

Judge Covette Rooney was born and raised in Philadelphia, Pennsylvania. She joined the U.S. Occupational Safety and Health Review Commission in 1996, and on March 14, 2011, she was named Chief Administrative Law Judge. Judge Rooney was previously a U.S. Administrative Law Judge at the Social Security Administration in Hattiesburg, Mississippi. Her prior work experience includes employment with the Philadelphia Regional Office of the Solicitor, Region III, U.S. Department of Labor, from 1980 until 1994. In that capacity, she served as Regional Counsel for the Mine Safety and Health Administration and the Black Lung Program. She was also a Senior Hearing Attorney during her tenure with the Office of the Solicitor.

Judge Rooney earned her undergraduate degree at Colgate University, and she received her Juris Doctor at Temple University School of Law. After law school, she was a law clerk for the Honorable Paul A. Dandridge, First Judicial District of Pennsylvania, Court of Common Pleas, in Philadelphia, Pennsylvania. She is admitted to the Pennsylvania Bar, the U.S. District Court for the Eastern District of Pennsylvania, and the U.S. Court of Appeals for the Third Circuit.

### **Correspondence with the Court**

Judge Rooney permits telephonic or written contact with her office concerning administrative, scheduling and other non-substantive routine matters. The parties may also contact her office to advise that a case has been settled or is being dismissed; written verification of these matters must follow. Otherwise, all communications with the Court should be made by the filing of pleadings, motions, applications, briefs or legal memoranda.

Under no circumstances may any party or counsel communicate ex parte with the Court's office staff, who have no authority to render legal advice or grant continuances or any other relief.

### **Preliminary General Matters**

Each conventional case is assigned a hearing date. Judge Rooney routinely begins the proceedings at 9:30 a.m. and ends them at 5:00 p.m. The proceedings may go past 5:00 p.m.

### **Prehearing Procedures**

Upon assignment of a case, Judge Rooney routinely issues an order requesting the parties to confer and to forward to her recommendations with respect to scheduling deadlines. After reviewing the parties' recommendations, Judge Rooney will issue a scheduling order that sets out deadlines for the completion of discovery, the filing of dispositive motions and other prehearing submissions, and the date of the hearing.

### **Extensions of Time and Continuances**

The parties should advise the Court as soon as possible, and before the deadline, of any requests for an extension of time in regard to discovery and other prehearing matters. With respect to a request for a continuance of the scheduled hearing date, such a request must be made no later

than 21 days in advance of the hearing. Requests for extensions of time and for continuances of the hearing shall be in writing and shall set out in detail the specific reasons for the request. Such requests shall also set out the additional period of time desired and shall include a statement in regard to whether the opposing party agrees or disagrees with the request.

Since hearing dates are set well in advance, Judge Rooney is extremely reluctant to grant continuances. She will permit extensions of time for discovery and other prehearing matters upon a showing that the opposing party will not be prejudiced and that granting the extension will not interfere with the hearing date.

**Electronic Filing**

Judge Rooney finds that electronic filing provides greater efficiency and timeliness in managing cases. Electronic filing provides the Court with automatic e-mail notices of case activity. It also 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.

**Motions**

Any motion filed by a party shall include a proposed order to be signed by the Court.

**APPENDIX A – SAMPLE ORDERS**

SECRETARY OF LABOR,  Complainant,  v.  Respondent.	OSHRC Docket No.
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**NOTICE OF HEARING AND ORDER FOR PARTIES TO CONFER AND SUBMIT PLANNING RECOMMENDATIONS**

The parties are notified that the hearing in this matter will be heard commencing at [ ] a.m., [ ], in [ ]. Pursuant to 5 U.S.C. § 556 and Commission Rules of Procedure 51 and 67, 29 C.F.R. §§ 2200.51 and 67, the parties are directed to confer with one another, and on or before [ ], jointly submit recommendations for time limits on the following activities.

A. The number of days needed to complete the hearing.

B. The date(s) by which the parties must submit in writing the names, organizational affiliations and subject matter areas of expertise of expert witnesses they may call at the hearing, and the date(s) by which reports prepared by the expert witnesses shall be completed and delivered to counsel who retained the expert(s) and exchanged with opposing counsel.

C. The date by which all discovery is to be completed.

D. The date by which motions to amend pleadings shall be received by the administrative law judge and served on all parties.

E. The date by which dispositive or partially dispositive prehearing motions shall be received by the administrative law judge and served on all parties.

F. The date by which responses to dispositive or partially dispositive prehearing motions shall be received by the administrative law judge and served on all parties.

G. The date (at least 12 days prior to hearing) by which prehearing statements shall be received by the administrative law judge and served on all parties.

H. Any other time limits or deadlines the parties suggest as appropriate or necessary for the efficient management of the prehearing and hearing activities.

Electronic filing of documents is the Court's preferred method of filing. The Commission's Rules of Procedure permit filing and service of pleadings and documents by electronic means at [washdcoshrcjudges@oshrc.gov](mailto:washdcoshrcjudges@oshrc.gov). The pertinent rules are 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) (Filing - Electronic filing). The parties are to determine whether they will electronically file and serve, and then consult the agency website at [http://www.oshrc.gov/publications/instructions\\_elecfilng.html](http://www.oshrc.gov/publications/instructions_elecfilng.html) for instructions for electronic filing.

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COVETTE ROONEY  
Chief Judge

Dated:  
Washington, D.C.

SECRETARY OF LABOR,

Complainant,

v.

Respondent.

OSHRC Docket No.

**NOTICE OF HEARING, SCHEDULING ORDER  
AND SPECIAL NOTICES**

The parties are hereby notified that the hearing in this matter will be heard commencing at

[ ] a.m. on [ ] in [ ]. Having considered the recommendations of the parties IT IS ORDERED THAT:

A. All discovery shall be completed in such a manner as to be completed on or [ ].<sup>1</sup> The parties have agreed to the following schedule: [ ] completion of all written discovery; [ ] completion of all non-expert witness depositions; [ ] completion of all expert depositions; [ ] deadline for filing any motions involving written discovery disputes; [ ] responses to discovery dispute motions filed.

B. Motions to amend pleadings shall be filed in such a manner as to be received by all parties and the administrative law judge no later than [ ]. Responses to said motions shall be filed on [ ].

C. Dispositive pre-trial motions, including *motions in limine*, shall be filed in such a manner as to be received by all parties and the administrative law judge no later than [ ]. Responses to pre-trial

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<sup>1</sup> "Completed" means "propounded and answered", i.e., all discovery shall be served in sufficient time for the responses thereto to be served by this deadline. **Counsel must resolve all discovery disputes or bring them to the undersigned's attention in a timely manner so as to allow sufficient time for the completion of discovery within the time set.** The conduct of any discovery which would require a later due date shall be permitted only on the order of the administrative law judge or by filed stipulation of the parties, and only in cases that will not be delayed for trial thereby. The parties should be aware that a stipulation to the extension of time for discovery anticipates no discovery disputes and, therefore, the administrative law judge will not hear discovery disputes arising during any such extensions.

motions shall be filed in such a manner as to be received by all parties and the administrative law judge no later than [ ].

## **FINAL PRETRIAL PROCEDURES**

Required Pretrial Conference Between Parties:

A. It is the responsibility of counsel for all parties to meet together or to confer by telephone no later than [ ] in a good faith effort to:

1. discuss the possibility of settlement;
2. stipulate to as many facts or issues as possible;
3. examine, mark and stipulate to the admissibility of as many as possible of the exhibits to be offered by any party at trial;

4. exchange the names and addresses of all witnesses and presently identifiable rebuttal witnesses; and

5. prepare a pretrial statement in accordance with section III.B of this Order.

