

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

January 3, 2023

Ravi Sharma, Complainant,)	
)	
)	
v.)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2022B00023
)	
NVIDIA CORP., Respondent.)	
)	
)	

Appearances: Ravi Sharma, pro se Complainant
Patrick Shen, Esq., K. Edward Raleigh, Esq., and Samantha Caesar, Esq.,
for Respondent

ORDER DISCLOSING COMPLAINANT’S EX PARTE
COMMUNICATION AND REJECTING ORAL MOTION

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Ravi Sharma, filed a complaint, pro se, with the Office of the Chief Administrative Hearing Officer (OCAHO) on February 2, 2022, alleging that Respondent, NVIDIA Corp., violated § 1324b. On March 15, 2022, Respondent, through counsel, filed a Motion to Dismiss and Answer. On March 28, 2022, Complainant filed an Opposition to the Motion to Dismiss. On August 11, 2022, the Court denied Respondent’s Motion to Dismiss.

Ravi Sharma v. NVIDIA Corp., 17 OCAHO no. 1450, 1 (2022).¹

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>.

On September 14, 2022, the Court issued an Order Summarizing September 7, 2022 Prehearing Conference, which, *inter alia*, outlined discovery parameters for the parties.

On September 21, 2022, Complainant filed a Request for Anonymity in Court's Published Orders and Decisions (Anonymity Motion). On October 3, 2022, Respondent filed an Opposition to Complainant's Anonymity Motion. On October 13, 2022, the Court denied Complainant's Anonymity Motion.

On November 22, 2022, Complainant filed a Motion to Seek Resolution Regarding Respondent NVIDIA Corporation's Responses to Complainant's Discovery Requests (Discovery Motion). On December 6, 2022, Respondent filed an Opposition to Complainant's Discovery Motion.

On December 13, 2022, the Court issued an Order Extending Discovery Deadline and Modifying Case Schedule. *Ravi Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450a, 1 (2022). The administrative law judge (ALJ) bifurcated the issues raised in Complainant's Discovery Motion, considering separately the request to extend the discovery timeframe. *Id.* at 3. The ALJ found that Complainant showed good cause for the extension. *Id.* at 4. Accordingly, the ALJ amended the date discovery closes (including the deadline for discovery motions) to February 6, 2023. *Id.* The ALJ further noted that "[a]ll discovery limitations outlined in previous orders remain in place." *Id.* at 3.

On December 16, 2022, Complainant filed a Motion to Request Additional Discovery. On December 21, 2022, Complainant filed a Motion for Leave of Court to File Reply to Respondent's Opposition to Complainant's Motion to Seek Resolution Regarding Respondent Responses to Complainant's Discovery Requests (Motion for Leave to Reply). Complainant's Motion for Leave to Reply also included Complainant's reply.

On December 22, 2022, Complainant left a voicemail wherein he attempts to seek clarification on the Court's December 13, 2022 Order and to request scheduling "a conference with the Judge."²

II. LEGAL STANDARDS & DISCUSSION

Portions of Complainant's voicemail raises concerns about *ex parte* communications.³ *See* 28 C.F.R. § 68.36.⁴ Communications with the Court are not considered *ex parte* *if* made "for the sole purpose of scheduling hearings, or requesting extensions of time." *Id.* (emphasis added). Even then, "all other parties shall be notified of such request by the requesting party and be given an

² As discussed further below, the Court construes this request as an oral motion to schedule a prehearing conference. *See* 28 C.F.R. §§ 68.11(a), 68.13.

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).

⁴ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

opportunity to respond thereto.” *Id.* 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 ALJ should then provide parties the opportunity to review and comment upon the communication. *See id.*

Complainant’s voicemail, when considered in the totality of the information provided, is a prohibited ex parte communication. Complainant did not leave the voicemail for sole purpose of scheduling related to a hearing⁵ or requesting an extension of time. *See* 28 C.F.R. § 68.36(a).⁶ Rather, Complainant discusses specific discovery matters (i.e., requests for additional discovery emailed to Respondent’s counsel, and the meaning of the Court’s extension of the discovery deadline). The voicemail also did not indicate that opposing counsel was made aware of the contents of the voicemail.

The Court therefore discloses Complainant’s voicemail by affixing a transcription at Appendix A.⁷ The Court will allow Respondent 10 days from the date of this Order to provide any response it deems appropriate.

To the extent the contents of the voicemail can be construed as a motion, the Court now addresses the Complainant’s request to schedule a prehearing (discovery) conference. *See* 28 C.F.R. § 68.13(a)(2). While the ALJ may accept an oral motion at a prehearing conference or a hearing, parties cannot make oral motions by way of leaving a voicemail with Court staff. Voicemail is inherently ex parte; it does not allow for all parties to receive contemporaneous notice (distinguishable from an oral motion made at a prehearing conference when all parties are present) *See* 28 C.F.R. § 68.11(a); *see also Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1089, 2 (2003) (“[A]ll requests for relief shall be submitted in the form of a motion[.]”).

⁵ OCAHO regulations define a hearing as “that part of a proceeding that involves the submission of evidence, either by oral presentation or written submission.” 28 C.F.R. § 68.2. A prehearing conference does not encompass submission of evidence, and may be held “upon motion of a party.” *See* 28 C.F.R. § 68.13(a). Accordingly, a party’s request to schedule a prehearing conference is distinct from the hearing scheduling matters contemplated by 28 C.F.R. § 68.36(a) because a request to have a prehearing conference can only be received by way of a motion.

⁶ Parties seeking to communicate matters covered by 28 C.F.R. § 68.36(a) should endeavor to use a communication method which avoids the ex parte communication issues raised here (i.e., a method which ensures contemporaneous notice to all parties).

Complainant, a pro se litigant, should consider himself on notice of the prohibition on ex parte communications following receipt of this Order, and he should understand that future ex parte communications may adversely impact his case. *See generally* 28 C.F.R. § 68.36(b).

⁷ 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.

Even if a party is able to demonstrate proper notice, voicemail oral motions raise concerns related to constructing a clear record, and wasting judicial resources (having to transcribe voicemails). Accordingly, the Court **REJECTS** Complainant's December 22, 2022 oral motion.

While Complainant's oral motion is rejected, Complainant is not precluded from filing his motion to schedule a prehearing conference in writing with proper service on opposing counsel.

SO ORDERED.

Dated and entered on January 3, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge