

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

December 8, 2022

ROBERT PAUL HEATH,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00060
I-SERVICES, INC.,)	
Respondent.)	
)	

Appearances: Robert Heath, pro se Complainant
Murali Ghanta, on behalf of I-Services, Inc., pro se Respondent

ORDER

I. PROCEDURAL HISTORY

This case arises under the employment discrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Robert Heath, filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on September 22, 2021. Complainant alleges that Respondent, I-Services, Inc., discriminated against him on account of citizenship status and national origin, and engaged in unfair documentary practices, in violation of § 1324b.

On February 14, 2022, Respondent filed an answer which the Court accepted on February 22, 2022. *Heath v. I-Services, Inc.*, 15 OCAHO no. 1413, 1 (2022).¹ On May 9, 2022, the Court issued an Order Issuing Stay of Proceedings due to a communication from Complainant that he

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>.

was experiencing a health emergency. *See Heath v. I-Services, Inc.*, 15 OCAHO no. 1413a, 1 (2022). On July 13, 2022, the Court issued an Order for Status Report. *See Heath v. I-Services, Inc.*, 15 OCAHO no. 1314b, 1 (2022). On August 3, 2022, Respondent filed a “Response to Notice for Status Report and Motion to Dismiss the Complaint.”

On August 31, 2022, the Court issued an Order Denying Motion to Dismiss and Notice of Apparent Death. *See Heath v. I-Services, Inc.*, 15 OCAHO no. 1314c, 1 (2022). In the August 31, 2022, Order, the Court denied Respondent’s motion to dismiss. *See id.* at 2–4 (finding that Complainant sufficiently alleged a discrimination in hiring claim, and that Respondent did not move the Court on the unfair documentary practices claim). Next, the Court notified the parties of its intent to take official notice of Complainant’s apparent death, pursuant to 28 C.F.R. § 68.41,² and allowed the parties to be heard on matters related to the apparent death within thirty days. *See id.* at 4–5. Lastly, the Court ordered Complainant to advise as to his intent to advance this litigation within thirty days. *Id.* at 5. The Court did not receive submissions as to the propriety of official or judicial notice of the apparent death, applicable law on the substitution of parties, propriety of finding a claim abandoned in the absence of a response by Complainant or any putative successor party, or Complainant’s intent to advance the litigation.

II. DISCUSSION

A. Official Notice of Complainant’s Death

28 C.F.R. § 68.41, states in part that “official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice.” Federal Rule of Evidence 201 describes a matter for which one might traditionally take judicial notice as:

“[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.”

Fed. R. Evid. 201(b).

Recently, the OCAHO administrative law judge (ALJ) in *Heath v. Ancile, Inc.* took official notice of the death certificate for Mr. Heath after providing notice to the parties. *See* 15 OCAHO no. 1411b, 2–3 (2022) (reasoning that “[w]hether under the broader concept of official notice or under the circumscribed evidentiary rule 201 judicial notice, [Mr. Heath’s] death certificate meets that standard[.]”). The *Ancile* ALJ then found that Mr. Heath died on May 18, 2022. *Id.* at 3.

Public records support taking official notice of this fact. Mr. Heath is identified as deceased by the Circuit Court in Palm Beach County, Florida, in a petition for administration of his estate, with a Ms. Tonya Heath appointed as his personal representative. *eCaseView*, Clerk of the Circuit Court

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

& Comptroller Palm Beach Cty., <https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx> (last visited Nov. 22, 2022). The Clerk of the Court’s online database is an official publication created by the State of Florida, falling within Rule 201(b)(2)’s stricture of a document coming from a source “whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Further, as a public record the contents of the website can be “readily and accurately determined.” *See id.* In addition, information on Complainant’s death is readily verifiable in two online, publicly available obituaries for Robert Heath. *Robert “Bobby” Paul Heath Jr.*, Tribute Archive, <https://www.tributearchive.com/obituaries/24883485/robert-bobby-paul-heath-jr> (last visited Nov. 22, 2022); *Obituary: Robert Heath*, Palm Beach Post, <https://www.palmbeachpost.com/obituaries/pwpb0216852> (last visited Nov. 22, 2022). The obituaries have indicia of reliability as to material facts; for instance, the biographical data from the Tribute Archive and Palm Beach Post obituaries corroborates information listed in Robert Heath’s death certificate. *See Ancile, Inc.*, 15 OCAHO no. 1411a, at 1 (referencing the legal name, date of birth, date of death, and place of residence shown on the death certificate). Moreover, some federal courts recognize obituaries as a 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, 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).

The Court finds that based upon the *Ancile* case, the probate records, and public obituaries, the Court has a proper foundation from which to take official notice of Complainant’s death. *See* 28 C.F.R. § 68.41. No one has objected to the suggestion of death, or that it is an improper subject of official notice. Accordingly, the Court takes official notice of the fact that Complainant Robert Heath died on May 18, 2022.

B. Substitution of Parties

Following official notice of Mr. Heath’s death, the *Ancile* ALJ determined that application of Federal Rule of Civil Procedure 25 (Rule 25), regarding substitution of parties, is appropriate in this forum. *Ancile, Inc.*, 15 OCAHO no. 1411b, at 4 (citing *Lee v. AT&T*, 8 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. *See* 28 C.F.R. § 68.1[.]”). Per Rule 25, should a party fail to file a motion “within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1). The undersigned similarly finds that Rule 25 may be used as a guideline, is applicable to the facts presented in this circumstance, and will apply the rule in this circumstance.

The Court’s determination that Complainant is deceased would normally trigger the ninety-day window for filing motions for substitution per Rule 25. Still, the Court must ensure that appropriate notice about substitution is given. Indeed, “[c]ourts have noted upon 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).

The Court hereby provides notice to Complainant’s apparent successor in interest, Ms. Tonya Heath. *See id.* at 5 (noting her identification on the death certificate and on the Palm Beach County Clerk of Court’s public records); *see also eCaseView*, Clerk of the Court & Comptroller Palm Beach Cty., <https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx> (last visited Nov. 22, 2022) (probate record for Complainant, naming his executor). The Court intends to take official notice of Tonya Heath as Complainant’s executor, subject to the parties’ opportunity to be heard. Respondent and Ms. Heath may advise or object, no later than fourteen days from the date of this Order, concerning the Court’s intent of taking official notice of Ms. Heath as Complainant’s executor pursuant to 28 C.F.R. § 68.41.

If the Court takes official notice of Ms. Heath as Complainant’s executor, the Court will issue an Order stating as such. Following official notice of Ms. Heath as Complainant’s executor, the Court would start the ninety-day window for filing motions for substitution. If a motion to substitute is not made in that time, the case would then be dismissed.

The Court further provides that Tonya Heath be included in the certificate of service (i.e., filings and orders shall also be served on Tonya Heath).

III. CONCLUSION

The Court takes official notice that Complainant Robert Heath died on May 18, 2022.

The Court provides the parties notice that it intends to take official notice of Tonya Heath as Complainant’s executor. The parties may advise or object, no later than fourteen days from the date of this Order.

The Court orders that Tonya Heath shall be included in the certificate of service.

SO ORDERED.

Date: December 8, 2022.

Jean C. King
Chief Administrative Law Judge