B. The joint prehearing statement shall be filed in such a manner so as to be received by the administrative law judge no later than **3:00 p.m.** [ ] (a courtesy copy may be emailed to judgecr@oshrc.gov), and shall contain:

1. a list of all exhibits to be offered into evidence with notations of all objections thereto; **and a certification by counsel that all exhibits have been exchanged;**

2. a list of all witnesses, and presently identifiable rebuttal witnesses, who may be called at the hearing;

3. a list of all expert witnesses including, as to each such expert witness, a written report prepared and signed by the witness .

4. a concise statement of those facts which are admitted and will require no proof at the hearing, together with any reservations directed to such admissions;

5. a concise statement of applicable principles of law on which there is agreement;

6. a concise statement of those issues of fact which remain to be litigated (without incorporation by reference to prior pleadings or memoranda.);<sup>2</sup>

7. a concise statement of those issues of law which remain to be litigated (without incorporation by reference to prior pleadings or memoranda);<sup>3</sup>

8. a concise statement of any disagreement as to the application of the Federal Rules of Evidence or the Commission Rules of Procedure;

9. a list of all motions or other matters which require action by the administrative law judge;

10. an estimate of time each counsel anticipates will be needed to present its case; and 11. the signatures, telephone phone numbers, and email addresses of counsel for all parties.

## **SPECIAL NOTICES**

### **A. Motions**

1. All motions must state the basis of the request, identify authority in support of the request and be accompanied by an order prepared for the administrative law judge's signature. 2.

**Motions for extensions of time, motions for continuances of any kind, motions seeking to limit or compel discovery, and motions seeking to expand or limit the calling of witnesses or the introduction of evidence, will not be entertained unless accompanied by moving counsel's certification that the parties have discussed the matter and that there is either no objection to the motion or that the parties have made a good faith effort to settle the matter and have been unable to do so. In addition, such a motion must be filed at least four (4) business days prior to the deadline the motion is seeking to extend.** The undersigned grants such motions only upon a showing of good cause, focusing on the diligence of the party seeking the continuance and any prejudice that may result if the court denies the continuance.

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<sup>2</sup> Note: A mere restatement of the general elements to be proven will be deemed to be insufficient.

<sup>3</sup> See Note 2, above.

3. Motions which do not meet the requirements of A.1 and A.2, above, may be summarily denied. The Court will ignore correspondence, **e.g. letters**, from counsel that should properly be the subject of motion practice.

**B. Witnesses may not be permitted to testify and exhibits may not be accepted into evidence unless they have been identified in a timely pre-hearing exchange. At the commencement of the hearing all documents and exhibits exchanged by the parties together with an index and placed in a three-ring binder shall be submitted to the undersigned. Furthermore, each party shall provide the court reporter with an original or copy of each**

**Exhibit he/she introduces and is admitted into the record.**

C. The Complainant and Respondent must disclose the names, organizational affiliations and subject matter areas of expertise of its expert witnesses, if any, no later than [ ]. A report must be produced for each expert and shall be completed and delivered to opposing counsel no later than [ ]. This written report shall be prepared and signed by the expert witness, and shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

The Complainant and Respondent must disclose the names, organizational affiliations and subject matter areas of expertise of its rebuttal expert witnesses, if any, no later than [ ]. A report must be produced for each rebuttal expert and shall be completed and delivered to opposing counsel no later than [ ].

D. All parties must comply literally with all parts of the above order. Failure to do so may result in appropriate sanctions including dismissal of claim or defense.

E. The appearance of counsel on any pleading is deemed to be the appearance of every member of counsel's law firm and such appearance requires the presence of either the attorney who filed the pleading or a member of his/her law firm at the hearing on the matter.

