61 because they "appear as an aid to the court and not as a practitioner."[38]

Q: What was *NWIRP & Cheng v. Sessions III, et al.*, about?

NWIRP & Cheng v. Sessions III, et al., was a lawsuit concerning NWIRP's ability to provide legal assistance to local pro se respondents. NWIRP is a nonprofit organization that provides free immigration legal services to more than 10,000 immigrants each year in Washington State, including detained individuals. These services range from full representation to brief counseling on an individualized basis, in legal clinics, in group assistance events, and at community outreach functions.

For years NWIRP has provided limited assistance to pro se respondents without filing an E-27 or E-28. However, since EOIR issued new rules concerning the entry of those forms in 2008, NWIRP advocates identified themselves on any motions, pleadings, or applications they helped pro se respondents prepare or file, to ensure they remained accountable for their work. Initially, local EOIR officials indicated this would satisfy the rules. However, in 2017, EOIR changed its interpretation of the rules concerning when practitioners needed to file an E-27 or E-28 and sent NWIRP a cease-and-desist letter to stop providing pro se assistance. In response, NWIRP sued EOIR, alleging, among others, violations of our First Amendment rights to advocate for immigrant communities. We prevailed and obtained both a temporary restraining order and a preliminary injunction, which allowed not just NWIRP to continue providing these crucial services, but also other nonprofit organizations, along with affiliated private attorneys.

After completing discovery, the parties agreed to a settlement. *See generally* Notice of Settlement and Filing of Settlement Agreement, *NWIRP v. Barr,* No. 2:17-cv-00716, ECF No. 109 (W.D. Wash. Apr. 17, 2019). The settlement provided EOIR the opportunity to promulgate regulations that would ensure practitioners the right to provide pro se respondents limited legal services without requiring practitioners to enter an appearance as practitioner of record. If EOIR published such a rule, NWIRP would agree to dismiss the pending litigation.

On September 14, 2022, EOIR promulgated the final rule that is the subject of this advisory. After EOIR fulfilled the remaining terms of the settlement, the district court dismissed the case.

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[37] 8 C.F.R. §§ 1003.17(b)(2), 1003.38(g)(2)(ii)
[38] EOIR FAQs at 6