

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

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| _____ |) | |
| RENEE M. RICE, |) | |
| Complainant, |) | 8 U.S.C. § 1324b Proceeding |
| |) | |
| v. |) | OCAHO Case No. 97B00151 |
| |) | |
| NEXUS INCORPORATED, |) | Judge Robert L. Barton, Jr. |
| Respondent. |) | |
| _____ |) | |

ORDER DISMISSING PROCEEDING WITHOUT PREJUDICE
(August 27, 1997)

The Complaint in this case, which is dated July 18, 1997, was filed with the Office of the Chief Administrative Hearing Officer (OCAHO) on August 20, 1997, and assigned to this Judge on August 27, 1997. The complaint is signed only by John B. Kotmair, Jr., who is neither the complainant nor an attorney.

In prior cases I have excluded Mr. Kotmair from appearing in OCAHO proceedings because he is not an attorney licensed to practice before any federal or state court and was not qualified to act as a lay representative due to his criminal record and his failure to show that he possesses the requisite honesty and moral character to practice before OCAHO. See John Davis v. GTE Florida Inc., OCAHO Case No. 97B00087 (August 14, 1997); Gayle Davis v. GTE Florida Inc., OCAHO Case No. 97B00088 (August 14, 1997); and Hendickson v. GTE Communications Systems Corp., OCAHO Case No. 97B00089 (August 14, 1997). While the OCAHO Rules of Practice and Procedure (OCAHO Rules) specifically authorize a party to be represented by an attorney at law who is admitted to practice before a federal or state court, 28 C.F.R. § 68.33(B)(4), they do not specifically authorize lay representation. Thus, as articulated in several prior decisions, a lay representative does not have an unqualified right to appear in OCAHO proceedings. See, e.g. Lee v. AT&T, 7 OCAHO 924, at 5 (1997); Costigan v. NYNEX, 6 OCAHO 918, at 11-12 (1997). Mr. Kotmair has been given several opportunities in prior cases to show that he possesses

the requisite competence and moral character to act as a lay representative and has failed to do so. I conclude that he is not qualified to represent parties before OCAHO.¹

The OCAHO Rules provide that in an unfair immigration related employment practice case brought pursuant to 8 U.S.C. § 1324b, the charging party may file a complaint directly with OCAHO. 28 C.F.R. § 68.4(c). The complaint must be signed either by the charging party or a person qualified to represent the party. Here the complaint is not signed by Complainant Rice and I have determined that Kotmair is not an authorized representative. Consequently, I am dismissing the complaint sua sponte, without prejudice. Complainant may refile the complaint signed either by herself or by a qualified representative.

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

¹ Although Kotmair has appeared as a lay representative in cases before other Administrative Law Judges, all of those cases have been dismissed for failure to state a claim or for lack of jurisdiction. See, e.g., Hutchinson v. GTE Data Serv., Inc., 7 OCAHO 954 (1997) (Morse); Horst v. Juneau School District, 7 OCAHO 957 (1997) (Thomas); and Jarvis v. AK Steel, 7 OCAHO 930 (1997) (McGuire). However, these decisions have not addressed the issue of lay representation in general or whether, in light of his criminal record, Kotmair was eligible to practice before OCAHO. Moreover, even if they had, I am not bound by decisions of other Administrative Law Judges.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August, 1997, I have served the foregoing Order Dismissing Proceeding Without Prejudice on the following persons at the addresses shown by first class mail, unless otherwise noted:

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(Complainant)

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(Complainant's Representative)

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(Respondent)

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