

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

February 15, 2023

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00036
)	
E-SUPPLY ENTERPRISES,)	
Respondent.)	
_____)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Tiberius D. Mocanu, for Respondent¹

DISCLOSURE OF EX PARTE COMMUNICATION

I. BACKGROUND

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On March 25, 2022, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, E-Supply Enterprises, violated § 1324b.

On November 10, 2022, the Court issued an Order on Motions and Updated Case Schedule. *Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438b, 1 (2022).² The updated case schedule

¹ The Court’s November 10, 2022, Order provided that an attorney appearing on behalf of Respondent was to file a notice of appearance by December 8, 2022. On January 19, 2023, the Court received a notice of appearance from Tiberius Mocanu, Esq. The Court exercises discretion to accept Mocanu’s untimely notice of appearance. Mocanu is now the attorney of record for Respondent, pursuant to 28 C.F.R. § 68.33.

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

provided that Complainant may supplement his Opposition to the Motion to Dismiss by January 19, 2023, and Respondent may file a reply by February 2, 2023. *Id.* at 7.

On December 14, 2022, Complainant electronically filed a “Laymans’ Response To: Order On Motions And Updated Case Schedule: Rule 0 & Rule 37: Failure To Make Disclosures Or To CoOperate In Discovery 28 CFR 68.23 / Rule(s) 30 B.6, & Rule 31 A-4.” Complainant’s filing included a “Motion for Failure to Again Provide Discovery / Response” (Discovery Motion), along with a “Motion to Dismiss / Jurisdiction / Response.”

On January 18, 2023, the Court issued an Order on Complainant’s Discovery Motion. *Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438d, 1 (2023). The Court stated that it considered Complainant’s “Motion to Dismiss / Jurisdiction / Response” as timely supplementing his Opposition to the Motion to Dismiss. *Id.* at 2 n.3. After denying the discovery motion, the administrative law judge (ALJ) reminded the parties that “as Complainant supplemented his Opposition to the Motion to Dismiss, Respondent may file a reply to that opposition by February 2, 2023.” *Id.* at 3 (emphasis added).

On February 8, 2023, the Court received a voicemail that, inter alia, discusses this case. *See* App’x A (transcription of February 8, 2023 voicemail). Complainant references an inability to respond to a February 2, 2023 “close” or “response” date, related to the January 18, 2023 Order. *See id.* The voicemail does not indicate that Respondent was made aware of the contents of the voicemail.

II. LEGAL STANDARDS & DISCUSSION

Complainant’s voicemail raises concerns about ex parte communications. *See* 28 C.F.R. § 68.36.³ 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.” *Zajradhara v. HDH Co.*, 16 OCAHO no. 1417a, 2 (2022) (citations omitted) (emphasis in original). Communications with the Court are not considered ex parte if made “for the sole purpose of scheduling hearings, or requesting extensions of time, 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).

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>.

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

If ex parte communication occurs, the Administrative Procedure Act requires disclosure of the communication. *Tingling v. City of Richmond*, 13 OCAHO no. 1324b, 2 (2021) (citing 5 U.S.C. § 557(d)(1)(C)). The ALJ should provide parties the opportunity to review and comment upon the communication. *Id.*

Complainant's voicemail runs afoul of OCAHO's rule on ex parte communication, 28 C.F.R. § 68.36. Construed liberally, Complainant seeks additional time to respond to a February 2, 2023 deadline. *See* § 68.36(a). The Court's November 10, 2022, Order (as re-stated in the January 31, 2023, Order) set a February 2, 2023 deadline. However, that deadline was not for Complainant; it was for Respondent to reply to Complainant's supplemented Opposition to the Motion to Dismiss. Further, the voicemail does not indicate that Respondent was made aware of the contents of the voicemail, which is required for a party seeking an extension of time. *See* § 68.36(a).

The Court hereby discloses Complainant's voicemail by affixing a transcription of the February 8, 2023 voicemail at Appendix A.⁴ The Court will allow Respondent until thirty (30) days from the date of this Order to provide any response to the February 8, 2023 voicemail it deems appropriate.

As this is the second ex parte voicemail left by Complainant in this case, the Court admonishes Complainant that he may not call this office to discuss anything substantive in this case. Any further such communications will result in appropriate sanctions. *See* 28 C.F.R. § 68.36(b).

SO ORDERED.

Dated and entered on February 15, 2023.

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); *e.g.*, *HDH Co.*, 16 OCAHO no. 1417a, at 3–4.