

has been afforded an opportunity to provide input on all matters pertaining to the settlement before the agreement is finalized; and

(iv) If the settlement agreement includes the withdrawal of a notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period, state whether such withdrawal is with prejudice.

(2) The parties shall not incorporate the settlement agreement in, or append it to, the joint submission required in paragraph (b)(1) of this section or substitute the settlement agreement for the required joint submission.

(3) *Issuance of order terminating proceeding.* If the requirements of paragraphs (b)(1) and (2) of this section have been met with respect to all contested citation items and no affected employees who have elected party status have raised an objection to the reasonableness of any abatement period, the Judge shall issue an Order acknowledging that the parties have resolved all contested citation items and agreed to terminate the proceeding before the Commission.

(c) *Filing; service and notice.* A Notification of Settlement submitted after a Judge's report has been issued shall be filed with the Executive Secretary. Proof of service shall be filed with the Notification of Settlement, showing service upon all parties and authorized employee representatives in the manner prescribed by § 2200.7(c) and (d) and the posting of notice to non-party affected employees in the manner prescribed by § 2200.7(g). The parties shall also file a draft order terminating the proceedings for adoption by the Judge or, if the Judge's report has been issued, by the Commission. If the time has not expired under these rules for electing party status, an order acknowledging the termination of the proceedings before the Commission because of the settlement shall not be issued until at least 14 days after service or posting to consider any affected employee's or authorized employee representative's objection to the reasonableness of any abatement time. The affected employee or authorized employee representative shall file any such objection within this time. If such objection is filed, the Commission or

the Judge shall provide an opportunity for the affected employees or authorized employee representative to be heard and present evidence on the objection, which shall be limited to the reasonableness of the abatement period.

[84 FR 14558, Apr. 10, 2019, as amended at 85 FR 65220, Oct. 15, 2020]

§ 2200.101 Failure to obey rules.

(a) *Sanctions.* When any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or the Judge, the party may be declared to be in default either on the initiative of the Commission or the Judge, after having been afforded an opportunity to show cause why the party should not be declared to be in default, or on the motion of a party. Subsequently, the Commission or the Judge, in their discretion, may enter a decision against the defaulting party or strike any pleading or document not filed in accordance with these rules.

(b) *Motion to set aside sanctions.* For reasons deemed sufficient by the Commission or the Judge and upon motion conforming to § 2200.40 expeditiously made, the Commission or the Judge may set aside a sanction imposed under paragraph (a) of this section. See § 2200.90(c).

(c) *Discovery sanctions and failure to appear.* This section does not apply to sanctions for failure to comply with orders compelling discovery, which are governed by § 2200.52(f), or to a default for failure to appear, which is governed by § 2200.64(a).

(d) *Show cause orders.* All show cause orders issued by the Commission or the Judge under paragraph (a) of this section shall be served in a manner prescribed in § 2200.7(o).

§ 2200.102 Withdrawal.

A party may withdraw its notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period at any stage of a proceeding. The notice of withdrawal shall be served in accordance with § 2200.7(c) upon all parties and authorized employee representatives that are eligible to elect, but have not elected, party status. It shall also be posted

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in the manner prescribed in §2200.7(g) for the benefit of any affected employees not represented by an authorized employee representative who are eligible to elect, but have not elected, party status. Proof of service shall accompany the notice of withdrawal in accordance with §2200.7(d).

§ 2200.103 Expedited proceeding.

(a) *When ordered.* Upon application of any party or intervenor or upon its own motion, the Commission may order an expedited proceeding. When an expedited proceeding is ordered by the Commission, the Executive Secretary shall notify all parties and intervenors.

(b) *Automatic expedition.* Cases initiated by employee contests and petitions for modification of abatement period shall be expedited. See §§2200.37(d)(2) and 2200.38(c).

(c) *Effect of ordering expedited proceeding.* When an expedited proceeding is required by these rules or ordered by the Commission, it shall take precedence on the docket of the Judge to whom it is assigned, or on the Commission's review docket, as applicable, over all other classes of cases, and shall be set for hearing or for the submission of briefs at the earliest practicable date.

(d) *Time sequence set by Judge.* The assigned Judge shall make rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, and shall do all other things appropriate to complete the proceeding in the minimum time consistent with fairness.

§ 2200.104 Standards of conduct.

(a) *General.* All representatives appearing before the Commission and its Judges shall comply with the letter and spirit of the Model Rules of Professional Conduct of the American Bar Association.

