(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 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

(B) Is not the administrative law judge assigned to hear and decide the case.

(ii) The settlement judge shall not be appointed to hear and decide the case.

(4) *Duration of proceeding.* Unless the Chief Administrative Law Judge directs otherwise, settlement negotiations under this section shall not exceed thirty days from the date of appointment of the settlement judge, except that with the consent of the parties, the settlement judge may request an extension from the Chief Administrative Law Judge. The negotiations will be terminated immediately if a party unambiguously indicates that it no longer wishes to participate, or if in the judgment of the settlement judge, further negotiations would be fruitless or otherwise inappropriate.

(5) *General powers of the settlement judge.* The settlement judge has the power to convene settlement conferences; to require that parties, or representatives of the parties having the authority to settle, participate in conferences; and to impose other reasonable requirements on the parties to expedite an amicable resolution of the case, provided that all such powers shall terminate immediately if negotiations are terminated pursuant to paragraph (e)(4).

(6) *Suspension of discovery.* Requests for suspension of discovery during the settlement negotiations shall be directed to the presiding administrative law judge who shall have sole discretion in granting or denying such requests.

(7) *Settlement conference.* In general the settlement judge should communicate with the parties by telephone

conference call. The settlement judge may, however, schedule a personal conference with the parties when:

(i) The settlement judge is scheduled to preside in other proceedings in a place convenient to all parties and representatives involved;

(ii) The offices of the attorneys or other representatives of the parties, and the settlement judge, are in the same metropolitan area; or

(iii) The settlement judge, with the concurrence of the Chief Administrative Law Judge, determines that a personal meeting is necessary for a resolution of substantial issues, and represents a prudent use of resources.

(8) *Confidentiality of settlement discussions.* All discussions between the parties and the settlement judge shall be off-the-record. No evidence regarding statements or conduct in the proceedings under this section is admissible in the instant proceeding or any subsequent administrative proceeding before the Department, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpoena. The settlement judge shall not discuss any aspect of the case with any administrative law judge or other person, nor be subpoenaed or called as a witness in any hearing of the case or any subsequent administrative proceedings before the Department with respect to any statement or conduct during the settlement discussions.

(9) *Contents of consent order or settlement agreement.* Any agreement disposing of all or part of the proceeding shall be written and signed by a parties. Such agreement shall conform to the requirements of paragraph (b) of this section.

(10) *Report of the settlement.* If a settlement is reached, the parties shall report to the presiding judge in writing within seven working days of the termination of negotiations. The report shall include a copy of the settlement agreement and/or proposed consent order. If a settlement is not reached, the parties shall report this to the presiding judge without further elaboration.

(11) *Review of agreement by presiding judge.* A settlement agreement arrived at with the help of a settlement judge shall be treated by the presiding judge as would be any other settlement agreement.

(12) *Non-reviewable decisions.* Decisions concerning whether a settlement judge should be appointed, the selection of a particular settlement judge, or the termination of proceedings under this section, are not subject to review by Department officials.

[48 FR 32538, July 15, 1983, as amended at 58 FR 38500, July 16, 1993; 64 FR 47089, Aug. 27, 1999]

§ 18.10 Parties, how designated.

(a) The term *party* whenever used in these rules shall include any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public or private organization, or governmental agency. A party who seeks relief or other affirmative action shall be designated as *plaintiff, complainant* or *claimant,* as appropriate. A party against whom relief or other affirmative action is sought in any proceeding shall be designated as a *defendant* or *respondent,* as appropriate. When a party to the proceeding, the Department of Labor shall be either a party or party-in-interest.

(b) Other persons or organizations shall have the right to participate as parties if the administrative law judge determines that the final decision could directly and adversely affect them or the class they represent, and if they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties.

(c) A person or organization wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state: (1) Petitioner's interest in the proceeding, (2) how his or her participation as a party will contribute materially to the disposition of the proceeding, (3) who will appear for petitioner, (4) the issues on