

PRACTICE STANDARDS
(Revised July 16, 2013)

JUDGE JOHN H. SCHUMACHER
UNITED STATES OCCUPATIONAL SAFETY & HEALTH REVIEW
COMMISSION

United States Customs House
721 Nineteenth Street, Suite 407
Denver, CO 80202-2517
Telephone: (303) 844-3409
FAX: (303) 844-3759

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. All Orders and Notices as promulgated by the Court.

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.

Communications with Chambers

My legal assistant, Ms. Kate Sydney, can be contacted at 303-844-2284.

The Court permits telephonic or written contact concerning administrative, scheduling and other non-substantive routine matters. To request a conference call among all the parties, or for information about scheduling matters, courtroom technology, or submission of trial exhibits, please contact my legal assistant.

All other communications with the Court should be made by the filing of pleadings, motions, applications, briefs or legal memoranda.

For non-administrative matters, no party or counsel may communicate *ex parte* with the Court's office staff, who have no authority to render legal advice or grant continuances or any other form of relief.

Electronic filing of documents is the Court's preferred method of filing. The Court finds that electronic filing provides greater efficiency and timeliness in managing cases. See Commission Rule 7(c), 29 C.F.R. § 2200.7(c) (Service and Notice - How Accomplished) and Rule 8(g), 29 C.F.R. § 2200.8(g) (Electronic Filing).

Attached below are two sample initial Orders; one for Simplified cases and the other for Conventional cases.

SIMPLIFIED:

United States of America

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

721 19th Street, Room 407

Denver, Colorado 80202

Phone: (303) 844-3409

Fax: (303) 844-3759

SECRETARY OF LABOR,
Complainant,

v.

XYZ CORPORATION,
Respondent.

OSHRC Docket No.: 13-0000

ORDER TO CONFER AND APPEAR FOR SIMPLIFIED PROCEEDING

CONFERENCE CALL

The parties are ORDERED to confer, either in person or by telephone, **within twenty (20) days of the date of this Order**, regarding:

1. Settlement of this case. Specific offers and counter-offers are encouraged; and

2. Commission Rule 207(b) issues. The parties are ORDERED to identify and discuss the following:

- a. Proposed trial date and location (the Court prefers proposed dates approximately four to six months from the date of this Order);
- b. Factual and/or legal stipulations;
- c. Affirmative defenses asserted by Respondent. Only those defenses identified during the Pre-Trial Conference Call will be considered at trial, absent extraordinary circumstances;
- d. Specific exhibits each party intends to offer at trial. Only those exhibits identified during the Pre-Trial Conference Call will be considered at trial, absent a showing of good cause;
- e. Specific witnesses each party intends to call at trial. Only those witnesses identified during the Pre-Trial Conference Call will be considered at trial, absent a showing of good cause; and
- f. Any other issues the parties believe the Court should address for efficient management, preparation, and trial of this case.

The parties are further **ORDERED** to appear by telephone for a **Conference Call on Thursday, August X, 20XX at 10:00 a.m. (Mountain Time) 11:00 a.m. (Central Time)** pursuant to Commission Rule 207. The parties will be required to present the results of their discussion as ordered above. All parties shall dial-in to the Century Link Conferencing Center at **1-877-446-3914**, and enter Conference Pass Code Number **421907**,

followed by the # sign. If problems develop during dial-in, please contact Kate Sydney, Legal Assistant, by telephone at (303-844-3409).

The parties are reminded of their disclosure obligations in Commission Rules 206(a) and (b).

**PRACTICE GUIDE FOR APPEARANCES BEFORE JUDGE
SCHUMACHER IN SIMPLIFIED PROCEEDING CASES**

Initial procedures:

Upon assignment of a case, Judge Schumacher requires the parties to promptly confer regarding settlement, a proposed trial date, stipulations, and to identify witnesses, exhibits, and defenses.