(b) *Misbehavior before a Judge—(1) Exclusion from a proceeding.* A Judge may exclude from participation in a proceeding any person, including a party or its representative, who engages in disruptive behavior, refuses to comply with orders or rules of procedure, continuously uses dilatory tactics, refuses to adhere to standards of orderly or

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ethical conduct, or fails to act in good faith. The cause for the exclusion shall be stated in writing or may be stated in the record if the exclusion occurs during the course of the hearing. Where the person removed is a party's attorney or other representative, the Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or other representative.

(2) *Appeal rights if excluded.* Any attorney or other representative excluded from a proceeding by a Judge may, within 7 days of the exclusion, appeal to the Commission for reinstatement. No proceeding shall be delayed or suspended pending disposition of the appeal.

(c) *Disciplinary action by the Commission.* If an attorney or other representative practicing before the Commission engages in unethical or unprofessional conduct or fails to comply with any rule or order of the Commission or its Judges, the Commission may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action, including suspension or disbarment from practice before the Commission.

(d) *Show cause orders.* All show cause orders issued by the Commission under paragraph (c) of this section shall be served in a manner prescribed in §2200.7(o).

§ 2200.105 Ex parte communication.

(a) *General.* Except as permitted by §2200.120 or as otherwise authorized by law, there shall be no ex parte communication with respect to the merits of any case not concluded, between any Commissioner, Judge, employee, or agent of the Commission who is employed in the decisional process and any of the parties or intervenors, representatives, or other interested persons.

(b) *Disciplinary action.* In the event an ex parte communication occurs, the Commission or the Judge may make such orders or take such actions as fairness requires. The exclusion of a person by a Judge from a proceeding shall be governed by §2200.104(b). Any disciplinary action by the Commission,

including suspension or disbarment, shall be governed by § 2200.104(c).

(c) *Placement on public record.* All ex parte communications in violation of this section shall be placed on the public record of the proceeding.

§ 2200.106 Amendment to rules.

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained in this Part. The Commission invites suggestions from interested parties to amend or revoke rules of procedure. Such suggestions should be sent by email to rules.suggestions@oshrc.gov or addressed to the Executive Secretary of the Commission at One Lafayette Centre, 1120 20th Street NW, Suite 980, Washington, DC 20036-3457.

§ 2200.107 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules and for good cause shown, the Commission or the Judge may, upon application by any party or intervenor or on their own motion, after 3 working days' notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

§ 2200.108 Official Seal of the Occupational Safety and Health Review Commission.

The seal of the Commission shall consist of: A gold eagle outspread, head facing dexter, a shield with 13 vertical stripes superimposed on its breast, holding an olive branch in its claws, the whole superimposed over a plain solid white Greek cross with a green background, encircled by a white band edged in black and inscribed "Occupational Safety and Health Review Commission" in black letters.

Subpart H—Settlement Part

§ 2200.120 Settlement procedure.

(a) *Voluntary settlement—(1) Applicability and duration.* (i) Voluntary settlement applies only to notices of contests by employers and to applications

for fees under the Equal Access to Justice Act and 29 CFR part 2204.

(ii) Upon motion of any party conforming to § 2200.40 after the docketing of the notice of contest, or with the consent of the parties at any time in the proceedings, the Chief Administrative Law Judge may assign a case to a Settlement Judge for proceedings under this section. In the event either the Secretary or the employer objects to the use of a Settlement Judge procedure, such procedure shall not be imposed.

(2) *Length of voluntary settlement procedures.* Voluntary settlement procedures shall be for a period not to exceed 75 days, unless extended with the concurrence of the Chief Administrative Law Judge.

(b) *Mandatory settlement—(1) Applicability.* Mandatory settlement applies only to notices of contest by employers in which the aggregate amount of the penalties sought by the Secretary is \$205,000 or greater. Periodically, the aggregate amount of penalties for case referral to Mandatory Settlement Proceedings may be adjusted proportionately upon consideration of the penalty increases required by the Inflation Adjustment Act of 2015. The adjusted aggregate penalty amount for case referral to Mandatory Settlement will be posted on the Commission's website (www.oshrc.gov).

(2) *Assignment of case and appointment of Settlement Judge.* Notwithstanding any other provisions of these rules, upon the docketing of the notice of contest, the Chief Administrative Law Judge shall assign to the Settlement Part any case which satisfies the criteria set forth in paragraph (b)(1) of this section. The Chief Administrative Law Judge shall appoint a Settlement Judge, who shall be a Judge other than the one assigned to hear and decide the case, except as provided in paragraph (f)(2) of this section.

(3) *Mandatory settlement proceedings.* (i) The Settlement Judge may consult all attorneys, non-attorney representatives, and self-represented parties by any suitable means to schedule the Settlement Conference and to facilitate preparation for the conference.