

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

April 14, 2021

ANA MARIA RAVINES DE SCHUR,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
EASTER SEALS-GOODWILL NORTHERN)	OCAHO Case No. 2020B00093
ROCKY MOUNTAIN, INC.,)	
)	
Respondent.)	
_____)	

NOTICE AND ORDER
COMPLAINANT SHALL CEASE EX PARTE COMMUNICATIONS WITH THE COURT
AND SHALL COMPLY WITH PROCEDURAL FILING REQUIREMENTS

I. BACKGROUND

On September 18, 2020, Complainant, Ana Maria Ravines De Schur filed a complaint pursuant to 8 U.S.C. § 1324b with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Easter Seals-Goodwill Northern Rocky Mountain, Inc. Respondent's counsel filed an answer to the complaint on October 28, 2020.

The Court held a prehearing conference on March 2, 2021. During the prehearing conference, the parties expressed interest in e-filing. Germane to this Notice and Order, the Court reminded the parties of the prohibition of ex parte communications with the Court during the prehearing conference. Based on the parties request to participate in e-filing, the Court issued an Order on Electronic Filing granting the parties the privilege to e-file their documents on March 3, 2021.

Between March 6, 2021 and April 12, 2021, Complainant attempted to e-file four matters by sending correspondence directly to the organizational email box designated for e-filing (SCTC). These emails were all rejected as they did not contain attachments constituting a proper filing and/or did they contain certificates of service annotating service of a filing on Respondent. On at least one occasion, Complainant attempted to communicate directly with the Court to the exclusion of Respondent.¹

¹ Complainant's email dated April 7, 2021 was not contemporaneously sent to Respondent's counsel, and thus is a prohibited ex parte communication. The Court's staff provided this

Bearing in mind Complainant's pro se status, the Court served instructional letters on two separate occasions to Complainant (with courtesy copy to Respondent) reminding Complainant of the parameters of e-filing and explaining that her filings would be rejected. Despite receiving these letters on March 8, 2021 and April 9, 2021 respectively, Complainant sent another filing via email on April 13, 2021 that lacked the required certificate of service and an attachment and did not include Respondent via courtesy copy.

II. APPLICABLE LAW AND REGULATIONS

All parties, including pro se parties, "are presumed to know the Rules of Practice and Procedure that govern OCAHO cases[.]"² *United States v. Horno MSJ, Ltd. Co.*, 11 OCAHO no. 1247a, 3 (2015) (quoting *United States v. Cordin Co.*, 10 OCAHO no. 1162, 2–3 (2012)).³

"[A]ny application for an order or any other request shall be made by motion which shall be made in writing[.]" 28 C.F.R. § 68.11(a). Pleadings, which include motions, must "contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by [OCAHO], the names of all parties . . . , and a designation of the type of pleading (e.g., complaint, motion to dismiss)." 28 C.F.R. §§ 68.2, 68.7; e.g., *United States v. Facebook, Inc.*, 14 OCAHO no. 1386, 1–2 (2021).

28 C.F.R. § 68.6(a) states all filings "shall be accompanied by a certification indicating service to all parties of record. When a party is represented by an attorney, service shall be made upon the attorney." Additionally, "[o]nly those documents attached to an email directed to the [SCTC]

correspondence to Respondent on April 9, 2021, with a courtesy copy of the communication to Complainant.

² The Rules of Practice and Procedure for Administrative Hearings, codified at 28 C.F.R. pt. 68, govern proceedings before the Office of the Chief Administrative Hearing Officer (OCAHO).

³ 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>.

email address and emailed simultaneously to the opposing party will be considered filed.”

OCAHO Instructions for Filing by Email 2; OCAHO’s Practice Manual, Ch. 3.7.⁴

28 C.F.R. § 68.36(a) proscribes ex parte communications. Because ex parte communications undercut the fundamental fairness underpinning cases in this forum, the applicable regulations permit sanctions for those who engage or attempt to engage in ex parte communications. Specifically, “[a] party or participant who makes a prohibited ex parte communication . . . may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion from the proceedings and adverse ruling on the issue which is the subject of the prohibited communication.” 28 C.F.R. § 68.36(b).

The Administrative Procedure Act requires disclosure of ex parte communications to the opposing party. *Tingling v. City of Richmond*, 13 OCAHO no. 1324b, 2 (2021) (first citing 5 U.S.C. § 557(d)(1)(C); and then citing *State of N.C. Env’tl. Policy Inst. v. EPA*, 881 F.2d 1250, 1257 (4th Cir. 1989)). “[T]he interest of fairness and opportunity to be heard dictate disclosure of” Complainant’s ex parte communications. *Tingling*, 13 OCAHO no. 1324b at 2 (citation omitted). *Cf. United States v. Burger*, 964 F.2d 1065, 1069 (10th Cir. 1992) (“[I]mmediate recusal was required in view of the district court’s failure to disclose the ex parte communications.”) “When an administrative law judge (ALJ) requires disclosure of ex parte communications, the ALJ ‘should give parties an adequate opportunity to review them, [and] comment upon them.’” *Tingling*, 13 OCAHO no. 1324b at 3 (quoting *State of N.C. Env’tl. Policy Inst.*, 881 F.2d at 1258)).

III. ANALYSIS

The Court now rejects the April 13, 2021 email as it does not constitute a proper filing and does not contain a certificate of service. More concerning, Respondent’s counsel was not courtesy copied on the email, rendering it yet another attempt at ex parte communication.

While sanctions for yet another attempt at ex parte communications could be warranted, the Court declines to sanction Complainant at this juncture. Complainant should consider herself on notice that any future attempts at ex parte communications can and likely will result in sanctions as outlined in the applicable regulation.

IV. CONCLUSION

⁴ OCAHO’s Practice Manual may be found within the Executive Office for Immigration Review’s (EOIR) Policy Manual on the United States Department of Justice’s website: <https://www.justice.gov/eoir/eoir-policy-manual/part-iv-ocaho-practice-manual>.

Complainant is ORDERED to cease engaging in ex parte communications with the Court by always including Respondent on any electronic communications.

Complainant is ORDERED to attach a certificate of service for each document indicating service to Respondent's counsel.

Complainant is ORDERED to attach a PDF filing to emails as text in the body of an email does not constitute a filing. Any future emails lacking such an attachment will be rejected.

Complainant is ORDERED to make any requests for relief from the Court by way of a motion pursuant to 28 C.F.R. § 68.11(a).

Bearing in mind the fairness consideration outlined in *Tingling*, the Court shall permit Respondent to provide comment on the ex parte communications by way of a filing with the Court. Such a filing will be considered timely if it is received within 10 calendar days from the certificate of service for this Order. Respondent is reminded that these ex parte communications are not part of the evidentiary record and the contents of these communications has not been and will not be considered.

The Court also reminds Complainant that failure to comply with the Court's orders may lead to dismissal of her case. *Rodriguez v. Tyson Foods, Inc.*, 9 OCAHO no. 1109, 3 (2004) (citations omitted) ("OCAHO precedent supports the dismissal of a pro se complainant's complaint with prejudice when he or she fails to obey orders issued by an ALJ.").

Dated and entered on April 14, 2021.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge