

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

January 12, 2023

ROBERT PAUL HEATH,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00060
I-SERVICES, INC.,)	
Respondent.)	
)	

Appearances: Robert Heath, pro se Complainant
Murali Ghanta, on behalf of I-Services, Inc., pro se Respondent

ORDER

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On September 22, 2021, Complainant, Robert Paul Heath, filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, I-Services, Inc., violated §§ 1324b(a)(1), (6).¹

On December 8, 2022, the Court issued an Order taking official notice of Complainant's death, pursuant to 28 C.F.R. § 68.41.² *See Heath v. I-Services, Inc.*, 15 OCAHO no. 1413d, 4 (2022).³

¹ The Court's December 8, 2022, Order, provides a detailed procedural history of this case.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

³ 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

The undersigned found Federal Rule of Civil Procedure 25 (Rule 25) to be permissive guidance, and that it should be applied in this circumstance. *Id.* at 3. The Court then observed that Rule 25 requires notice to a party's successor. *Id.* at 3–4. Accordingly, the Court provided notice to Complainant's apparent successor, Ms. Tonya Heath, and stated its intention to take official notice of her appointment as Complainant's executor. *Id.* at 4 (citing 28 C.F.R. § 68.41) (providing the parties fourteen days to advise regarding official notice). The Court did not receive filings in response to the December 8, 2022, Order.

II. DISCUSSION

A. Official Notice of Complainant's Executor

OCAHO's rules permit official notice of "any material fact, not appearing in the record, which is among the traditional matters of judicial notice." 28 C.F.R. § 68.41; *see I-Services, Inc.*, 15 OCAHO no. 1413d, at 2 (explaining a matter for which one might traditionally take judicial notice (citing Fed. R. Evid. 201(b))).

In a petition for administration of Mr. Heath's estate before the Circuit Court in Palm Beach County, Florida, a judge appointed Ms. Tonya Heath as his personal representative. *eCaseView*, Clerk of the Circuit Court & Comptroller Palm Beach Cty., <https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx> (last visited Dec. 27, 2022). This Court previously determined that the Clerk of the Court's online database falls within the strictures of Federal Rule of Evidence 201(b). *I-Services, Inc.*, 15 OCAHO no. 1413d, at 3 (noting that it is an official publication created by the State of Florida, "whose accuracy cannot reasonably be questioned," and its contents can be "readily and accurately determined") (citing Fed. R. Evid. 201(b)). The Court therefore finds that the Palm Beach County probate records are a proper foundation from which to take official notice that Ms. Heath is Complainant's executor. *See* 28 C.F.R. § 68.41. No one has objected to the Court taking official notice of this fact. Accordingly, the Court takes official notice of the fact that Ms. Tonya Heath is Complainant's executor.

B. Substitution of Parties

This Court's December 8, 2022, Order, provided notice that the undersigned intended to apply Rule 25 to this circumstance following notice to Complainant's successor. *See I-Services, Inc.*, 15 OCAHO no. 1413d, at 3–4 (citations omitted); Fed. R. Civ. P. 25(a)(1). The Order further stated that following notice, "the Court would start the ninety-day window for filing motions for substitution [pursuant to Rule 25]. If a motion to substitute is not made in that time, the case would then be dismissed." *Id.* at 4. Ms. Heath, now officially noticed as Complainant's executor pursuant to 28 C.F.R. § 68.41, was served the December 8, 2022, Order. Accordingly, the Court finds that Complainant's successor has notice of these proceedings.

The remaining issue is whether Mr. Heath's death extinguishes his claims. *See* Fed. R. Civ. P. 25(a)(1). The Court recently addressed the issue of survivability when a complainant dies during

database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

the proceedings in *Heath v. Niha Techs., Inc.*, 16 OCAHO no. 1427c, 4 (2022). In *Niha Techs.*, the undersigned found that Mr. Heath’s § 1324b claims in that case “[were] not extinguished, whether the state survivorship law or the federal common law [was] applied.” *Id.* (citations omitted). The Court similarly finds that Mr. Heath’s § 1324b claims survive in this matter. As the claims survive Mr. Heath’s passing, the ninety-day window for filing a motion to substitute commences as of the date of issuance of this Order. *See* Fed. R. Civ. P. 25(a)(1).

III. CONCLUSION

The Court takes official notice that Ms. Tonya Heath is Complainant’s executor.

The Court ORDERS that the ninety-day window for filing motions for substitution, pursuant to Rule 25(a)(1), begins. If a motion to substitute is not made within 90 days from the date of this Order, this action by Mr. Heath (OCAHO Case No. 2021B00060) may be subject to dismissal.

SO ORDERED.

Dated and entered January 12, 2023.

Honorable Jean C. King
Chief Administrative Law Judge