
February 13, 2023 - Deadline for filing responses to motions in limine to preclude admission

OALJ personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. H-110 as the place of service. The subject line of all electronic submissions to oalj@ftc.gov shall set forth only the docket number and the title of the submission. The parties are not required to serve a courtesy copy to the OALJ in hard copy, except upon request. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy to the Office of Administrative Law Judges. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges.

2. The parties shall serve each other by electronic mail and shall include "Docket 9407" in the re: line and all attached documents in .pdf format. In the event that service through electronic mail is not possible, the parties may serve each other through any method authorized under the Commission's Rules of Practice.

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss, motion for summary decision, or a motion for summary judgment) shall be accompanied by a certificate of service.

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6. If papers filed with the Office of the Secretary contain camera or confidential material, the filing party shall mark any such material with the complete version of their m7r1(r)5 c (1)e (1)s [(t)

the party does not object to the admission of the evidence unless the party (a) has previously been designated on its witness list or adequately explain why the requested witness was not designated on its witness list.

16. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

17. Witnesses not permitted to testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

(f) At the time of service of the expert reports, a party shall provide opposing counsel:

(i) a list of all commercially available computer programs used by the expert in the preparation of the report;

(ii) a copy of all data sets used by the expert, in native file format and processed data file format; and

(iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

(g) Experts' disclosures and reports shall comply in all respects with Rule 3.31A, except that neither side must preserve or disclose:

(i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves;

(ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);

(iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case;

(iv) drafts of expert reports, analyses or other work product; or

(v) data formulations, data runs, data analyses, or any database related operations not relied upon by the expert in the opinions contained in his or her final report.

19. If the expert reports prepared for either party contain confidential information that has been granted in camera treatment, the party shall prepare two versions of its expert report(s) in accordance with Additional Provision 6 of this Scheduling Order and 6 C.F.R. § 3.45(e).

20. Pursuant to the Commission's September 9, 2022 Order Directing Further Proceedings and Specifying Facts Without Substantial Controversy, the evidentiary hearing in this matter will be conducted remotely by video conference. The parties are encouraged, in advance of the hearing, to take expert depositions for the purpose of perpetuating trial testimony (i.e., a trial deposition) and to submit such trial testimony as an exhibit in lieu of presenting the expert's testimony via live video at trial. This trial deposition may be conducted in addition to any deposition of an expert witness for purposes of discovery (discovery deposition). Although the parties are encouraged to submit trial depositions in lieu of live video testimony at trial for all expert witnesses in the case, you may choose to do trial depositions for all or fewer than all experts.

21. Pursuant to the Commission's September 9, 2022 Order Directing Further Proceedings and Specifying Facts Without Substantial Controversy, the evidentiary hearing in this matter will be conducted remotely by video conference. To accommodate safety or other concerns of witnesses and attorneys and staff, the parties may, in advance of the hearing, take trial depositions of fact witnesses who had been deposed before the close of discovery and to submit such trial deposition testimony (as video and/or transcript of trial deposition testimony) as an exhibit in lieu of presenting the fact witness' testimony via live video at trial. Although

the parties may submit trial depositions in lieu of live video testimony at trial for all fact witnesses in the case, you may choose to do trial depositions for fewer than all fact witnesses.

All trial depositions shall occur between the close of discovery and the close of the hearing; a party noticing trial depositions shall give five days' notice to the other party. The parties shall work cooperatively to accommodate each other's schedules when noticing trial depositions.

22. An expert witness's testimony is limited to opinions contained in the expert report that has been previously and properly provided to the opposing party. In addition, no opinion will be considered, even if included in an expert report, if the underlying and supporting documents and information have not been properly provided to the opposing party. Unless an expert witness is qualified as a fact witness, an expert witness is only allowed to provide opinion testimony. Expert testimony is not considered for the purpose of establishing the underlying facts of the case.

23. The final exhibit lists shall represent counsel's good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

24. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

25. The parties shall provide to one another and to the Administrative t.g0.004 Tc 0.004 Tw 2.36 0

28. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if PX100 and RX200 are different copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

ORDERED:

D. Michael Chappell