

UNITED STATES OCCUPATIONAL SAFETY AND
HEALTH REVIEW COMMISSION
Washington, D.C.

GENERAL PROCEDURES AND PRACTICES FOR HEARINGS IN SIMPLIFIED
PROCEEDINGS

BEFORE THE HONORABLE DENNIS L. PHILLIPS

I.
PREAMBLE

The instructions are intended to familiarize counsel with the hearing procedures in cases before The Honorable Dennis L. Phillips that have been designated for disposition through Simplified Proceedings.

The number of cases pending before the United States Occupational Safety and Health Review Commission imposes a burden upon both lawyers and judges. We owe a duty to advance the administration of justice by making the hearing an efficient, expeditious and clear exposition of the real issues.

These procedures are designed to prevent waste of time and expedite the administration of justice without impeding in any way counsel's ability, as an advocate, to present your client's case fully and fairly.

II.
GENERAL PROCEDURES

A. PREHEARINGS

After the filing of an action before the U.S. Occupational Safety and Health Review Commission, the Judge will set the case for a prehearing scheduling conference. The prehearing scheduling conference will be generally conducted by telephone and arranged by the Judge's staff. Such conference will deal with the matters identified in the Notice of Pre-Hearing Scheduling Conference and Order. The Judge will also establish a date for the hearing. The Judge will issue a Notice of Hearing and Scheduling Order in Simplified Proceeding subsequent to the prehearing scheduling conference.

B. HEARING ASSIGNMENT

Hearing dates will be set as described previously. For good cause, the Judge in its discretion may reschedule a hearing date *sua sponte* or upon a party's motion.

The Judge's goal is to try all cases designated for simplified procedures within 45 days of the prehearing scheduling conference. The Judge will issue a decision either

from the bench or in writing within 45 days of the close of the hearing or any post trial briefing.

C. COURTROOM PROCEDURE

Conduct of counsel during the progress of cases will be governed by the following instructions:

1. Counsel Tables

The Secretary of Labor's counsel will occupy the counsel table to the Judge's right. Respondent/Petitioner's counsel will occupy the counsel table to the Judge's Left. Other party's counsel will occupy a middle counsel table, where applicable and available.

2. Hearing Session

Hearings will usually start at 9:00 a.m. The morning session will continue until about 12:00 p.m. There will be a morning recess of about 15 minutes at or about 10:30a.m. The afternoon session will usually end at about 5:00 p.m. There will be a recess of 15 minutes at about 3:00 p.m.

3. Addressing the Judge and Interrogation of Witnesses by Counsel

All addresses to the Judge will be made from a lectern, where available, facing the Judge. Otherwise, addresses will be made while standing at the Counsel's table.

Counsel will interrogate witnesses from a lectern, where available, at all times. Otherwise, counsel will interrogate witnesses while standing at counsel's table. Counsel will hand specific documents that have been previously marked to the witness. Documents intended for impeachment purposes which are not admitted into evidence will be suitable marked as directed by the Judge, and then handed by counsel to the witness.

4. Examination of Witnesses

a. Although the Federal Rules of Evidence will not apply, each party will have the right to question all witnesses and to introduce relevant evidence.

b. In advance of the hearing, counsel will instruct all witnesses to answer questions with courtesy. Evasive answers, answering a question with a question or disrespect to opposing counsel will not be permitted.

c. Counsels are expected to extend equal courtesy to all witnesses. Counsel will wait until the witness has finished an answer before asking the next question. Multiple questions and repetitious questions will not be permitted. Counsel may not, by any action, inflection, or expression indicate disbelief of any witness' answer.

d. Counsel will indicate to the Judge that he or she has completed examination of a witness. Only the Judge will advise opposing counsel to proceed.

e. Counsel will stand when making an objection. Only a short statement of the grounds for the objection will be permitted, unless counsels are called to a bench conference or the witness is temporarily excused by the Judge.

f. When there is co-counsel, only one counsel for each party may examine a witness and/or stand behind the lectern, where available.

III. HEARING PRACTICES

A. PREPARATION OF EXHIBITS: Counsel for each of the parties will assemble all documents, photographs, or other materials expected to be used at the hearing. The following procedure will be followed:

1. All such documents, photographs, and other matter will be assembled in three-ring binders with each exhibit bearing a numbered exhibit sticker and the same number on a tab extending beyond the binder on the right side thereof. Exhibits smaller than 8 ½ x 11 inches, such as photographs, shall be mounted individually on 8 ½ x 11 inches sheets of paper. Joint exhibits will bear Roman numerals; Complainant exhibits, Arabic numbers; and Respondent exhibits, letters. Third-party or intervenor exhibits may be numbered with an identifying letter prefix with Arabic numbers; *e.g.* Union exhibits using a “U” prefix and numbered U-1, etc. Documentary exhibits shall be marked with the case docket number and have each page numbered serially.

2. Where respondent exhibits are expected before the hearing to exceed 52, respondent’s counsel will promptly advise Complainant’s counsel. In such event, both sides will identify exhibits by number, using alternate three-digit sets; *i.e.* Complainant, 100-199, 300-399, 500-599, etc.; and Respondent, 200-299, 400-499, 600-699, etc.

3. Any party desiring to use a videotape or CD/DVD at the hearing shall be responsible for having appropriate playback equipment and a competent operator at the hearing. An edited videotape or CD/DVD, capable of continuous playback and purged of unnecessary portions must be prepared by the offering party. A copy of the edited tape and an accompanying log shall be made available to other parties at least 25 days before the commencement of the hearing. The parties are further advised that any portion of a videotape containing an audio component, such as employee interviews or other conversations, which a party intends to introduce into the record, must be fully transcribed and exchanged with other parties at least 25 days before the commencement of the hearing. In addition, the unedited original tape(s) shall be available at the hearing. Each videotape used at a hearing must be accompanied by a log containing references to counter numbers which identify each segment to be shown at the hearing in terms of the

elapsed real time from the beginning of the unedited tape(s) from which the segment was taken.

4. At the commencement of the hearing all documents and exhibits exchanged by the parties together with an index placed in three-ring binders shall be submitted by each party to the judge for his use during the hearing.¹ Sufficient copies of exhibits shall also be made and available at the courtroom so as to provide a copy of each exhibit to the witnesses testifying and all parties. Furthermore, each party shall provide the court reporter with an original or copy of each exhibit any party introduces, has marked for identification purposes, and/or is admitted into the record. Exhibits with markings made by counsel or witnesses during testimony shall remain with the court reporter. The court reporter's exhibits will generally serve as the official record of hearing exhibits.

5. Counsel should offer all their exhibits, not previously admitted, into evidence during the hearing before they rest.

B. CLOSING ARGUMENT: Each party may present oral argument at the close of the hearing.²

¹ An additional set of these three ring binders will be delivered by each party to the judge's chambers at One Lafayette Centre – South, 1120 20th St., N.W., Ste 993, Washington, D.C. 20036-3457 seven days before the start of the hearing.

² The parties should also be prepared to make brief opening statements.