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5 Motions before the Immigration Court

5.1 Who May File

(a) Parties. — Only an alien who is in proceedings before the Immigration Court (or the alien’s representative), or the Department of Homeland Security may file a motion. A motion must identify all parties covered by the motion and state clearly their full names and alien registration numbers (“A numbers”), including all family members in proceedings. See Chapter 5.2(b) (Form), Appendix F (Sample Cover Page). The Immigration Judge will *not* assume that the motion includes all family members (or group members in consolidated proceedings). See Chapter 4.21 (Combining and Separating Cases).

(b) Representatives. — Whenever a party is represented, the party should submit all motions to the Court through the representative. See Chapter 2.1(d) (Who may file).

(i) Pre-decision motions. — If a representative has already filed a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28), and the Immigration Judge has not rendered a final order in the case, a motion need not be accompanied by a Form EOIR-28. However, if a representative is appearing for the first time, the representative must file a Form EOIR-28 along with the motion. See Chapter 2 (Appearances before the Immigration Court).

(ii) Post-decision motions. — All motions to reopen, motions to reconsider, and motions to reopen to rescind an in absentia order filed by a representative must be accompanied by a Form EOIR-28, even if the representative is already the representative of record. See Chapter 2 (Appearances before the Immigration Court).

(c) Persons not party to the proceedings. — Only a party to a proceeding, or a party’s representative, may file a motion pertaining to that proceeding. Family members, employers, and other third parties may not file a motion. If a third party seeks Immigration Court action in a particular case, the request should be made through a party to the proceeding.

5.2 Filing a Motion

(a) Where to file. — The Immigration Court may entertain motions only in those cases in which it has jurisdiction. See subsections (i), (ii), (iii), below, Appendix K (Where

to File). If the Immigration Court has jurisdiction, motions are filed with the Immigration Court having administrative control over the Record of Proceedings. See Chapter 3.1(a) (Filing).

(i) Cases not yet filed with the Immigration Court. — Except for requests for bond redetermination proceedings, the Immigration Court cannot entertain motions if a charging document (i.e., a Notice to Appear) has not been filed with the court. See Chapters 4.2 (Commencement of Removal Proceedings), 9.3(b) (Jurisdiction).

(ii) Cases pending before the Immigration Court. — If a charging document has been filed with the Immigration Court but the case has not yet been decided by the Immigration Judge, all motions must be filed with the court.

(iii) Cases already decided by the Immigration Court. —

(A) No appeal filed. — Where a case has been decided by the Immigration Judge, and no appeal has been filed with the Board of Immigration Appeals, motions to reopen and motions to reconsider are filed with the Immigration Court. Parties should be mindful of the strict time and number limits on motions to reopen and motions to reconsider. See Chapters 5.7 (Motions to Reopen), 5.8 (Motions to Reconsider), 5.9 (Motions to Reopen In Absentia Orders).

(B) Appeal filed. — Where a case has been decided by the Immigration Judge, and an appeal has been filed with the Board of Immigration Appeals, the parties should consult the Board Practice Manual for guidance on where to file motions. The Board Practice Manual is available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir/biainfo.htm. See also Appendix K (Where to File).

(b) Form. — There is no official form for filing a motion before the Immigration Court. Motions must be filed with a cover page and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). In addition, all motions must be accompanied by a proposed order for the Immigration Judge's signature. See Chapter 3.3(c)(i) (Order of documents), Appendix Q (Sample Proposed Order). Motions and supporting documents should be assembled in the order described in Chapter 3.3(c)(i) (Order of documents).

A motion's cover page must accurately describe the motion. See Chapter 3.3(c)(vi) (Cover page and caption). Parties should note that the Immigration Court construes motions according to content rather than title. Therefore, the court applies time and

number limits according to the nature of the motion rather than the motion's title. See Chapter 5.3 (Motion Limits).

Motions must state with particularity the grounds on which the motion is based. In addition, motions must identify the relief or remedy sought by the filing party.

