

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

UNITED STATES OF AMERICA,)
Complainant,)
)
) 8 U.S.C. § 1324a Proceeding
v.) OCAHO Case No. 2025A00020
)
)
ABS STAFFING SOLUTIONS, LLC,)
Respondent.)
)

ORDER CONCERNING INEFFECTIVE SERVICE OF COMPLAINT

I. BACKGROUND

This case arises under the employment eligibility verification provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a. On November 29, 2024, Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, ABS Staffing Solutions, LLC, failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for 251 individuals in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl., Ex. A.

In the Complaint, Complainant asked OCAHO to serve the complaint on Respondent at an address in New York, NY. Compl. 5 (citing 28 C.F.R. § 68.7).

On January 15, 2025, OCAHO's Chief Administrative Hearing Officer (CAHO) attempted to serve Respondent at the New York address identified via United State Postal Service certified mail with the complaint, Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the Notice of Intent to Fine (NIF), and Respondent's request for a hearing before this Court (collectively the Complaint package). OCAHO requested a tracking number for the Complaint package. The mail tracking information for the Complaint package indicates that the Respondent "moved, left no address" and that "forward expired."

II. LEGAL STANDARDS AND DISCUSSION

Under OCAHO’s Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024), this Court is responsible for service of the Complaint on Respondent. 28 C.F.R. § 68.3(a).¹ OCAHO’s Rules also require that the Complainant include in the Complaint “[t]he names and address of the respondents” and “a statement identifying the party or parties to be served” by OCAHO. 28 C.F.R. §§ 68.7(b)(2), 68.7(b)(5). OCAHO may serve the Complaint by one of three identified methods, including “[b]y mailing to the last known address of such individual, partner, officer, or attorney or representative of record.” 28 C.F.R. § 68.3(a)(3). “Service of complaint . . . is complete upon receipt by addressee.” 28 C.F.R. § 68.3(b).

When OCAHO “encounters difficulty with perfecting service,” the Court “may direct that a party execute service of process.” 28 C.F.R. § 68.3(c); *see, e.g.*, United States v. Oil Patch Petroleum, 18 OCAHO no. 1508 (2023).² In this case, OCAHO has been unable to perfect service at the address Complainant provided. The Court now turns to Respondent for assistance with service of the Complaint package.

“OCAHO’s Rules do not specify the methods by which the party may execute service when OCAHO directs the party to do so,” Wang v. Dropbox, Inc., 20 OCAHO no. 1605, 2, (2024), though it prescribes three specific methods when the Court is effecting process of the complaint, 28 C.F.R. § 68.3(a)(1)-(3). Because the “Federal Rules of Civil Procedure may be used” by the Court “as a general guideline in any situation not provided for or controlled by [OCAHO’s] rule,” the Court turns to Federal Rule 4(h) to clarify. 28 C.F.R. § 68.1; *see also* Wang, 20 OCAHO no. 1605 at 2-3 (outlining options for complainant’s service of the complaint based on Federal Rule 4(h)). Rule 4(h), which addresses service on a corporation, partnership, or association, includes many of the same methods of service provided for by 28 C.F.R. § 68.3, including “delivering a copy of . . . the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process” Fed. R. Civ. P. 4(h)(1)(B). Service may also be effected by any method identified in Rule 4(e)(1), which allows any method allowed by the state law of the state in which the district court is located or in which service is effected. Fed. R. Civ. P. 4(h)(1)(A), 4(e)(1). Finally, under Federal Rule 4(d)(1), in cases involving “[a] . . . corporation . . . that is subject to service under Rule 4 . . . (h) . . .

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024). The rules are also available through OCAHO’s webpage on the United States Department of Justice’s website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

² 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 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 “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

[t]he plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons,” subject to a written notice and request.

The Court now offers Complainant options for effecting service upon Respondent. Complainant may submit a supplement to the Complaint, identifying a working address for an officer, director, or registered agent for Respondent. Alternatively, Complainant may request a waiver of service from Respondent compliant with Federal Rule 4(d)(1), or Complainant may serve Respondent itself.

Should Complainant seek to serve Respondent itself, Complainant should execute service of process by personally serving the Complaint, the NOCA, the NIF, and the request for a hearing on Respondent. Complainant must serve the Respondent in a manner compliant with 28 C.F.R. § 68.3(a)(1). *See United States v. Dolan*, 2 OCAHO no. 388, 727, 728 (1991) (ordering Complainant “to make personal service of the complaint and notice of hearing . . . on Respondent by delivering the pleadings at his principal place office, place of business or residence or otherwise.”); *see also United States v. DJ’s Transp.*, 18 OCAHO no. 1488 (2023).

Upon Complainant’s executing service on Respondent, Complainant shall file proof of personal service of the Complaint package with the Court. Complainant should include an attestation of personal service, the name and title of the individual served with the Complaint package and accompanying documents, the relationship of the person served with Respondent, the date that personal service was accomplished, and that service was perfected in accordance with 28 C.F.R. § 68.3(b). *DJ’s Transp.*, 18 OCAHO no. 1488, at 4 (citing *United States v. Sea Dart Trading Co.*, 2 OCAHO no. 336, 304, 305 (1991)). That attestation “may include an affidavit or declaration from its agent(s) and supporting documentation relevant to service.” *Id.* (citing *United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431a, 2-3 (2022)). Complainant’s filing should also identify a working address for Respondent. *Id.*

If Complainant is unable to provide the Court with a working address, unable to obtain a waiver of service from Respondent, and unable to personally serve Respondent’s officer, director, or registered agent, Complainant should submit a filing “describing its efforts to serve the complaint on Respondent,” or, alternatively, its attempts to identify a working address or obtain a waiver of service from Respondent, “and, if desired, it may move to dismiss the complaint without prejudice.” *Oil Patch*, 18 OCAHO no. 1508, at 5. Alternatively, the Court may consider sua sponte dismissal. *Id.* (citing *United States v. Rios-Villatoro*, 14 OCAHO no. 1364, 1 (2020)).

The Court now ORDERS Complainant to submit a filing either: (1) providing the Court with a working address for Respondent's officer, director, or registered agent and requesting that the Court effect service on the identified address; (2) demonstrating that Respondent signed a waiver of service compliant with Federal Rule 4(d)(1) with evidence of the signed waiver; or (3), outlining Respondent's successful attempt to personally serve Respondent, with evidence of the service. The Complainant is directed to file the submission within 60 days of this Order.

SO ORDERED

Dated and entered February 13, 2025

Honorable John A. Henderson
Administrative Law Judge