

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Amendments to Rules and Regulations

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (NLRB) is issuing a final rule amending its Rules and Regulations to reflect the closure of the Atlanta, Georgia office of the Division of Judges.

DATES: The effective date is January 4, 2016.

FOR FURTHER INFORMATION CONTACT: Gary Shinnners, Executive Secretary, 1015 Half Street SE., Washington, DC 20570. Telephone: (202) 273-1067.

SUPPLEMENTARY INFORMATION: The NLRB's Division of Judges (DOJ) currently has 34 administrative law judges, including the chief judge, deputy chief judge, and three associate chief judges, who hear, decide, and settle unfair labor practice cases nationwide. The judges are formally assigned to one of four offices in Washington, DC, New York, NY, San Francisco, CA, and Atlanta, GA, and receive their case assignments through those offices.

The NLRB has decided to close the Atlanta DOJ office and reassign the administrative law judges and clerical staff to other offices. It is doing so for several reasons. First, the office's longtime head, Associate Chief Judge William N. Cates, will be retiring at the end of the year. Second, of the four DOJ offices, the Atlanta office has the smallest number of nonsupervisory judges (four) and clerical employees (two). Third, although assigned to the Atlanta DOJ office, the four judges do not physically work out of that office. Like most NLRB administrative law judges, they telework and travel to the designated hearing sites from their states of residence (Virginia, Tennessee, Texas, and Florida). Fourth, closing the Atlanta DOJ office will save the NLRB the cost of renting that facility.

The four Atlanta DOJ administrative law judges will be reassigned to the Washington, DC DOJ office. They will continue to telework and perform their duties as before, but will receive their case assignments from the Chief Judge or Deputy Chief Judge, and be assisted by the clerical staff, in that office. One of the two administrative professional employees in the Atlanta DOJ office will be reassigned to assist the NLRB's nearby Regional Office in Atlanta. The other administrative professional

employee will be relocated to the NLRB Atlanta Regional Office and will continue to provide assistance to the Division of Judges.

Accordingly, consistent with the foregoing, the NLRB is revising §§ 102.24, 102.25, 102.30(c), 102.34, 102.35(b), 102.36, 102.42, and 102.149 of its rules and regulations, and appendix A thereto, to delete the references to the Atlanta DOJ office and to reflect the current structure of the Agency's field organization. Appendix A to part 102 of the Board's Rules and Regulations, which includes a complete listing of the official office hours of the NLRB Headquarters, the Division of Judges, and the Regional and Subregional Offices, was last published in full at 57 FR 4158 (February 4, 1992). Since that time, the Board has published numerous individual amendments to its Statement of Organization and Functions, including 65 FR 53228, 65 FR 64723, 69 FR 31143, 69 FR 74541, 77 FR 72886, 78 FR 44602, 79 FR 69136, and 79 FR 72707. Accordingly, the Board is now publishing Appendix A to Part 102—NLRB Official Office Hours in its entirety because of the number of changes made to the field offices and the age of the last publication.

This action is not subject to the advance notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553), or the requirements of Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801). As indicated above, the action relates solely to agency organization, management, or personnel matters. It will have no adverse impact on the ability of the NLRB Judges Division to cover the trial docket in the southern region of the country or elsewhere. Nor will it impose any additional paperwork, reporting, or other costs, burdens, or responsibilities on parties, practitioners, or others who participate in hearings before the NLRB's administrative law judges.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB amends part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

■ 1. The authority citation for part 102 continues to read as follows:

Authority: Sections 1, 6, National Labor Relations Act (29 U.S.C. 151, 156). Section 102.117 also issued under section 552(a)(4)(A) of the Freedom of Information

Act, as amended (5 U.S.C. 552(a)(4)(A)), and Section 102.117a also issued under section 552a(j) and (k) of the Privacy Act of 1974 (5 U.S.C. 552a(j) and (k)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. Amend § 102.24 by revising paragraph (a) to read as follows:

§ 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; default judgment procedures; summary judgment procedures.

(a) All motions under §§ 102.22 and 102.29 made prior to the hearing shall be filed in writing with the Regional Director issuing the complaint. All motions for default judgment, summary judgment, or dismissal made prior to the hearing shall be filed in writing with the Board pursuant to the provisions of § 102.50. All other motions made prior to the hearing, including motions to reschedule the hearing under circumstances other than those set forth in § 102.16(a), shall be filed in writing with the chief administrative law judge in Washington, DC, with the associate chief judge in San Francisco, California, or with the associate chief judge in New York, New York, as the case may be. All motions made at the hearing shall be made in writing to the administrative law judge or stated orally on the record. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to § 102.45, shall be filed with the administrative law judge, care of the chief administrative law judge in Washington, DC, the associate chief judge in San Francisco, or the associate chief judge in New York, as the case may be. Motions shall briefly state the order or relief applied for and the grounds therefor. All motions filed with a Regional Director or an administrative law judge as set forth in this paragraph shall be filed therewith by transmitting three copies thereof together with an affidavit of service on the parties. All motions filed with the Board, including motions for default judgment, summary judgment, or dismissal, shall be filed with the Executive Secretary of the Board in Washington, DC, by transmitting eight copies thereof together with an affidavit of service on the parties. Unless otherwise provided in this part, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

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■ 3. Revise § 102.25 to read as follows:

§ 102.25 Ruling on motions.

