



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

PROCEDURES AND PRACTICES IN SIMPLIFIED PROCEEDINGS
BEFORE JUDGE JOHN B. GATTO

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May 7, 2024

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I. Preamble

This case has been assigned to Simplified Proceedings. *See* 29 C.F.R. § 2200.203. A Guide to Simplified Proceedings is available on the Commission’s web page at <https://www.oshrc.gov> under the “Rules – Guides” tab. The purpose of the Simplified Proceedings is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so that parties before the Commission may reduce the time and expense of litigation. Any party may file a motion requesting that Simplified Proceedings be discontinued and that the matter proceed under conventional procedures. A motion to discontinue must explain why the case is inappropriate for Simplified Proceedings. Responses to such motions shall be filed within **14 days** from the date of service of the motion. Joint motions to return a case to conventional proceedings shall be granted without requiring a showing of good cause.

Any rule referenced in these procedures is to the Federal Rules of Civil Procedure, unless otherwise indicated.¹ Any reference to a Commission Rule means the Commission’s Rules of Procedure, 29 CFR Part 2200, a copy of which is available on the Commission’s web page at <https://www.oshrc.gov> under the “Rules – Guides” tab. All motions shall be accompanied by a proposed order that would grant the relief requested in the motion. *See* 29 C.F.R. § 2200.40(e).

II. Contacting Chambers

Judge Gatto’s assistant is listed in Judge Gatto’s first order sent to the parties. Judge Gatto’s assistant is your primary point of contact on matters relating to your case and can be reached by e-mail or telephone number indicated in Judge Gatto’s first order sent to the parties. Neither the parties nor their counsel are permitted to discuss the merits of the case with any Court staff. **Subpoenas** may be requested *ex parte* through Judge Gatto’s assistant by email.

III. Mandatory Electronic Filing; Email Service

A. Mandatory Electronic Filing. **ALL** parties must file documents electronically in the Commission’s E-File System (unless you filed a written request to be exempt from electronic filing explaining specifically how and why it would be an undue burden to comply with the electronic filing and were granted an exemption from electronic filing by the Judge). **If you have not yet registered, you must immediately do so and notify the Court’s Legal Assistant that you have done so.** If you have not registered but included your email address in your notice of

¹ The Occupational Safety and Health Act of 1970 mandates that unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure. *See* 29 U.S.C. 661(g).

contest or notice of appearance, you will receive a **one-time** *courtesy* copy of the Court’s Initial Scheduling Order sent to your email address of record. *Unless you have been granted an exemption from electronic filing by the Judge, you will not receive any future Court orders/notices until you register and notify the Court’s Legal Assistant that you have done so.*

B. User Registration and Electronic Filing. User registration and electronic filing are accomplished at <https://oshrc.entellitrak.com>. You are responsible for reviewing and complying with the Commission’s Instructions for Electronic Filing link located on the Commission’s web page at <https://www.oshrc.gov> under the “Featured Resources” tab. Failure to comply with these Instructions may result in the rejection of your submission.

C. Email Service. Documents filed electronically must be served by *email* attachment on all parties and intervenors. The Certificate of Service must not be filed as a separate document. The document submitted for filing to the Commission E-File System case file will be rejected if a Certificate of Service that conforms with the Commission Rules is not included with the document submitted. The Certificate of Service certifying simultaneous email service of the document to the other parties and intervenors in the case must be included as the final page of the document submitted for filing:

Certificate of Service

This is to certify that service of the [Document Name] filed in the Commission’s E-File System was also simultaneous served by email attachment to the parties listed below on [Date of Service].

[Name of Individual Served
Address
Email Address]

_____/s/_____
Name Title
Company / Firm Name / Office of the Solicitor
Street Address
City, State, Zip Code Email Address

IV. Pleadings.

Complaints and answers are not required. If the Complainant has filed a complaint, no answer is required.

V. Discovery.

Discovery, including requests for admissions, will only be allowed under the conditions and time limits set by the Court. Any party may file a motion requesting limited discovery.

VI. Witness Lists; Exhibit Lists; Stipulations

A. Witness Lists. Within **14 days** before trial, each party must deliver to the Court, the Court reporter, and opposing parties a witness list. The list must designate the witnesses whom the party **will** have present at trial and those witnesses whom the party **may** have present at trial. Expert witnesses (any witness who might express an opinion under Rule 702) must be included and separately identified. Impeachment and rebuttal witnesses whose use as a witness can be reasonably anticipated must also be included. Witnesses who are not included on the witness list (including expert, impeachment, and rebuttal witnesses whose use should have been reasonably anticipated) will not be permitted to testify, unless expressly authorized by Court order based upon a showing that the failure to comply was justified. All parties may rely upon a representation by a designated party that a witness **will** be present unless notice to the contrary is given **7 days** prior to trial to allow the other party(s) to subpoena the witness or to obtain the witness' testimony by other means.

