

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. 2020B00089
CONSULTADD AND AN ANONYMOUS)	
EMPLOYER,)	
Respondent.)	
)	

ORDER

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. Complainant, Robert Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on August 31, 2020, to which Respondent, ConsultAdd and an Anonymous Employer, filed an answer on February 11, 2021.

On May 19, 2022, the undersigned issued a Notice and Order of Stay. *See Heath v. ConsultAdd*, 15 OCAHO no. 1395b (2022).¹ The Court disclosed communications by Complainant in April 2022 in which Complainant asserted that he was very ill and would be hospitalized for the near future. *Id.* at 1–2. The Court provided Respondent 14 days to file any response “it deem[ed] appropriate.” *Id.*

On August 11, 2022, the undersigned issued a Notice and Order, providing notice to the parties of Complainant’s apparent death. *See Heath v. ConsultAdd*, 15 OCAHO no. 1395c, 1 (2022) (citing *Heath v. Ancile, Inc.*, 14 OCAHO no. 1411a, 1 (2022)). The Court indicated that it would take judicial notice of Complainant’s death, subject to the parties’ opportunity to comment within 30 days. *Id.* at 1; *see* 28 C.F.R. § 68.41.² 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 within the same timeframe. *ConsultAdd*, 15 OCAHO no. 1395c, at 1–2.

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 (2023).

The parties did not respond to the Court's May 19, 2022 Notice and Order of Stay or the August 11, 2022 Notice and Order. Complainant's executor or successor in interest did not enter their appearance or otherwise advise if they will pursue this litigation (OCAHO Case No. 2020B00089).

On March 7, 2023, the undersigned issued a Notice and Order regarding official notice of Complainant's death under 28 C.F.R. § 68.41 and the applicability of Rule 25. *See Heath v. ConsultAdd*, 15 OCAHO no. 1395d, 1 (2023). The Court took official notice that Complainant died on May 18, 2022, based on the Court's official notice in *Ancile, Inc.* and obituaries. *See id.* at 2–3 (citations omitted). Next, the Court concluded that Rule 25 should apply, as it did not present a conflict with OCAHO's rules or the Administrative Procedure Act. *See id.* at 3 (citation omitted). The Court then noted that a determination on a complainant's death normally triggers the window for filing Rule 25 substitution motions. *Id.* 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.* (citation 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.* The Court permitted Respondent and Ms. Heath 21 days to advise or object to this official notice. *Id.*

The Court did not receive filings in response to the March 7, 2023 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 March 7, 2023 Notice and Order was perfected on Ms. Heath via certified mail. *See also* Fed. R. Civ. P. 25(a)(3).

Neither party moved for dismissal based on an argument that the claims in this action have been extinguished with Mr. Heath's death. The Court therefore declines to raise this sua sponte.

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. 2020B00089) may be subject to dismissal without prejudice. *See id.*

SO ORDERED.

Dated and entered on May 10, 2023.

Honorable John A. Henderson
Administrative Law Judge