(c) When to file. — Pre-decision motions must comply with the deadlines for filing discussed in Chapter 3.1(b) (Timing of submissions). Deadlines for filing motions to reopen, motions to reconsider, and motions to reopen in absentia orders are governed by statute or regulation. See Chapters 5.7 (Motions to Reopen), 5.8 (Motions to Reconsider), 5.9 (Motions to Reopen In Absentia Orders).

(d) Copy of underlying order. — Motions to reopen and motions to reconsider should be accompanied by a copy of the Immigration Judge's decision, where available.

(e) Evidence. — Statements made in a motion are *not* evidence. If a motion is based upon evidence that was not made part of the record by the Immigration Judge, that evidence should be submitted with the motion. Such evidence may include sworn affidavits, declarations under the penalties of perjury, and documentary evidence. The Immigration Court will not suspend or delay adjudication of a motion pending the receipt of supplemental evidence.

All evidence submitted with a motion must comply with the requirements of Chapter 3.3 (Documents).

(f) Filing fee. — Where the motion requires a filing fee, the motion must be accompanied by a fee receipt from the Department of Homeland Security (DHS) or a request that the Immigration Judge waive the fee. Filing fees are paid to DHS. See Chapter 3.4 (Filing Fees).

(g) Application for relief. — A motion based upon eligibility for relief must be accompanied by a copy of the application for that relief and all supporting documents, if an application is normally required. See 8 C.F.R. § 1003.23(b)(3). A grant of a motion based on eligibility for relief does not constitute a grant of the underlying application for relief.

The application for relief must be duly completed and executed, in accordance with the requirements for such relief. The original application for relief should be held by the filing party for submission to the Immigration Court, if appropriate, after the ruling on the motion. See Chapter 11.3 (Submitting Completed Forms). The copy that is submitted to the Immigration Court should be accompanied by a copy of the appropriate supporting documents.

If a certain form of relief requires an application, *prima facie eligibility for that relief cannot be shown without it*. For example, if a motion to reopen is based on adjustment of status, a copy of the completed Application to Adjust Status (Form I-485) should be filed *with* the motion, along with the necessary documents.

Application fees are *not* paid to the Immigration Court and should not accompany the motion. Fees for applications should be paid if and when the motion is granted in accordance with the filing procedures for that application. See Chapter 3.4(c) (Application fees).

(h) Visa petitions. — If a motion is based on an application for adjustment of status and there is an underlying visa petition that has been approved, a copy of the visa petition and the approval notice should accompany the motion. When a petition is subject to visa availability, evidence that a visa is immediately available should also accompany the motion (e.g., a copy of the State Department’s Visa Bulletin reflecting that the priority date is “current”).

If a motion is based on adjustment of status and the underlying visa petition has not yet been adjudicated, a copy of that visa petition, all supporting documents, and the filing receipt (Form I-797) should accompany the motion.

Parties should note that, in certain instances, an approved visa petition is required for motions based on adjustment of status. See, e.g., *Matter of H-A-*, 22 I&N Dec. 728 (BIA 1999), modified by *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002).

Filing fees for visa petitions are not paid to the Immigration Court and should not accompany the motion. The filing fee for a visa petition is submitted to DHS when the petition is filed with DHS.

(i) Opposing party’s position. — The party filing a motion should make a good faith effort to ascertain the opposing party’s position on the motion. The opposing party’s position should be stated in the motion. If the filing party was unable to ascertain the opposing party’s position, a description of the efforts made to contact the opposing party should be included.

(j) Oral argument. — The Immigration Court generally does not grant requests for oral argument on a motion. If the Immigration Judge determines that oral argument is necessary, the parties are notified of the hearing date.

5.3 Motion Limits

Certain motions are limited in time (when the motions must be filed) and number (how many motions may be filed). Pre-decision motions are limited in time. See Chapter 3.1(b) (Timing of submissions). Motions to reopen and motions to reconsider are limited in both time and number. See Chapters 5.7 (Motions to Reopen), 5.8 (Motions to Reconsider), 5.9 (Motions to Reopen In Absentia Orders). Time and number limits are strictly enforced.

5.4 Multiple Motions

When multiple motions are filed, the motions should be accompanied by a cover letter listing the separate motions. In addition, each motion must include a cover page and comply with the deadlines and requirements for filing. See Chapter 5.2(b) (Form), Appendix F (Sample Cover Page).

Parties are strongly discouraged from filing compound motions, which are motions that combine two separate requests. Parties should note that time and number limits apply to motions even when submitted as part of a compound motion. For example, if a motion seeks both reopening and reconsideration, and is filed more than 30 days after the Immigration Judge's decision (the deadline for reconsideration) but within 90 days of that decision (the deadline for reopening), the portion that seeks reconsideration is considered untimely.

5.5 Motion Briefs

A brief is not required in support of a motion. However, if a brief is filed, it should accompany the motion. See 8 C.F.R. § 1003.23(b)(1)(ii). In general, motion briefs should comply with the requirements of Chapters 3.3 (Documents) and 4.19 (Pre-Hearing Briefs).

A brief filed in opposition to a motion must comply with the filing deadlines for responses. See Chapter 3.1(b) (Timing of submissions).

5.6 Transcript Requests

The Immigration Court does not prepare a transcript of proceedings. See Chapter 4.10 (Record). Parties are reminded that recordings of proceedings are generally available for review by prior arrangement with the Immigration Court. See Chapter 1.6(c) (Records).

5.7 Motions to Reopen

(a) Purpose. — A motion to reopen asks the Immigration Court to reopen proceedings after the Immigration Judge has rendered a decision, so that the Immigration Judge can consider new facts or evidence in the case.

(b) Requirements. —

(i) Filing. — The motion should be filed with a cover page labeled “MOTION TO REOPEN” and comply with the deadlines and requirements for filing. See subsection (c), below, Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). If the alien is represented, the attorney must file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.1(b) (Entering an appearance). To ensure that the Immigration Court has the alien’s current address, an Alien’s Change of Address Form (EOIR-33/IC) should be filed with the motion. Depending on the nature of the motion, a filing fee or fee waiver request may be required. See Chapter 3.4 (Filing Fees). If the motion is based on eligibility for relief, the motion must be accompanied by a copy of the application for that relief and all supporting documents, if an application is normally required. See Chapter 5.2(g) (Application for relief).

(ii) Content. — A motion to reopen must state the new facts that will be proven at a reopened hearing if the motion is granted, and the motion must be supported by affidavits or other evidentiary material. 8 C.F.R. § 1003.23(b)(3).

A motion to reopen is not granted unless it appears to the Immigration Judge that the evidence offered is material and was not available and could not have been discovered or presented at an earlier stage in the proceedings. See 8 C.F.R. § 1003.23(b)(3).

A motion to reopen based on an application for relief will not be granted if it appears the alien’s right to apply for that relief was fully explained and the alien had an opportunity to apply for that relief at an earlier stage in the proceedings (unless the relief is sought on the basis of circumstances that have arisen subsequent to that stage of the proceedings). 8 C.F.R. § 1003.23(b)(3).

(c) Time limits. — As a general rule, a motion to reopen must be filed within 90 days of an Immigration Judge’s final order. 8 C.F.R. § 1003.23(b)(1). (For cases decided by the Immigration Judge before July 1, 1996, the motion to reopen was due on or before September 30, 1996. 8 C.F.R. § 1003.23(b)(1)). There are few exceptions. See subsection (e), below.

Responses to motions to reopen are due within fifteen (15) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

(d) Number limits. — A party is permitted only one motion to reopen. 8 C.F.R. § 1003.23(b)(1). There are few exceptions. See subsection (e), below.

