

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

ROBERT PAUL HEATH,)	
)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00015
AMERITECH GLOBAL,)	
)	
Respondent.)	
_____)	

Appearances: Robert Paul Heath, pro se, Complainant
Rishi Agrawal, Esq., for Respondent

ORDER TAKING OFFICIAL NOTICE OF COMPLAINANT'S DEATH,
IDENTIFYING REPRESENTATIVE, ADDRESSING CLAIM SURVIVABILITY,
AND SETTING DEADLINE FOR SUBSTITUTION

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act, 8 U.S.C. § 1324b. On February 8, 2021, Complainant, Robert Paul Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Ameritech Global. Complainant alleges that Respondent discriminated against him based on citizenship status and national origin.

In April 2022, Complainant called OCAHO and informed Court staff that he had been hospitalized due to a health emergency. The Court issued an Order on Complainant's Communications to the Court, notifying Respondent as to the nature and substance of Complainant's communications with the Court. *Heath v. Ameritech Global*, 16 OCAHO no. 1435, 3-4 (2022).¹ The Court permitted Respondent to file any

¹ Citations to OCAHO precedents in bound Volumes 1 through 8 include the volume and case number of the particular decision, followed by the specific page in the bound

response it deemed necessary regarding Complainant's communications. *Id.* The Court ordered the parties to file a status report within thirty days of the date of the Order. *Id.* at 4. Neither party responded to this Order.

On September 15, 2022, the Court issued a Notice of Suggestion of Death and Notice and Order to Show Cause for Status Report. *Heath v. Ameritech Global*, 16 OCAHO no. 1435a (2022). The Court notified the parties of the suggestion of the death of Complainant and its intention to take notice of this material fact after giving the parties an opportunity to show the contrary. *Id.* at 2-3 (citing 28 C.F.R. § 68.41,² and then citing *Heath v. ConsultAdd*, 15 OCAHO no. 1395c, 1 (2022)). The Court noted that the respondent in an unrelated OCAHO case had filed a notification of Robert Heath's passing, along with a death certificate from the State of Florida for Robert Heath. *Id.* at 3 (citing *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411a, 1 (2022)). The Court stated that either party could file a statement of the fact of death and supporting documentation, or a filing disputing the suggestion of death and showing the contrary in accordance with 28 C.F.R. § 68.41. *Id.* The Court further stated that either party could identify Complainant's legal representative or successor and formally move for substitution pursuant to 28 C.F.R. § 68.33(g), or file briefs on the applicability of Federal Rule of Civil Procedure 25(a)(1) to OCAHO proceedings. *Id.* at 3 & n.3 (citing 28 C.F.R. § 68.1). The Court noted that should Complainant's death be established, and his claims survive death, any party or the decedent's successor or representative would have ninety days to file a motion for substitution or the action would be dismissed. *Id.* at 3-4.

volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the relevant volume. Pinpoint citations to OCAHO precedents after Volume 8, where the decision has not yet been 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," the LexisNexis database "OCAHO," and on OCAHO's homepage on the United States Department of Justice website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

² Proceedings in this case will generally be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024). OCAHO's Rules are available on OCAHO's homepage on the United States Department of Justice's website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

The Court addressed the parties' failure to file a status report as required by the Order on Complainant's Communications to the Court. *Heath*, 16 OCAHO no. 1435a, at 4. The Court cautioned that when a party fails to respond to an order, including an order for a status report, the Court may order the party to show good cause for its failure to respond. *Id.* (citations omitted). Thus, the Court ordered the parties to submit a filing showing sufficient good cause for their failure to file a status report as ordered, and to file a status report addressing the suggestion of Complainant's death, explaining how that potential death might affect the posture of this case, and stating their positions on the advancement of the litigation, including anticipated motions. *Id.* at 4-5. If the parties could not jointly file a response and status report, the Court instructed each party to file its own submission and describe efforts to confer with the opposing party before filing. *Id.* at 4 (citing *United States v. Greif*, 10 OCAHO no. 1183, 5 (2013)).

