



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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STANDING ORDER ON SIMPLIFIED CASES

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General Provisions

This *Standing Order on Simplified Cases* applies to all cases assigned to Judge John B. Gatto (the Court) on the Simplified Case track in the United States Occupational Safety and Health Review Commission. A copy of this Standing Order and the appended forms (Appendix A of this Standing Order) can be obtained by accessing Judge Gatto's *Standing Order on Simplified Cases* link on the Review Commission's website at: <http://www.oshrc.gov/ALJP/index.html>. Any reference to "counsel" in this Standing Order or appended forms refers to any person who is permitted, in accordance with law, to represent a party in an action pending in the Review Commission, and to any person proceeding *pro se* in an action pending in the Review Commission.

The purpose of the Simplified Proceedings subpart is to provide simplified procedures under the Occupational Safety and Health Act of 1970, so that parties before the Commission may reduce the time and expense of litigation while being assured of due process and a trial that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554. These procedural rules will be applied to accomplish this purpose. The procedures are simplified in a number of ways. If it becomes apparent at any time that a case is not appropriate for Simplified Proceedings, the Court may, upon motion by any party for good cause or by the Court *sua sponte* (with the concurrence of the Chief Judge), discontinue Simplified Proceedings and order the case to continue under conventional rules. Joint motions to return a case to Conventional Proceedings shall be granted by the Court and do not require a showing of good cause.

The major differences between Simplified Proceedings and those provided in Conventional Proceedings are as follows.

(1) Complaints and answers are not required. Once a case is designated as a Simplified Proceeding, the complaint and answer requirements are suspended.

(2) Formal pleadings (*e.g.* complaint, answer, motion etc.) generally are not required. However, early discussions among the parties are required to narrow and define the disputes.

(3) The Secretary and the employer are required to provide each other with certain informational documents early in the proceeding (*see* Disclosure of Information section below).

(4) **Discovery**, including requests for admissions, will only be allowed under the conditions and time limits set by the Court, and only upon motion of a party.

(5) Interlocutory appeals are not permitted.

(6) Trials are less formal. As soon as practicable after the conclusion of the pretrial conference, the Court will schedule a trial on any issue that remains in dispute. The Court will receive oral, physical, or documentary evidence that is not irrelevant, unduly repetitious or unreliable. Testimony will be given under oath or affirmation. The Federal Rules of Evidence do not apply. Instead of briefs, the parties may argue their case orally before the Court at the conclusion of the trial.

Motions

A primary purpose of Simplified Proceedings is to eliminate, as much as possible, motions and similar documents. Therefore, the Court will not entertain a motion unless accompanied by the movant'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 be made in a separate document (*i.e.*, shall not be included in the body of another document). A motion must be accompanied by an order prepared for the Court's signature.

Disclosure of Information

(1) Within 12 working days after a case is designated as a Simplified Proceeding, the Secretary shall provide the employer, free of charge, copies of the narrative (Form OSHA 1-A) and the worksheet (Form OSHA 1-B), or their equivalents.

(2) Within 30 calendar days after a case is designated as a Simplified Proceeding, the Secretary shall provide the employer with reproductions of any photographs or videotapes that the Secretary anticipates using at the hearing.

(3) Within 30 calendar days after a case is designated as a Simplified Proceeding, the Secretary shall provide to the employer any exculpatory evidence in the Secretary's possession.

(4) The Court shall act expeditiously on any claim by the employer that the Secretary improperly withheld or redacted any portion of the documents, photographs, or videotapes on the grounds of confidentiality or privilege.

(5) Within 30 calendar days after a case is designated as a Simplified Proceeding, the employer must disclose to the Secretary all documents relevant to any affirmative defenses asserted by the employer.

(6) If the employer is a corporation, within 30 calendar days after a case is designated as a Simplified Proceeding, the employer must file a written declaration listing all parents, subsidiaries, and affiliates of that corporation or stating that the corporation has no parents, subsidiaries, or affiliates, whichever is applicable. If the employer fails to file an adequate declaration, the employer may be held in default after being given an opportunity to show cause why it should not be held in default. If the employer is subject to the disclosure requirements of this paragraph, the employer has a continuing duty to notify the Court of any change in the information on the disclosure declaration until the Commission issues a final order disposing of the proceeding.

Pretrial Procedures

As soon as practicable after the assignment of the case, the Court will issue to the parties an *Order to Confer and Appear for Telephonic Pretrial Conference*, which requires the parties to confer and discuss, at the initiation of the Secretary's counsel, **within twenty (20) days of the date of that Order**, regarding the following:

- (a) Settlement of the case (including specific offers and counter-offers, which are encouraged);
- (b) Proposed trial date or dates (excluding Mondays, unless the case will be tried in Atlanta, Georgia, and not later than three to four months from the date of this Order) and location of trial;
- (c) An agreed statement of issues and facts (stipulations) and narrowing of issues;
- (d) Affirmative defenses asserted by Respondent;
- (e) Specific witnesses each party intends to call at trial;

- (f) Specific exhibits each party intends to offer at trial;
- (g) Specific date the parties will exchange all exhibits prior to trial;
- (h) Motions that are or will be pending, if any; and
- (i) Any other issues the parties believe the Court should address for efficient management, preparation, and trial of this case.