(e) Exceptions to the limits on motions to reopen. — A motion to reopen may be filed outside the time and number limits only in specific circumstances. See 8 C.F.R. § 1003.23(b)(4).

(i) Changed circumstances. — When a motion to reopen is based on a request for asylum, withholding of removal (“restriction on removal”), or protection under the Convention Against Torture, and it is premised on new circumstances, the motion must contain a complete description of the new facts that comprise those circumstances and articulate how those circumstances affect the party’s eligibility for relief. See 8 C.F.R. § 1003.23(b)(4)(i). Motions based on changed circumstances must also be accompanied by evidence of the changed circumstances alleged. See 8 C.F.R. § 1003.23(b)(3).

(ii) In absentia proceedings. — There are special rules pertaining to motions to reopen following an alien’s failure to appear for a hearing. See Chapter 5.9 (Motions to Reopen In Absentia Orders).

(iii) Joint motions. — Motions to reopen that are agreed upon by all parties and are jointly filed are not limited in time or number. See 8 C.F.R. § 1003.23(b)(4)(iv).

(iv) DHS motions. — For cases in removal proceedings, the Department of Homeland Security (DHS) is not subject to time and number limits on motions to reopen. See 8 C.F.R. § 1003.23(b)(1). For cases brought in deportation or exclusion proceedings, DHS is subject to the time and number limits on motions to reopen, unless the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum. See 8 C.F.R. § 1003.23(b)(1).

(v) Pre-9/30/96 motions. — Motions filed before September 30, 1996 do not count toward the one-motion limit.

(vi) Battered spouses, children, and parents. — There are special rules for certain motions to reopen by battered spouses, children, and parents. INA § 240(c)(7)(C)(iv).

(vii) Other. — In addition to the regulatory exceptions for motions to reopen, exceptions may be created in accordance with special statutes, case law, directives, or other special legal circumstances. The Immigration Judge may also reopen proceedings at any time on his or her own motion. See 8 C. F. R. § 1003.23(b)(1).

(f) Evidence. — A motion to reopen must be supported by evidence. See Chapter 5.2(e) (Evidence).

(g) Motions filed prior to deadline for appeal. — A motion to reopen filed prior to the deadline for filing an appeal does not stay or extend the deadline for filing the appeal.

(h) Motions filed while an appeal is pending. — Once an appeal is filed with the Board of Immigration Appeals, the Immigration Judge no longer has jurisdiction over the case. See Chapter 5.2(a) (Where to file). Thus, motions to reopen should not be filed with the Immigration Court after an appeal is taken to the Board.

(i) Administratively closed cases. — When proceedings have been administratively closed, the proper motion is a motion to recalendar, *not* a motion to reopen. See Chapter 5.10(t) (Motion to recalendar).

(j) Automatic stays. — A motion to reopen that is filed with the Immigration Court does not automatically stay an order of removal or deportation. See Chapter 8 (Stays). For automatic stay provisions for motions to reopen to rescind in absentia orders, see Chapter 5.9(d)(iv) (Automatic stay).

(k) Criminal convictions. — A motion claiming that a criminal conviction has been overturned, vacated, modified, or disturbed in some way must be accompanied by clear evidence that the conviction has actually been disturbed. Thus, neither an intention to seek post-conviction relief nor the mere eligibility for post-conviction relief, by itself, is sufficient to reopen proceedings.

5.8 Motions to Reconsider

(a) Purpose. — A motion to reconsider either identifies an error in law or fact in the Immigration Judge's prior decision or identifies a change in law that affects an Immigration Judge's prior decision and asks the Immigration Judge to reexamine his or her ruling. A motion to reconsider is based on the existing record and does not seek to introduce new facts or evidence.

(b) Requirements. — The motion should be filed with a cover page labeled "MOTION TO RECONSIDER" and comply with the deadlines and requirements for filing. See subsection

(c), below, Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). If the alien is represented, the attorney must file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.1(b) (Entering an appearance). To ensure that the Immigration Court has the alien's current address, an Alien's Change of Address Form (EOIR-33/IC) should be filed with the motion. A filing fee or a fee waiver request may be required. See Chapter 3.4 (Filing Fees).