The Court warned the parties that inaction could result in dismissal of the complaint based on abandonment. *Heath*, 16 OCAHO no. 1435a, at 5 (citing 28 C.F.R. §§ 68.37(b)-(b)(1), and then citing *Gallegos v. Magna-View, Inc.*, 4 OCAHO no. 628, 359, 362 (1994)). The Court further warned that failure to respond as ordered could lead to dismissal of the case for Complainant's failure to prosecute. *Id.* (citing Fed. R. Civ. P. 41(b)). Finally, the Court warned that failure to respond as ordered could lead to an entry of default against Respondent for failure to defend in these proceedings. *Id.* (citing Fed. R. Civ. P. 55(a)). Neither party filed any response to the Court's order dated September 15, 2022.

On April 4, 2024, the Court issued an Order Providing Notice of Suggestion of Death to Successor and Reissuing Order to Show Cause. *Heath v. Ameritech Global*, 16 OCAHO no. 1435b (2024). Through this order, the Court put the parties on notice that, given information contained in publicly available probate records, it intended to take official notice of Ms. Tonya Heath as Complainant's personal representative pursuant to 28 C.F.R. § 68.41. *Id.* at 4-5. The Court noted that the parties could advise as to the propriety of taking notice of Ms. Heath as Complainant's personal representative. *Id.* The Court amended its Order on Electronic Filing to require the parties to serve all filings electronically and, in a manner that complied with 28 C.F.R. § 68.6, to mail filings to Complainant at his last known mailing address and to Ms. Heath at the address identified by the Court. *Id.* at 5.

The Court reissued its September 15, 2022, Notice of Suggestion of Death and Notice and Order to Show Cause for Status Report, and reset the deadlines in that order. *Heath*, 16 OCAHO no. 1435b, at 4. The Court ordered the parties, within

twenty-one days of the date of the order, to show good cause for their failure to file a status report as ordered, and to file a status report addressing the suggestion of Complainant's death, stating their positions on the advancement of this litigation, and identifying any anticipated motions. *Id.* at 5. The Court further provided that the parties could (1) use the status report, if desired, to discuss the propriety of taking official notice of Complainant's death and of Ms. Heath as Complainant's personal representative, (2) file a statement of the fact of death of Complainant, a filing disputing the suggestion of death, or a filing identifying Complainant's legal representative or successor and moving for substitution, and (3) file briefs regarding the notice of suggestion of death and the applicability of Federal Rule of Civil Procedure 25(a)(1) to these proceedings. *Id.* The Court cautioned that (1) failure to respond to the Court's orders might lead the Court to conclude that Complainant had abandoned his complaint and result in dismissal, (2) Complainant might face dismissal pursuant to Federal Rule of Civil Procedure 41(b), and (3) Respondent's failure to respond to the Court's orders might lead the Court to enter a default against it. *Id.* (citing 28 C.F.R. §§ 68.37(b)-(b)(1); Fed. R. Civ. P. 55(a); 28 C.F.R. § 68.9(b)).

OCAHO served the Court's order dated April 4, 2024, on Complainant and Respondent by email and United States Postal Service (USPS) mail. OCAHO used USPS certified mail to serve the order on Complainant's apparent personal representative and the Respondent-business. The USPS website's mail tracking service indicated that the order sent to Ms. Heath was delivered and left with an individual on April 8, 2024.

Neither party nor Complainant's apparent personal representative, Tonya Heath, responded to the Court's Order on Complainant's Communications to the Court, Notice of Suggestion of Death and Notice and Order to Show Cause for Status Report, or Order Providing Notice of Suggestion of Death to Successor and Reissuing Order to Show Cause. Complainant and Respondent, who is represented by counsel Rishi Agrawal, did not submit the mandatory filings ordered by the Court, namely, a filing showing good cause and a status report.³ The parties also did not submit the optional filings permitted by the Court. No person associated with this case has contacted OCAHO since Complainant telephoned the Court's staff in April 2022.

