

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

ROBERT HEATH,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2020B00089
CONSULTADD AND AN ANONYMOUS)	
EMPLOYER,)	
Respondent.)	
)	

NOTICE AND ORDER

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. On August 31, 2020, Complainant Robert Heath filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, ConsultAdd and an Anonymous Employer, discriminated against him based on his citizenship and national origin status, and engaged in unfair documentary practices, in violation of 8 U.S.C. § 1324b. On February 17, 2021, Respondent filed its answer. On September 29, 2021, Respondent filed its Motion for Summary Decision, to which Complainant filed his opposition on October 15, 2021. On November 19, 2021, Respondent filed its reply in support of its Motion for Summary Decision.

On May 19, 2022, the undersigned issued a Notice and Order of Stay. *See Heath v. ConsultAdd*, 15 OCAHO no. 1395b (2022).¹ The Court disclosed communications by Complainant in April 2022 in which Complainant asserted that he was very ill and would be hospitalized for the near future. *Id.* at 1–2. The Court provided Respondent 14 days to file any response “it deem[ed] appropriate.” *Id.*

On August 11, 2022, the undersigned issued a Notice and Order, providing notice to the parties of Complainant’s apparent death. *See Heath v. ConsultAdd*, 15 OCAHO no. 1395c, 1 (2022) (citing *Heath v. Ancile, Inc.*, 14 OCAHO no. 1411a, 1 (2022) (stating information provided

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

on Robert Heath’s death certificate)). The Court indicated that it would take judicial notice of Complainant’s death, subject to the parties’ opportunity to comment within 30 days. Id. at 1; *see* 28 C.F.R. § 68.41 (describing official notice as covering “the traditional matters of judicial notice”).² The Court further directed the parties to file any briefs concerning the applicability of Federal Rule of Civil Procedure 25 (Rule 25) to these proceedings within the same timeframe. ConsultAdd, 15 OCAHO no. 1395c, at 1–2.

The parties did not respond to the Court’s May 19, 2022 Notice and Order of Stay or the August 11, 2022 Notice and Order. Complainant’s executor or successor in interest did not enter their appearance or otherwise advise if they will pursue this litigation (OCAHO Case No. 2020B00089).

On October 20, 2022, the Court issued a Notice and Order in Heath v. Ancile, Inc., 15 OCAHO no. 1411b, 1 (2022). The Court discussed the propriety of taking official or judicial notice that Robert Heath died on May 18, 2022, based on his death certificate. *See id.* at 2–3 (citations omitted). The Court concluded, “[w]hether under the broader concept of official notice or under the more circumscribed evidentiary rule 201 judicial analysis, [Robert Heath’s] death certificate meets the standard, and accordingly the Court takes official notice of the document.” Id. at 2 (citing 28 C.F.R. § 68.41). Accordingly, “[b]ased on the Court taking official notice of the death certificate, the Court finds that [Robert Heath] died on May 18, 2022.” Id.

Similarly, the Court deems it appropriate to take official notice of Complainant’s death in this matter, pursuant to 28 C.F.R. § 68.41. The Court’s August 11, 2022 Notice and Order advised of its intent to take judicial notice of Complainant’s apparent death. ConsultAdd, 15 OCAHO no. 1395c, at 1. At that time, the parties received notice that the State of Florida’s Bureau of Vital Records issued a death certificate for Robert Heath on June 24, 2022. Id. The parties were further informed that Mr. Heath died on May 18, 2022. Id.

Moreover, information about Complainant’s death is readily verifiable by online obituaries as well as public probate record. Robert “Bobby” Paul Heath, Jr., Tribute Archive, <https://www.tributearchive.com/obituaries/24883485/robert-bobby-paul-heath-jr> (last visited Jan. 24, 2023) (listing Complainant’s date of death); Obituary: Robert Heath, Palm Beach Post, <https://www.palmbeachpost.com/obituaries/pwpb0216852> (last visited Jan. 24, 2023) (referencing Complainant’s place of residence); eCaseView, Palm Beach Clerk of Court, <https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx> (last visited Jan. 24, 2023) (listing Complainant as a decedent); *see generally* 28 C.F.R. § 68.40 (“All relevant material and reliable evidence is admissible[.]”); Fed. R. Evid. 803 (implicitly endorsing a record of death as reliable evidence). Indeed, federal courts have embraced obituaries as proper foundation on which to take judicial notice of a death. *See Crews v. Pfizer, Inc.*, No. 2:21-CV-00868-RDP, 2021 WL 5040493,

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

at *1 (N.D. Ala. Oct. 29, 2021) (citations omitted) (“Courts may take judicial notice of obituaries.”); *e.g.*, United States v. Thomas, No. CR 01-058 (KSH), 2022 WL 538540, at *3 (D.N.J. Feb. 23, 2022) (taking judicial notice of an obituary notice published online by a funeral home); Sanders v. Justice, No. 15-CV-00142-SMY, 2015 WL 1228830, at *4 (S.D. Ill. Mar. 16, 2015) (taking judicial notice of an online newspaper obituary); Hudson v. Broomfield, No. 5:21-CV-01094 EJD, 2022 WL 3702108, at *3 (N.D. Cal. Aug. 26, 2022) (taking judicial notice of an obituary submitted in another case).

Based on the Court’s official notice in Ancile, Inc. and the above-mentioned obituaries, the Court takes official notice that Complainant Robert Heath died on May 18, 2022.

Turning to the next issue, the applicability of Rule 25 in this matter, OCAHO recently determined that “neither the OCAHO Rules nor the Administrative Procedures Act present a conflict with Rule 25,” and that Rule 25 should apply in OCAHO cases where a party is deceased. *See Ancile, Inc.*, 15 OCAHO no. 1411b, at 2–3 (citations omitted). Rule 25 is therefore applicable to this case.

Rule 25(a)(1) instructs: “If a party dies and the claim is not extinguished . . . [a] motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days . . . the action [by] the decedent must be dismissed.”

The Court’s determination that Complainant is deceased would normally trigger the 90-day window for filing motions for substitutions per Rule 25. However, Complainant appeared pro se in this litigation. The Court recently observed that: “Courts have noted upon the determination that a party is deceased, notice must be provided to that party’s successor in interest or executor, regardless of whether the nonparty has entered an appearance or otherwise advised the court of their interest in the litigation.” Ancile, Inc., 15 OCAHO no. 1411b, at 4 (citations omitted).

Accordingly, the Court provides notice to Robert Heath’s apparent successor in interest, Tonya Heath. *See id.* at 5 (noting her identification on the death certificate and the Palm Beach County Clerk of Court website). The Court intends to take official notice, subject to the parties’ opportunity to comment and advise, of Ms. Heath as Complainant’s executor. Respondent and Ms. Heath may advise or object, by no later than 21 days from the issuance of this Order, concerning the Court’s intention of taking official notice of Ms. Heath as Complainant’s executor pursuant to 28 C.F.R. § 68.41.

The Court further provides that Ms. Heath shall be included in the certificate of service, and shall be served via certified mail with a copy of this Order.

SO ORDERED.

Dated and entered on March 7, 2023.

Honorable John A. Henderson
Administrative Law Judge