



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

JUDGE GATTO'S
STANDING ORDER
ON
SETTLEMENT CASE TRACK

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General Provisions

This *Standing Order on Settlement Case Track* applies to all cases assigned to Judge Gatto on the Mandatory or Voluntary Settlement Case track in the United States Occupational Safety and Health Review Commission (the Commission or the Court). A copy of this Standing Order and relevant Court developed forms ([Appendix A](#) of the Standing Order) can be obtained by accessing Judge Gatto's *Standing Order on Settlement Cases* link on the Commission's website at: <http://www.oshrc.gov/ALJP/index.html>.

Any reference to "counsel" in this Standing Order or appended forms includes any person licensed and authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution, and to any person who is permitted, in accordance with law, to represent a party in an action pending in the Commission, and to any person proceeding *pro se* in an action pending in the Commission.

Discovery

Unless the Court orders otherwise, all cases are assigned to a **four (4) month** discovery period, commencing after the appearance of the first Respondent by answer to the complaint (or a motion that delays the filing of an answer, such as a motion to dismiss). Discovery must be initiated early enough to permit completion of discovery at least seven (7) days prior to the date set for trial, unless the Court orders otherwise. *See* Commission Rule 52. Responses to initiated discovery must be completed before expiration of the assigned discovery period.

Discovery is not available under the Commission's Rules through depositions except to the extent provided in Commission Rule 56. In the absence of a specific provision, discovery procedures shall be in accordance with the Fed. R. Civ. P., except, Rule 26(a). In conformity with the Commission's Rules, any party may, without leave of the Court, obtain discovery by one or more of the following methods:

- (a) production of documents or things or permission to enter upon land or other property for inspection and other purposes (Commission Rule 53);
- (b) requests for admission to the extent provided in Commission Rule 54; and
- (c) interrogatories to the extent provided in Commission Rule 55.

Commission Rule 120 mandates that the assigned Settlement Judge issue a discovery scheduling order and supervise all discovery proceedings. At the conclusion of discovery the Settlement Judge must conduct settlement proceedings. *See* 29 C.F.R. § 2200.120. **The parties may also agree in writing to use alternative means of dispute resolution (e.g., minitrial or mediation conducted by the Settlement Judge) as authorized by 5 U.S.C. § 556 and 29 C.F.R. § 2200.120.**

Settlement proceedings shall commence the day after discovery is concluded and shall conclude within sixty (60) days thereafter.

The parties and their representatives are required to comply with the spirit of the settlement regulations and shall exert a good faith effort to resolve issues in controversy, either in full or in part, in an amicable manner. The parties, their representatives, *and individuals with full settlement authority must be present at all settlement conferences.* Refusal to cooperate fully within the spirit of the settlement regulations may result in the imposition of sanctions.

Prior to any scheduled settlement conference the parties are directed to confer to ensure that whatever exchange of information is needed for all sides to evaluate the case for settlement purposes is completed by the date of the settlement conference. Each party shall also be prepared to discuss the factual predicate for their respective positions on each issue in controversy at the settlement conference.

Joint Discovery and Settlement Plan

Within **thirty (30) days** after service of the complaint on the Respondent, counsel for the parties are required to **confer** at the initiation of the Secretary's counsel in an effort to settle the case, discuss discovery, limit issues, and discuss all matters to be addressed in the parties' proposed *Joint Discovery and Settlement Plan*. Counsel for each party must inform their client promptly of all offers of settlement proposed at the conference in compliance with Fed. R. Civ. P. 26(f).

Within **forty-five (45) days** after service of the complaint on the Respondent, counsel are required to complete and file the Court's *Joint Discovery and Settlement Plan* form. No deviations from this form are permitted, except upon the express prior approval of the Court. The form may be retyped, provided it is not modified in any way.

Conference Following Discovery

Lead counsel and a person possessing settlement authority for Complainant and Respondent are required to confer following the close of discovery to discuss, in good faith, settlement of the case.

Motions

Generally. Any motion filed in this Court shall be made in compliance with the Commission's Rules and the Fed. R. Civ. P. A motion that is not specially limited in time by the Commission's Rules or the Fed. R. Civ. P must be filed within thirty (30) days after the beginning of discovery unless the filing party has obtained prior permission from the Court. The Court will not respond to correspondence, *e.g.*, letters, from counsel that should properly be the subject of motion practice. Motions which do not meet the requirements outlined in this Standing Order are deemed denied without any further action required by the Court.

A motion 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. A motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. A motion shall not be included in another document, such as a brief or a petition for discretionary review, but shall be made in a separate document. A motion must be accompanied by an order prepared for the Court's signature.

