

JUDGE JOSHUA R. PATRICK
UNITED STATES OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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PRACTICE STANDARDS FOR CONVENTIONAL PROCEEDINGS

I. GENERAL PROCEDURES

A. Applicable Rules

All parties appearing before the Court in a conventional case must comply with:

1. Federal Rules of Civil Procedure;
2. Federal Rules of Evidence;
3. [OSHRC Rules of Procedure](#); and
4. [These Practice Standards](#).

B. Communications with Chambers

1. My legal assistant, Kate Sydney, can be contacted at 303-844-2284.
2. Parties may call or email the Court concerning administrative, scheduling, and other non-substantive routine matters. For information about the status of a motion or document, courtroom technology, trial preparation, or submission of trial exhibits, please contact my legal assistant.
3. All other communications with the Court should be made by the filing of pleadings, motions, applications, briefs or legal memoranda.
4. Under no circumstances may any party or counsel communicate *ex parte* with the Court's office staff, who has no authority to render legal advice, grant continuances, or any other relief.

C. Filing of Documents – eFiling

OSHRC has implemented a nationwide electronic filing system (E-Filing system) pursuant to Commission Rule 8(c), 29 C.F.R. §2200.8(c). Represented parties and intervenors must file all documents, except for confidential and privileged documents, electronically in the Commission's E-File system. Electronically filed documents must be simultaneously emailed to the other parties and intervenors to ensure that service of the document is accomplished on the same date the document is e-filed with the Commission. *See* Commission Rule 7(c)(1), 8(c)(9), 29 C.F.R. § 2200.7(c)(1) (Service, Notice and Posting - How Accomplished) and Rule 8(c), 29 C.F.R. § 2200.8(c) (Filing).

In order to use the new system, e-filers must first register within the system. Parties can register using this [link](#). Instructions for the E-Filing system are also posted on the OSHRC website, which are provided [here](#). Once registered, e-filers must enter an appearance in each specific case with which they are involved. Upon the Court’s receipt of a party’s Notice of Appearance, the party will then be able to file and receive pleadings electronically in each of those cases. Parties may also designate additional individuals, such as a docket clerk, 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](#).

Self-represented parties and intervenors are also required to file documents electronically *unless* they can show compliance with mandatory e-filing requirements would impose an undue burden. To seek an exemption from mandatory e-filing, the party or intervenor must submit a statement to the judge illustrating how the use of the Commission’s e-file system imposes such a burden. If an exemption is granted, the party or intervenor must file all documents by postage-prepaid first class or higher class U.S. Mail, commercial delivery service, personal delivery, or fax as described in [Commission Rule 8\(d\)](#). Documents “filed” by email will not be accepted.

The requirements and restrictions for electronically filed documents, audio files, and video files can be found [here](#).

D. Subpoenas

Parties shall comply with Commission Rule 65, 29 C.F.R. § 2200.65, when seeking the issuance of and when serving a Subpoena. Requests for the issuance of a Subpoena may be made ex parte. A party seeking the issuance of a Subpoena shall: (i) identify the name and address of the person/entity subject to the Subpoena; (ii) the type of Subpoena being requested; and (iii) provide a brief explanation of the testimony the person/entity will provide. Once issued by the Court, a Subpoena may be served on and enforced against any individual or entity in the United States and any Territory or possession of the United States. Commission Rule 9 65(b), 29 C.F.R. § 2200.65(b). See also 84 FR 14554 (April 10, 2019).

II. MOTIONS

A. Rule Governing Motions

All motions, objections and responses shall conform to the requirements of Commission Rule 40, including the requirement to confer. The Court will not consider email or letters from counsel as proper motion practice, nor will it consider email sufficient for the purposes of the conferral requirement.

B. Responses and Replies

Consult Commission Rule 40(h) for applicable time limits for filing responsive pleadings. Commission Rule 4 controls the computation of time.

Parties are not permitted to file reply, surreply, or supplemental briefs without leave of the Court and for good cause shown. Replies, surreplies, or supplemental briefs without permission of the Court will be rejected.

C. Untimely or Noncomplying Motions, Objections, Responses, or Replies

Motions or replies that are untimely, noncomplying, or filed without a certification pursuant to Commission Rules 8(c)(9) and 40(b) may be denied with prejudice, stricken *sua sponte*, or rejected.

D. Motions *in limine*

The Court discourages motions *in limine* when they request advanced evidentiary rulings on particular pieces of evidence without the context provided by the testimony at trial and other evidence. Instead of a motion *in limine*, the Court prefers the parties to briefly summarize the disputed evidentiary issue(s) in a pretrial brief. Nevertheless, if a party chooses to file a motion *in limine*, it must be submitted fifteen days before trial unless the Scheduling Order establishes a different timeframe.

E. Dispositive Motions

Procedures for motions seeking relief pursuant to Fed.R.Civ.P. 12 or 56 are governed by the Scheduling Order and deadlines will be strictly enforced.

F. Motions to Exclude Expert Testimony

The motion to exclude expert testimony shall identify with specificity each opinion the moving party seeks to exclude the proposed testimony. The motion shall also identify the specific ground(s) on which each opinion is challenged, e.g., relevancy, sufficiency of facts and data, methodology. *See* Fed. R. Evid. 702. The deadline for filing all such motions is established in the Scheduling Order. Based on the motion and response, the Court may, in its discretion, order a hearing to determine whether the challenged opinions are admissible.

G. Discovery Motions

Discovery deadlines and limitations will be established in the Scheduling Order. The presumptive discovery period is six months for conventional cases.

For all discovery disputes, the parties must meet and confer to attempt to resolve the dispute. This conferral must take place in person, by video conference, or by telephone.