³ As it did with the Court's order dated April 4, 2024, OCAHO shall serve this Order by electronic mail on Mr. Agrawal, and by USPS mail on his law firm, The Agrawal Firm, LLC. OCAHO also shall serve this Order by certified mail on Tonya Heath and Ameritech Global.

II. DISCUSSION AND ANALYSIS

The Court finds that OCAHO perfected service of the Court’s April 4, 2024, order on Tonya Heath via certified mail on April 8, 2024, and that service of that order, as well as the Court’s order dated September 15, 2022, on the parties was done in accordance with 28 C.F.R. § 68.6. Through those orders, the Court gave the parties and Ms. Heath notice of the suggestion of death of Complainant and the identification of Tonya Heath as Complainant’s personal representative, and its intention to take notice of those material facts pursuant to 28 C.F.R. § 68.41. *See Heath*, 16 OCAHO no. 1435a, at 2; *see also Heath*, 16 OCAHO no. 1435b, at 5. The Court also gave the parties and Ms. Heath an opportunity to show the contrary and to provide the Court with filings discussing the propriety of taking official notice of those facts. *See Heath*, 16 OCAHO no. 1435a, at 3, 5; *see also Heath*, 16 OCAHO no. 1435b, at 5. The Court now proceeds in taking official notice of Complainant’s death and of Tonya Heath’s identity as Complainant’s daughter, executor, and personal representative, pursuant to 28 C.F.R. § 68.41.

A. Official Notice of Complainant’s Death and Identity of Representative

OCAHO’s Rules of Practice and Procedure for Administrative Hearings provide that an Administrative Law Judge (ALJ) may take official notice of a material fact. Specifically, 28 C.F.R. § 68.41 provides that “[o]fficial notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice. Provided, however, that the parties shall be given adequate notice . . . of the matters so noticed, and shall be given adequate opportunity to show the contrary.” *See also* 5 U.S.C. § 556(e) (“When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.”).

The Court looks next to the law on judicial notice as guidance when considering whether to take official notice of a fact. *See, e.g., Heath v. Ancile*, 15 OCAHO no. 1411b, 2 (2022) (collecting case law discussing the relationship between official and judicial notice). Federal Rule of Evidence 201(b) provides that courts may take judicial notice of “a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”

As the Court explained to the parties in its order dated September 15, 2022, an OCAHO ALJ presiding over a separate case in which Robert Heath was the complainant issued an order explaining that the respondent had filed a notice of the complainant's passing and had included a death certificate from the State of Florida for Robert Heath. *See Heath v. Ameritech Global*, 16 OCAHO no. 1435a, 3 (2022) (citing *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411a (2022)). The death certificate filed in the *Heath v. Ancile, Inc.*, case listed Robert Heath's date of death as May 18, 2022, the date of registration of his death with the State of Florida as June 1, 2022, and the date of the issuance of his death certificate as June 24, 2022. *Ancile, Inc.*, 15 OCAHO no. 1411a, at 1. The ALJ in that case took official notice of that death certificate and found that Robert Heath died on May 18, 2022. *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411b, 3 (2022).

Because the death of Robert Heath and the identity of his successor are material facts to these proceedings, the Court has reviewed the death certificate filed in the *Heath v. Ancile, Inc.*, case. The death certificate on file is a copy of an official document of the Bureau of Vital Statistics for the State of Florida. It bears the state seal in the lower left corner, a state file number, and the signature of the state registrar above a certification that the death certificate is "a true and correct copy of the official record on file." The death certificate contains information about the decedent Robert Heath, including his full name and address, and information identifying the physician, by name and license number, who certified his death. The certificate also identifies Tonya Heath as Robert Heath's daughter and provides her address. The decedent's information in the death certificate, including Robert Heath's full name and address, matches information contained in the complaint Mr. Heath filed in this case.

The government website for the State of Florida's Bureau of Vital Statistics explains that "[t]he death certificate is a permanent legal record of the fact of death of a person." *Electronic Death Registration*, Fla. Dep't of Health, Bureau of Vital Stats., <https://www.floridahealth.gov/certificates/certificates/EDRS/index.html> (last visited Aug. 15, 2024). The Court finds that the death certificate is an official legal record created by the Bureau of Vital Statistics within the State of Florida's Department of Health, being a governmental source "whose accuracy cannot reasonably be questioned," and a governmental record containing facts which "can be accurately and readily determined." Fed. R. Evid. 201(b)(2). As such, the Court may take official notice of facts contained therein.

As the Court explained to the parties in its order dated April 4, 2024, *see Heath*, 16 OCAHO no. 1435b, at 4, Robert Heath's death formed the basis for a petition for

administration of his estate, with Tonya Heath being identified as his executor and personal representative, in Case Number 50-2022-CP-003619-XXXX-MB in the Circuit Court of Palm Beach County, Florida. *See eCaseView*, Clerk of the Cir. Ct. & Comptroller, Palm Beach Cnty., <https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx> (last visited Aug. 12, 2024). Information pertaining to this probate matter is publicly available through an online database on the governmental website for the Clerk of the Circuit Court of Palm Beach County in the State of Florida, being a source “whose accuracy cannot reasonably be questioned” under Federal Rule of Evidence 201(b)(2). As such, the Court considers Robert Heath’s death and the identification of Tonya Heath as his executor and personal representative as reflected in the probate matter filed with the Clerk of the Circuit Court of Palm Beach County to be facts that may be “accurately and readily determined” and ones that are appropriate for judicial notice. Fed. R. Evid. 201(b)(2); *see also Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410e, 2 (2023) (finding that “the Palm Beach County probate records are a proper foundation from which to take notice that Ms. Heath is Complainant’s executor”) (citation omitted).

The fact of Robert Heath’s death on May 18, 2022, also may be readily determined through publicly available obituaries for Robert Heath published by a newspaper, *The Palm Beach Post*, and an online website called *Tribute Archive*. *See* Obituary, *Robert Heath*, *The Palm Beach Post*, <https://www.palmbeachpost.com/obituaries/pwpb0216852> (last visited Aug. 15, 2024); *Robert “Bobby” Paul Heath, Jr., Obituary*, *Tribute Archive*, <https://www.tributearchive.com/obituaries/24883485/robert-bobby-paul-heath-jr> (last visited Aug. 15, 2024). Although these obituaries are not governmental records, they are publicly available records that support material facts contained within the governmental records discussed above. Namely, the obituaries state that Robert Heath died on May 18, 2022, and identify Tonya Heath as Complainant’s daughter. Courts in this forum, including an ALJ who handled a case where the complainant was Robert Heath, have taken judicial notice of facts contained in obituaries. *See, e.g., Heath v. Euclid Innovations*, 16 OCAHO no. 1418c, 4 (2022) (citing *Crews v. Pfizer, Inc.*, No. 2:21-CV-00868-RDP, 2021 WL 5040493, at *1, 2021 U.S. Dist. LEXIS 209372, at *3 (N.D. Ala. Oct. 29, 2021) (citations omitted) (“Courts may take judicial notice of obituaries.”); and then citing *United States v. Thomas*, No. CR 01-058 (KSH), 2022 WL 538540, at *3, 2022 U.S. Dist. LEXIS 31566, at *8 (D.N.J. Feb. 23, 2022) (taking judicial notice of an obituary notice published online by a funeral home); and then citing *Sanders v. Justice*, No. 15-CV-00142-SMY, 2015 WL 1228830, at *4 n.6, 2015 U.S. Dist. LEXIS 31944, at *9 n.6 (S.D. Ill. Mar. 16, 2015) (taking judicial notice of an online newspaper obituary)).

