

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

December 4, 2023

SOPHIE ACKERMANN,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2023B00004
)	
MINDLANCE, INC.,)	
Respondent.)	
_____)	

Appearances: Sophie Ackermann, pro se Complainant
Kathryne Hemmings Pope, Esq. and Christopher J. Gilligan, Esq., for Respondent

ORDER DISCLOSING COMPLAINANT’S EX PARTE FILINGS

This matter 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.

This matter is back before this Court after referral to the Office of the Chief Administrative Hearing Officer (OCAHO)’s Settlement Officer Program. On September 14, 2023, the assigned Settlement Officer terminated negotiations and referred this matter back to the undersigned for further proceedings. On September 19, 2023, the Court re-commenced the case schedule previously set in this matter, ordering that discovery would resume on October 1, 2023 and close on January 5, 2024.

On November 30, 2023, Complainant sent three emails to the Court’s e-filing inbox, without including opposing counsel.¹ The Court has attached these emails to this Order. In the body of

¹ On July 19, 2023, the Court issued an order directing the parties to electronically file all filings in this case. OCAHO’s Instructions for Filing by Email read, in pertinent part, that “[o]nly those documents attached to an email directed to [sctc.ocado@usdoj.gov] and emailed simultaneously to the opposing party will be considered filed” and that “[p]rior to transmission, all case-related documents to be filed must be converted to Portable Document Format (PDF).” *See also* OCAHO Practice Manual Chapter 3.7(d)(3)–(4) (same).

the first email received at 3:52pm EST (“Email 1”), Complainant writes that she spoke on the phone with Respondent’s attorney Christopher Gilligan² on November 29, 2023, and that another lawyer, George Summer, who identified himself as working for Respondent, joined the call. Attorney Summer “[s]trong arm[ed]” and “threaten[ed]” Complainant to drop the case. She requests that the Court sanction Attorneys Gilligan and Summers, and asks to be made whole and that Respondent “cease and desist any/all further threats.” She writes that she attached to the email an email from Attorney Gilligan scheduling their phone conversation as well as a recording of their phone conversation. However, the only attachment is the email between the parties. The second and third emails relate to unsuccessful attempts to send the recording.

Complainant’s three emails to the Court—none of which copied opposing counsels’ email addresses or contained certificates of service indicating service on Respondent—are ex parte communications. OCAHO’s Rules of Practice and Procedure provide that the Administrative Law Judge (ALJ) “shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate.” 28 C.F.R. § 68.36.³ The Rules also provide that communications for “the sole purpose of scheduling hearings, or requesting extensions of time are not considered *ex parte* communications” *Id.* If ex parte communications occur, the Administrative Procedure Act requires disclosure of the communication. *See Tingling v. City of Richmond*, 13 OCAHO no. 1324b, 2 (2021) (citing 5 U.S.C. § 557(d)(1)(C)).⁴ “The ALJ should then provide parties an opportunity to review and comment upon the communication.” *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450c, 3 (2023) (citing *Tingling*, 13 OCAHO no. 1324b, at 2).

² Complainant reports that she learned in the telephone call that Respondent’s Attorney Kathryn Hemmings Pope no longer works for the firm Margolis Edelstein. Attorney Gilligan also entered his appearance to represent Respondent in this matter by filing a notice of appearance on February 6, 2023. Nonetheless, if Attorney Hemmings Pope is no longer appearing in this matter, she should file a motion for withdrawal or substitution pursuant to 28 C.F.R. § 68.33(g). The Court has not received an appearance in this matter from Attorney George Summer.

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

⁴ 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 been 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 “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

Here, as the communications from Complainant are not for the purpose of scheduling hearings or requesting extensions, and do not appear to have been served on opposing counsel, they are ex parte communications with the Court. As such, the Court now discloses these communications to opposing counsel. Complainant is reminded to refrain from ex parte communications going forward. *See* 28 C.F.R. § 68.36(b).

Moreover, each of the three emails from Complainant warrant rejection by the Court as noncompliant with the Court’s filing requirements: the filings do not contain certificates of service, *see* 28 C.F.R. § 68.6(a), and Complainant’s requests for the Court are in the body of the email, rather than in a PDF attachment, *see* OCAHO Practice Manual Chapter 3.7(d)(3)–(4).

Therefore, Emails 2 and 3 regarding attempts to attach a telephone will not be considered by the Court. Complainant is reminded to review the Instructions for E-Filing previously sent by the Court. A copy of these instructions has been attached to this order as a courtesy.⁵ To the extent Complainant seeks to introduce a recording, Complainant should transcribe the recording and properly submit it to the Court with a certificate of service reflecting service on opposing counsel.

However, given the nature of the concerns expressed in the first email, the Court will exercise discretion and accept the filing, and will consider the body of the email and the attached email exchange together as the filing. As this filing may be construed as a motion for sanctions, the Court will now provide Respondent with an opportunity to respond to this motion. Respondent may submit a response to the filing by December 18, 2023.

SO ORDERED.

Dated and entered on December 4, 2023.

Honorable Jean C. King
Chief Administrative Law Judge

⁵ Complainant is also directed not to copy the Court’s CAHO email address in future communications with the sctc.ocado@usdoj.gov inbox, but rather, only to copy the email addresses listed in the certificate of service attached to this Order for Attorneys Hemmings Pope and Gilligan and the Immigrant and Employee Rights Section. Complainant may contact the Court at 703-305-1742 with questions regarding filing procedures.