Extensions of Time and Continuances:

Requests for extensions of time and/or continuances must be made by written motion and shall include: (1) the specific grounds for the request, (2) the date on which the parties conferred regarding the request, (3) a statement of whether the request is opposed or unopposed, and (4) a proposed new deadline or trial date.

Communication with the Court:

All pre-trial motions and other requests to the Court shall be in writing and filed pursuant to the Commission's procedural rules. *Ex-parte* communication with the Court, or Court staff, concerning the substantive issues involved in the case is not allowed. Court staff will not provide legal advice or give any indication of anticipated rulings by the Court. **If you have a question about a routine administrative issue, contact Kate Sydney, Legal Assistant, by telephone at (303-844-3409).**

Applicable rules:

All parties and party representatives in a simplified proceeding case must comply with:

1. Commission Rules of Procedure (www.oshrc.gov/procrules/index.html) (specifically Commission Rules 200 through 211 in Subpart M); and
2. The provisions of this Practice Guide.

All attorneys appearing before the Court must also comply with applicable ethics rules and codes of professional responsibility.

Electronic filing:

The parties are encouraged to use the Commission's electronic filing procedures. Information concerning these procedures can be obtained by reviewing Commission Rule 8(g), as well as at: www.oshrc.gov/publications/instructions_elec_filing.html. Electronic filings in cases assigned to Judge Schumacher should be directed to denveroshrcjudges@oshrc.gov. Please provide written notice to the Court if the parties agree, pursuant to Commission Rule 8(g)(1), to use electronic filing procedures in this case. When filing documents electronically, the email **subject line** should include the following information: (1) Judge Schumacher, (2) case title, and (3) case docket number (e.g. Judge Schumacher/Secretary v. Smith Company/01-1111).

Notice of Settlement:

If the parties successfully negotiate a full resolution of their dispute, the Court must be promptly notified in writing of the same. A simple, concise, written notice stating that full settlement has been reached is sufficient. The settlement notice must be signed by at least one party representative and served on all other parties. The specific terms of settlement do not need to be included with the initial notice, as the Court will subsequently order the parties to file a detailed settlement agreement at a later date. Partial settlement agreements are encouraged, although they will not affect the scheduled trial date. **Telephonic notification of settlement alone is not sufficient to cancel a scheduled trial date.**

Courtroom procedures and demeanor:

Professional courtesy and civility are expected during all court appearances, as well as during pre-trial interaction among the parties. Respect for the Court, respect for one another, respect for witnesses, and respect for the judicial process are paramount. All trial proceedings and other hearings will begin promptly at their scheduled times. There will be no visual or verbal gestures of approval or disapproval of any witness testimony, any comments by counsel, or any rulings by the Court. All mobile phones and pagers must be either turned off or placed in vibrate mode while in the courtroom.

Trial Exhibits:

Exhibits shall be sequentially numbered with a label placed in the lower right corner of each exhibit (and on each page thereafter, unless subsequent pages have clearly identified page numbers which can be referenced on the record). Each exhibit shall be numbered C-1, C-2, C-3, etc. for Complainant's exhibits, and R-1, R-2, R-3, etc. for Respondent's exhibits. If other parties have been recognized in the case, they should follow a similar procedure (e.g. U-1, U-2, U-3 for exhibits offered by union representatives participating in the proceeding). The proposed, pre-numbered exhibits must be securely placed in a three-ring binder, along with an index page located in the front of the binder. Each party shall create a minimum of four (4) copies of their respective exhibit notebooks: (1) one copy for Judge Schumacher (to be provided at trial), (2) one copy for the witness stand (which shall become the official Court copy), (3) one copy for each opposing party (which should be produced before trial pursuant to the Court's deadlines), and (4) a copy for the party offering the exhibits.

