

## **PRACTICE STANDARDS**

JUDGE PATRICK B. AUGUSTINE  
UNITED STATES OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION  
United States Customs House  
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### **I. GENERAL PROCEDURES**

#### **A. Applicable Rules**

Those appearing before the Court must know and follow:

1. Federal Rules of Civil Procedure;
2. Federal Rules of Evidence;
3. Rules of Procedure of the United States Occupational Safety and Health Review Commission (“Commission Rules”); and
4. These Practice Standards.

#### **B. Access to Rules and Practice Standards**

Copies of the Commission Rules and these Practice Standards are available at <http://www.oshrc.gov> under the “Rules” and “Administrative Law Judge Practice” links.

#### **C. Communications with Chambers**

1. My legal assistant, Sharon M. Hall, can be contacted at 303-844-0418.
2. The Court permits telephonic or written contact concerning administrative, scheduling and other non-substantive routine matters. For information about the status of a motion, document, or for information about courtroom technology, trial preparation, or submission of trial exhibits, please contact my legal assistant.
3. All other communications with the Court should be made by the filing of pleadings, motions, applications, briefs or legal memoranda.
4. Under no circumstances may any party or counsel communicate *ex parte* with the Court’s office staff, who has no authority to render legal advice or grant continuances or any other relief.
5. The Court finds that electronic filing provides greater efficiency and timeliness in managing cases. Electronic filing allows for electronic storage of documents for remote access by the Court and the parties. The Commission’s rules in regard to electronic filing can be found on the Commission’s website. Electronic filing of documents is the Court’s preferred method of

filing. Documents should be sent by email to [denveroshrcjudges@oshrc.gov](mailto:denveroshrcjudges@oshrc.gov) as an attachment in Word format. The email message should identify the case number and the document attached. You may, in the alternative, follow any procedure outlined in Commission Rule 8 for the filing of such documents.

#### D. Pretrial Conferences and Scheduling Orders

Upon assignment of a case the Court will issue a Pretrial Trial Conference Order which outlines the responsibility of the parties prior to the Pretrial Trial Conference. After the Initial Pretrial Conference the Court will issue a Scheduling Order that sets out deadlines for completion of discovery, filing of dispositive motions and other prehearing submissions.

#### E. Discovery

Discovery deadlines and limitations will be established in the Scheduling Order. The presumptive discovery period is six months for conventional cases.

#### F. Motions to Continue Conference, Hearing or Trial

Motions to continue (including motions to vacate or reset) conferences, hearings and trials, will be determined pursuant to Commission Rule 62, require good cause and shall be filed within the time frame set forth in the Scheduling Order. Uncontested or joint motions for continuance are not effective until approved by the Court. When requesting a continuance on a rescheduling of a conference, hearing or trial, the parties shall provide three alternative dates for the Court to consider.

#### G. Motions for Extensions of Time to File or Respond

1. Motions for extension of time require a showing of good cause, which must be established with particularity. When requesting an extension of time, parties shall provide the Court with a proposed alternative date.

2. Any motion for extension of time shall be filed no later than three business days prior to the date the motion, response, reply, or other documentation is due.

3. This practice standard is subject to Fed.R.Civ.P. 29 which governs extension by stipulation.

#### H. Settlement

1. If a settlement is reached before trial, please advise my legal assistant, Sharon Hall within the time frame established in the Scheduling Order. However, no deadline, hearing or trial will be vacated, except upon the filing of a Notice which states that all matters subject to the trial have been resolved by the parties and the issuance of an order.

2. Settlement discussions are encouraged; however, hearings, trials, and pretrial deadlines will not be continued or vacated to facilitate settlement negotiations or alternative dispute resolution.

3. Partial Case Settlement/Dismissal – The parties shall promptly notify the Court by written notice if a partial settlement is reached. The court will then provide the parties sufficient time to submit a partial settlement agreement to the court for approval.

4. Once approved and final, the Court will not retain jurisdiction over cases that have been settled. The proper mechanism for enforcing a settlement is, in almost all cases, through a new action.

## **II. COURTROOM PROCEDURES**

### **A. Courtroom Protocol**

1. Please observe traditional courtroom decorum. Wear professional attire, stand when addressing the Court, address the Court as “Your Honor,” and request permission to approach the bench or a witness.

