

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

February 16, 2023

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2021B00043
)	
LI YONG HONG CORPORATION,)	
Respondent.)	
_____)	

ORDER DISCLOSING EX PARTE COMMUNICATION

On June 30, 2021, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, Li Yong Hong Corporation, discriminated against him on account of his national origin and citizenship status, in violation of 8 U.S.C. § 1324b. Compl. 6.

On January 31, 2023, the Court entered an Order Issuing Stay – Abandoned Complaint. *See Zajradhara v. Li Yong Hong Corp.*, 17 OCAHO no. 1472, 2–3 (2023)¹ (finding that Complainant’s disregard of the September 21, 2021 show cause order and lack of participation in proceedings constituted abandonment of his complaint). Through this Order, the Court advised:

During the stay of proceedings for Zajradhara v. Li Yong Hong Corporation (OCAHO Case No. 2021B00043), the Court will not consider or adjudicate submissions filed by the parties. The parties are not precluded from contacting the

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>.

Court and requesting a status update; however, parties should bear in mind that the Court will timely inform the parties in writing when the stay is lifted. When the stay is lifted, the case will be dismissed.

Id. On February 8, 2023, the Court received a voicemail from Complainant that discusses, inter alia, this case. *See* App’x A (transcription of Feb. 8, 2023 voicemail). The voicemail poses substantive questions related to the Court’s January 31, 2023 Order. *Id.* The voicemail did not indicate that Respondent was made aware of the contents of the voicemail.

Complainant’s voicemail raises concerns about ex parte communications under the OCAHO regulations. *See* 28 C.F.R. § 68.36.² 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.” § 68.36(a) (emphasis added).

Continued ex parte communications can lead to sanctions. *See Tingling v. City of Richmond*, 13 OCAHO no. 1324b, 2 (2021) (citing § 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.*

Here, Complainant’s voicemail is an 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). Instead, Complainant’s voicemail poses substantive questions regarding the Court’s January 31, 2023 Order, with no indication of notice to all parties, or opportunity for all parties to respond.

To the extent that Complainant seeks relief related to the Order Issuing Stay – Abandoned Complaint,³ “the Court will not consider or adjudicate submissions filed by the parties” during the stay. *Li Yong Hong Corp.*, 17 OCAHO no. 1472, at 2. “[T]he Court will timely inform the parties in writing when the stay is lifted.” *Id.* at 3.

² 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).

³ Indeed, “all requests for relief shall be submitted in the form of a motion[.]” *Hsiesh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1089, 2 (2003); *see* 28 C.F.R. § 68.11(a). Voicemail is not the appropriate way or place to make an oral motion. *See Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450c, 2–4 (2023) (citations omitted) (identifying that “[v]oicemail is inherently ex parte,” and “does not allow for all parties to receive contemporaneous notice[.]”).

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

SO ORDERED.

Dated and entered on February 16, 2023.

Honorable Andrea R. Carroll-Tipton
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).