If the parties cannot reach a resolution, they must contact the Court to request a discovery dispute telephone conference. Two days prior to the conference call, the parties shall submit a joint statement of no more than five pages, which: (1) certifies the parties have conferred; (2) identifies the discovery request(s) in dispute; (3) sets forth the parties' respective positions, including relevant caselaw; and (5) sets forth each parties' proposed compromise with respect to the issue(s).

The Court will reject any unsolicited discovery motions filed prior to compliance with the

foregoing process.

H. 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) certification that the parties have conferred; and (iv) a statement as to whether the request is opposed or unopposed.

I. Motions for Extensions of Time to File or Respond

Motions for extension of time require a showing of good cause, which must be established with particularity. When requesting an extension of time, parties shall provide the Court with: (i) a proposed alternative date; (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.

J. Notice of Settlement

If a full settlement is reached before trial, please advise my legal assistant, Kate Sydney, **within three business days prior to the trial**. The Court will not extend deadlines, nor will it cancel upcoming hearings or trials, until (1) it receives the filing of a written notice stating all matters subject to the trial have been resolved by the parties and (2) it issues an order cancelling any deadlines and/or hearing or trial dates. 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. The Court will 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.

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 found on the Commission website under the heading “[Administrative Law Judge Practices](#).”

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.

III. TRIAL

A. Pretrial Conference

The Court will conduct a final pretrial conference approximately twenty (20) days prior to the trial to address trial management issues. Issues such as the time, place, and length of the trial will have been determined by the Scheduling Order and Notice of Trial. Counsel/Representatives who will try the case must attend.

B. Courtroom Protocol

Professional courtesy and civility are expected during all court appearances, as well as during pretrial 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 turned off or placed in silent mode while in the courtroom.

It is the policy of the Court that witnesses will be sequestered unless the witness is representing the party as its official representative.

C. 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.

D. Exhibits and Witness Lists and Recordings

1. The Scheduling Order will provide the date for the filing of the Exhibit list, Witness list and exchange of the proposed exhibits.
2. **Witness and Exhibit Lists** – Parties are required to use the format or its equivalent in the Sample Forms section of these Standards in submitting the Witness list and Exhibit list. Witness list shall identify 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 and estimated time for testimony. For expert witnesses, the parties must identify his/her area(s) of expertise and a brief statement of the facts and conclusions to which the expert will testify. Only the Witness and Exhibit lists should be provided to the Court with the required Pretrial submissions. Do not file exhibits with the Court. Each exhibit shall be identified by an exhibit number and a description.
3. **Exhibits** – Exhibits shall be pre-marked with the docket number and exhibit number. Complainant's exhibits shall be marked beginning with "C-1. Respondent's exhibits shall be marked beginning with "R-1." To the extent possible, exhibits should be marked in order of their anticipated use in the trial, Commission Rule 70(a). Exhibits smaller than 8½ by 11 inches, such as photographs, should be mounted individually on 8½ by 11 sheets of paper. Over-size documents such as overheads, charts, graphs or demonstrative exhibits may be used during court proceedings, but they shall be reduced, photocopied, or otherwise produced so they can be submitted as a paper exhibit and electronically.

Parties shall provide the Court with exhibits in hard copy as well as an electronic copy in one of the following electronic formats: Adobe Portable Document Format (.pdf) (preferred) or Word (read only) Document (.doc). Documents in excess of 5 megabytes (MB), such as graphic intensive documents, must be filed on a flash drive. Paper copies of each exhibit, together with an index and placed in a three-ring binder, shall be provided to the Judge, the court reporter, the witness testifying and opposing counsel.

4. **Audio or Video Files** – An edited recording, capable of continuous playback and purged of unnecessary portions should be provided. Any portion of a recording containing an audio component, such as employee interviews or other conversations, which a party intends to introduce into the record, must be fully transcribed. The unedited original recording shall be available at trial. Any party desiring to use a recording at the trial shall be responsible for having appropriate playback equipment and a competent operator at trial. The preferred format for audio files is .mp3, and the preferred .mp4.
5. **Official Version of Exhibits** – The electronic version of exhibits, as described in Paragraph 3, will serve as the official version of trial exhibits for court transcript certification.
6. **Marking of Stipulations** – Any stipulations of fact should be formatted as a pleading and marked as an exhibit.

E. Pretrial Briefs

Pretrial briefs are encouraged, but not required absent specific Court order. Please flag evidentiary issues in a trial brief rather than by motion in limine. A trial brief may not be used as a substitute for a motion. The Scheduling Order sets forth the requirements for the submission of a pretrial brief.

F. Post-Trial Procedures

In lieu of Closing Argument, the Court will issue an Order to the parties requiring the submission of post-trial briefs to the Court within the time period specified in the Order. The Court will not issue the Order until it receives the certified copy of the trial transcript from the Court Reporter. Post-trial briefs should contain each party's proposed factual findings, a discussion of whether the Secretary met its burden to establish a violation of the Act, a discussion of whether Respondent established any affirmative defense, as well as a discussion of any other pertinent issues the parties believe the Court should address in its decision or that the Court has directed *sua sponte*.

SAMPLE FORMS

I. WITNESS LIST

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Case No. _____ Date _____

Case Title: _____

COMPLAINANT/RESPONDENT WITNESS LIST

(Circle One)

WITNESS NAME

TIME ESTIMATED FOR EXAMINATION

Direct

Cross

Re-Direct

Re-Cross

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

II. EXHIBIT LIST

EXHIBIT LIST OF _____ CASE NUMBER _____						
CASE CAPTION _____ v. _____ Page No. 1 <i>List of Complainant's Exhibits by C1, C2, etc) and Respondent's Exhibits by R1, R2, etc.)</i>						
EX NO.	WITNESS	DESCRIPTION	REC.	REJ.	RUL. RESVD.	COMMENTS