



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Complainant,

v.

Respondent.

OSHRC DOCKET No.

**RULES OF TRIAL**

1. Normally, court will convene at 9:00 a.m. and recess at 5:00 p.m. The parties may expect morning, lunch and afternoon breaks at appropriate times.
2. No food or drink is allowed in the courtroom except for water. Each party shall be dressed appropriately for Court.
3. *Absent* good cause shown, opening statements are limited to fifteen (15) minutes for each side.
4. No visual aid or exhibit shall be used during an opening statement unless opposing counsel has been shown the visual aid or exhibit and has agreed that the item may be used during the opening statement.
5. During the course of trial, each party shall notify opposing counsel of all witnesses it intends to call the following day. The parties should be prepared to have a witness ready to testify immediately following the conclusion of testimony of another witness.
6. The interrogation of each witness shall consist of: (1) direct examination; (2) cross-examination; (3) redirect examination; and (4) recross-examination. Redirect examination will be limited to issues addressed in cross examination. Recross examination will be limited to issues addressed in redirect examination. No further questioning will be permitted except by leave of Court in extraordinary circumstances.
7. The direct examination of each witness, other than a party or an expert, shall be no longer than sixty (60) minutes. Cross-examination of all witnesses shall be no longer than direct. Redirect shall be no longer than twenty (20) minutes, and recross-examination shall be no longer than redirect. Expert witnesses may testify about their qualifications and background for no longer than five (5) minutes on direct examination; cross-examination concerning the expert's qualifications will be unlimited except insofar as the general time limitation on cross-

examination applies. These time limits shall not be changed except with leave of Court for good cause addressed at the earliest opportunity available which in most instances should be in pretrial motion filed well in advance of the trial. The Court reserves the right to impose reasonable time limitations on the direct examination of parties.

8. Only one (1) counsel per party may examine a witness.

9. Counsel shall request permission of the Court to approach a witness for a legitimate purpose. Once granted permission, counsel may approach the witness additional times without requesting permission to do so. However, witnesses shall be interrogated from a reasonable distance and shall not be badgered.

10. Except in unusual circumstances, counsel should stand when addressing the Court or when examining the witness.

11. Except in unusual circumstances, a witness should be allowed to complete an answer. If the question calls for a "yes" or "no" answer, you may anticipate that the witness will be allowed an opportunity to explain that answer.

12. When making an objection, counsel should say only "objection" plus the legal reason for the objection (i.e., leading, hearsay, etc). If objecting counsel desires to give reasons for the objection or if an opposing counsel desires to oppose the objection, counsel shall request leave to do so. Objections to evidence should be made only by counsel handling the witness. Objections during opening statements or closing arguments should be made only by counsel making opening statements or closing arguments.

13. Unless permission is granted before the trial begins, a maximum of two (2) expert witnesses shall be allowed to testify for any party on any one (1) subject. After counsel questions an expert about his/her qualifications, do not ask the Court to declare the witness an expert.

14. Counsel shall treat adverse witnesses and parties with fairness and consideration. No abusive language or offensive personal references will be tolerated.

15. Visible reactions to the testimony of witnesses, counsels' presentations or to the Court's rulings (such as facial or body gestures) are inappropriate.

16. Conversation with clients and/or co-counsel must be in tones inaudible to the Court.

17. During conferences at the bench please note that the court reporter may have a very sensitive microphone located on the bench. Sounds are greatly amplified. Any shuffling of papers, clicking of pens, tapping of fingers on the bench, or touching the microphone results in great discomfort to the reporter. Please avoid any such movements.

18. Daubert Motions. Any party objecting to an expert's testimony based upon *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579,113 S.Ct. 2786 (1993) shall file a motion no later than the date that the proposed pretrial order is submitted. Otherwise, such objections will be waived, unless expressly authorized by court order based upon a showing that the failure to comply was justified. The motion shall identify with specificity each opinion the moving party seeks to exclude. The motion shall also identify the specific ground(s) on which each opinion is challenged, *e.g.*, relevancy, sufficiency of facts and data, or methodology. *See* Fed. R. Evid. 702. Upon the filing of such a motion, the Court, in its discretion, may set a hearing to determine whether the challenged opinions are admissible under the Fed. R. Evid. The setting of such hearing does not obviate the need for opposing counsel to respond to such motion.

**SO ORDERED.**

  

---

**JOHN B. GATTO, Judge**  
U.S. Occupational Safety and  
Health Review Commission