

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

April 25, 2022

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00009
)	
HDH CO., LTD,)	
Respondent.)	
_____)	

ORDER DISCLOSING EX PARTE COMMUNICATION

I. PROCEDURAL HISTORY

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b.¹ On December 1, 2021, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, HDH Co., Ltd., discriminated against him on account of his citizenship status and national origin.

On February 17, 2022, the Court issued an Order to Show Cause to Respondent for failing to file an answer. To date, Respondent has not filed an answer.² On March 28, 2022, the Court received Complainant’s Motion for Entry of Default Judgment.

¹ The OCAHO Rules of Practice and Procedure govern this matter. *See* 28 C.F.R. pt. 68 (2022). All parties, including those appearing pro se, are expected to comply with the OCAHO Rules. *See* 28 C.F.R. § 68.1.

² The Court rejected a faxed letter from Respondent, as explained in the March 30, 2022 order. *See Zajradhara v. HDH Co.*, 16 OCAHO no. 1417, 1 n.1 (2022).

On March 30, 2022, the Court issued an Order to Show Cause on Jurisdiction. *See Zajradhara v. HDH Co.*, 16 OCAHO no. 1417 (2022).³ The Court ordered Complainant to show cause through a filing that establishes how many employees Respondent employs. *Id.* at 2.

On April 7, 2022, an OCAHO staff member received a voicemail from Complainant. Complainant's voicemail makes allegations in specific reference to this case and the Court's Order to Show Cause on Jurisdiction.

II. DISCUSSION

Complainant's voicemail raises concerns about ex parte communications under the OCAHO regulations. *See* 28 C.F.R. § 68.36. An ex parte communication is generally defined as “[a] communication between counsel or a party and the court when opposing counsel or party is not present.” *See Ravines de Schur v. Easter Seals-Goodwill N. Rocky Mountain, Inc.*, 15 OCAHO no. 1388c, 4 n.5 (2021) (quoting *Ex Parte Communications*, *Black's Law Dictionary* (11th ed. 2019)) (emphasis added). Communications with the Court “for the sole purpose of scheduling hearings, or requesting extensions of time are not considered ex parte communications, except that all other parties shall be notified of such request by the requesting party and be given an opportunity to respond thereto.” 28 C.F.R. § 68.36(a) (emphasis added).

The OCAHO Rules strongly discourage ex parte communications, and permit the Court to impose sanctions against parties who make prohibited ex parte communications. *See Tingling v. City of Richmond*, 13 OCAHO no. 1324b, 2 (2021) (citing 28 C.F.R. § 68.36). If an ex parte communication occurs, the Administrative Procedure Act requires disclosure of the communication. *Id.* (citing 5 U.S.C. § 557(d)(1)(C)). The Administrative Law Judge (ALJ) should provide parties the opportunity to review and comment upon the communication. *Id.*

Complainant's voicemail is a prohibited ex parte communication. The voicemail was not left for the sole purpose of scheduling a hearing or requesting an extension of time. *See* 28 C.F.R. § 68.36(a). Rather, Complainant's voicemail discussed the substance of the case, and included arguments about a specific Court order (“the Court is defending the company”; “I thought the

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

company had to defend itself”). Complainant’s voicemail ended with a nonspecific request for legal advice from the Court.

To the extent Complainant was responding to the Court’s Order to Show Cause on Jurisdiction, this response must be made in writing, with service on the opposing party. *See* 28 C.F.R. § 68.11(a). To the extent the Complainant is seeking relief from the Court, this should be made in the form of a motion and all parties must be given an opportunity to respond. *See Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1089, 1–2 (2003).

The Court hereby discloses Complainant’s oral communication by affixing a transcription of the April 7, 2022 voicemail.⁴ The Court will allow Respondent twenty-one (21) days, from the date of this Order, to provide any response it deems appropriate.

The Court reminds Complainant that he has until May 30, 2022, to respond *in writing* to the Court’s Order to Show Cause on Jurisdiction. The Court will not consider this communication to be a response to that Order.

SO ORDERED.

Dated and entered on April 25, 2022.

Honorable Jean C. King
Chief Administrative Law Judge

⁴ A voicemail transcription provides the parties with the substance of a prohibited oral communication, as required by the OCAHO Rules and Administrative Procedure Act. *See* 28 C.F.R. § 68.36; 5 U.S.C. 557(d)(1)(C).

Voicemail to the Office of the Chief Administrative Hearing Officer

Received April 7, 2022

<<START>> 0:00

Hi there, good morning, this message is for [name redacted]. This is Zaji Zajradhara. My number is [phone number redacted]. I'm calling about the HDH, case number, 2022B00009, Order to Show Cause on Jurisdiction.

Is the Court, like, defending the company? The company don't have an attorney, but the Court is defending the company? I mean if the Court is defending the company, I might as well drop all my cases. How I'm gonna fight the Court?

I thought the company had to defend itself. I didn't know that the Court defends the person that's breaking the law.

Can somebody call me and explain this to me? Thank you.

<<END>> 0:55