



OFFICE OF THE GENERAL COUNSEL

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT

1900 E Street, NW, Suite 7353
Washington, D.C. 20415-1300
Phone (202) 606-1700 Fax (202) 606-0082

FAX TRANSMITTAL

TO: Honorable William D. Spencer, Clerk of the Board
Office: Merit Systems Protection Board
Phone: (202) 653-7200
Fax: (202) 653-7130

FROM: Robert J. Girouard
Office: Office of the General Counsel
U.S. Office of Personnel Management
Phone: (202) 606-1700
Fax: (202) 606-0082

DATE: October 6, 2010

PAGES: 4 (including cover)

The Office of Personnel Management (Agency) hereby respectfully submits a notice to the Board and to the parties in the consolidated appeal of Aguzie, et al. v. OPM, Nos. DC-0731-09-0261-R-1, DC-0731-09-0260-R-1, AT-0731-09-0240-I-1, and CH-0731-09-0578-I-1.

RECEIVED NSPP
2010 OCT -6 AM 11:49
CLERK OF THE BOARD



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

Office of the
General Counsel

Honorable William D. Spencer
Clerk of the Board
U.S. Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419

OCT 6 2010

Re: Aguzie, et al. v. OPM, Nos. DC-0731-09-0261-R-1, DC-0731-09-0260-R-1,
AT-0731-09-0240-I-1, and CH-0731-09-0578-I-1.

Dear Mr. Spencer:

In connection with the above-referenced appeals, the Office of Personnel Management wishes to bring to the Board's and the parties' attention certain regulations, which counsel discovered in the course of preparing for oral argument, and upon which OPM may rely at the oral argument. The regulations, which are set forth at 5 C.F.R. § 22.1(c) (1946 Ann. Supp.); 5 C.F.R. §§ 5.4, 5.5, 9.102, 22.1(c) (1947 Ann. Supp. & 1949 Ed.); 5 C.F.R. §§ 05.2, 05.4(a), (d)-(e), 9.102(a), 22.101(a) (1960 Cum. Supp.); 5 C.F.R. §§ 22.103(b)(1)-(2), 22.201(b) (1963 Cum. Supp.); 5 C.F.R. §§ 5.2, 5.4(a), (d)-(e), 731.302 (1964 Ed.); and 5 C.F.R. §§ 731.302, 754.101 *et seq.* (1966 Cum. Supp.), reveal that the Civil Service Commission continuously regulated suitability actions as actions distinct from adverse actions initiated by agencies, subject to distinct procedural requirements, since at least 1946. OPM cites this history in support of the arguments in its briefs that such distinction is deeply rooted in the civil service laws and that when it enacted the Civil Service Reform Act, Congress did not intend to relegate OPM-initiated suitability actions to the procedures established at Chapter 75 for agency-initiated adverse actions.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Elaine Kaplan".

Elaine Kaplan
General Counsel

Enclosure