

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

PORFIRIO SPERANDIO,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2021B00025
)	
UNITED PARCEL SERVICE, INC.,)	
Respondent.)	
)	

Appearances: Porfirio Sperandio, pro se, Complainant
Patrick Shen, Esq., Daniel Brown, Esq., and K. Edward Raleigh, Esq., for
Respondent

ORDER ON COMPLAINANT’S SUBMISSIONS

I. BACKGROUND

On October 12, 2021, the Court issued an Order permitting the parties to electronically submit filings.

On January 2, 2022, Complainant electronically submitted a letter addressed to the undersigned that lacked a certificate of service. Respondent’s counsel was not copied on the email.

On January 10, 2022, Complainant electronically submitted Complainant’s Motion for Sanctions for Spoliation of Evidence, which contained a certificate of service indicating Respondent’s counsel was served the motion. However, Respondent’s counsel was not copied on the email to the Court.

Before addressing the merits of the submissions, the Court first turns to the propriety of the submissions.

II. LEGAL STANDARDS

28 C.F.R. § 68.6(a) requires all filings contain “a certification indicating service to all parties of record. When a party is represented by an attorney, service shall be made upon the attorney.” When e-filing, “all case-related documents must be submitted to OCAHO by sending

an email to the designated OCAHO email address. Only those documents attached to an email directed to the [Court's e-filing] email address and emailed *simultaneously* to the opposing party will be considered filed." OCAHO's Practice Manual, Ch. 3.7(d)(3) (emphasis added).¹

Further, "requests for relief must be submitted in the form of a motion, not a letter." Hsieh v. PMC – Sierra, Inc., 9 OCAHO no. 1089, 1–2 (2003); *see* 28 C.F.R. § 68.11(a) ("any application for an order or any other request shall be made by motion").²

28 C.F.R. § 68.35(b) and § 68.36 prohibit ex parte communications. "Because ex parte communications undercut the fundamental fairness underpinning cases in this forum, [28 C.F.R. § 68.36(b)] permit[s] sanctions for those who engage or attempt to engage in ex parte communications." Ravines de Schur v. Easter Seals-Goodwill N. Rocky Mountain, Inc., 15 OCAHO no. 1388, 3 (2021).

In the event that an 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); 5 U.S.C. § 557(d)(1)(C); State of N.C. Env'tl. Policy Inst. v. EPA, 881 F.2d 1250, 1257 (4th Cir. 1989)). "When an administrative law judge (ALJ) requires disclosure of ex parte communications, the ALJ 'should give parties an adequate opportunity to review them, comment upon them, and if appropriate order any further disclosures that may appear warranted.'" *Id.* (quoting State of N.C. Env'tl. Policy Inst., 881 F.2d at 1258).

III. DISCUSSION

As noted above, Complainant's January 10, 2022 submission to the Court contains a certificate of service which identifies Respondent; however, Respondent was not included in the actual email sent to the Court. This raises the specter of an ex parte submission. In recognition of Complainant's pro se status, and the indicia of Complainant's attempted service to Respondent in compliance with § 68.6(a), the Court will accept Complainant's Motion for Sanctions for Spoliation of Evidence. *See* Sharma v. Lattice Semiconductor, 14 OCAHO no.

¹ 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>.

² 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>.

1362, 3 (2020) (“courts generally liberally construe a pro se party’s pleadings”). Complainant’s motion is therefore deemed filed.

Conversely, Complainant’s letter of January 2, 2022 is rejected because it lacks a certificate of service as required per § 68.6(a).³ All parties, including pro se ones, are presumed to know and abide by OCAHO’s rules. Ravines de Schur, 15 OCAHO no. 1388, at 2–3. The Court will not consider Complainant’s letter. If Complainant wishes the Court to consider the content of his letter, he must refile the submission as a motion with a certificate of service.

The parties shall ensure that their submissions comply with OCAHO’s rules and regulations. Specifically, all filings must contain a certificate of service in compliance with § 68.6(a). Moreover, the filing party must copy the opposing party on the email to the Court containing the filing so as to comply with the simultaneous filing requirement of Chapter 3.7(d)(3) of the OCAHO Practice Manual. Future submissions that fail to comply with OCAHO’s rules will be summarily rejected and not considered by the Court.

Although the certificate of service on the January 10, 2022 motion indicates that Respondent’s counsel was served, it is unclear to the Court whether service was actually effected as evidenced by Respondent not being included on the email sent to the Court. Accordingly, the motion may constitute prohibited ex parte communication. In “the interests of fairness and opportunity to be heard[,]” the Court discloses Complainant’s Motion for Sanction for Spoliation of Evidence by way of attachment to this Order. See Tingling, 13 OCAHO no. 1324b, at 2–3. The Court also provides Respondent 14 days from the issuance of this Order to file a response to Complainant’s motion.

SO ORDERED.

ENTERED:

Honorable John A. Henderson
Administrative Law Judge

DATE: January 12, 2022

³ Notwithstanding the undersigned’s foregoing Order that the Complainant’s January 2, 2022 submission is rejected, the fact that it was presented to the Court ex parte necessitates its disclosure to Respondent. The Court discloses Complainant’s January 2, 2022 ex parte submission by providing it as an attachment to this Order.