B. Exhibit Lists. Within **14 days** before trial, each party must deliver to the Court, the court reporter, and opposing parties an exhibit list. Learned treatises that are expected to be used at trial shall not be admitted as exhibits. Counsel are required, however, to identify all such treatises under a separate heading on the party's exhibit list. The parties shall comply with the "Trial Exhibits" provisions in the Court's Procedures and Practices in Conventional Cases. Each party's exhibit list must be submitted in the following format, *and with the first two columns completed*:

Complainant's Respondent's Exhibit List

Docket No. _____

Secretary of Labor v. _____

Page No. ____ of ____

EX. #	DESCRIPTION	TENDERED	WITHDRAWN	ADMITTED	REJECTED

C. Stipulations. No later than **14 days** before trial, the parties shall jointly file a list of

stipulations covering each topic enumerated below:

1. Settlement of the case;
2. Narrowing of issues;
3. Agreed issues and facts (e.g., jurisdiction; Respondent engages in a business affecting commerce; Respondent's workplace; applicability of cited standards; cited standards were violated; (3) employee exposure to the hazard; employer knowledge; whether violation was serious; appropriateness of penalty etc.);
4. Affirmative Defenses;
5. Motions;
6. Need for interpreter services, if any (subject to the availability of funds), which indicates the **specific** type of services needed;
7. Whether the parties agree to apply the Federal Rules of Evidence at trial;
8. Location of Respondent's principal place of business; and
9. Any other pertinent issues.

Except under extraordinary circumstances, any affirmative defenses not raised in the Stipulations may not be raised at trial. In addition to filing the mandatory stipulations, the parties may also request a telephone conference, if necessary.

VII. Pretrial Disclosures

Any party that fails to timely disclose as required herein shall be prohibited from using the document, photograph, videotape, or defense at trial that is not timely disclosed. The Court shall act expeditiously on any claim by a party that the opposing party improperly withheld or improperly redacted any portion of documents, photographs, or videotapes. Within **30 days** after a case is designated for Simplified Proceedings:

- A. The Complainant shall provide the employer, free of charge, with:
 1. copies of the narrative (Form OSHA 1-A) and the worksheet (Form OSHA 1-B), or their equivalents;
 2. reproductions of any photographs or videotapes that the Complainant anticipates using at the hearing; and
 3. any exculpatory evidence in the Complainant's possession.
- B. The employer shall disclose to the Complainant all relevant documents supporting each affirmative defense it raises in the Stipulations.

VIII. Trial Exhibits

A. General Requirements. The official exhibits shall be the electronic version, which shall be presented in Adobe Portable Document Format (.pdf). *The electronic version of each exhibit must mirror the original paper version in all respects, including clarity and color.* The parties shall have a joint duty to consolidate duplicate exhibits using a joint common numbering system for such exhibits to the extent feasible (the Court will not admit a duplicate exhibit from one party that has already been admitted by another party). Counsel shall familiarize themselves with all exhibits (and the numbering thereof) prior to trial. Counsel will not be afforded time during the trial to examine exhibits that are or should have been listed.

B. Marking Exhibits. Prior to trial, each party shall number their exhibits using exhibit stickers, marked with the docket number, with a designation identifying the party offering the exhibit, and numbered consecutively. Each page of each exhibit shall be numbered consecutively, preferably with a Bates stamp. Exhibits shall not include alphabetical or numerical subparts (e.g., A, B, C, I, ii, iii etc.). If subparts are necessary, separate exhibits must be identified.

C. Objections. Specific objections to another party's exhibits must be typed on a separate page and must be attached to the exhibit list of the party against whom the objections are raised. Objections as to authenticity, privilege, competency, and, to the extent possible, relevancy of the exhibits shall be included. Any listed document to which an objection is not raised shall be deemed to have been stipulated as to authenticity, privilege, competency, and, to the extent possible, relevancy by the parties and shall be admitted at trial without such further proof.

D. Presenting Exhibits. No later than **7 days** before trial a copy of each exhibit shall be provided in electronic format (Adobe Portable Document Format (.pdf)) by email attachment to the **(1)** opposing party, **(2)** Court's Legal Assistant, **(3)** court reporter, and **(4)** if the trial is held remotely, the party calling a witness shall also provide to that witness the specific exhibits to be addressed by that witness. *The electronic pdf version of each exhibit must mirror the original paper version in all respects, including clarity and color.* If a particular exhibit is too large to transmit by email, an electronic copy of the exhibits may be provided by mail on a CD or flash drive. If the trial is held in- person, each party's original paper exhibits shall also be presented in a notebook to the court reporter at the beginning of the trial for use by the witnesses. Each exhibit must be separated by a tab labeled with the exhibit number.

IX. Personally Identifiable Information

A party filing a submission with the Court or tendering an exhibit at trial containing Personally Identifiable Information (PII) **shall** comply with Commission Rule 8(g), which sets out the redaction procedures for applicable types of PII and medical records.

X. Proposed Findings of Fact and Conclusions of Law and Briefs

The parties shall file proposed findings of fact and conclusions of law and separate post-trial briefs within **30 days** after receipt of the electronic trial transcript, except that if the Respondent is self-represented or represented by a non-attorney, the Respondent may, but shall not be required, to file proposed findings of fact and conclusions of law and separate post-trial briefs. *Reply briefs are not authorized without the approval of the Court.*

XI. Status Report

The parties shall file a joint status report of their intent to proceed to trial, settle, or withdraw the citation or notice of contest no later than **14 days** before trial. If the parties intend to settle, or a party intends to withdraw the citation or notice of contest, but the Court was not timely informed as required herein, the parties must appear for trial, unless otherwise ordered, to memorialize the settlement or withdrawal announcement on the record.

SO ORDERED.


/s/ _____
JOHN B. GATTO, Judge

Dated: May 7, 2024
Atlanta, GA