



Re: Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases before the Federal Court

March 7, 2014

1. Scope of Protocol

This protocol addresses the procedure to be followed in the Federal Court where an applicant alleges professional incompetence, negligence, or other conduct against his or her former legal counsel or other authorized representative, within the context of applications for leave and for judicial review made under the Federal Courts Immigration and Refugee Protection Rules, SOR/93-22, or applications filed as appeals under the Citizenship Act, R.S.C., 1985, c. C-29.

For the purposes of this protocol, authorized representative includes an immigration consultant.

The purpose of this protocol is solely to assist the Court in its adjudication of applications in which such allegations are made.

2. Requisite Steps Before Pleading Incompetence

i. Prior to pleading incompetence, negligence or other conduct by the former legal counsel or other authorized representative as a grounds for relief in an application for leave and for judicial review under the Immigration and Refugee Protection Act, S.C. 2001, c. 27, or in an application brought as an appeal under the Citizenship Act, current counsel must satisfy him/herself, by means of personal investigations or inquiries, that there is some factual foundation for this allegation. In addition, current counsel must notify the former counsel or authorized representative in writing with sufficient details of the allegations and advise that the matter will be pled in an application described above. The written notice must advise the former counsel or authorized representative that they have seven days from receipt of the notice to respond. Along with this notice, and in cases where privilege may be applicable, current counsel must provide the former counsel or authorized representative with a signed authorization from the applicant releasing any privilege attached to the former representation along with a copy of this Protocol.

ii. Current counsel should, unless there is urgency, wait for a written response from the former counsel or authorized representative before filing and serving the application record. If the former counsel or authorized representative intends to respond he or she must do so, in writing to current counsel, within seven days of receipt of the notice from current counsel.

iii. If after reviewing the response of the former counsel or authorized representative, current counsel believes that there may be merit to the allegations, current counsel may file the application or appeal record with the Court. Any perfected application which raises allegations against the former counsel or authorized representative must be served on the former counsel or authorized representative and proof of service be provided to the Court. The application will be served on the respondent in the normal course.

- iv. Where current counsel is investigating the allegations against the former counsel or authorized representative and it becomes apparent that his or her pursuit of this investigation may delay the perfection of the application record or appeal record beyond the timelines provided for by the Rules, current counsel may apply by motion for an extension of time to perfect the record.
- v. If the former counsel or authorized representative wishes to respond to the allegations made in the record, he or she may do so in writing by sending a written response to current counsel and to counsel for the Respondent within ten days of service of the application or appeal record or such further time as the Court may direct.
- vi. Current counsel who wishes to respond to the communication received from the former counsel or authorized representative must file a motion under Rule 369 for an extension of time and for leave to file further written submissions with respect to the new material received. Any relevant evidence shall be included in the motion record and filed by way of affidavit, including any response from the former counsel or authorized representative and documentation of a complaint made to the appropriate provincial or federal governing body.
- vii. If no response from the former counsel or authorized representative is received within ten days of service, and no extension of time has been granted, current counsel must advise the Court and the respondent that no further information from the former counsel or authorized representative is being submitted and the Court shall base its decision on the application for leave or the application, as the case may be, on the material filed by the applicant and respondent without any further notification to the former counsel or authorized representative.

3. Steps upon Leave Being Granted or an Appeal Proceeding to Hearing

If, upon reviewing the materials filed, the Court decides to grant leave, the following procedure will apply:

- i. Current counsel will provide a copy of the order granting leave or the order(s) setting the matter down for hearing to the former counsel or authorized representative forthwith.
- ii. If the former counsel or authorized representative deems his or her further participation in the proceedings necessary, he or she may make a motion pursuant to Rules 109 and 369 for leave to intervene. It is presumed that in most cases, if leave to intervene is granted to the former counsel or authorized representative, written submissions will be permitted.

« Paul Crampton »
Chief Justice