

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

ROSALINDA A. BARAJAS,)	
)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2024B00116
DILLARD’S, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Rosalinda A. Barajas, pro se Complainant
Mary E. Buckley, Esq., and Ross E. Simpson, Esq., for Respondent¹

ORDER ON COMPLAINANT’S FILINGS, RESPONSE DEADLINE TO
RESPONDENT’S MOTION TO DISMISS, AND ELECTRONIC FILING

I. PROCEDURAL HISTORY

On June 27, 2024, Complainant, Rosalinda A. Barajas, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) in which she alleges that Respondent, Dillard’s, Inc., violated the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986. Specifically, Complainant has alleged that the Respondent violated 8 U.S.C. § 1324b by discriminating against her based on her citizenship status, retaliating against her, and engaging in unfair documentary practices. Compl. §§ 6-10. On July 31, 2024, Respondent filed an answer to the complaint.

On August 6, 2024, Respondent filed a Motion to Dismiss and Incorporated Brief in Support. Also, on August 6, 2024, OCAHO invited the parties to register for

¹ OCAHO’s Electronic Filing Pilot Program is described in detail in the Federal Register. See 79 Fed. Reg. 31143 (May 30, 2014).

its Electronic Filing Pilot Program through which they can file electronically all filings in this case and accept electronic service of case-related documents from OCAHO and the opposing party.² OCAHO provided the parties with Attorney/Participant Registration Forms and Certifications for OCAHO's Electronic Filing Pilot Program, along with instructions for accessing any encrypted messages OCAHO may use to send decisions or orders that contain personally identifiable information, such as names, email addresses, home addresses, and telephone numbers.

On August 16, 2024, Complainant copied OCAHO staff on an email exchange with Respondent's counsel. In an email dated August 16, 2024, Complainant identified a new, temporary mailing address to Respondent's counsel and asked counsel to mail her a copy of Respondent's Motion to Dismiss and Incorporated Brief in Support. She also provided Respondent with her email address.

On August 20, 2024, Respondent's counsel, Mary E. Buckley, filed an Attorney/Participant Registration Form and Certification for OCAHO's Electronic Filing Pilot Program.

On August 28, 2024, Complainant filed her completed Participant Registration Form and Certification for OCAHO's Electronic Filing Pilot Program. Complainant identified a different "temporary" mailing address on her registration form. She attached a certificate of service to her filing, but it failed to identify the date and manner of service on Respondent. Along with her e-filing registration, Complainant submitted a document entitled "General Orders." The submission's certificate of service did not identify the manner of service on Respondent.

OCAHO staff spoke with Complainant by telephone on August 29, 2024, during which Complainant represented that she had notified Respondent's counsel by mail of her change of address. She further indicated that her new address was temporary and that she might change her address in approximately six months. OCAHO staff advised Complainant of her responsibility to include a signed certificate of service on all filings, to serve her filings on Respondent's counsel, and to notify OCAHO and Respondent's counsel of any changes in her address.

² Information and links to materials associated with OCAHO's Electronic Filing Pilot Program may be found on OCAHO's filing page on the United States Department of Justice's website. See <https://www.justice.gov/eoir/ocaho-filing>.

II. DISCUSSION

A. Complainant's Temporary Change of Address

The Court first addresses Complainant's Participant Registration Form for OCAHO's Electronic Filing Pilot Program through which she notified the Court of a temporary change to her address. Although her filing contained a certificate of service, it failed to indicate service on the opposing party, as required by OCAHO's Rules of Practice and Procedure for Administrative Hearings,³ which generally govern these proceedings. *See* 28 C.F.R. § 68.6(a) (providing that all pleadings shall be "accompanied by a certification indicating service to all parties of record"); *see also* OCAHO's Practice Manual Ch. 3.2(c).⁴

Although Complainant did not attach a compliant certificate of service to her filing, the Court exercises its discretion and accepts the filing in this matter. *See, e.g., United States v. Bhattacharya*, 14 OCAHO no. 1380b, 3 n.3 (2021)⁵ (noting that "OCAHO adjudicators do have some discretion to accept non-conforming pleadings in appropriate circumstances") (citation omitted). In making this determination, the Court has considered Complainant's pro se status and the nature of the filing, namely, to enroll in OCAHO's Electronic Filing Pilot Program and to inform the Court about a change to Complainant's mailing address. OCAHO will maintain the address provided to the Court on August 28, 2024, as Complainant's address of record.

³ OCAHO Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68, *available at* <https://www.govinfo.gov/content/pkg/CFR-2021-title28-vol2/pdf/CFR-2021-title28-vol2-part68.pdf>.

⁴ OCAHO's Practice Manual is available online at <https://www.justice.gov/eoir/reference-materials/ocaho>.