(c) Time limits. — A motion to reconsider must be filed within 30 days of the Immigration Judge's final administrative order. 8 C.F.R. § 1003.23(b)(1). (For cases decided by the Immigration Court before July 1, 1996, the motion to reconsider was due on or before July 31, 1996. 8 C.F.R. § 1003.23(b)(1)).

Responses to motions to reconsider are due within fifteen (15) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

(d) Number limits. — As a general rule, a party may file only one motion to reconsider. See 8 C.F.R. § 1003.23(b)(1). Motions filed prior to July 31, 1996, do not count toward the one-motion limit. Although a party may file a motion to reconsider the denial of a motion to reopen, a party may not file a motion to reconsider the denial of a motion to reconsider. 8 C.F.R. § 1003.23(b)(1).

(e) Exceptions to the limits on motions to reconsider. —

(i) Alien motions. — There are no exceptions to the time and number limitations on motions to reconsider when filed by an alien.

(ii) DHS motions. — For cases in removal proceedings, the Department of Homeland Security (DHS) is not subject to time and number limits on motions to reconsider. See 8 C.F.R. § 1003.23(b)(1). For cases brought in deportation or exclusion proceedings, DHS is subject to the time and number limits on motions to reconsider, unless the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum. See 8 C.F.R. § 1003.23(b)(1).

(iii) Other. — In addition to the regulatory exceptions for motions to reconsider, exceptions may be created in accordance with special statutes, case law, directives, or other special legal circumstances. The Immigration Judge may also reconsider proceedings at any time on its own motion. 8 C.F.R. § 1003.23(b)(1).

(f) Identification of error. — A motion to reconsider must state with particularity the errors of fact or law in the Immigration Judge’s prior decision, with appropriate citation to authority and the record. If a motion to reconsider is premised upon changes in the law, the motion should identify the changes and, where appropriate, provide copies of that law. For citation guidelines, see Chapter 4.19(f) (Citation), Appendix J (Citation Guidelines).

(g) Motions filed prior to deadline for appeal. — A motion to reconsider filed prior to the deadline for filing an appeal does not stay or extend the deadline for filing the appeal.

(h) Motions filed while an appeal is pending. — Once an appeal is filed with the Board of Immigration Appeals, the Immigration Judge no longer has jurisdiction over the case. See Chapter 5.2(a) (Where to file). Thus, motions to reconsider should not be filed with an Immigration Judge after an appeal is taken to the Board.

(i) Automatic stays. — A motion to reconsider does not automatically stay an order of removal or deportation. See Chapter 8 (Stays).

(j) Criminal convictions. — When a criminal conviction has been overturned, vacated, modified, or disturbed in some way, the proper motion is a motion to reopen, not a motion to reconsider. See Chapter 5.7(k) (Criminal convictions).

5.9 Motions to Reopen In Absentia Orders

(a) In general. — A motion to reopen requesting that an in absentia order be rescinded asks the Immigration Judge to consider the reasons why the alien did not appear at the alien’s scheduled hearing. See Chapter 4.17 (In Absentia Hearing).

(b) Filing. — The motion should be filed with a cover page labeled “MOTION TO REOPEN AN IN ABSENTIA ORDER” and comply with the deadlines and requirements for filing. See subsection (d), below, Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). If the alien is represented, the attorney must file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28). See Chapter 2.1(b) (Entering an appearance). To ensure that the Immigration Court has the alien’s current address, an Alien’s Change of Address Form (EOIR-33/IC) should be filed with the motion. A filing fee or fee waiver request may be required, depending on the nature of the motion. See 8 C.F.R. § 1003.24(b)(2).

