

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

IN RE CHARGE OF)
KATALIN BALAZS-KILGORE)
)
UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. §1324b Proceeding
) Case No. 93B00109
AUBURN UNIVERSITY,)
Respondent.)
_____)

ORDER, INCLUDING ORDER TO SHOW CAUSE

(June 30, 1994)

As confirmed by the Fifth Prehearing Conference Report and Order dated June 15, 1994, the fifth telephonic prehearing conference on June 14 addressed the motion to withdraw filed June 10, 1994 by the Office of Special Counsel (OSC). Pending decision on withdrawal of its case by OSC, the conference adopted a schedule for certain filings by the parties, i.e., a report due June 20, 1994, by OSC describing its dialogue with Dr. Balazs-Kilgore (Balazs) in context of questions raised at the conference, instructions by OSC to Balazs instructing her "to inform me in writing (on notice to Respondent and OSC), by June 27, 1994 whether or not she wishes to pursue this case," and authorization to Respondent to respond to OSC's motion not later than July 12, 1994.

On June 20, 1994, OSC responded to the commitment agreed to at the conference by filing a June 15, 1994 "Report as Directed" which attaches a copy of a June 9, 1994 letter from OSC to Balazs which notified her of her right to proceed in light of OSC's stated intention to withdraw. Although the Report omits reference to its further undertaking to inform Balazs she was expected to advise whether she wishes to maintain a private action, OSC on June 20, 1994 filed a copy of a June 16, 1994 letter to Balazs to that effect. It does not appear

that OSC provided a copy of the June 15 order which provided that Balazs "be instructed by OSC to inform me. . . ." Instead, OSC wrote to her that I "requested that we write to you and tell you that he wants you to inform him. . . ." It may be speculated whether as the result of OSC's precatory terminology Balazs understood her obligation to respond to be less stringent than called for by the June 15 order. In any case, Balazs has made no filing to date.

This order directs Balazs to show cause if any she has why her failure to obey the direction to inform the forum of her intent whether to proceed with this case by June 27, 1994 should not result in dismissal with prejudice of the complaint, and of her opportunity to maintain a private action arising out of the circumstances alleged in the complaint. Any response by Balazs must be served on the parties and filed not later than Monday, July 11, 1994. Failure by Balazs to make a timely filing will be understood as evidencing an intent not to pursue this case, and will result in dismissal of the complaint and of her right, if any she has, to maintain a private action arising out of the circumstances alleged in the complaint.

Whether or not Balazs makes a filing pursuant to this order, any motions forthcoming by the parties will be timely if filed not later than July 25, 1994. Replies will be timely if filed by August 8, 1994.

OSC's June 9 letter to Balazs mentions "enclosed rules and regulations," presumably a reference to the rules of practice and procedure for cases before administrative law judges in the Office of the Chief Administrative Hearing Officer. Balazs, as well as the parties, will be expected to adhere to those rules in their participation in this case.

For her information, the copy of this Order mailed to Balazs includes also a copy of the June 15, 1994 order.

SO ORDERED. Dated and entered this 30th day of June, 1994.

MARVIN H. MORSE
Administrative Law Judge