⁵ 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 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 through the Westlaw database "FIM-OCAHO," the LexisNexis database "OCAHO," and on the United States Department of Justice's website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

The Court notes that the CAHO previously informed the parties in the NOCA that a notice of change of address or contact information must be served on OCAHO as well as on the opposing counsel, and the Court repeats that reminder here. *See* Notice Case Assignment 2 (“All representatives and parties are also required to maintain a current address with OCAHO and to timely file a notice of a change of address with the presiding Administrative Law Judge . . . and must also serve such notice on the opposing party.”); *see also United States v. Cordin Co.*, 10 OCAHO no. 1162, 4 (2012)) (“It is the Respondent’s responsibility (indeed, the responsibility of all parties before OCAHO) to file a notice of change of address or other contact information directly with the [Administrative Law Judge], as well as serving that notice on the opposing party.”).

Because of the incomplete certificate of service attached to Complainant’s Participant Registration Form for OCAHO’s Electronic Filing Pilot Program, Complainant failed to certify service on Respondent of her filing containing her updated address. While the Court has the August 16, 2024, email exchange between Complainant and Respondent’s counsel during which Complainant provided her new address to Respondent, and Complainant’s representation to OCAHO staff during the telephone call on August 29, 2024, that she provided her updated address by mail to Respondent’s counsel, this information does not excuse Complainant from her responsibility to comply with OCAHO’s Rules of Practice and Procedure for Administrative Hearings. The Court has attached to this Order a copy of Complainant’s filing dated August 28, 2024, to ensure its receipt by Respondent’s counsel.

Likewise, the Court has attached to this Order copies of Respondent’s filings—Respondent’s Answer and Respondent’s Motion to Dismiss and Incorporated Brief—to ensure their receipt by Complainant. It is the Court’s understanding that Complainant began receiving mail at a different address sometime after the filing of this case. The August 16, 2024, email exchange reflects that Complainant was still seeking a copy of Respondent’s Motion to Dismiss and Incorporated Brief after its filing date of August 6, 2024. This request calls into question both the date and location of service reflected on the attached certificate of service.

B. Complainant’s “General Orders” Submission

On August 24, 2024, Complainant submitted a six-page submission entitled “General Orders.” In the document, Complainant discussed facts, raised new arguments, and made requests of Respondent’s counsel. Gen. Orders 1-6.

Complainant represented in the submission that she had attached supporting documents and communications, yet no attachments were submitted. *Id.* at 1, 3.

The Court finds that Complainant's submission is deficient because it fails to comply with OCAHO's Rules of Practice and Procedure for Administrative Hearings. It is neither an amended complaint pursuant to 28 C.F.R. § 68.9(e) nor a reply to any affirmative defenses Respondent raised in its answer. *See id.* § 68.9(d). The submission also does not appear to be a motion which is "an oral or written request, made a person or a party, for some action by an Administrative Law Judge." *Id.* § 68.2. Complainant's submission is not signed and dated, and it does not contain Complainant's address and telephone number, all of which are needed to satisfy OCAHO's Rules regarding the form of pleadings. *See id.* § 68.7(a). Further, the submission's certificate of service does not identify the method of service on Respondent.⁶ *See id.* § 68.6(a).

Although Complainant is pro se, she, like all litigants, must comply with OCAHO's Rules of Practice and Procedure for Administrative Hearings. Given its deficiencies, the Court now rejects her "General Orders" submission. It will not be considered by the Court.⁷ *See Y.Y. v. Zuora, Inc.*, 15 OCAHO no. 1402c, 3-4 (2022) (discussing in procedural history the rejection of the pro se complainant's filing for failure to comply with OCAHO's regulations governing service, filing, and the form

⁶ The Court notes that, before Complainant mailed this submission, OCAHO staff provided Complainant with a sample certificate of service to use as a model. The sample certificate explained that the filing party must indicate the manner of service and gave the examples of regular mail, FedEx delivery, electronic mail, and facsimile. Despite this, Complainant did not indicate the manner of service on Respondent.

⁷ The Court notes that Complainant's filing mentioned a potential interest in mediation. Gen. Orders at 4. OCAHO offers a voluntary mediation program through which the parties may use a settlement officer to mediate settlement negotiations as a means of alternative dispute resolution. EOIR Policy Memorandum 20-16 sets forth the OCAHO Settlement Officer Program and is available at <https://www.justice.gov/eoir/page/file/1300746/download>. More information about the Settlement Officer Program can be found in OCAHO's Practice Manual: <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>. Should the parties be interested in mediating this case, they must review the OCAHO Settlement Officer Program's rules and file a joint motion with the Court, stating that they have been fully informed about the program's procedures and consent to their use.

of pleadings); *see also Ravines de Schur v. Easter Seals-Goodwill No. Rocky Mountain, Inc.*, 15 OCAHO no. 1388e, 2 (2021) (rejecting pro se complainant's submission where it was "unclear what action Complainant seeks" from the Administrative Law Judge).

C. Response Deadline to Respondent's Motion to Dismiss

Complainant has not filed a response to Respondent's Motion to Dismiss and Incorporated Brief, and Respondent's motion did not indicate Complainant's position on the motion. OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that parties may file a response in opposition to a motion "[w]ithin ten (10) days after a written motion is served, or within such other period as the Administrative Law Judge may fix" 28 C.F.R. § 68.11(b). Although OCAHO's Rules "do not provide specific standards for granting extensions, . . . the standard routinely applied is good cause." *United States v. Space Expl. Techs. Corp.*, 18 OCAHO no. 1499, 5 (2023) (citing, *inter alia*, Fed. R. Civ. P. 6(b)(1) ("When an act may be or must be done within a specified time, the court may, for good cause, extend the time")).