As explained above, the Court twice provided the parties with notice, pursuant to 28 C.F.R. § 68.41, of its intention to take notice of the material fact of Complainant's death based on the death certificate filed in the *Heath v. Ancile, Inc.*, case, and it gave the parties an opportunity to show to the contrary. *See Heath*, 16 OCAHO no. 1435a, at 3; *see also Heath*, 16 OCAHO no. 1435b, at 5. The Court also put the parties on notice of its intention to take official notice of the material fact in the State of Florida probate records that Tonya Heath is Complainant's executor and personal representative and gave them an opportunity to address the propriety of doing so. *See Heath*, 16 OCAHO no. 1435b, at 5. Neither party submitted a filing to the Court disputing or questioning the accuracy of the death certificate or the identification of Ms. Heath as Complainant's executor or personal representative. The Court likewise notified Ms. Heath of the Court's intention to take official notice of her identity as Complainant's executor or personal representative and provided Ms. Heath with the opportunity to object to the Court's taking official notice of this fact. *Id.* Ms. Heath did not respond to the Court's order.

Having found that the death certificate and the probate records fall under Federal Rule of Evidence 201(b)(2) and that the facts contained therein are appropriate for official notice, and having satisfied the notice provisions of 28 C.F.R. § 68.41, the Court now takes official notice, pursuant to 28 C.F.R. § 68.41, of two material facts, namely, Robert Heath's death on May 18, 2022, and the identification of Tonya Heath as his daughter, executor, and personal representative. *See, e.g., United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416d, 4-5 (2023) (citing *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011) (holding that it is appropriate to take "judicial notice of publicly-available documents . . . which were matters of public record directly relevant to the issue at hand")). The Court also finds that, pursuant to 28 C.F.R. § 68.41, it would be appropriate to take official notice of Complainant's date of death and Tonya Heath's relationship to Complainant through the obituaries for Robert Heath described above.

B. Survivability of Complainant's Claims and Deadline for Substitution

Next, the Court considers whether Complainant's claims survive his death and whether Tonya Heath may file a motion to substitute in this matter. OCAHO's Rules of Practice and Procedure for Administrative Hearings and the Administrative Procedure Act, a federal act governing the procedures of administrative law and codified in 5 U.S.C. §§ 551-59, do not provide for substitution of parties upon the death of a party. However, 28 C.F.R. § 68.1 explains 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, by the Administrative Procedure Act, or by any other

applicable statute, executive order, or regulation.” Federal Rule of Civil Procedure 25(a)(1) provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. 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 after service of a statement noting the death, the action by or against the decedent must be dismissed.”

The Court twice invited the parties to file briefs regarding the applicability of Federal Rule of Civil Procedure 25(a)(1) to these proceedings through its orders dated September 15, 2022, and April 4, 2024. *See Heath*, 16 OCAHO no. 1435a, at 3, 5; *Heath*, 16 OCAHO no. 1435b, at 5. The Court also gave Tonya Heath an opportunity to state her position on this litigation. *Heath*, 16 OCAHO no. 1435b, at 5. Neither the parties nor Tonya Heath provided briefing on the applicability of Rule 25 to these proceedings. The parties also did not move for dismissal or argue that death extinguished Complainant’s claims in the complaint in this matter.

As the Court explained to the parties in its order dated September 15, 2022, it finds Federal Rule of Civil Procedure 25(a)(1) to be instructive because it governs substitution of parties on death where the claim is not extinguished. *See Heath*, 16 OCAHO no. 1435a, at 3. Pursuant to 28 C.F.R. § 68.1, this Court now applies Federal Rule of Civil Procedure 25(a)(1) to this case. *See, e.g., Heath v. Ancile, Inc.*, 15 OCAHO no. 1411c, 2 (2023) (applying Rule 25(a)(1) after noting the death of the complainant and his successor); *Heath v. Euclid Innovations*, 16 OCAHO no. 1418d, 3 (2023) (same); *Lee v. AT&T*, 7 OCAHO no. 924, 9 n.5 (1997) (“Although the OCAHO rules do not directly address the issue of substitution of parties, the Federal Rules of Civil Procedure may be utilized as a general guideline in any situation not covered by the OCAHO Rules . . . Therefore, Rule 25 of the FRCP may be relevant to the issue of substitution of the parties in this case.”) (internal citation omitted).

