



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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

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I. Preamble

The Chief Judge has assigned your case to Simplified Proceedings, 29 CFR Part 2200, Subpart M. 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.

At any time during the proceedings any party may request in writing that Simplified Proceedings be discontinued and that the case 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.

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.

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 apply for and are granted an exemption from electronic filing by the Judge on the grounds that it would place an undue burden to comply with the electronic filing requirement. 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 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 may 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.*

B. Email Service. Documents filed electronically must be served by *email* attachment on all parties and intervenors.

IV. Pleadings. Complaints and answers are not required. If the Secretary 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 Judge. Any party may request 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.

B. Exhibit Lists. Within **14 days** before trial, each party must deliver to the Court, the court reporter, and opposing parties an exhibit list. Each party's exhibit list must be submitted in the following format, *and with the first two columns completed*:

EXHIBIT LIST OF (COMPLAINANT/RESPONDENT) OSHRC Docket No. _____

SECRETARY OF LABOR v. _____ Page No. ____ of ____

EXHIBIT NUMBER	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; 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.

VII. 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.

VIII. Trial Exhibits

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.

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.

A. In-Person Trial.

1. Opposing party. No later than **14 days before trial**, a copy of each exhibit in Adobe Portable Document Format (.pdf) shall be provided to the opposing party 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;*

2. Court Reporter. The original trial exhibit notebooks shall be presented to the court reporter at trial, along with a courtesy copy for the judge. Copies of each exhibit shall be sent by email attachment to the court reporter at the conclusion of the trial 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.*

B. Remote Trial. No later than **14 days before trial**, the parties must each deliver:

1. Opposing party. 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. Court Reporter. 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;*

3. Court's Legal Assistant. 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. Witnesses. 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.

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.

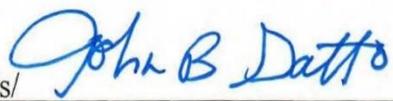
X. Proposed Findings of Fact and Conclusions of Law and Briefs

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. However, if the Respondent is 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; 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