

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

ROBERT HEATH,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00045
ANCILE, INC.,)	
Respondent.)	
)	

ORDER

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. On July 12, 2021, Complainant, Robert Heath filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Ancile, Inc., alleging citizenship and national origin discrimination in violation of § 1324b. On August 11, 2021, Respondent timely filed an answer denying all liability.

On July 18, 2022, the undersigned issued an Order related to the Respondent’s Notification of Complainant’s Passing and Motion to Dismiss. *See Heath v. Ancile, Inc.*, 15 OCAHO no. 1411, 1 (2022).¹ The Court indicated that it would take official notice of Complainant’s death, subject to the parties’ opportunity to comment per OCAHO Rule 68.41.² *Id.* The Court further directed the parties to file any briefs concerning the applicability of Federal Rule of Civil Procedure 25 (Rule 25) to these proceedings. *Id.* at 1–2. The Court additionally directed that the parties shall file any submissions to these questions within thirty days of the Order. *Id.* at 2.

Neither Complainant nor his successor in interest filed a response concerning judicial notice. Complainant also did not file a submission concerning the applicability of Rule 25.

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>.

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

Respondent's August 15, 2022 submission on this question urged the Court to deem Rule 25 applicable to this matter, and further sought for the Court to rule that no person should be substituted for Complainant.

On October 20, 2022, the undersigned issued a Notice and Order regarding official notice of Complainant's death and the applicability of Rule 25. *See Heath v. Ancile, Inc.*, 15 OCAHO no. 1411a, 1 (2022). The Court took official notice of the death certificate for Complainant pursuant to 28 C.F.R. § 68.41. *See id.* at 2–3 (citations omitted). Therefore, “[b]ased on the Court taking official notice of the death certificate,” the Court found that Complainant died on May 18, 2022. *Id.* at 3. Next, the Court concluded that Federal Rule 25 should apply, as it did not present a conflict with the OCAHO Rules or the Administrative Procedures Act. *See id.* at 3–4. The Court then noted that a determination on a complainant's death normally triggers the window for filing Rule 25 substitution motions.³ *Id.* at 4. However, the Court observed that notice must be given to that party's successor in interest or executor, even if the nonparty did not enter an appearance or advise the Court of their interest in the litigation. *See id.* at 4 (citations omitted). Accordingly, the Court provided notice to Robert Heath's apparent successor in interest, Tonya Heath, of its intent to take official notice of her as Complainant's executor pursuant to 28 C.F.R. § 68.41. *Id.* at 5. The Court permitted Respondent and Ms. Heath 14 days to advise or object to this official notice. *Id.*

The Court did not receive filings in response to the October 20, 2022 Notice and Order. Accordingly, the Court will take official notice of Tonya Heath as Complainant's executor pursuant to 28 C.F.R. § 68.41. The Court further observes that service of the October 20, 2022 Notice and Order was perfected on Ms. Heath via certified mail. *See also* Fed. R. Civ. P. 25(a)(3).

As discussed in the prior order, neither party has moved for dismissal based on an argument that the claims in this action have been extinguished with Mr. Heath's passing. The Court therefore declines to sua sponte raise the matter.

The Court now starts the 90-day period proscribed by Federal Rule 25(a)(1). “A motion for substitution may be made by any party or by the decedent's successor or representative.” Fed. R. Civ. P. 25(a)(1). If a motion for substitution is not made within 90 days from the date of this Order, this action by Robert Heath (OCAHO Case No. 2021B00045) may be subject to dismissal without prejudice. *See id.*

³ The Court stated Respondent may re-raise Rule 25 objections from its August 15, 2022 submission upon a motion for substitution. *See Ancile, Inc.*, 15 OCAHO no. 1411b, 4 n.4.

SO ORDERED.

Dated and entered on March 9, 2023.

Honorable John A. Henderson
Administrative Law Judge