(c) Deportation and exclusion proceedings. — The standards for motions to reopen to rescind in absentia orders in deportation and exclusion proceedings differ from the standards in removal proceedings. See Chapter 7 (Other Proceedings before

Immigration Judges). The provisions in subsection (d), below, apply to removal proceedings only. Parties in deportation or exclusion proceedings should carefully review the controlling law and regulations. See 8 C.F.R. § 1003.23(b)(4)(iii).

(d) Removal proceedings. — The following provisions apply to motions to reopen to rescind in absentia orders in removal proceedings only. Parties should note that, in removal proceedings, an in absentia order may be rescinded *only* upon the granting of a motion to reopen. The Board of Immigration Appeals does not have jurisdiction to consider direct appeals of in absentia orders in removal proceedings.

(i) Content. — A motion to reopen to rescind an in absentia order must demonstrate that:

- the failure to appear was because of exceptional circumstances;
- the failure to appear was because the alien did not receive proper notice; or
- the failure to appear was because the alien was in federal or state custody and the failure to appear was through no fault of the alien

INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii). The term “exceptional circumstances” refers to exceptional circumstances beyond the control of the alien (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances). INA § 240(e)(1).

(ii) Time limits. —

(A) Within 180 days. — If the motion to reopen to rescind an in absentia order is based on an allegation that the failure to appear was because of exceptional circumstances, the motion must be filed within 180 days after the in absentia order. See INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii).

(B) At any time. — If the motion to reopen to rescind an in absentia order is based on an allegation that the alien did not receive proper notice of the hearing, or that the alien was in federal or state custody and the failure

to appear was through no fault of the alien, the motion may be filed at any time. See INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii).

(C) Responses. — Responses to motions to reopen to rescind in absentia orders are due within fifteen (15) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

(iii) Number limits. — The alien is permitted to file only one motion to reopen to rescind an in absentia order. 8 C.F.R. § 1003.23(b)(4)(ii).

(iv) Automatic stay. — The removal of the alien is automatically stayed pending disposition by the Immigration Judge of the motion to reopen to rescind an in absentia order in removal proceedings. See INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii).

5.10 Other motions

(a) Motion to continue. — A request for a continuance of any hearing should be made by written motion. Oral motions to continue are discouraged. The motion should set forth in detail the reasons for the request and, if appropriate, be supported by evidence. See Chapter 5.2(e) (Evidence). It should also include the date and time of the hearing, as well as preferred dates that the party is available to re-schedule the hearing. However, parties should be mindful that the Immigration Court retains discretion to schedule continued cases on dates that the court deems appropriate.

The motion should be filed with a cover page labeled “MOTION TO CONTINUE” and comply with the deadlines and requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

The filing of a motion to continue does not excuse the appearance of an alien or representative at any scheduled hearing. Therefore, until the motion is granted, parties must appear at all hearings as originally scheduled.

(b) Motion to advance. — A request to advance a hearing date (move the hearing to an earlier date) should be made by written motion. Motions to advance are disfavored. Examples of circumstances under which a hearing date might be advanced include:

- imminent ineligibility for relief, such as a minor alien “aging out” of derivative status

- a health crisis necessitating immediate action by the Immigration Judge

A motion to advance should completely articulate the reasons for the request and the adverse consequences if the hearing date is not advanced. The motion should be filed with a cover page labeled “MOTION TO ADVANCE” and comply with the deadlines and requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

(c) Motion to change venue. — A request to change venue should be made by written motion. The motion should be supported by documentary evidence. See Chapter 5.2(e) (Evidence). The motion should contain the following information:

- the date and time of the next scheduled hearing
- an admission or denial of the factual allegations and charge(s) in the Notice to Appear (Form I-862)
- a designation or refusal to designate a country of removal
- if the alien will be requesting relief from removal, a description of the basis for eligibility
- the address and telephone number of the location at which respondent will be residing if the motion is granted
- if the address at which the alien is receiving mail has changed, a properly completed Alien’s Change of Address Form (Form EOIR-33/IC)
- a detailed explanation of the reasons for the request

See generally *Matter of Rahman*, 20 I&N Dec. 480 (BIA 1992), 8 C.F.R. § 1003.20.