**F. Documentary exhibits shall be marked with the case docket number, with a designation identifying the party offering the exhibit and numbered consecutively. Exhibits shall have each**

**page numbered serially and identified as “Docket No. \_\_\_\_, Exhibit No.\_\_\_\_, page \_\_\_\_ of \_\_\_\_ pages.”**

The parties are instructed to not submit to my office during the course of these proceedings anything containing either personally identifiable information (“PII”) or medical information relating to an employee involved in this matter. Documents containing such information may be submitted if the PII, or, in case of medical records, the name of the employee, is first deleted. **Commission Rule 8, 29 C.F.R. § 2200.8**, sets out the types of PII and medical records to which this instruction applies.

*G.* Any party desiring to use a videotape at the hearing shall be responsible for having appropriate playback equipment and a competent operator at the hearing. **An edited videotape, capable of continuous playback and purged of unnecessary portions must be prepared by the offering party. A copy of the edited tape and an accompanying log shall be made available to other parties at least 10 days before the commencement of the hearing. The parties are further advised that any portion of a videotape containing an audio component, such as employee interviews or other conversations, which a party intends to introduce into the record, must be fully transcribed and exchanged with other parties at least 10 days before the commencement of the hearing.** In addition, the unedited original tape(s) shall be available at the hearing.

Each videotape used at a hearing must be accompanied by a log containing references to counter numbers which identify each segment to be shown at the hearing in terms of the elapsed real time from the beginning of the unedited tape(s) from which the segment was taken.

***H.* Any party desiring to offer excerpts of depositions at hearing must comply with Commission Rule 2200.55(f). 29 C.F.R. §2200.56(f).**

***I.* Filing Requirements**

**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. The Commission Rules of Procedure permit filing and service of pleadings and documents in electronic format at the appropriate OSHRC office email address listed below. 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) (Filing - Electronic Filing). Instructions for electronic filing can be found on the Commission’s web site under the “Publications” headings -[http://www.oshrc.gov/publications/instructions\\_elec\\_filing.html](http://www.oshrc.gov/publications/instructions_elec_filing.html). The parties shall determine whether they will electronically file and serve pleadings and documents.

When parties elect to file and serve pleadings and documents in hard-copy format the following guidelines shall be followed to accommodate the internal Review Commission electronic document management system. All hard-copy format documents, including exhibits, attachments and appendices, greater than 20 pages, shall also be filed in one of the following electronic formats: Adobe Portable Document Format (.pdf)(preferably) or Word (read only) Document (.doc). Electronic filings shall be sent by e-mail to the following address: **washdcoshrcjudges@oshrc.gov**.

Electronically filed documents shall include the case docket number and name, at the beginning of the electronic file title or email subject line. The electronic file title or email subject line shall also state the document title and assigned judge.

Documents in excess of 5 megabytes (MB), such as graphic intensive documents, must be filed on a CD-ROM or flash drive.

All electronic documents filed on a CD-ROM or flash drive shall be password protected. The password shall be simultaneously filed, via email, to the appropriate OSHRC office email address, set forth above.

To accommodate the scanning of hard-copy format pleadings and documents, into the internal Review Commission electronic document management system, all pleadings and documents shall (1) be printed on only one side of the paper; (2) contain a 1-inch margin from the top of the page; (3) be secured by binder clips or other fasteners that do not puncture or otherwise interfere with scanning, instead of staples or permanent binding; and (4) use Exhibit separator pages, instead of Exhibit tabs, to avoid scanning errors.

#### **POST-TRIAL BRIEFS**

Post-trial briefs should include a Table of Contents, Stipulations, Factual Background and Findings of Fact with citation references to the official transcript, Argument, Table of Authorities, and Conclusion. An original shall be filed in a PDF compatible format and a courtesy copy emailed to the undersigned at [judgecr@oshrc.gov](mailto:judgecr@oshrc.gov) or on an electronic storage device.

Dated:

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COVETTE ROONEY

Chief Judge, OSHRC

SECRETARY OF LABOR,

Complainant,

v.

Respondent.

OSHRC Docket No.

