



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

**PROCEDURES AND PRACTICES IN SIMPLIFIED CASES
BEFORE JUDGE JOHN B. GATTO**

I. Preamble

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. All procedural 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).² The court has established discovery and disclosure timeframes in these procedures that it has determined are appropriate and necessary for most conventional cases, which may not be altered except by order of the court upon motion of the parties.

II. Contacting Chambers

The court's Legal Assistant, **Sherice M. Dunham**, is your primary point of contact on matters relating to your case, and can be reached by e-mail at Sdunham@oshrc.gov, or by telephone at (404) 562-1640. 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 the court's Legal Assistant by email.

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. 29 U.S.C. 661(g).

² **Mandatory Electronic Filing; Email Service.** ALL parties must file documents electronically in the Commission's E-File System unless you apply for and are granted an exemption from electronic filing by the Judge. Documents filed electronically must be served by *email* attachment to all parties. You are responsible for reviewing and complying with the Commission's Instructions for Electronic Filing located under the Featured Resources section on the Commission's web page (www.oshrc.gov). Failure to comply with the Instructions for Electronic Filing may result in the rejection of submissions. *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 yet registered but included your email address in your notice of 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. *You will not receive any future court orders/notices until you register and notify the court's Legal Assistant that you have done so.*

III. Pretrial Disclosures

Any party that fails to timely disclose as required herein shall be prohibited from using the document, photograph, or videotape 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.

A. Disclosure to employer.

1. Within 30 days after a case is designated for Simplified Proceedings, 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 days after a case is designated for Simplified Proceedings, the Secretary shall provide the employer with reproductions of any photographs or videotapes that the Secretary anticipates using at the hearing.

3. Within 30 days after a case is designated for Simplified Proceedings, the Secretary shall provide to the employer any exculpatory evidence in the Secretary's possession.

B. Disclosure to the Secretary. Within 30 days after a case is designated for Simplified Proceedings, the employer shall disclose to the Secretary all relevant documents supporting each affirmative defense it raises in the Stipulations.

C. Discovery. To the extent the parties agreed to limited discovery in their Joint Trial Stipulation, said request is **GRANTED** and any related proposed schedule is approved.

IV. Joint Witness Lists and Exhibit Lists and Stipulations

A. Joint Witness Lists and Exhibit Lists. *At the initiation of the Secretary's Counsel,* the parties are **ordered** to confer to reach an agreement as to stipulations regarding the enumerated issues (see below). Within **14 days** before trial, the parties must deliver to the Court, the court reporter, and opposing parties' separate *lists* of exhibits and witnesses, except those offered solely for impeachment. Each party's exhibit list must be submitted in the following format, *and with the first two columns completed:*

EXHIBIT LIST OF _____

OSHRC Docket No. [Docket#]

CASE CAPTION: SECRETARY OF LABOR v. [Case Name]

Page No. ____ of ____

EXHIBIT NUMBER	DESCRIPTION	TENDERED	WITHDRAWN	ADMITTED	REJECTED

B. Stipulations. No later than **14 days** before trial, the parties shall electronically file a consolidated 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; employer engage in a business affecting commerce; Respondent's workplace; applicability of cited standards; knowledge; appropriateness of penalty etc.);
4. Affirmative Defenses;
5. Witnesses, exhibits and motions;
6. Need for interpreter services, if any (each party is responsible for securing Language Access Services required for their witnesses. However, upon timely notice to the Commission, we will provide such services to a party);
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.

V. Trial Exhibits

A. In-Person Trial. The parties shall have a joint duty to consolidate duplicate exhibits using a joint common numbering system for such exhibits to the extent feasible. Exhibits shall not include alphabetical or numerical subparts (e.g., A, B, C, I, ii, iii etc.). Rather, if subparts are necessary, separate exhibits must be used in lieu thereof. Prior to trial, each party shall number their exhibits using exhibit stickers, marked with the docket number, with a designation identifying the party or intervenor offering the exhibit, and numbered consecutively. Each page of each exhibit shall be numbered consecutively, preferably with a Bates stamp. The pre-numbered exhibits must be securely placed in a trial exhibit notebook and each exhibit separated by a tab labeled with the exhibit number. *The trial notebooks shall be presented to the court reporter at trial, along with a courtesy copy for the judge.*

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.

Unless otherwise noted, copies rather than originals of documentary evidence may be used at trial. Documentary or physical exhibits may not be submitted by counsel after filing of the pretrial order, except upon consent of all the parties or permission of the court. Exhibits must be numbered, inspected by counsel, and marked with stickers prior to trial. Counsel shall familiarize themselves with all exhibits (and the numbering thereof) prior to trial. Counsel will not be afforded time during trial to examine exhibits that are or should have been listed.

No later than **14 days before trial**, the parties must each deliver a copy of each exhibit in Adobe Portable Document Format (.pdf) to the court reporter AND to the court's Legal Assistant by email attachment in Adobe Portable Document Format (.pdf). The electronic pdf version of each exhibit must mirror the original paper version in all respects, including clarity and color.

B. Virtual Trial. If the trial is scheduled as a virtual trial rather than in-person, in lieu of the above instructions, no later than **14 days before trial**, the parties must each deliver:

1. A copy of each exhibit in Adobe Portable Document Format (.pdf) by email attachment in Adobe Portable Document Format (.pdf), or by mail on a CD or flash drive to the opposing party. *The electronic pdf version of each exhibit must mirror the original paper version in all respects, including clarity and color;*

2. Their original trial exhibit notebooks to the court reporter, **along with** copies of each exhibit by email attachment in Adobe Portable Document Format (.pdf), or by mail on a CD or flash drive. *The electronic pdf version of each exhibit must mirror the original paper version in all respects, including clarity and color. At trial, exhibits shall be viewed from the provided copies and will not be viewed using the screen sharing function;*

3. A copy of each exhibit in Adobe Portable Document Format (.pdf) by email attachment to the Court's Legal Assistant. *The electronic pdf version of each exhibit must mirror the original paper version in all respects, including clarity and color;* and

4. The party calling a witness must deliver to the witness a copy of each exhibit to be addressed with the witness by email attachment in Adobe Portable Document Format (.pdf) or on a CD or flash drive. *The electronic pdf version of each exhibit must mirror the original paper version in all respects, including clarity and color.*

VI. 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.

VII. 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. *Reply briefs are not authorized without the approval of the court.*

VIII. Status Report; Settlement Practices

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 at the trial location, unless otherwise ordered, to memorialize the settlement or withdrawal announcement on the record.

SO ORDERED.


/s/ _____
JOHN B. GATTO, Judge