The parties shall present the results of their discussion at the pretrial conference and must be prepared to discuss in detail at the conference the contents of paragraphs (a)-(i) above. Although not required, the Court prefers that the parties waive in writing the conference and submit a proposed *Joint Scheduling and Pretrial Plan* (see Waiver of Pretrial Conference Provision below). Except under extraordinary circumstances, only affirmative defenses, exhibits, and witnesses identified during the Pretrial Conference will be considered at trial. At the conclusion of the conference, if held, or after submission of a proposed *Joint Scheduling and Pretrial Plan*, the Court will issue an order setting forth any agreements reached by the parties and will specify in the order the issues to be addressed by the parties at the trial.

Waiver of Pretrial Conference

In lieu of a pretrial conference, the parties can waive in writing the conference and submit a proposed *Joint Scheduling and Pretrial Plan* (see Joint Scheduling and Pretrial Plan form) within thirty (30) days of the date of the *Order to Confer and Appear for Telephonic Pretrial Conference*.

Extensions of Time and Continuances

Requests for extensions of time and/or continuances must be in writing and must include: (1) the specific grounds for the request, (2) the date on which the parties conferred regarding the request, and (3) a statement of whether the request is opposed or unopposed. The motion must be accompanied by an order for the Court's signature. However, since trial dates are set well in advance, the Court will generally not grant continuances of trial dates.

Trial Exhibits

The parties shall confer and consolidate duplicate exhibits and use a joint common numbering system for such exhibits to the extent feasible. Exhibits shall be premarked by counsel with the case docket number, with a designation identifying the party or intervenor offering the exhibit, and numbered consecutively. Adequate space must be left on the left margin of each party's exhibit list for Court stamping purposes. 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 (U-1, U-2, U-3 for exhibits offered by union representatives participating in the proceeding). The 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 exhibit shall be separated by a tab properly labeled with the exhibit number. Each party shall prepare the following number of copies of their respective exhibit notebooks: (1) one copy for the Court (to be provided at trial), (2) one copy for the witness stand (to be provided at trial, 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 (30) 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.

Settlement Practices

The parties are to provide the Court, at least three (3) days in advance of trial, notice of whether a case has settled. If the case has not settled, but the parties are still engaged in settlement discussions, they may file a motion seeking a postponement of the trial. If a case has settled, but the Court was not timely informed as required herein and Judge Gatto is already in travel status, the parties must appear at the trial location (unless otherwise ordered) to provide an on-the-record explanation of why the timeframes in these Settlement Practices were not followed, and to memorialize the settlement on the record.

Electronic Filing

The Review 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 (*see* the Consent to Electronic Filing form), 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 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.



/s/

JOHN B. GATTO, Judge
U.S. OCCUPATIONAL SAFETY AND
HEALTH REVIEW COMMISSION

APPENDIX A – FORMS

A. CONSENT TO ELECTRONIC FILING

B. ORDER TO CONFER AND APPEAR FOR TELEPHONIC PRETRIAL
CONFERENCE

C. JOINT SCHEDULING AND PRETRIAL PLAN



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.

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 Instructions for Electronic Filing rules.

For the Complainant: _____ Date: _____

For the Respondent: _____ Date: _____



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 TO CONFER AND APPEAR FOR
TELEPHONIC PRETRIAL CONFERENCE**

IT IS HEREBY ORDERED THAT within twenty (20) calendar days of the date of this **Order**, the parties are directed to confer and discuss, at the initiation of the Secretary's counsel, either in person or by telephone, regarding the following:

- (a) Settlement of this case (specific offers and counter-offers are encouraged);
- (b) Proposed trial date(s) and location (not later than two to four months from the date of this Order);
- (c) An agreed statement of issues and facts (stipulations) and narrowing of issues;
- (d) Affirmative defenses asserted by the employer;
- (e) Specific witnesses each party intends to call at trial;
- (f) Specific exhibits each party intends to offer at trial;
- (g) Motions; and
- (h) Any other issues the parties believe the Court should address for efficient management, preparation, and trial of this case.

IT IS FURTHER ORDERED THAT the parties shall appear for a telephonic Conference Call on _____ at _____ a.m./p.m. (ET). **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 line at 1-877-446-3914, and enter Conference Pass Code Number 335359# on the designated date and time of the conference. Except under extraordinary

circumstances, only affirmative defenses, exhibits, and witnesses identified during the Pretrial Conference will be considered at trial.

