

Fed. Mine Safety and Health Review Commission

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amicus curiae must comply with § 2700.75(c).

[58 FR 12164, Mar. 3, 1993, as amended at 64 FR 48714, Sept. 8, 1999; 71 FR 44209, Aug. 4, 2006; 71 FR 52211, Sept. 1, 2006]

§ 2700.75 Briefs.

(a) *Time to file*—(1) *Opening and response briefs*. Within 30 days after the Commission grants a petition for discretionary review, the petitioner shall file his opening brief. If the petitioner desires, he may notify the Commission and all other parties within the 30-day period that his petition and any supporting memorandum are to constitute his brief. Other parties may file response briefs within 30 days after the petitioner's brief is served. If the Commission directs review on its own motion, all parties shall file any opening briefs within 30 days of the direction for review. In such cases, a party may file a response brief within 20 days after service of the opposing party's opening brief.

(2) *Reply briefs*. In cases where the Commission has granted a petition for discretionary review, the petitioner may file a reply brief within 20 days after the service of the response briefs.

(b) *Additional briefs*. No further briefs shall be filed except by leave of the Commission.

(c) *Length of brief*. Except by permission of the Commission and for good cause shown, opening and response briefs shall not exceed 35 pages, and reply briefs shall not exceed 15 pages. A brief of an amicus curiae shall not exceed 25 pages. A brief of an intervenor shall not exceed the page limitation applicable to the party whose position it supports in affirming or reversing the Judge, or if a different position is taken, such brief shall not exceed 25 pages. Tables of contents or authorities shall not be counted against the length of a brief.

(d) *Motion for extension of time*. A motion for an extension of time to file a brief shall comply with § 2700.9. The Commission may decline to accept a brief that is not timely filed.

(e) *Consequences of petitioner's failure to file brief*. If a petitioner fails to timely file a brief or to designate the petition as his brief, the direction for review may be vacated.

(f) *Motion for leave to exceed page limit*. A motion requesting leave to exceed the page limit for a brief shall be received not less than 3 days prior to the date the brief is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. Filing of a motion requesting an extension of page limit is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

(g) *Number of copies*. As provided in § 2700.5(f), each party shall file the original and six copies of its brief. If the filing party is not represented by a lawyer, the original shall be sufficient. When filing is by facsimile transmission, the original must be filed with the Commission within 3 days of the facsimile transmission, but no additional copies should be filed.

(h) *Table of contents*. Each opening and response brief filed with the Commission shall contain a table of contents. Unless otherwise ordered by the Commission, a party is not required to submit a table of contents for a previously filed petition for discretionary review that has been designated as the party's opening brief pursuant to paragraph (a) of this section.

[58 FR 12164, Mar. 3, 1993, as amended at 64 FR 48714, Sept. 8, 1999; 71 FR 44209, Aug. 4, 2006]

§ 2700.76 Interlocutory review.

(a) *Procedure*. Interlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission. Procedures governing petitions for review of temporary reinstatement orders are found at § 2700.45(f).

(1) Review cannot be granted unless:
(i) The judge has certified, upon his own motion or the motion of a party, that his interlocutory ruling involves a controlling question of law and that in his opinion immediate review will materially advance the final disposition of the proceeding; or

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(ii) The Judge has denied a party's motion for certification of the interlocutory ruling to the Commission, and the party files with the Commission a petition for interlocutory review within 30 days of the Judge's denial of such motion for certification.

(2) In the case of either paragraph (a)(1)(i) or (ii) of this section, the Commission, by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission, may grant interlocutory review upon a determination that the Judge's interlocutory ruling involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding. Interlocutory review by the Commission shall not operate to suspend the hearing unless otherwise ordered by the Commission. Any grant or denial of interlocutory review shall be by written order of the Commission.

(b) *Petitions for interlocutory review.* Where the Judge denies a party's motion for certification of an interlocutory ruling and the party seeks interlocutory review, a petition for interlocutory review shall be in writing and shall not exceed 15 pages. A copy of the Judge's interlocutory ruling sought to be reviewed and of the Judge's order denying the petitioner's motion for certification shall be attached to the petition.

(c) *Briefs.* When the Commission grants interlocutory review, it shall also issue an order which addresses page limits on briefs and the sequence and schedule for filing of initial briefs, and, if permitted by the order, reply briefs.

(d) *Scope of review.* Unless otherwise specified in the Commission's order granting interlocutory review, review shall be confined to the issues raised in the Judge's certification or to the issues raised in the petition for interlocutory review.

[58 FR 12164, Mar. 3, 1993, as amended at 64 FR 48714, Sept. 8, 1999; 67 FR 18485, Apr. 16, 2002; 71 FR 44209, Aug. 4, 2006]

§ 2700.77 Oral argument.

Oral argument may be ordered by the Commission on its own motion or on the motion of a party. A party requesting oral argument shall do so by sepa-

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rate motion no later than the time that it files its opening or response brief.

§ 2700.78 Reconsideration.

(a) A petition for reconsideration must be filed with the Commission within 10 days after a decision or order of the Commission. Any response must be filed with the Commission within 10 days of service of the petition.

(b) Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not stay the effect of a decision or order of the Commission.

[58 FR 12164, Mar. 3, 1993, as amended at 71 FR 44209, Aug. 4, 2006]

§ 2700.79 Correction of clerical errors.

The Commission may correct clerical errors in its decisions at any time.

Subpart I—Miscellaneous

§ 2700.80 Standards of conduct; disciplinary proceedings.

(a) *Standards of conduct.* Individuals practicing before the Commission or before Commission Judges shall conform to the standards of ethical conduct required of practitioners in the courts of the United States.

(b) *Grounds.* Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the Commission on grounds that such person has engaged in unethical or unprofessional conduct; has failed to comply with these rules or an order of the Commission or its Judges; has been disbarred or suspended by a court or administrative agency; or has been disciplined by a Judge under paragraph (e) of this section.

(c) Disciplinary proceedings shall be subject to the following procedure:

(1) *Disciplinary referral.* Except as provided in paragraph (e) of this section, a Judge or other person having knowledge of circumstances that may warrant disciplinary proceedings against an individual who is practicing or has practiced before the Commission shall forward to the Commission for action such information in the form of a written disciplinary referral. Whenever the