

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.

(ii) The Settlement Judge may issue a preconference scheduling order addressing procedural matters, including but not limited to, formal pleadings, settlement status conference calls, ex parte caucus calls, and allowing, limiting, or suspending discovery during the settlement proceedings.

(iii) The Settlement Conference shall be conducted as soon as practicable, taking into consideration the case size, the complexity of the issues, and the time needed to complete preconference preparation.

(iv) Mandatory settlement procedures under this section shall be for a period not to exceed 120 days, unless extended with the concurrence of the Chief Administrative Law Judge.

(v) If at the conclusion of the settlement proceedings the case has not been settled, the Settlement Judge shall promptly inform the Chief Administrative Law Judge in accordance with § 2200.120(f)(2).

(c) *Powers and duties of Settlement Judges.* (1) The Settlement Judge shall confer with the parties regarding the whole or partial settlement of the case and seek resolution of as many issues as is feasible.

(2) The Settlement Judge may require the parties to provide statements of the issues in controversy and the factual predicate for each party's position on each issue and may enter other orders as appropriate to facilitate the proceedings.

(3) The Settlement Judge may allow or suspend discovery during the settlement proceedings.

(4) The Settlement Judge has the discretion to engage in ex parte communications throughout the course of settlement proceedings. The Settlement Judge may suggest privately to each attorney or other representative of a party what concessions the client should consider and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(5) The Settlement Judge may, with the consent of the parties, conduct such other settlement proceedings as may aid in the settlement of the case.

(d) *Settlement conference*—(1) *General.* The Settlement Judge shall convene and preside over conferences between

the parties. The Settlement Judge shall designate the time, place, and nature of the conference.

(2) *Participation in conference.* The Settlement Judge may require that any attorney or other representative who is expected to try the case for each party be present. The Settlement Judge may also require that the party's representative be accompanied by an official of the party having full settlement authority on behalf of the party. The parties and their representatives or attorneys are expected to be completely candid with the Settlement Judge so that the Settlement Judge may properly guide settlement discussions. The failure to be present at a settlement conference or otherwise to comply with the orders of the Settlement Judge or the refusal to cooperate fully within the spirit of this rule may result in default or the imposition of sanctions under § 2200.101.

(3) *Confidentiality of settlement proceedings.* (i) All statements made and all information presented during the course of settlement proceedings under this section shall be regarded as confidential and shall not be divulged outside of these proceedings except with the consent of the parties. The Settlement Judge shall issue appropriate orders to protect the confidentiality of settlement proceedings.

(ii) The Settlement Judge shall not divulge any statements or information presented during private negotiations with a party or the party's representative during settlement proceedings except with the consent of that party.

(iii) The following shall not be admissible in any subsequent hearing, except by stipulation of the parties:

(A) Evidence of statements or conduct in settlement proceedings under this section within the scope of Federal Rule of Evidence 408,

(B) Notes or other material prepared by or maintained by the Settlement Judge in connection with settlement proceedings, and

(C) Communications between the Settlement Judge and the Chief Administrative Law Judge in connection with settlement proceedings including the report of the Settlement Judge under paragraph (f) of this section.

(iv) Documents and factual information disclosed in the settlement proceeding may not be used in litigation unless obtained through appropriate discovery or subpoena.

(v) With respect to the Settlement Judge's participation in settlement proceedings, the Settlement Judge shall not discuss the merits of the case with any other person, nor appear as a witness in any hearing of the case.

(vi) The requirements of paragraph (d)(3) of this section apply unless disclosure is required by any applicable law or public policy.

(e) *Record of settlement proceedings.* No material of any form required to be held confidential under paragraph (d)(3) of this section shall be considered part of the official case record required to be maintained under 29 U.S.C. 661(g), nor shall any such material be open to public inspection as required by section 661(g), unless the parties otherwise stipulate. With the exception of an order approving the terms of any partial settlement agreed to between the parties as set forth in paragraph (f)(1) of this section, the Settlement Judge shall not file or cause to be filed in the official case record any material in the Settlement Judge's possession relating to these settlement proceedings, including but not limited to communications with the Chief Administrative Law Judge and the Settlement Judge's report under paragraph (f) of this section, unless the parties otherwise stipulate.

(f) *Report of Settlement Judge.* (1) The Settlement Judge shall promptly notify the Chief Administrative Law Judge in writing of the status of the case at the conclusion of the settlement period or such time that the Settlement Judge determines further negotiations would be fruitless. If the Settlement Judge has made such a determination and a settlement agreement is not achieved within 75 days of the case being assigned to voluntary settlement proceedings or within 120 days of being assigned for mandatory settlement proceedings, the Settlement Judge shall then advise the Chief Administrative Law Judge in writing. The Chief Administrative Law Judge may then in the Chief Administrative Law Judge's discretion allow an addi-

tional period of time, for further proceedings under this section. If at the expiration of the period allotted under this paragraph the Settlement Judge has not approved a full settlement, the Settlement Judge shall furnish to the Chief Administrative Law Judge copies of any written stipulations and orders embodying the terms of any partial settlement the parties have reached.

(2) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to an Administrative Law Judge other than the Settlement Judge or Chief Administrative Law Judge for appropriate action on the remaining issues. If all the parties, the Settlement Judge, and the Chief Administrative Law Judge agree, the Settlement Judge may be retained as the Hearing Judge.

(g) *Non-reviewability.* Notwithstanding the provisions of §2200.73 regarding interlocutory review, any decision concerning the assignment of any Judge and any decision by the Settlement Judge to terminate settlement proceedings under this section is not subject to review, appeal, or rehearing.

[84 FR 14558, Apr. 10, 2019, as amended at 87 FR 8949, Feb. 17, 2022]

Subparts I–L [Reserved]

Subpart M—Simplified Proceedings

§ 2200.200 Purpose.

(a) The purpose of the Simplified Proceedings subpart 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 while being assured due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554. These procedural rules will be applied to accomplish this purpose.

(b) Procedures under this subpart are simplified in a number of ways. The major differences between these procedures and those provided in subparts A through G of the Commission's rules of procedure are as follows.