

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

ELIZABETH KLIMAS,)	
Complainant,)	
)	
v.)	8 U.S.C. §1324b Proceeding
)	CASE NO. 91200146
DEPARTMENT OF TREASURY)	
Respondent.)	
_____)	

ORDER

On November 15, 1991, Andrew Schwartz, Esquire filed a Notice of Appearance in this case. A review of the file, and contact with Mr. Schwartz, has established that Mr. Schwartz is still attorney of record for Ms. Elizabeth Klimas.

On February 10, 1992, Ms. Klimas, the Complainant, filed an Affidavit For Issuance of Subpoena Duces Tecum and Extension of Time apparently without benefit of counsel. Ms. Klimas' Affidavit appears to be a request for a subpoena to be used in obtaining an audio tape recording of an alleged conversation between herself and an employee of the Respondent's regarding her employment termination, as well as a request for an extension of time. Ms. Klimas alleged at a pre-hearing conference on January 24, 1992, that this taped conversation contained support for her citizenship status discrimination claim.

The filing of Ms. Klimas' Affidavit has raised several issues. How-ever, in an effort to proceed with this case in a manner both judicial and efficient, I will only address the most immediate ones.

At this time, I will not be acting on either of Ms. Klimas' requests since neither comply with our Rules of Practice and Procedure. See 28

C.F.R. 68.1-54*. Requests for both subpoenas and extensions of time are required to be in proper motion format; however, neither of Ms. Klimas' requests are. See 28 C.F.R. 68.11.

As to Complainant's request for an extension of time, I could not act on this request even if it were in proper motion format, as Ms. Klimas has given no indication what time frame she wants extended. See 28 C.F.R. 68.11. I do not find that, in this case, it would be proper for me to guess or to infer what Respondent is actually requesting. Any such future proper motion for extension of time must correct this deficiency.

A further error in Ms. Klimas' filed documents concerns, what I assume is, a copy of a typewritten transcript of a taped conversation between Complainant and an employee of the Respondent's. At the same pre-hearing on January 24, 1992, Complaint was ordered to submit only certified copies of any transcripts of audio taped conversations. A typewritten transcript by the Complainant, with or without an affidavit, of an alleged undated conversation does not meet this requirement.

Due to the particular circumstances surrounding this case, I believe that further instruction is needed on the proper way to file any future request for a subpoena. At the pre-hearing conference held on January 24, 1992, Respondent represented that she was not aware of the existence of the audio tape that Ms. Klimas had described. However, Respondent represented that she would cooperate with Complainant in locating and obtaining such tape for her use. Complainant agreed to this method of obtaining the tape and that a subpoena would only be requested in the event of Respondent's non-cooperation. As I agreed with both parties that this was the best course of action, I indicated in my Order of January 28, 1992, that upon a showing of difficulty in obtaining this tape, I would be inclined to grant a request for a subpoena.

In the instant request, Ms. Klimas has made no such showing. In fact, she has not even indicated that Respondent has actually been contacted for help in obtaining this tape, or that if she has, that Respondent has refused or been unable to help. Should Counsel for

* Citations are to the OCAHO Rules of Practice and Procedure for Administrative Hearings as amended in the Interim Rule published in 56 Fed. Reg. 50049 (1991) (to be codified at 28 C.F.R. Part 68) (hereinafter cited as 28 C.F.R. Section 68).

Complainant file another request for subpoena of this tape, this deficiency must be corrected.

As such, Counsel for the Complainant is ordered to contact Counsel for the Respondent, in a timely manner, for help in obtaining the desired tape. If Respondent is uncooperative or unable to help in locating and obtaining this tape, and Complainant and her counsel determine that a subpoena would be helpful in locating and obtaining this evidence, then counsel for Complainant may file a proper motion requesting the issuance of a subpoena to aid in obtaining this tape. The request must comply with the relevant regulations, must be in proper motion form, must detail the need for the subpoena, must detail the steps already taken in trying to locate and obtain this tape (including details of contact with Counsel for Respondent), must detail the present custodianship of the requested tape, and must provide the proper address for service of the subpoena. See 28 C.F.R. 68.25.

As there is an attorney of record, that attorney should file all motions, requests and pleadings under his signature. This procedure allows for a minimal of confusion, judicial economy, and proper representation of the party. See 28 C.F.R. 68.33. Complainant and her counsel are reminded that under my Order of January 28, 1992, all affidavits and certified transcripts of taped conversations are to be submitted to this court on or before close of business February 24, 1992.

IT IS SO ORDERED this 12th day of February, 1992, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge