

(iii) Rule that the non-complying party may not introduce into evidence or otherwise rely upon testimony by such party, officer or agent, or the documents or other evidence, in support of or in opposition to any claim or defense;

(iv) Rule that the non-complying party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence should have shown.

(v) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

§ 18.7 Prehearing statements.

(a) At any time prior to the commencement of the hearing, the administrative law judge may order any party to file a prehearing statement of position.

(b) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and shall briefly set forth the following matters, unless otherwise ordered by the administrative law judge:

- (1) Issues involved in the proceeding;
- (2) Facts stipulated pursuant to the procedures together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible;
- (3) Facts in dispute;
- (4) Witnesses, except to the extent that disclosure would be privileged, and exhibits by which disputed facts will be litigated;
- (5) A brief statement of applicable law;
- (6) The conclusion to be drawn;
- (7) Suggested time and location of hearing and estimated time required for presentation of the party's or parties' case;
- (8) Any appropriate comments, suggestions or information which might assist the parties in preparing for the hearing or otherwise aid in the disposition of the proceeding.

§ 18.8 Prehearing conferences.

(a) *Purpose and scope.* (1) Upon motion of a party or upon the administrative law judge's own motion, the judge may direct the parties or their counsel to participate in a conference at any reasonable time, prior to or during the course of the hearing, when the administrative law judge finds that the proceeding would be expedited by a prehearing conference. Such conferences normally shall be conducted by conference telephonic communication unless, in the opinion of the administrative law judge, such method would be impractical, or when such conferences can be conducted in a more expeditious or effective manner by correspondence or personal appearance. Reasonable notice of the time, place and manner of the conference shall be given.

(2) At the conference, the following matters shall be considered:

- (i) The simplification of issues;
- (ii) The necessity of amendments to pleadings;
- (iii) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;
- (iv) The limitation of the number of expert or other witnesses;
- (v) Negotiation, compromise, or settlement of issues;
- (vi) The exchange of copies of proposed exhibits;
- (vii) The identification of documents or matters of which official notice may be requested;
- (viii) A schedule to be followed by the parties for completion of the actions decided at the conference; and
- (ix) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) *Reporting.* A prehearing conference will be stenographically reported, unless otherwise directed by the administrative law judge.

(c) *Order.* Actions taken as a result of a conference shall be reduced to a written order, unless the administrative law judge concludes that a stenographic report shall suffice, or, if the conference takes place within 7 days of the beginning of the hearing, the administrative law judge elects to make

a statement on the record at the hearing summarizing the actions taken.

§ 18.9 Consent order or settlement; settlement judge procedure.

(a) *Generally.* At any time after the commencement of a proceeding, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint, order of reference or notice of administrative determination (or amended notice, if one is filed), as appropriate, and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge; and

(4) A waiver of any right to challenge or contest the validity of the order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order for consideration by the administrative law judge, or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action, or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the administrative law judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

(e)(1) *Settlement judge procedure; purpose.* This paragraph establishes a voluntary process whereby the parties may use a settlement judge to mediate settlement negotiations. A settlement judge is an active or retired administrative law judge who convenes and presides over settlement conferences and negotiations, confers with the parties jointly and/or individually, and seeks voluntary resolution of issues. Unlike a presiding judge, a settlement judge does not render a formal judgment or decision in the case; his or her role is solely to facilitate fair and equitable solutions and to provide an assessment of the relative merits of the respective positions of the parties.

(2) *How initiated.* A settlement judge may be appointed by the Chief Administrative Law Judge upon a request by a party or the presiding administrative law judge. The Chief Administrative Law Judge has sole discretion to decide whether to appoint a settlement judge, except that a settlement judge shall not be appointed when—

(i) A party objects to referral of the matter to a settlement judge;

(ii) Such appointment is inconsistent with a statute, executive order, or regulation;

(iii) The proceeding arises pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 et seq., and associated acts such as the District of Columbia Workmen's Compensation Act, 36 DC Code 501 et seq.; or

(iv) The proceeding arises pursuant to Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901 et seq., also known as the Black Lung Benefits Act.

(3) *Selection of settlement judge.* (i) The selection of a settlement judge is at the sole discretion of the Chief Administrative Law Judge, provided that the individual selected—

(A) is an active or retired administrative law judge, and