IT IS FURTHER ORDERED THAT in lieu of attending a pretrial conference, within thirty (30) days of the date of this Order the parties may waive in writing the pretrial conference and submit a proposed *Joint Scheduling and Pretrial Plan* using the mandatory Court developed form.¹

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 using the Consent to Electronic Filing form.

SO ORDERED THIS ____ day of _____, 20____.

JOHN B. GATTO, Judge
U.S. OCCUPATIONAL SAFETY AND
HEALTH REVIEW COMMISSION

¹ The parties are directed to Judge Gatto's *Standing Order on Simplified Cases*, which is incorporated herein by reference and made a part of this Order. A copy of the *Standing Order on Simplified Cases* and appended forms (*see* Appendix A of the *Standing Order*) may be obtained by accessing Judge Gatto's *Standing Order on Simplified Cases* link on the Commission's website at: <http://www.oshrc.gov/ALJP/index.html>. If a party does not have access to the internet, the party can request a copy of Judge Gatto's *Standing Order on Simplified Cases* by contacting Judge Gatto's Legal Assistant, Nancy F. Sims, at (404) 562-1640.



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.

JOINT SCHEDULING AND PRETRIAL PLAN

The parties hereby waive the pretrial conference requirements of Commission Rule 207 and in lieu thereof submit the following proposed Joint Scheduling and Pretrial Plan:

1. **Settlement:** The parties are discussing settlement possibilities and will advise the court if a settlement is reached. [The parties have not discussed settlement but anticipate settlement discussions.] They will continue to exchange factual information.
2. **Trial date(s), time, and location** (excluding Mondays unless conducted in Atlanta, Georgia, and not later than three months from the date of this Order): The proposed date(s) for trial is or are _____, 20____ at _____ (time) in _____ (city), _____ (state). The parties will be notified at a subsequent date as to the exact court location.
3. **An agreed statement of issues and facts (stipulations):**²
 - a. Respondent admits that it is an employer engaged in a business affecting commerce within the meaning of the Occupational Safety and Health Act.
 - b. Respondent's notice of contest was timely filed.

² The Complainant has the burden of proof as to each element of an alleged violation. The Respondent must prove each element of a defense. Omission of any issue in this Order does not mean that the element has been established.

- c. Respondent contests Citation No. _____, item [s] ____
- d. Whether respondent violated 29 C.F.R. §____
- e. If a violation of 29 C.F.R. § _____ is [are] found, whether the violation[s] was [were] serious and whether the proposed penalty[ies] of \$ ____is [are] reasonable.

4. **Narrowing of issues:**

- a. As to Citation No. __, item ____, Complainant asserts:
- b. As to Citation No. ____, item ____, Respondent contends:

5. **Defenses:** *See* above. As affirmative defenses, Respondent alleges:

6. **Witnesses:**

- a. Complainant's witnesses:
 - 1.
- b. Respondent's witnesses:
 - 1.

The parties may supplement their list of witnesses upon proper notice to the opposing party and to the Court.

7. **Exhibits:**

- a. Pursuant to Commission Rule 206, the Complainant shall provide [has provided] the Respondent with copies of the OSHA Form 1A, OSHA Form 1B, and any photographs, videotapes and any exculpatory evidence in the Complainant's possession.
- b. Respondent shall provide [has provided] the Complainant with any evidence in the Respondent's possession or control relative to any evidentiary and affirmative defenses.
- c. Complainant's exhibits:

1.

d. Respondent's exhibits:

1.

The parties may supplement their list of exhibits upon proper notice to the opposing party and to the Court. Copies of exhibits that the other party does not have must also be furnished. The parties are directed to exchange the documents they intend to introduce into evidence as soon as practicable, but not later than five (5) working days before the scheduled trial.

8. **Motions:** [No motions were discussed].

9. **Any Other Pertinent Matters:** [No other pertinent matters were discussed].

Submitted, this ___ day of _____, 20__.

Counsel for Complainant

Counsel for Respondent



UNITED STATES OF AMERICA
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THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

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v.

OSHRC DOCKET No.

Matter Description (Uppercase),

Respondent.

SCHEDULING AND PRETRIAL ORDER

IT IS HEREBY ORDERED that the parties' proposed Joint Scheduling and Pretrial Plan is adopted by the Court and constitutes the Court's Scheduling and Pretrial Order in the above case and supersedes the pleadings, which shall not be amended except by Order of the Court to prevent manifest injustice. Any attempt to reserve a right to amend or add to any part of the order after it has been filed shall be invalid and of no effect and shall not be binding upon any party or the Court, unless specifically ordered by the Court.

SO ORDERED THIS ___ day of _____, 20_____.

JOHN B. GATTO, Judge
U.S. OCCUPATIONAL SAFETY AND
HEALTH REVIEW COMMISSION