The motion should be filed with a cover page labeled “MOTION TO CHANGE VENUE” and comply with the deadlines and requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

The filing of a motion to change venue does not excuse the appearance of an alien or representative at any scheduled hearing. Therefore, until the motion is granted, parties must appear at all hearings as originally scheduled.

(d) Motion for substitution of counsel. — See Chapter 2.3(i)(Change in representation).

(e) Motion to withdraw as counsel. — See Chapter 2.3(i) (Change in representation).

(f) Motion for extension. — See Chapter 3.1(c)(iv) (Motions for extensions of filing deadlines).

(g) Motion to accept an untimely filing. — See Chapter 3.1(d)(ii) (Untimely filings).

(h) Motion for closed hearing. — See Chapter 4.9 (Public Access).

(i) Motion to waive representative's appearance. — See Chapter 4.15 (Master Calendar Hearing).

(j) Motion to waive respondent's appearance. — See Chapter 4.15 (Master Calendar Hearing).

(k) Motion to permit telephonic appearance. — See Chapter 4.15 (Master Calendar Hearing).

(l) Motion to request an interpreter. — See Chapter 4.15 (Master Calendar Hearing).

(m) Motion for video testimony. — See Chapter 4.15 (Master Calendar Hearing).

(n) Motion to present telephonic testimony. — See Chapter 4.15 (Master Calendar Hearing).

(o) Motion for subpoena. — See Chapter 4.20 (Subpoenas).

(p) Motion for consolidation. — See Chapter 4.21 (Combining and Separating Cases).

(q) Motion for severance. — See Chapter 4.21 (Combining and Separating Cases).

(r) Motion to stay removal or deportation. — See Chapter 8 (Stays).

(s) *Motions in disciplinary proceedings.* — Motions in proceedings involving the discipline of an attorney or representative are discussed in Chapter 10 (Discipline of Practitioners).

(t) *Motion to recalendar.* — When proceedings have been administratively closed and a party wishes to reopen the proceedings, the proper motion is a motion to recalendar, not a motion to reopen. A motion to recalendar should provide the date and the reason the case was closed. If available, a copy of the closure order should be attached to the motion. The motion should be filed with a cover page labeled “MOTION TO RECALENDAR” and comply with the requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page). To ensure that the Immigration Court has the alien’s current address, an Alien’s Change of Address Form (EOIR-33/IC) should be filed with the motion. Motions to recalendar are not subject to time and number restrictions.

(u) *Motion to amend.* — The Immigration Judge entertains motions to amend previous filings in limited situations (e.g., to correct a clerical error in a filing). The motion should clearly articulate what needs to be corrected in the previous filing. The filing of a motion to amend does not affect any existing motion deadlines.

The motion should be filed with a cover page labeled “MOTION TO AMEND” and comply with the requirements for filing. See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

(v) *Other types of motions.* — The Immigration Court entertains other types of motions as appropriate to the facts and law of each particular case, provided that the motion is timely, is properly filed, is clearly captioned, and complies with the general motion requirements. See Chapters 5.2 (Filing a Motion), Appendix F (Sample Cover Page).

5.11 Decisions

Immigration Judges decide motions either orally at a hearing or in writing. If the decision is in writing, it is generally served on the parties by regular mail.

5.12 Effect of Departure

An alien’s departure, deportation, or removal from the United States while a motion to reopen or a motion to reconsider is pending constitutes withdrawal of the motion. 8 C.F.R. § 1003.23(b)(1).

5.13 Response to Motion

Responses to motions must comply with the deadlines and requirements for filing. See 8 C.F.R. § 1003.23(a), Chapter 3 (Filing with the Immigration Court). A motion is deemed unopposed unless timely response is made. Parties should note that unopposed motions are not necessarily granted.