The Court will generally permit extensions of time for discovery and other pretrial matters upon a showing that the opposing party will not be prejudiced and that granting the extension will not interfere with the trial date. However, since trial dates are set well in advance, and are set only after submission of a proposed Discovery and Settlement Plan, the Court will generally not grant continuances.

Motions to Compel. Motions to compel may be filed prior to the close of discovery or, if longer, any time within fourteen (14) days after service of the disclosure or discovery response upon which the motion is based. The deadline for filing all such motions shall be established in the proposed Discovery and Settlement Plan.

Electronic Filing

The Commission's Rules contemplate that at the commencement of the case, the parties will confer and agree to electronically file and serve all pleadings and documents. The Rules do

not allow one party to electronically file with the Commission and serve a party by another means. If a party does not agree to electronic service, the opposing party may not unilaterally file documents electronically.

However, there may be instances where the parties have not agreed to file and serve all documents electronically, but desire to electronically file and serve a single document, such as a settlement agreement. This is an accepted procedure. When the parties agree in writing to electronically file and serve pleadings and documents, E-file submissions are accomplished by sending an e-mail with the attached pleading(s) or document(s) in Adobe Portable Document Format (PDF) format to: atlantaoshrcjudges@oshrc.gov. The Court has developed the [Consent to Electronic Filing](#) form for the parties' convenience. The pertinent E-Filing Rules are Commission Rule 7(g) (Service and notice - How accomplished) and Commission Rule 8(g) (Filing - Electronic filing). The Commission's E-Filing Instructions can be found on the Commission's website at: http://www.oshrc.gov/publications/instructions_elecfileing.html.

SO ORDERED THIS 22nd day of November, 2013.



/s/

JOHN B. GATTO, Judge

U.S. OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

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APPENDIX A – SAMPLE FORMS

- A. ORDER REQUIRING FILING OF DISCOVERY AND SETTLEMENT PLAN**
- B. JOINT DISCOVERY AND SETTLEMENT PLAN**
- C. CONSENT TO ELECTRONIC FILING**



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Complainant,

v.

OSHRC DOCKET No.

Matter Description (Uppercase),

Respondent.

**ORDER REQUIRING FILING OF JOINT
DISCOVERY AND TRIAL PLAN¹**

IT IS HEREBY ORDERED THAT the above-styled action is assigned to a four (4) month discovery period commencing after the appearance of the first Respondent by answer to the complaint (or a motion that delays the filing of an answer, such as a motion to dismiss). Discovery shall be initiated early enough to permit completion of discovery no later than seven (7) days prior to the date set for trial, unless the Court orders otherwise. *See* Commission Rule 52. Responses to initiated discovery must be completed before expiration of the assigned discovery period.

IT IS FURTHER ORDERED THAT within thirty (30) days after service of the complaint on the Respondent, counsel for the parties are required to confer at the initiation of the Secretary's counsel in person in an effort to settle the case, discuss discovery, limit issues, and discuss all matters addressed in the parties' proposed *Discovery and Settlement Plan*. Counsel for the parties must inform their clients promptly of all offers of settlement proposed at the conference. This conference shall comply with the requirements of Fed. R. Civ. P. 26(f).

¹ The parties are directed to Judge Gatto's *Standing Order on Conventional Case Track*, which applies to all cases assigned to the Conventional Case track. A copy of Judge Gatto's *Standing Order on Conventional Case Track* and relevant Court developed forms (see [Appendix A](#) to the Standing Order) may be obtained by accessing Judge Gatto's *Judge Gatto's Standing Order on Conventional Cases* link on the Commission's website at: <http://www.oshrc.gov/ALJP/index.html>.

IT IS FURTHER ORDERED THAT within forty-five (45) days after service of the complaint on the Respondent, counsel are required to complete and file a proposed [Joint Discovery and Settlement Plan](#), using the Court's mandatory form. No deviations from this form shall be permitted, except upon the express prior approval of the Court. The form may be retyped, provided it is not modified in any way.

IT IS FURTHER ORDERED THAT at the commencement of the case, the parties will confer and hopefully agree to electronically file and serve all pleadings and documents. The Court has developed the [Consent to Electronic Filing](#) form for the parties' convenience. When the parties agree in writing to electronically file and serve pleadings and documents, they must be electronically submitted in accordance with the Commission's Instructions for electronic filing by sending an e-mail with the attached pleading(s) or document(s) in Adobe Portable Document Format (PDF) format to: atlantaoshrcjudges@oshrc.gov. The Commission's complete Instructions for electronic filing can be found on the Commission's website at: http://www.oshrc.gov/publications/instructions_elec_filing.html.

