

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

September 24, 2021

ANA MARIA RAVINES DE SCHUR,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
EASTER SEALS-GOODWILL NORTHERN)	OCAHO Case No. 2020B00093
ROCKY MOUNTAIN, INC.,)	
)	
Respondent.)	
_____)	

ORDER DENYING COMPLAINANT’S MOTIONS FOR RESTRAINING
ORDER AGAINST RESPONDENT’S COUNSEL

I. BACKGROUND

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b(a)(1)(B). On September 18, 2020, Complainant Ana Maria Ravines De Schur filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Easter Seals-Goodwill Northern Rocky Mountain, Inc. Complainant alleges that Respondent discriminated against her based on her citizenship status and national origin and intimidated, threatened, coerced, or retaliated against her for asserting her legal rights against unfair immigration-related employment practices in violation of 8 U.S.C. § 1324b. Compl. 6, 9.¹ On October 28, 2020, Respondent’s counsel filed an answer.

On August 2, 2021, Complainant filed “Claimant’s Request for a Restraining Order Against Attorney Jean Faure and Associates” (First Request for Restraining Order).² On August 30,

¹ Pinpoint citations to the Complaint are to the internal page numbers of the PDF, as opposed to the varied numbering on the actual pages of the Complaint.

² Previously, Complainant attempted to file a similar submission, dated June 15, 2021, which the Court received on June 17, 2021. That submission was rejected because it lacked the case number and the certificate of service did not specify the date of service. 28 C.F.R. §§ 68.7(a), 68.6. OCAHO staff sent a letter dated August 13, 2021 explaining such to the parties. Prior to receipt of the rejection letter, Respondent filed a Brief in Opposition to Complainant’s Demand for Restraining Order. Because the initial filing was rejected, Respondent was also informed by

2021, Complainant filed Claimant's Request for a Restraining Order Against Attorney Jean Faure and Associates (Second Request for Restraining Order), which was dated August 23, 2021.

Complainant seeks a "restraining order" against Respondent and Respondent's counsel, specifically requesting that "no further phone, email, post mail or personal conversations be attempted by EasterSeals or its representation to Claimant." First Req. Restraining Order 12.³ Rather than communicate directly with Respondent or Respondent's counsel, Complainant requests "[a]ll further contacts by the Respondent's Attorney should be delivered to the Judge not to the Claimant[.]" *Id.* at 13. Additionally, Complainant states that she "is not willing to produce any sensitive information to be delivered to the attorney of the Respondent, because of legitimate concerns that 'The Brotherhood' will as usually, take preponderance in the process of unfair administration of justice and misuse sensitive information to further harm the Claimant." *Id.* at 12.

II. LEGAL STANDARDS

OCAHO's regulations do not explicitly reference "restraining orders." 28 C.F.R. § 68.18(c) addresses the Court's authority regarding other protective orders. Section 68.18(c) provides that:

Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the Administrative Law Judge may make any order that justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) The discovery not be had;
- (2) The discovery may be had only on specified terms and conditions, including a designation of the time, amount, duration, or place;
- (3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery; or
- (4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters.

way of the letter that Respondent's filing would not be considered because Complainant's underlying motion was rejected.

³ Pinpoint citations to both of Complainant's requests for restraining orders are to the internal page numbers of the PDF, because Complainant did not paginate her filings.

Thus, “the party seeking the protective order has the burden of showing that good cause actually exists.” *United States v. Emp. Sols. Staffing Grp. II, LLC*, 11 OCAHO no. 1234, 4 (2014) (citation omitted). To demonstrate good cause, “the moving party must present particular and specific facts as to why it needs a protective order, and “[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing.” *Tingling v. City of Richmond*, 13 OCAHO no. 1324, 2 (2019) (quoting *Webb v. Green Tree Servicing, LLC*, 283 F.R.D. 276, 278 (D. Md. 2012)). “[T]he standard for issuance of a protective order is high.” *Id.* (quoting *Minter v. Wells Fargo Bank, N.A.*, 258 F.R.D. 118, 125 (D. Md. 2009)).

The Court is only authorized “to issue a protective order to protect a party from discovery-related matters. [Section 68.18(c)] does not authorize an ALJ to issue an order protecting a party from harassment or retaliation unrelated to discovery.” *Griffin v. All Desert Appliances*, 14 OCAHO no. 1370, 4 (2020) (citing § 68.18(c)).⁴ In *Griffin*, the Court denied the complainant’s motion for a protective order because “to the extent that [the complainant] is seeking a no contact order . . . this Court has no authority to do so.” *Id.* But see *Banuelos v. Transp. Leasing Co.*, 1 OCAHO no. 148, 1043, 1048 (1990) (finding that since the ALJ in § 1324b proceedings “is functionally comparable to a district court judge, he or she, consistent with the general powers outlined in the statute, governing regulations, and the [Administrative Procedures Act], has the requisite legal and equitable authority to consider and rule on requests for preliminary relief”).

III. ANALYSIS

This Court does not have the authority to issue a “restraining order” as contemplated and requested by Complainant. See *Griffin*, 14 OCAHO no. 1370, at 4 (finding that the court does not have authority to issue “a no contact order”).

Alternatively, the Complainant appears to be requesting that the Court entertain a scheme wherein communication between parties is provided, ex parte, to the Court, which then obligates

⁴ 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 on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

the Court to act as a “messenger.” For obvious reasons,⁵ the Court declines to endorse or participate in such a communication scheme.

The Complainant’s requests for a “restraining order” is DENIED.

With the issue of a “restraining order” resolved, the Court now addresses Complainant’s filing, construed as a request for a discovery-based protective order. In her submission, Complainant states she is not “willing to produce any sensitive information.” First Req. Restraining Order 12.

In order for the Court to consider the propriety of a protective order regarding the production of discovery, Complainant must file a motion demonstrating good cause as required by 28 C.F.R. § 68.18(c). Specifying the information one seeks to be subject to a protective order is a necessary prerequisite to a finding of good cause required for a protective order. *Cf. Wije v. Barton Springs//Edwards Aquifer C.D.*, 4 OCAHO no. 635, 403, 406–07 (1994) (issuing protective order upon a motion specifying protection of personnel documents).

Here, Complainant’s failure to identify the information meriting protection forecloses her ability to establish good cause for the requested order. Therefore, to the extent Complainant’s submission is a request for a discovery-related protective order, such a request is also DENIED.

IV. CONCLUSION

Complainant’s First and Second Requests for Restraining Orders against Respondent’s counsel are DENIED.

SO ORDERED.

Dated and entered on September 24, 2021.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

⁵ For example, OCAHO’s regulations clearly prohibit ex parte communications. 28 C.F.R. § 68.35(b); *accord* 28 C.F.R. § 68.36(a). Ex parte communication is defined as “[a] communication between counsel or a party and the court when opposing counsel or party is not present.” *Ex Parte Communications*, *Black’s Law Dictionary* (11th ed. 2019); *see, e.g., Acheff v. Lazare*, No. 1:12-cv-00100-JCH-RHS, 2013 U.S. Dist. LEXIS 195256, at *4 (D.N.M. Oct. 18, 2013).