

Judge's report has been directed for review shall be filed with the Executive Secretary. When a settlement agreement is filed with the Judge or the Executive Secretary, proof of service shall be filed with the settlement agreement, showing service upon all parties and authorized employee representatives in the manner prescribed by §2200.7(c) and the posting of notice to non-party affected employees in the manner prescribed by §2200.7(g). The parties shall also file a final consent order for adoption by the Judge. If the time has not expired under these rules for electing party status, or if party status has been elected, an order terminating the litigation before the Commission because of the settlement shall not be issued until at least 10 days after service or posting to consider any affected employee's or authorized employee representative's objection to the reasonableness of any abatement time. The affected employee or authorized employee representative shall file any such objection within this time. If such objection is filed or stated in the settlement agreement, the Commission or the Judge shall provide an opportunity for the affected employees or authorized employee representative to be heard and present evidence on the objection, which shall be limited to the reasonableness of the abatement time.

(d) *Form of settlement document.* It is preferred that settlement documents be typewritten in conformance with §2200.30(a). However, a settlement document that is hand-written or printed in ink and is legible shall be acceptable for filing.

[51 FR 32015, Sept. 8, 1986, as amended at 57 FR 41688, Sept. 11, 1992]

§ 2200.101 Failure to obey rules.

(a) *Sanctions.* When any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or Judge, he may be declared to be in default either on the initiative of the Commission or Judge, after having been afforded an opportunity to show cause why he should not be declared to be in default, or on the motion of a party. Thereafter, the Commission or Judge, in their discretion, may enter a decision against the defaulting party or strike

any pleading or document not filed in accordance with these rules.

(b) *Motion to set aside sanctions.* For reasons deemed sufficient by the Commission or Judge and upon motion expeditiously made, the Commission or Judge may set aside a sanction imposed under paragraph (a) of this section. See §2200.90(b)(3).

(c) *Discovery sanctions.* This section does not apply to sanctions for failure to comply with orders compelling discovery, which are governed by §2200.52(f).

(d) *Show cause orders.* All show cause orders issued by the Commission or Judge under paragraph (a) of this section shall be served upon the affected party by certified mail, return receipt requested.

[70 FR 22790, May 3, 2005]

§ 2200.102 Withdrawal.

A party may withdraw its notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period at any stage of a proceeding. The notice of withdrawal shall be served in accordance with §2200.7(c) upon all parties and authorized employee representatives that are eligible to elect, but have not elected, party status. It shall also be posted in the manner prescribed in §2200.7(g) for the benefit of any affected employees not represented by an authorized employee representative who are eligible to elect, but have not elected, party status. Proof of service shall accompany the notice of withdrawal.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987]

§ 2200.103 Expedited proceeding.

(a) *When ordered.* Upon application of any party or intervenor or upon its own motion, the Commission may order an expedited proceeding. When an expedited proceeding is ordered by the Commission, the Executive Secretary shall notify all parties and intervenors.

(b) *Automatic expedition.* Cases initiated by employee contests and petitions for modification of abatement period shall be expedited.

(c) *Effect of ordering expedited proceeding.* When an expedited proceeding is required by these rules or ordered by

§ 2200.104

the Commission, it shall take precedence on the docket of the Judge to whom it is assigned, or on the Commission's review docket, as applicable, over all other classes of cases, and shall be set for hearing or for the submission of briefs at the earliest practicable date.

(d) *Time sequence set by Judge.* The assigned Judge shall make rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, may order daily transcripts of the hearing, and shall do all other things appropriate to complete the proceeding in the minimum time consistent with fairness.

§ 2200.104 Standards of conduct.

(a) *General.* All representatives appearing before the Commission and its Judges shall comply with the letter and spirit of the Model Rules of Professional Conduct of the American Bar Association.

(b) *Misbehavior before a Judge—(1) Exclusion from a proceeding.* A Judge may exclude from participation in a proceeding any person, including a party or its representative, who engages in disruptive behavior, refuses to comply with orders or rules of procedure, continuously uses dilatory tactics, refuses to adhere to standards of orderly or ethical conduct, or fails to act in good faith. The cause for the exclusion shall be stated in writing, or may be stated in the record if the exclusion occurs during the course of the hearing. Where the person removed is a party's attorney or other representative, the Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or other representative.

(2) *Appeal rights if excluded.* Any attorney or other representative excluded from a proceeding by a Judge may, within five days of the exclusion, appeal to the Commission for reinstatement. No proceeding shall be delayed or suspended pending disposition of the appeal.

(c) *Disciplinary action by the Commission.* If an attorney or other representative practicing before the Commission engages in unethical or unprofessional conduct or fails to comply with any

29 CFR Ch. XX (7–1–06 Edition)

rule or order of the Commission or its Judges, the Commission may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action, including suspension or disbarment from practice before the Commission.

(d) *Show cause orders.* All show cause orders issued by the Commission or Judge under paragraph (c) of this section shall be served upon the affected party by certified mail, return receipt requested.

[51 FR 32015, Sept. 8, 1986, as amended at 55 FR 22783, June 4, 1990]

§ 2200.105 Ex parte communication.

(a) *General.* Except as permitted by § 2200.120 or as otherwise authorized by law, there shall be no ex parte communication with respect to the merits of any case not concluded, between any Commissioner, Judge, employee, or agent of the Commission who is employed in the decisional process and any of the parties or intervenors, representatives or other interested persons.

(b) *Disciplinary action.* In the event an ex parte communication occurs, the Commission or the Judge may make such orders or take such actions as fairness requires. The exclusion of a person by a Judge from a proceeding shall be governed by § 2200.104(b). Any disciplinary action by the Commission, 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.

[51 FR 32015, Sept. 8, 1986, as amended at 70 FR 22790, May 3, 2005]

§ 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 herein. The Commission invites suggestions from interested parties to amend or revoke rules of procedure. Such suggestions should