SO ORDERED this ____ day of _____, **20**_____.

JOHN B. GATTO, Judge
U.S. Occupational Safety and
Health Review Commission



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Complainant,

v.

Matter Description (Uppercase),

Respondent.

OSHRC DOCKET No.

CONSENT TO ELECTRONIC FILING

The parties in the above-captioned case have consented to the electronic filing and service of all submissions in conformity with the Court's E-Filing Rules and instructions.

Counsel for Complainant

Counsel for Respondent

Date: _____

Date: _____



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Complainant,

v.

Matter Description (Uppercase),

Respondent.

OSHRC DOCKET No.

JOINT DISCOVERY AND SETTLEMENT PLAN

1.

The date by which the parties must exchange in writing the names, organizational affiliations and subject matter areas of expertise of expert witness(es) it may call at the trial is _____, 20____.

2.

The date by which Reports prepared by the expert witness(es) shall be completed and delivered to counsel who retained the expert(s) is _____, 20____.¹

3.

The date by which Reports prepared by the expert witness(es) shall be exchanged with opposing counsel is _____, 20____.²

¹ This disclosure shall be accompanied by a mandatory written report prepared and signed by the witness. The report shall contain the subject matter on which the witness is expected to present evidence under Fed. R. Evid. 702, 703, or 705; a summary of the facts and opinions to which the witness is expected to testify 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.

² Absent a stipulation, the exchanges must occur at least 60 days before the date set for trial or for the case to be ready for trial.

4.

The nature of the discovery each party intends to take is:

- a. Complainant: _____.
- b. Respondent: _____.

5.

The number of interrogatories each party anticipates it will serve on the opposing party is:

- a. Complainant: _____.
- b. Respondent: _____.³

6.

The number of depositions each party intends to notice to the opposing party is:

- a. Complainant: _____.
- b. Respondent: _____.⁴

7.

The number of requested admissions each party anticipates it will serve on the opposing party is:

- a. Complainant: _____.
- b. Respondent: _____.⁵

8.

a. The date on or before which a party may file any objection, together with the grounds for it, to the use under Fed. R. Civ. P. 32(a) of a deposition designated by another party under

³ The number of interrogatories each party may serve on the opposing party shall not exceed 25 questions, including subparts, without an order of the Court. The party seeking to serve more than 25 questions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of interrogatories.

⁴ Depositions of parties, intervenors, or witnesses shall be allowed only by agreement of all the parties, or on order of the Court following the filing of a motion of a party stating good and just reasons. All depositions shall be before an officer authorized to administer oaths and affirmations at the place of examination. The deposition shall be taken in accordance with the Fed. R. Civ. P., particularly Rule 30. A motion to take depositions may be filed after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss. Any depositions allowed by the Court may be taken after 10 days written notice to the other party(ies). The 10-day notice requirement may be waived by the other party(ies).

⁵ The number of requested admissions each party may serve on the opposing party shall not exceed 25, including subparts, without an order of the Court. The party seeking to serve more than 25 requested admissions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of requested admissions.

Rule 26(a)(3)(A)(ii) is _____, 20____ (not later than fourteen (14) after service of the disclosure).

b. The date on or before which a party may file any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Fed. R. Civ. P. 26(a)(3)(A)(iii) is _____, 20____ (not later than fourteen (14) after service of the disclosure).

c. The date on or before which a party may file any motion(s) to compel is _____, 20____ (not later than fourteen (14) after service of the discovery response).

An objection not so made, except for one under Fed. R. Evid. 402 or 403, is waived unless excused by the Court for good cause.

9.

The date by which the parties shall file separate position papers (not later than fourteen (14) days prior to the date of the proposed settlement conference) is _____, 20____. The position papers shall include the issues in controversy and the factual predicate for each party's position on each issue.

10.

The parties ___ propose ___ do not propose that the settlement proceedings be conducted in whole or in part telephonically.

11.

The proposed date(s) to conduct *ex parte* communications with the Settlement Judge is/are _____, 20____ at 9:00 a.m. in _____, _____.

12.

The proposed date(s) for a settlement conference is/are _____, 20____ at 9:00 a.m. in _____, _____. The parties will be notified at a subsequent date as to the exact court location.

Counsel for Complainant

Counsel for Respondent

SCHEDULING ORDER

IT IS HEREBY ORDERED that the foregoing, including the attachments thereto, constitutes the Court's discovery and scheduling order in the above-styled action and shall not be amended except by Order of the Court to prevent manifest injustice.

SO ORDERED THIS ____ day of _____, 20____.

JOHN B. GATTO, Judge
U.S. Occupational Safety and
Health Review Commission