

JUDGE CHRISTOPHER D. HELMS
UNITED STATES OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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PRACTICE STANDARDS

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

I. Applicable Rules

All parties and party representatives in a conventional case must comply with:

1. Commission Rules of Procedure (www.oshrc.gov/procrules/index.html);
2. Federal Rules of Civil Procedure (*see* Commission Rule 2(b));
3. Federal Rules of Evidence (*see* Commission Rule 71);
4. (if E-Filing) the OSHRC E-Filing Instructions and User Guide; and
5. The provisions of this Practice Guide.

All attorneys appearing before the Court must also comply with applicable ethics rules and codes of professional responsibility.

II. Communication with Chambers

- A. For questions about minor, routine, non-substantive issues, my Legal Assistant, Kate Sydney, can be contacted at 303-844-2284.
- B. The Court permits telephonic or informal 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.
- C. All other communications with the Court should be made by the filing of pleadings, motions, briefs or legal memoranda, copied to the opposing party.
- D. Under no circumstances may any party or counsel communicate *ex parte* with the Court's office staff regarding substantive matters. The Court's office staff has no authority to render legal advice or grant continuances or any other relief.

III. Filing of Documents – eFiling

OSHRC has implemented a nationwide electronic filing system (EFS) pursuant to Commission Rule 8(g). Represented parties and intervenors must file all documents, except for confidential and privileged documents, electronically in the Commission’s EFS. Self-represented parties (*pro se* parties) and intervenors may choose to file electronically.

In order to use EFS, e-filers must first register within the system. To register, access the link at www.oshrc.gov. Instructions for the EFS are also posted on the OSHRC website. Once registered, e-filers must enter an appearance and then they will subsequently be able to file and receive pleadings electronically. In addition, parties may designate additional individuals who are authorized to receive notice of case filings and activity. The primary party must file a separate pleading entitled “Designation of Authorized Individuals for E-Filing system Notification” in which the authorized individuals are clearly identified by name, address, phone, and email address. All persons designated to receive notice of case filings and activity must be a registered user within the EFS. All parties have a continuing obligation to update service and registration information pursuant to Commission Rule 6.

IV. Motions to Continue Conference, Hearing or Trial

Motions to continue (including motions to vacate or reset) conferences, hearings and trials, will be determined pursuant to Commission Rule 62, require good cause and shall be filed within the timeframes set forth in the Scheduling Order. Uncontested or joint motions for continuance are not effective until approved by the Court. When requesting a continuance to reschedule a conference, hearing or trial, the parties shall provide: (i) three alternative dates for the Court to consider; (ii) the specific grounds for the request; (iii) the date on which the parties conferred regarding the request; and (iv) a statement as to whether the request is opposed or unopposed.

V. Notice of Settlement

A. If a full settlement is reached before trial, the parties should advise my legal assistant, Kate Sydney, within three business days prior to the trial. However, no deadline, hearing or trial will be vacated, except upon the filing of a written notice which states that all matters subject to the trial have been resolved by the parties and the issuance of an order by the Court. A written notice stating that full settlement has been reached is required. The settlement notice must be signed by at least one party representative and served on all parties. 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 Joint Notice of Full Settlement at a later date. Telephonic notification or email notification of settlement are not sufficient to cancel a scheduled trial or hearing date. *See* Commission Rule 100. *See also* “Sample Documents” tab on the Commission website at www.oshrc.gov.

- B. Settlement discussions are encouraged; however, hearings, trials, and pretrial deadlines will not be continued or vacated to facilitate settlement negotiations or alternative dispute resolution. Parties shall comply with the OSHRC Denver Office Standards on Settlement which is published at www.oshrc.gov under the heading “Administrative Law Judge Practices.”
- C. Partial Case Settlement/Dismissal – The parties shall promptly notify the Court by written notice if a partial settlement is reached. The Court will then provide the parties sufficient time to submit a Joint Notification of Partial Settlement. *See* Commission Rule 100. *See also* “Sample Documents” tab on the Commission website at www.oshrc.gov. 4. Once approved and final, the Court will not retain jurisdiction over cases that have been settled. The proper mechanism for enforcing a settlement is, in almost all cases, through a new action.

VI. Trials

- A. Courtroom procedures and demeanor: Professional courtesy and civility are expected during all court appearances, as well as during pre-trial interaction among the parties. Respect for the Court, respect for one another, respect for witnesses, and respect for the judicial process are paramount. All trial proceedings and other scheduled hearings will begin promptly at their scheduled times. There will be no visual or verbal gestures of approval or disapproval of any witness testimony, any comments by counsel, or any rulings by the Court. All mobile phones must be either turned off or placed in vibrate mode while in the courtroom.
- B. 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. If other parties have been recognized in the case, they should follow a similar procedure (e.g. U-1, U-2, U-3 for exhibits offered by union representatives participating in the proceeding). 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 Helms (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 (which should be produced before trial pursuant to the Court’s deadlines), and (4) a copy for the party offering the exhibits. If a party plans to offer more than twenty (20) evidentiary exhibits into the record, each copy of the exhibits should also include a CD containing the scanned exhibits in .pdf format (for documents), and .jpeg format (for photographs).

- C. 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 at the trial venue.
- D. It is the policy of the Court that witnesses will be sequestered unless the witness is representing the party as its official representative.
- E. Recording of Proceedings: The official record of all trials and proceedings will be taken by a real-time reporter. Transcripts of proceedings may be ordered directly from the court reporter.
- F. Witness and Exhibit Lists

- 1. Witness List

Witness lists shall identify each witness' address and telephone numbers, a short statement as to the nature and purpose of the witness testimony, whether testimony will be in person or by deposition, estimated time for testimony. For expert witnesses his/her area(s) of expertise, a brief statement of those facts and conclusions to which the expert will testify will be required.

- 2. Exhibit List

Only the Exhibit list should be provided to the Court with the required Pretrial submissions. Each exhibit shall be identified by an exhibit number and a description. The parties should use the format in the Sample Forms section of these Standards in submitting the Exhibit List.

VII. Conventional Proceedings

The following additional requirements apply only to cases in conventional proceedings:

- A. 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*.
- B. 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.

- C. 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.
- D. 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 the motion.
- E. In conventional cases, Judge Helms typically requires the parties 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.

VIII. Simplified Proceedings

- A. 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.
- B. In simplified proceedings, the parties will be provided an opportunity either to make closing argument on the record at the conclusion of trial or to file a post-trial brief. If a party elects to file a brief, it will typically be due thirty 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.

IX. Settlement Conference Proceedings

As to any case assigned to Judge Helms 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 to conduct discovery 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 require such filings in certain 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.