Having applied Federal Rule of Civil Procedure 25(a)(1) to this matter, the Court next considers whether Complainant’s claims under the antidiscrimination provisions of the INA have been extinguished by his death. The INA, Federal Rule of Civil Procedure 25, and OCAHO’s Rules of Practice and Procedure for Administrative Hearings do not specify what happens to a complainant’s claims when he dies during the legal proceedings.

To answer this question, as permitted by 28 C.F.R. § 68.57, the Court consults the law of the Eleventh Circuit Court of Appeals and the State of Florida where Complainant lived and died. *See, e.g.,* 7C Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 1952 (3d ed. 2024) (“Whether

the death of a party extinguishes a claim for or against the party is not a question of procedure. It is a question of substance on which the state law ordinarily governs. In a federal-question case, federal law and federal decisions, rather than state law, determine whether the action survives the death of a party . . .”). Under Florida state law, “[n]o cause of action dies with the person. All causes of action survive and may be [prosecuted] in the name of the person prescribed by law.” Fla. Stat. § 46.021 (2024). The Eleventh Circuit Court of Appeals and OCAHO ALJs have reached the same conclusion. *Heath v. Niha Techs., Inc.*, 16 OCAHO no. 1427c, 4 (2022) (finding 8 U.S.C. § 1324b claims not extinguished under the laws of the State of Florida or the Eleventh Circuit) (citing, inter alia, *United States v. NEC Corp.*, 11 F.3d 136, 137 (11th Cir. 1993) (holding that a remedial action survives the death of a plaintiff under federal common law); and then citing *McNier v. S.F. State Univ.*, 8 OCAHO no. 1030, 425, 433-36 (1999) (describing 8 U.S.C. § 1324b as a “remedial scheme” for prosecution of individualized discrimination claims)). This Court likewise finds that Complainant’s claims survive his death.

Given this finding of claim survivability and the applicability of Federal Rule of Civil Procedure 25, paired with the Court’s finding of Complainant’s death, the Court now puts Tonya Heath, Complainant’s representative, on notice that she has ninety days from the date of service of this Order to make a motion for substitution of Robert Heath in these proceedings. If Ms. Heath makes no such motion within ninety days after service of this Order, as provided by Federal Rule of Civil Procedure 25(a)(1), “the action by . . . the decedent [Robert Heath] *must* be dismissed” (emphasis added).

Lastly, the Court puts the parties on notice that, should no motion to substitute be filed, it intends to dismiss this case without prejudice. The parties may set forth their position as to the appropriateness of dismissal without prejudice in any filing they make with the Court during the ninety-day period.

III. ORDERS

IT IS SO ORDERED that, pursuant to 28 C.F.R. § 68.41, the Court takes official notice of the fact of the death of Complainant, Robert Heath;

IT IS FURTHER ORDERED that, pursuant to 28 C.F.R. § 68.41, the Court takes official notice of Tonya Heath as Complainant’s daughter, executor, and personal representative, and finds that she is Complainant’s representative for purposes of these proceedings;

IT IS FURTHER ORDERED that, pursuant to Federal Rule of Civil Procedure 25, Tonya Heath, Complainant's representative, may make a motion for substitution within ninety days after service of this Order; and

IT IS FURTHER ORDERED that, if Tonya Heath does not file a motion for substitution within ninety days after service of this Order, the Court shall dismiss this action without prejudice pursuant to Federal Rule of Civil Procedure 25.

SO ORDERED.

Dated and entered on August 27, 2024.

Honorable Carol A. Bell
Administrative Law Judge