Post-Trial Procedures:

In simplified proceedings, the parties will be provided an opportunity to either make closing argument on the record at the conclusion of trial or file a post-trial brief. If a party elects to file a brief, it will typically be due thirty days after the trial transcript is received from the court reporter. Post-trial briefs must contain each party's proposed factual findings, a discussion of whether the *prima facie* elements required to prove each alleged

violation were established, a discussion of whether the *prima facie* elements required to prove each alleged affirmative defense were established, as well as a discussion of any other pertinent issues the parties believe the Court should address in its decision.

All parties and party representatives must comply literally with the provisions of this Order and Practice Guide. Failure to comply may result in sanctions pursuant to Commission Rule 101.

SO ORDERED.

Judge John H. Schumacher
U.S. Occupational Safety and Health Review
Commission

SEE NEXT PAGE FOR SAMPLE OF CONVENTIONAL CASE ORDER

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

721 19th Street, Room
Denver, Colorado 80202

Phone: (303) 844-3409

Fax: (303) 844-3759

SECRETARY OF LABOR,

Complainant,

v.

XYZ MEGA CORP, LLC,

Respondent.

OSHRC DOCKET

NO.: 13-0000

ORDER TO CONFER AND SUBMIT PRE-TRIAL SCHEDULE

The parties are ORDERED to confer, either in person or by telephone, **within thirty (30) days of this Order**, regarding:

1. Settlement of this case. Specific offers and counter-offers are encouraged; and

2. A proposed pre-trial schedule. The parties are ORDERED to jointly file, **within forty-five (45) days of this Order**, a *Joint Proposed Pre-Trial Schedule* containing the following:

- a. Proposed trial date and location (the Court prefers proposed dates approximately six months from the date of this Order for routine cases).
- b. Anticipated number of days required for trial;
- c. Proposed deadline for completion of all discovery (the Court prefers no later than thirty days prior to trial);
- d. Proposed deadline to file motions to amend complaint and/or answer (the Court prefers no later than sixty days prior to trial);
- e. A statement of whether the parties anticipate expert testimony in this case, and if so, the proposed deadline by which the parties shall identify their respective expert witnesses and exchange written expert reports (the Court prefers simultaneous exchange of expert information sixty days prior to trial);
- f. Proposed deadline to file dispositive, or partially dispositive, motions (the Court prefers forty-five days prior to trial);
- g. Proposed deadline to file *Pre-Trial Statements* (the Court prefers ten calendar days prior to trial); and
- h. Any other proposed deadlines the parties believe are necessary for the efficient management, preparation, and trial of this case.

3. If the parties are unable to agree on dates or deadlines for their *Joint Proposed Pre-Trial Schedule*, the parties shall include their respective positions on each issue, including an explanation of why agreement could not be reached.

4. The *Joint Proposed Pre-Trial Schedule* shall be signed by a representative for each party.

PRACTICE GUIDE FOR APPEARANCES BEFORE JUDGE
SCHUMACHER

Initial procedures:

Upon assignment of a case, Judge Schumacher requires the parties to promptly confer regarding settlement, a proposed trial date, and various pre-trial deadlines. After considering the parties' proposals, Judge Schumacher will issue an order establishing a trial date and pre-trial deadlines.

Extensions of Time and Continuances:

Requests for extensions of time and/or continuances must be made by written motion and shall include: (1) the specific grounds for the request, (2) the date on which the parties conferred regarding the request, (3) a statement of whether the request is opposed or unopposed, and (4) a new proposed deadline or trial date. Extensions of discovery deadlines, if agreed upon by the parties in writing, do not require Court approval so long as they do not interfere with any party's ability to comply with other established Court deadlines.

Communication with the Court:

All pre-trial motions and other requests to the Court shall be in writing and filed pursuant to the Commission's procedural rules. *Ex-parte* communication with the Court, or Court staff, concerning the substantive issues involved in this case is not allowed. Court staff will not provide legal advice or give any indication of anticipated rulings by the Court. If you have a question about a minor, routine, or non-substantive issue, contact Kate Sydney, Legal Assistant, by telephone for assistance (303-844-2284). Additionally, if the parties would like to request a joint telephone conference with the judge, please contact Ms. Sydney at the number shown above.