### **NOTICE OF PRECISE LOCATION OF HEARING**

Please take notice that the hearing in this matter, which has already been scheduled to commence at [ ] a.m. on [ ], will be held at [ ]. Please bring government issued identification with you for admission into the building. Any procedural questions regarding scheduling or facilities, or the like, shall be addressed to Ms. Vivian Lassiter of this office.

Respondent's attention is again called to the requirement for service of a copy of this notice upon any representative of affected employees or, in the absence of such representation, posting a copy at or near the place where the citation was required to be posted.

#### **General Procedures**

Civility is the foundation of Judge Rooney's courtroom procedures. The hearing shall at all times be conducted in a dignified and formal manner. Counsel shall not raise their voices any louder than is necessary to be clearly heard by the Court and witnesses. All remarks should be addressed to the Court and counsel will rise when addressing the Court. Counsel should never act or speak disrespectfully to the Court or opposing counsel in any manner. Counsel's demeanor should be one of courtesy and professionalism. The rule on civility is absolute in addressing witnesses whether on direct or cross-examination. Do not approach a witness without leave of the Court. Do not, by facial expression or other conduct, exhibit an opinion concerning any witness. Counsel should avoid argumentative questions when questioning an opposing party.

Cell phones and pagers should be turned off upon entry into the courtroom. Counsel are responsible for their own and their witnesses' cell phones and pagers.

At the commencement of the hearing, all sequentially numbered documents and exhibits shall be placed, along with an index, in a three-ring binder, which shall be submitted to the undersigned. Each party shall provide the court reporter with an original or copy of each exhibit he or she introduces and has admitted into the record. At the close of the hearing, the parties shall

ensure that the admitted exhibits have been assembled into a single binder or binders, as necessary, retaining the tab numbers used during hearing.

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COVETTE ROONEY  
Chief Judge

Dated:  
Washington, D.C.

## **APPENDIX B**

### **COURTROOM ETIQUETTE -- PLEASE TAKE NOTICE**

#### **General Procedures**

All non-party spectators, including the media, who wish to observe the proceedings must be seated before the Court is in session and must remain in the courtroom until the next recess is called (emergencies are excepted). No spectators will routinely be admitted while the Court is in session.

#### **Courtroom Demeanor**

Persons in the courtroom must remain silent during the proceedings. There will also be no shaking of heads in approval or disapproval, or other signs or signals of approval or disapproval, in regard to any testimony given by a witness, any statements made by counsel or the Court, and any rulings of the Court.

There will be no reading of newspapers, magazines, books or other materials during the proceedings.

No smoking, drinking, eating or chewing gum will be allowed in the Court. With the permission of the presiding judge, counsel and witnesses may have drinking water.

The atmosphere in the courtroom must be quiet, calm and deliberative. Evidence in the case may be complex, graphic or emotional. At times, evidence may be very tedious. All persons attending the hearing must maintain a serious and composed demeanor.

All cell phones and pagers must be turned off while the proceedings are in progress. Computers, cameras, recorders and other such equipment may be not be brought into the courtroom except as specifically permitted by the presiding judge.

No one, including counsel for the parties, will be allowed beyond the bar of the Court at any time except as permitted by the presiding judge.

### **Official Record**

There is only one official court record of the proceedings. That record is the transcript of the original notes of the court reporter made in open court. The court reporter is employed by the Commission.

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COVETTE ROONEY  
Chief Judge

Dated:  
Washington, D.C.

### **APPENDIX C**

#### **FILING REQUIREMENTS**

In order to accommodate the scanning of legal papers presented in hard-copy format and saving in an electronic format in accordance with internal Review Commission scanning procedures, all legal papers must conform to the following requirements;

- a) all legal paper, including letters, must be printed on only one side of the paper;
- b) all legal pleadings including orders must contain a 1-inch space from the top of the page;
- c) all legal papers must not be stapled or permanently bound but must be secured by binder clips or other fasteners which do not puncture or otherwise interfere with scanning;
- d) to avoid scanning errors, Exhibit separator pages must be used instead of Exhibit tabs.

