

JUDGE PEGGY S. BALL

UNITED STATES OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
United States Customs House
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(Last amended 06/2016)

PRACTICE STANDARDS ORDER

The following guide is applicable to most cases. However, parties should also comply with specific orders issued in individual cases because the circumstances of a case may require deviation from standard procedures.

GENERAL MATTERS APPLICABLE TO ALL CASES

Communications With The Court

1. My legal assistant, Kate Sydney, can be contacted at 303-844-2284.
2. The Court permits telephonic or written contact concerning administrative, scheduling and other non-substantive, routine matters. My legal assistant may be contacted for information about the status of a motion or other document, or for information about courtroom technology, trial preparation, or submission of trial exhibits.
3. All other communications with the Court should be made by the filing of pleadings, motions, applications, briefs or legal memoranda, copied to the opposing party.
4. Under no circumstances may any party or counsel communicate *ex parte* with the Court's office staff regarding substantive matters. Court staff has no authority to render legal advice or to grant continuances or any other relief.

Applicable Rules

Those appearing before the Court must know and follow:

1. The Federal Rules of Civil Procedure;
2. The Federal Rules of Evidence;
3. The Rules of Procedure of the Occupational Safety and Health Review Commission - www.oshrc.gov/procrules/index.html ("Commission Rules"); and
4. These Practice Standards.

Filing

Electronic filing is the Court's preferred method of filing absent good cause shown to use one of the other filing methods outlined in Commission Rule 8. An exception is that confidential documents filed with the Judge in preparation for a Mandatory Settlement Conference are not to be filed electronically. Parties should take careful note of Commission Rules 7 and 8 regarding filing and service.

Instructions for electronic filing can be found using the following address:

http://www.oshrc.gov/publications/instructions_elec_filing.html. All documents, including exhibits, attachments and appendices, shall be sent by email to: denveroshrcjudges@oshrc.gov. To ensure proper routing, the email subject line should include the following information: (1) Judge Ball, (2) case title, and (3) case docket number.

Extensions of Time and Continuances:

Requests for extensions of time must be made by written motion and shall include: (1) the specific grounds for the request; (2) a statement of whether the request is opposed or unopposed by other parties; and (3) 3 proposed dates when the parties will be available to substitute for the scheduled date(s).

Pre-trial Proceedings

The Court usually conducts a telephonic pre-trial conference approximately two to three weeks prior to trial to address trial management issues. Counsel who will be trying the case for each party are expected to participate, and to be prepared to discuss:

- a) Progress toward settlement;
- b) Any potential narrowing of issues for trial;
- c) Estimated number of exhibits and witnesses
- d) Joint stipulations, if any.

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. 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 Ball (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; and (4) a copy for the party offering the exhibits.

Electronic Versions: In addition to hard copy submission of exhibits, each party shall provide to the Court an electronic copy of the exhibits (CD or flash drive) in one of the following electronic formats: Adobe Portable Document format (.pdf)(preferred) or Word (read only) Document (.doc). Materials that cannot be converted to electronic form (e.g., videotape, audiotape, etc) should be submitted to the Court in original form. Over-size documents such as overheads, charts, graphs or demonstrative exhibits may be used during court proceedings but shall also be reduced, photocopied or otherwise reproduced for submission as a paper or electronic exhibit. The electronic version of exhibits will be the official trial exhibits. Electronic trial exhibits admitted in audio or video format must be in .mp3 (audio) or .mp4 (video) format.

If any party anticipates utilizing any special equipment, such as a projector, it is the responsibility of such party to make arrangements in advance with courtroom staff.

Notice of Settlement:

If the parties successfully negotiate a full resolution of their dispute, the Court must be promptly notified in writing of such resolution. If a trial has been scheduled, please notify the Court no later than **three business days prior to such trial**. A simple, concise, written notice stating full settlement has been reached is sufficient. 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. Partial settlement agreements are also encouraged, although they will not affect the scheduled trial date. **Telephonic notification of settlement alone is not sufficient to cancel a scheduled trial date.**

Post-Trial Proceedings

Upon receipt of the transcript, the Court will issue a briefing order. Typically, the parties will be required 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. Post-trial briefs are limited to 30 pages unless the Court has granted leave for a greater number.

