

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

December 21, 2022

ROBERT PAUL HEATH,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2022B00012
	)	
EUCLID INNOVATIONS,	)	
Respondent.	)	
_____	)	

Appearances: Robert Paul Heath, pro se Complainant  
Sharadha Sankararaman Kodem, Esq., for Respondent  
Sam Shirazi, Esq., for the U.S. Department of Justice

AMENDED ORDER

The Court issued an Order in the above-captioned case on December 9, 2022. This Amended Order amends the December 9, 2022, Order, and corrects solely for clerical errors.

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Robert Paul Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on December 28, 2021. Complainant alleges that Respondent, Euclid Innovations, discriminated against him based on his national origin and citizenship status, and engaged in unfair documentary practices, in violation of § 1324b. On March 30, 2022, the Court issued an Order of Inquiry. *See Heath v. Euclid Innovations*, 16 OCAHO no. 1418, 1 (2022).<sup>1</sup> On

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<sup>1</sup> 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

April 14, 2022, the Court issued an Order Issuing Stay of Proceedings. *See Heath v. Euclid Innovations*, 16 OCAHO no. 1418a, 1 (2022) (issuing a sixty-day stay of proceedings and ordering Complainant to file a written status report).

On April 21, 2022, Sam Shirazi, Esq., an attorney from the U.S. Department of Justice, Immigrant and Employee Rights Section (IER), filed a Notice of Appearance and a Notice Regarding Complainant. On August 16, 2022, the Court rejected a filing from Sharadha Sankararaman Kodem, Esq., as she did not certify service on IER, or file a Notice of Appearance. *See* 28 C.F.R. §§ 68.6(a), 68.33(f).<sup>2</sup>

On September 29, 2022, the Court issued an Order stating that after multiple attempts to perfect service of the complaint, service was perfected on July 11, 2022. *See United States v. Euclid Innovations*, 16 OCAHO no. 1418, 1 (2022). The Court acknowledged that Kodem filed a Notice of Appearance and an answer on August 31, 2022. *Id.* at 3. However, Respondent did not provide good cause for its failure to timely file an answer. *Id.* Accordingly, the Court ordered Respondent to show cause to why it filed the answer late, by October 28, 2022. *Id.* at 3, 5. The Court also addressed a recent disclosure of apparent death and subject matter jurisdiction. *Id.* at 2–4. The Court provided the parties with notice of the “Certification of Death” for the decedent named Robert Heath. *Id.* at 4. The Court permitted the parties to be heard on the apparent death, including the propriety of judicial notice and applicable law on the substitution of parties, by October 28, 2022. *Id.* at 4–5. Lastly, after noting concerns as to its jurisdiction over Complainant’s § 1324b claims, the Court ordered Complainant to show cause on jurisdiction by October 28, 2022. *See id.* at 4–5.

On October 20, 2022, Respondent filed its “Motion to Show Good Cause.” Respondent argues that it did not know of its obligation to serve the answer on IER. Good Cause Mot. 1. Respondent avers that, upon learning of this requirement, it “immediately rectified the issue” and served IER. *Id.* Respondent asserts that these circumstances show good cause for its untimely answer. *See id.*

The Court has not received submissions regarding the apparent death of Robert Heath or applicable law on the substitution of parties. The Court also has not received a filing from Complainant, his executor, or a substitute party establishing the Court’s jurisdiction over the § 1324b claims, or the previously ordered status report.

## II. LEGAL STANDARDS & DISCUSSION

### A. Good Cause for Failure to Timely File Answer

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database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

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

A party that does not answer a complaint within the time specified is in default, whether or not that fact is officially noted. *See United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015). Therefore, before a late answer may be accepted, default must be excused. *Id.* Even so, OCAHO generally disfavors default judgment, “and doubts regarding entry of default should be resolved in favor of a decision on the merits of the case.” *United States v. Steidle Lawn & Landscaping, LLC*, 17 OCAHO no. 1457a, 2 (citations omitted).

Here, the Court finds that Respondent showed good cause for its untimely answer. *See M.S. v. Dave S.V. Hoon-John Wayne Cancer Institute*, 12 OCAHO no. 1305, 4-5 (2017) (discussing factors a judge should consider in determining whether “good cause” exists for vacating an entry of default). The Court observes that Respondent first attempted to file an answer on August 16, 2022, very close to the original answer deadline. That answer was rejected for a procedural deficiency related to service. Shortly after, Respondent properly filed an answer raising affirmative defenses, and timely responded to the order to show cause. Respondent’s conduct demonstrates that it intends to defend against this action. *See also United States v. Sanchez*, 13 OCAHO no. 1331, 2 (2019) (noting that OCAHO generally discourages default judgment solely on failure to meet procedural time requirements). Additionally, neither Complainant nor any successor in interest has responded, and under the circumstances of this case, there is not prejudice to Complainant. As such, the order to show cause is DISCHARGED and the Court accepts Respondent’s answer.

#### B. 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.* case 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 & 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.

### C. 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 on 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* (probate record for Complainant, naming his executor). The Court intends to take official notice of Ms. Heath as Complainant's executor, subject to the parties' opportunity to be heard. Respondent and Ms. Heath may advise or object, no later than December 23, 2022 (fourteen days from the date of the original 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 substitution motion is not made in that time, the case would then be dismissed.

The Court further provides that Ms. Heath be included in the certificate of service.

### III. CONCLUSION

The Court discharges the September 29, 2022 order to show cause and accepts the answer.

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

The Court provides the parties notice that it intends to take official notice of Ms. Tonya Heath as Complainant's executor.

The parties may advise or object, no later than December 23, 2022 (fourteen days from the date of the original Order). Ms. Tonya Heath shall be included in the certificate of service.

SO ORDERED.

Dated and entered on December 21, 2022.

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Honorable Jean C. King  
Chief Administrative Law Judge