

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

January 4, 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
Elizabeth Torres, pro se, 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.²

On December 29, 2022, Complainant left a voicemail which makes specific reference to this case. Complainant's voicemail includes discussion on the "Law Offices of Stephen Nutting and Tiberius Mocanu," and accusations against an "Elizabeth Santos."

¹ The Court previously observed that Respondent's July 25, 2022 filing lists Stephen Nutting, Esq., and Tiberius Mocanu, Esq., as attorneys for Respondent. *See Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438b, 1 n.2 (2022). The Court ordered these attorneys to file their notices of appearance by December 8, 2022. *Id.* at 1 n.2, 7. Neither attorney filed a notice of appearance for this matter; accordingly, the Court views Respondent as appearing pro se in these proceedings.

² The Court's November 10, 2022, Order provides a detailed procedural history for this case.

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).

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 Administrative Law Judge (ALJ) should provide parties the opportunity to review and comment upon the communication. *Id.*

Complainant’s voicemail is a prohibited 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). Rather, Complainant’s voicemail discusses the substance of a phone call with the “Law Offices of Stephen Nutting and Tiberius Mocanu” regarding E-Supply, and accuses an Elizabeth Santos of “ly[ing] on these attorneys.” The voicemail also does not indicate that Respondent was made aware of the contents of the voicemail.

To the extent Complainant seeks relief from the Court (i.e., for the Court to take an action), Complainant shall file a motion. *See* 28 C.F.R. § 68.11(a); *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1089, 2 (2002). A motion “state[s] with particularity the grounds therefor,” and “set[s] forth the relief or order sought.” 28 C.F.R. § 68.11(a). The motion must be submitted in a way that all parties have a “reasonable opportunity to respond or object[.]” *Id.*; *see also* 28 C.F.R. § 68.6 (service of a written motion).

The Court hereby discloses Complainant’s oral communication by affixing a transcription of the December 20, 2022 voicemail at Appendix A.⁴

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

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.

The Court will allow Respondent until February 3, 2023, to provide any response it deems appropriate.

SO ORDERED.

Dated and entered on January 4, 2023.

Honorable Jean C. King
Chief Administrative Law Judge