Here, it is unclear where and when Respondent's motion was served on Complainant given her use of a different, temporary mailing address. Although it was Complainant's responsibility to timely notify OCAHO and Respondent of any change to her mailing address—whether temporary or permanent—the Court acknowledges Complainant's pro se status, the August 16, 2024, email from Complainant to Respondent's counsel identifying her new address and seeking a copy of Respondent's filings, and Complainant's representation to OCAHO staff on August 29, 2024, that she notified Respondent's counsel by mail of her change of address. These communications occurred after Respondent served and filed its motion. As such, the Court will consider the date of this Order as the date of service of Respondent's Motion to Dismiss and Incorporated Brief in Support. To the extent that Complainant received Respondent's motion before the date of this Order, the Court finds an extension of the regulatory deadline justified for the above-stated reasons.

Complainant shall file any response to Respondent's Motion to Dismiss and Incorporated Brief in Support within ten days from the date of issuance of this Order. 28 C.F.R. § 68.11(b); *see Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462b, 3 n.4 (2023) (discussing an extension of the regulatory deadline for the complainant to file an opposition to a motion to dismiss considering confusion regarding service of the motion).

D. Electronic Filing

OCAHO has now received signed and completed Attorney/Participant Registration Forms and Certifications for OCAHO's Electronic Filing Pilot Program from Complainant and one of Respondent's counsel, namely, Mary E. Buckley. Both parties in this case having registered for the program, the Court now orders them to file electronically all filings in this case in accordance with the instructions for OCAHO's Electronic Filing Pilot Program unless otherwise permitted by the Court or its designee. The parties shall copy all electronic filers on their filings to the Court. All filings must be accompanied by a certificate of service indicating the date and manner of service. The filing party shall sign and date the certificate of service.

Should the parties wish to designate additional attorneys of record as electronic filers, such as Respondent's counsel Ross E. Simpson, they may submit supplemental registration and certification forms for the Electronic Filing Pilot Program. Parties must copy all electronic filers on these submissions.

E. Duty to Notify and OCAHO's Rules

The enrollment of this case in OCAHO's Electronic Filing Pilot Program does not change the parties' duty to maintain up-to-date contact information with the Court. Should any of the parties' contact information change, including their best email address, telephone number, or mailing address, it is their responsibility to timely notify OCAHO and the opposing party of those changes by filing a notice with the Court and serving it on the opposing party. *See United States v. Ortiz*, 6 OCAHO no. 904, 919, 925 (1996) ("It is the party's responsibility to inform the Court and opposing party of any change of address."); *see also United States v. Panamerican Supply Co.*, 5 OCAHO no. 804, 654, 655 (1995) ("[I]t is the Respondent's duty to keep both the Court and the opposing party informed as to its current mailing address and telephone number."). If, or when, Complainant's temporary address changes, Complainant shall file a notice of change of address with the Court and serve it on Respondent's counsel.

Finally, the Court notes that all parties appearing before OCAHO, including parties appearing pro se, have a duty to familiarize themselves with OCAHO's Rules of Practice and Procedure for Administrative Hearings, including the requirements for submitting proper filings. *See Ehere v. HawaiiUSA Fed. Credit Union*, 17 OCAHO no. 1471c, 4 (2023). As a courtesy, the Court has attached a copy of OCAHO's Rules to this Order. The parties are encouraged to review the additional

resources on OCAHO's website, including the OCAHO Practice Manual and OCAHO's published decisions which are listed both chronologically and by topic.⁸

III. ORDERS

IT IS SO ORDERED that, pursuant to 28 C.F.R. § 68.11(b), Complainant, Rosalinda A. Barajas, shall file any response to Respondent's Motion to Dismiss and Incorporated Brief in Support within ten days from the date of issuance of this Order;

IT IS FURTHER ORDERED that Complainant's Participant Registration Form for OCAHO's Electronic Filing Pilot Program is accepted as a filing in this case;

IT IS FURTHER ORDERED that Complainant's "General Orders" submission is rejected as a filing in this case; and

IT IS FURTHER ORDERED that the parties shall electronically file all filings in this case in accordance with the instructions for OCAHO's Electronic Filing Pilot Program unless otherwise permitted by the Court or its designee. The parties shall copy all electronic filers on their filings to the Court. All filings must be accompanied by a certificate of service indicating the date and manner of service. The filing party shall sign and date the certificate of service.

Should Complainant or Respondent wish to designate additional attorneys of record as electronic filers, they may submit supplemental registration and certification forms for OCAHO's Electronic Filing Pilot Program. The filing party must copy all electronic filers on these submissions.

SO ORDERED.

Dated and entered on November 25, 2024.

Honorable Carol A. Bell
Administrative Law Judge

⁸ See *supra* notes 4 and 5; see also <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.