

to amend its complaint, the Court seeks to identify and balance prejudice caused by the proposed amendment. *United States v. Mr. Z Enters.*, 1 OCAHO no. 162, 1128, 1128 (1990) (internal citations omitted).¹ Section 68.9(e) is “analogous to and is modeled upon Rule 15 of the Federal Rules of Civil Procedure.” *United States v. Valenzuela*, 8 OCAHO no. 1004, 3 (1998). OCAHO’s rules specifically provide that “[t]he Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by these rules[.]” 28 C.F.R. § 68.1.

Federal Rule of Civil Procedure Rule 15(a)(1) states that:

A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Federal Rule of Civil Procedure Rule 15(a)(2) further provides that, “[i]n all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”

Since the parties to this matter are located in Texas, and the violations are alleged to have occurred there, the Court also may look to the case law of the relevant United States Court of Appeals, here the Fifth Circuit. *See* 28 C.F.R. § 68.57 (designating for appeal purposes “the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer

¹ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

resides or transacts business.”). The Fifth Circuit has relied upon Rule 15 in determining whether to allow parties to amend their complaints, and has required complainants to seek leave of court, or the consent of respondents, to amend complaints after responsive pleadings were filed. *See Rachal v. Ingram Corp.*, 795 F.2d 1210, 1214 (5th Cir. 1986) (explaining that “[b]ecause the defendants had already served their responsive pleadings well before [the plaintiff] sought to amend his complaint, [the plaintiff] could only amend with their consent or by leave of court.”) (citing Fed. R. Civ. P. 15(a)); *cf. S&W Enters., LLC, v. SouthTrust Bank of Ala., N.A.*, 315 F.3d 533, 536 (5th Cir. 2003) (holding that Fed. R. Civ. P. 16(b), not Rule 15(a), “governs amendment of pleadings after a scheduling order deadline has expired” and requires a movant to demonstrate good cause to amend). OCAHO precedent likewise requires a complainant to seek leave of court to amend its complaint after a respondent has filed an answer to the complaint. *United States v. FRC Balance, LLC*, 14 OCAHO no. 1366, 2 (2020).

III. DISCUSSION AND ANALYSIS

Although Federal Rule of Civil Procedure 15(a)(1) permits a party to amend its pleading “once as a matter of course,” it must do so within the time parameters provided. Complainant here has failed to do so. DHS did not file its amended complaint within twenty-one days of the filing of its original complaint on April 12, 2021. It also filed its amended complaint more than twenty-one days after Respondent served its answer to the original complaint on May 12, 2021.

As such, the Court is guided by Federal Rule of Civil Procedure 15(a)(2). Although Rule 15(a)(2) permits the Court to “freely give leave when justice so requires,” and OCAHO’s rules likewise permit “appropriate amendments to complaints,” Complainant neither sought leave of Court to file its amended complaint nor provided Respondent’s written consent. 28 C.F.R. § 68.9(e). The Court therefore strikes Complainant’s amended complaint. *See FRC Balance, LLC*, 14 OCAHO no. 1366, at 2. If Complainant wants to refile its amended complaint, it must seek leave of this Court or obtain Respondent’s written consent to do so. The Court then will consider its request to amend.

IV. ORDER

IT IS SO ORDERED that the amended complaint filed by Complainant, DHS, is stricken from the record. If Complainant wants to file an amended complaint in this matter, it must seek leave of Court to do so or obtain Respondent's written consent.

ENTERED:

Honorable Carol A. Bell
Acting Chief Administrative Law Judge

DATE: July 16, 2021