2. If you have other questions about Courtroom protocol, please contact my legal assistant, Sharon Hall.

### **B. Recording of Proceedings**

1. The official record of all trials and proceedings will be taken by a real-time reporter.

2. Transcripts of proceedings may be ordered directly from the court reporter.

### **C. Exhibits and Witness Lists**

1. The Scheduling Order will provide the date for the filing of the exhibit list, witness list and exchange of the proposed exhibits.

2. Parties are required to use the format in the Sample Forms section of these Standards.

3. The Scheduling Order governs the marking, binding and the number of sets of exhibits that the Court requires.

4. Any stipulations of fact should be formatted as a pleading and marked as an exhibit.

## **III. MOTION PRACTICE**

### **A. Requirements**

All motions, objections and responses shall conform to the requirements of Commission Rule 40. The parties have a “confer” requirement under Commission Rule 40. The Court will not consider correspondence or letters from counsel as proper motion practice.

### **B. Responses and Replies**

1. See Commission Rule 40(c) for applicable time limits for filing responsive pleadings. Commission Rule 4 controls the computation of time.

2. No reply, surreply or supplemental brief shall be filed without leave from the Court.

C. Untimely or Noncomplying Motions, Objections, Responses, or Replies

1. Motions that are untimely, noncomplying, or filed without a certification pursuant to Commission Rule 40(a) may be denied with prejudice or stricken *sua sponte*.

2. Untimely or noncomplying objections, responses, or replies may be denied with prejudice, stricken, or ignored.

D. Motions In Limine

Motions in limine are discouraged when they request advanced evidentiary rulings, as they are typically more appropriate for the court to consider during trial. Instead, the disputed issue can be summarized briefly in a pretrial brief. If a party files a motion in limine, it is due fifteen days before the trial unless the Scheduling Order establishes a different timeframe.

E. Dispositive Motions

Procedures for motions seeking relief pursuant to Fed.R.Civ.P. 12 or 56 are governed by the Scheduling Order and deadlines will be strictly adhered.

F. Motions to Exclude Expert Testimony

A party objecting to the admissibility of opinion testimony by an expert witness shall file a written motion seeking its exclusion. Failure of an opponent to file such a motion, however, does not relieve the proponent of its burden to show that the proffered testimony is admissible at trial.

The motion shall identify with specificity each opinion the moving party seeks to exclude. The motion shall also identify the specific ground(s) on which each opinion is challenged, e.g., relevancy, sufficiency of facts and data, methodology. See Fed. R. Evid. 702. The deadline for filing all such motions is established in the Scheduling Order.

Upon the filing of a motion, the Court, in its discretion, may set a hearing to determine whether the challenged opinions are admissible under the relevant Federal Rules of Evidence. The setting of such hearing does not obviate the need for opposing counsel to respond to such motion. If such a hearing is ordered, the parties shall proceed as follows: the hearing will begin, if necessary, with brief opening arguments by the parties, followed immediately by the challenging party's examination of the expert witness. The proponent will then be permitted to ask questions of the expert witness.

**IV. TRIALS**

A. Final Pretrial Conference

The Court will conduct a final pretrial conference approximately twenty (20) days prior to the trial to address trial management issues. Counsel/Representatives who will try the case must attend.

B. Trial Setting

The case will be set for trial during the initial pretrial conference with the parties.

### C. Length of Trial

The time frame established for the trial will be adhered to absent good cause. The Court will issue a Trial Management Order setting forth the time parameters for the examination of witnesses by the parties.

### D. Trials

1. Trials begin at 8:30 a.m. on the first day of trial unless stated otherwise in the Notice of Trial.

2. Closing arguments will generally be dispensed with in favor of the submission of a post-trial brief. The Court will issue an Order governing the timeframe for the submission and content requirements for the brief.

### F. Pretrial Briefs

Pretrial briefs are encouraged, but not required absent specific Court order. Please flag evidentiary issues in a trial brief rather than by motion in limine. A trial brief may not be used as a substitute for a motion. The Scheduling Order sets forth the requirements for the submission of a pretrial brief.

**SAMPLE FORMS**

**I. WITNESS LIST**

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

Case No. \_\_\_\_\_ Date \_\_\_\_\_

Case Title: \_\_\_\_\_

**COMPLAINANT/RESPONDENT WITNESS LIST**

(Circle One)

**WITNESS NAME**

**TIME ESTIMATED FOR EXAMINATION**

Direct      Cross      Re-Direct      Re-Cross

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

