



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

**PROCEDURES AND PRACTICES IN VOLUNTARY OR MANDATORY
SETTLEMENT CASES
BEFORE JUDGE JOHN B. GATTO**

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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). The court has established discovery and disclosure timeframes in these procedures that it has determined are appropriate and necessary for most settlement cases.

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.

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.

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).

IV. Pleadings; Corporate Disclosure; Planning for Discovery

A. Complaint. If the Secretary has not filed a complaint, he shall do so **within 21 days** from the date of the court's *Initial Scheduling Order*.

B. Answer. If the Respondent has not filed an answer, Respondent shall do so **within 21 days** from the date of the court's *Initial Scheduling Order*, or service of the complaint, whichever is later.

C. Corporate Disclosure. Respondent's answer shall not be accepted for filing, or if it has been filed it shall be stricken from the record, unless Respondent complies with Commission Rule 35's corporate disclosure requirements. *Respondent may be held in default pursuant to Commission Rule 35(b) and (d) if it fails to file an adequate disclosure declaration or an amended disclosure.*

D. Joint Preliminary Settlement Report and Discovery Plan. The parties are required to file a *Joint Preliminary Settlement Report and Discovery Plan* **within 14 days** from the date of the Initial Scheduling Order, which shall include the following:

1. The date the Complainant has or shall provide to Respondent a copy of the complete, redacted, OSHA investigative files, including OSHA Forms 1-A and 1-B, documents, photographs, videos, and any exculpatory evidence.

2. The date the Respondent has or shall notify the Complainant if Respondent is claiming a financial inability to pay the proposed penalty. If so, the date the Complainant shall notify Respondent regarding the financial documents that the Complainant will need to receive and review prior to the settlement proceedings, regarding the claim of financial distress.

3. The date the Respondent has or shall provide to the Complainant:

a. Documents supporting Respondent's defenses and affirmative defenses, including photographs and videos;

b. Any proof of abatement documentation regarding the citations issued in these cases;
and

c. If Respondent is claiming a financial inability to pay the proposed penalties, the date Respondent will provide to the Complainant the requested financial documents regarding Respondent's claimed financial distress.

4. The date prior to the settlement conference that any additional discovery will be completed, if needed, to intelligently evaluate settlement options.²

5. The date the parties propose the settlement conference shall take place,³ which shall be no later than **75 days** from the date of assignment of the case to **voluntary** settlement proceedings or **120 days** from the date of assignment of the case to **mandatory** settlement proceedings. *See* Commission Rules 120(a)(2) and 120(b)(3)(iv). **All settlement conferences shall be conducted remotely via Zoom video conference.**

V. [Ex Parte Confidential Memorandum](#)

All statements made, and information presented during the course of the settlement proceedings are **confidential** and shall not be divulged to the opposing party or outside of the settlement proceedings except with the advance permission of the parties. Commission Rule 120(c)(d)(e). The parties' *ex parte* confidential memorandum shall **NOT** be electronically filed or served. Within **14 days** before the conference, each party shall prepare and submit to the court's Legal Assistant an *ex parte* Confidential Memorandum, which shall be marked "CONFIDENTIAL" and sent to the court's Legal Assistant by e-mail attachment with the following in the subject line: "Judge Gatto – Complainant's or Respondent's *Ex parte* Confidential Memorandum; [Case Name], OSHRC Docket No. [Docket#]." The *ex parte* confidential memoranda shall include:

1. Describe the circumstances that gave rise to the litigation, including an analysis of the factual and legal issues, a discussion of the factual predicate for the party's position on each issue, and any other information the party believes will be helpful to an understanding of its position;
2. Describe any matters pending in any related litigation;
3. Describe any recent developments that may affect the resolution of the case;
4. Describe the important factors (factual, legal, and practical) you believe affect the terms and conditions upon which the case may reasonably be settled;
5. Describe any efforts to settle the issues, including offers or demands before and since the citation(s) were issued;
6. Provide a candid assessment of the strengths and weaknesses of the major points of error of each party's case;
7. Describe the necessary terms in any settlement (i.e., confidentiality, date by which settlement must close, scope of release, disposition of related litigation, etc.);

² The Settlement Judge may allow or suspend discovery during the settlement proceedings. *See* 29 C.F.R. § 2200.120(c)(3).

³ The court only schedules one day for settlement conferences but will be available for one additional consecutive day if necessary.

8. Describe any additional information your client or the other party needs to settle the case and whether it is needed before the settlement conference;
9. State whether you and your parties will participate in the settlement conference in good faith with the intention of using your best efforts to settle the case and explain if "no" as to any party;
10. State whether you and your parties will maintain confidentiality with respect to settlement communications made and received during and subsequent to the settlement conference and explain if "no" as to any party;
11. If the settlement proceedings are not successful, describe the realistic range of outcomes upon further trial or disposition, including monetary remedies;
12. A copy of all settlement offers, and counteroffer made by each party prior to the scheduled conference; and
13. Attach to the Confidential Memorandum a completed chart as set forth in Attachment A to this procedure.

VI. Virtual Instructions for Settlement Conference Form

Within **14 days before** the conference, the parties must jointly complete and file with the court the [Virtual Instructions for Settlement Conference form](#), which is available under Judge Gatto's area of the Administrative Law Judge Practices section on the Commission's web page at <https://www.oshrc.gov/about/administrative-law-judge-practices>.

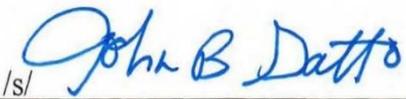
VII. Joint Status Report

The parties shall file a joint status report of their intent to proceed to conference, settle, or withdraw the citation or notice of contest no later than **14 days before** the conference.

VIII. Citation Settlement Offers Chart

The ex parte Confidential Memorandum shall include as an attachment a completed Citation Settlement Offers Chart as set forth in the [attachment](#) to this procedure.

SO ORDERED.


/s/ _____
JOHN B. GATTO, Judge