Applicable rules:

All parties and party representatives in a conventional case must comply with:

1. Commission Rules of Procedure, found at:
(www.oshrc.gov/procrules/index.html);
2. Federal Rules of Civil Procedure (see Commission Rule 2(b));
3. Federal Rules of Evidence (see Commission Rule 71); and
4. The provisions of this Practice Guide.

All attorneys appearing before the Court must also comply with applicable ethics rules and codes of professional responsibility.

Electronic filing:

The parties are encouraged to use the Commission's electronic filing procedures. Information concerning these procedures can be obtained by reviewing Commission Rule 8(g), as well as:

www.oshrc.gov/publications/instructions_elec_filing.html. Electronic filings in cases assigned to Judge Schumacher should be directed to:

denveroshrcjudges@oshrc.gov. Please provide written notice to the Court if the parties agree, pursuant to Commission Rule 8(g)(1), to use electronic filing procedures in this case. When filing documents electronically, the email **subject line** should include the following information: (1) Judge Schumacher, (2) case title, and (3) case docket number (e.g. Judge Schumacher/Secretary v. Smith Company/01-1111).

Notice of Settlement:

If the parties successfully negotiate a full resolution of their dispute, the Court must be promptly notified in writing of the same. A simple, concise, written notice stating that full settlement has been reached is sufficient. The settlement notice must be signed by at least one party representative and served on all parties. The specific terms of settlement do not need to be included with the initial notice, as the Court will subsequently order the parties to file a detailed settlement agreement at a later date. Partial settlement agreements are encouraged, although they will not affect the scheduled trial date. **Telephonic notification of settlement alone is not sufficient to cancel a scheduled trial date.**

Courtroom procedures and demeanor:

Professional courtesy and civility are expected during all court appearances, as well as during pre-trial interaction among the parties. Respect for the Court, respect for one another, respect for witnesses, and respect for the judicial process are paramount. All trial proceedings and other scheduled hearings will begin promptly at their scheduled times. There will be no visual or verbal gestures of approval or disapproval of any witness testimony, any comments by counsel, or any rulings by the Court. All mobile phones and pagers must be either turned off or placed in vibrate mode while in the courtroom.

Trial Exhibits:

Exhibits shall be sequentially numbered with a label placed in the lower right corner of each exhibit (and on each page thereafter, unless subsequent pages have clearly identified page numbers which can be referenced on the record). Each exhibit shall be numbered C-1, C-2, C-3, etc. for Complainant's exhibits, and R-1, R-2, R-3, etc. for Respondent's exhibits. If other parties have been recognized in the case, they should follow a similar procedure (e.g. U-1, U-2, U-3 for exhibits offered by union representatives participating in the proceeding). The proposed, pre-numbered exhibits must be securely placed in a three-ring binder, along with an index page located in the front of the binder. Each party shall create a minimum of four (4) copies of their respective exhibit notebooks: (1) one copy for Judge Schumacher (to be provided at trial), (2) one copy for the witness stand (which shall become the official Court copy), (3) one copy for each opposing party (which should be produced before trial

pursuant to the Court's deadlines), and (4) a copy for the party offering the exhibits.

Post-Trial Procedures:

In conventional cases, Judge Schumacher typically requires the parties to file a post-trial brief thirty days after the trial transcript is received from the court reporter. Post-trial briefs should contain each party's proposed factual findings, a discussion of whether the *prima facie* elements required to prove each alleged violation were established, a discussion of whether the *prima facie* elements required to prove each alleged affirmative defense were established, as well as a discussion of any other pertinent issues the parties believe the Court should address in its decision.

All parties and party representatives must comply literally with the provisions of this Order and Practice Guide. Failure to comply may result in sanctions pursuant to Commission Rule 101.

SO ORDERED.

Judge John H. Schumacher
U.S. Occupational Safety & Health
Review Commission

Dated:

Denver, CO