Additional requirements relating to specific types of proceedings are noted below:

CONVENTIONAL PROCEEDINGS

The following additional requirements apply only to cases in conventional proceeding.

Initial Case Preparation

Initial pleadings shall be filed consistently with Commission Rule 34. The Court also customarily issues an ORDER TO CONFER AND SUBMIT JOINT PROPOSED PRETRIAL SCHEDULE, which requires the parties to file a joint pleading within 45 days. Upon receipt of such pleading, the Court will schedule a trial. If feasible, the Court will utilize one of the dates and locations proposed by the parties.

Motion Practice

All motions, objections and responses shall conform to the requirements of Commission Rule 40. Note the parties have a "confer" requirement. The Court will not consider correspondence or letters from counsel as proper motion practice. See Commission Rule 40(c) also for applicable time limits for filing pleadings responsive to motions. No other reply or brief shall be filed without leave from the Court. Motions that are untimely, noncompliant, or filed without adequate effort to confer with opposing parties may be denied with prejudice or stricken *sua sponte*.

Motions *in limine* are discouraged when they request advanced evidentiary rulings, which 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.

Dispositive Motions: Motions seeking relief pursuant to Fed.R.Civ.P. 12 or 56, are governed by the Scheduling Order and deadlines will be strictly enforced.

Motions to Exclude Expert Testimony: A party objecting to the admissibility of opinion testimony must file a written motion seeking exclusion. Failure of an opponent to file such a motion, however, does not relieve the proponent of its burden to show the proffered testimony is admissible. Each such 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, or methodology. See Fed. R. Evid. 702. The deadline for filing all such motions is established in the Scheduling Order.

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.

Pretrial Conference

The Court will conduct a final Pre-Trial Conference approximately twenty (20) days prior to trial to address trial management issues. Counsel\Representatives who will try the case must attend.

Trials

Pretrial Briefs are encouraged, but not required absent specific court order. Closing arguments will generally be dispensed with in favor of the submission of a post-trial brief.

SIMPLIFIED PROCEEDINGS

The following requirements are applicable only to cases designated for Simplified Proceeding:

Applicable Law:

All parties and party representatives in any case proceeding pursuant to Simplified Proceeding must take particular note of Commission Rules 200 through 211, in Subpart M. The filing of a formal Complaint and Answer are not required. Discovery is not permitted unless the Court enters an Order permitting limited discovery in a particular matter. The Rules will be strictly construed.

SETTLEMENT CONFERENCE PROCEEDINGS

As to any case assigned to Judge Ball for Settlement Proceedings, either voluntary or mandatory, each party will provide to the Court a confidential statement of the issues in controversy and the party's factual predicate and legal position regarding each issue. If any discovery is sought in preparation for the Settlement Conference, a request must be filed and copied to all opposing parties or counsel, indicating what discovery is requested and why it is needed prior to Settlement Conference. The filing of a formal Complaint and Answer are not necessarily required but the Court may do so in particular cases, depending upon the complexity and transparency of issues presented.

All confidential settlement statements and documents submitted in support of settlement will be kept confidential and destroyed at the end of the settlement process. Confidentiality will be also maintained as to information disclosed to the Court.

COURTROOM RULES AND PROCEDURES FOR ALL CASES

Professional courtesy and civility are expected during all court appearances. 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.
- Please stand when the Judge enters or leaves the courtroom.
- Please stand when addressing the court or questioning witnesses.
- There will be no visual or verbal gestures of approval or disapproval of any witness testimony, comments by counsel, or rulings by the Court.
- Address objections, and responses to objections, to the Court. Do not direct objections, or responses to objections, to opposing counsel.
- Ask permission before approaching the witness or the bench.
- If witnesses are sequestered, attorneys and other party representatives are required to monitor the courtroom to ensure compliance with the court's exclusion order.
- All mobile phones, pagers, and laptop computers must be either turned off or placed in vibrate/silent mode while in the courtroom.
- No food, gum, or drinks (other than water) are allowed in the courtroom. For trials and other hearings conducted in Denver, water will either be provided at counsel table, or spill-proof containers of water will be permitted. In other locations, local court rules apply.
- Please advise court staff if you require disability-related accommodations

Do not move any furniture in the courtroom without express permission from the Judge.

Failure to Comply:

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