An administrative law judge designated by the chief administrative

law judge in Washington, DC, by the associate chief judge in San Francisco, California, or by the associate chief judge in New York, New York, as the case may be, shall rule on all prehearing motions (except as provided in §§ 102.16, 102.22, 102.29, and 102.50), and all such rulings and orders shall be issued in writing and a copy served on each of the parties. The administrative law judge designated to conduct the hearing shall rule on all motions after opening of the hearing (except as provided in § 102.47), and any orders in connection therewith, if announced at the hearing, shall be stated orally on the record; in all other cases the administrative law judge shall issue such rulings and orders in writing and shall cause a copy of the same to be served on each of the parties, or shall make his ruling in his decision. Whenever the administrative law judge has reserved his ruling on any motion, and the proceeding is thereafter transferred to and continued before the Board pursuant to § 102.50, the Board shall rule on such motion. (49 Stat. 449; 29 U.S.C. 151–166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151–167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141–168), (88 Stat. 395–397; 29 U.S.C. 152, 158, 169, 183))

■ 4. Amend § 102.30 by revising paragraph (c) to read as follows:

§ 102.30 Examination of witnesses; deposition.

* * * * *

(c) At the time and place specified in said order the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all the parties appearing, and his testimony shall be reduced to type-writing by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objections but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that said officer is not of counsel or attorney to any of the parties nor interested in the event of the proceeding or investigation. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver an original and two

copies of said transcript, together with his certificate, in person or by registered or certified mail to the Regional Director or the administrative law judge, care of the chief administrative law judge in Washington, DC, the associate chief judge in San Francisco, California, or the associate chief judge in New York, New York, as the case may be.

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■ 5. Revise § 102.34 to read as follows:

§ 102.34 Who shall conduct; to be public unless otherwise ordered.

The hearing for the purpose of taking evidence upon a complaint shall be conducted by an administrative law judge designated by the chief administrative law judge in Washington, DC, by the associate chief judge in San Francisco, California, or by the associate chief judge in New York, New York, as the case may be, unless the Board or any Member thereof presides. At any time an administrative law judge may be designated to take the place of the administrative law judge previously designated to conduct the hearing. Such hearings shall be public unless otherwise ordered by the Board or the administrative law judge. (49 Stat. 449; 29 U.S.C. 151–166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151–167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141–168), (88 Stat. 395–397; 29 U.S.C. 152, 158, 169, 183))

■ 6. Amend § 102.35 by revising paragraph (b) introductory text to read as follows:

§ 102.35 Duties and powers of administrative law judges; stipulations of cases to administrative law judges or to the Board; assignment and powers of settlement judges.

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(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, DC, the associate chief judge in San Francisco, California, or the associate chief judge in New York, New York may assign a judge who shall be other than the trial judge to conduct settlement negotiations. In exercising his or her discretion, the chief judge or associate chief judge making the assignment will consider, among other factors, whether there is reason to believe that resolution of the dispute is likely, the request for assignment of a settlement judge is made in good faith, and the assignment is otherwise feasible. Provided, however, that no such assignment shall be made absent the agreement of all parties to the use of this procedure.

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■ 7. Revise § 102.36 to read as follows:

§ 102.36 Unavailability of administrative law judges.

In the event the administrative law judge designated to conduct the hearing becomes unavailable to the Board after the hearing has been opened, the chief administrative law judge in Washington, DC, the associate chief judge in San Francisco, California, or the associate chief judge in New York, New York, as the case may be, may designate another administrative law judge for the purpose of further hearing or other appropriate action. (49 Stat. 449; 29 U.S.C. 151–166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151–167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141–168), (88 Stat. 395–397; 29 U.S.C. 152, 158, 169, 183))

■ 8. Revise § 102.42 to read as follows:

§ 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which may include presentation of proposed findings and conclusions, and shall be included in the stenographic report of the hearing. In the discretion of the administrative law judge, any party may, upon request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge, who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, DC, to the associate chief judge in San Francisco, California, or to the associate chief judge in New York, New York, as the case may be. Notice of the request for any extension shall be immediately served on all other parties, and proof of service shall be furnished. Three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished. In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions may not be necessary, he or she shall notify the parties at the opening of the hearing or as soon thereafter as practicable that he or she may wish to hear oral argument in lieu of briefs.

■ 9. Amend § 102.149 by revising paragraph (b) to read as follows:

§ 102.149 Filing of documents; service of documents; motions for extension of time.

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(b) Motions for extensions of time to file motions, documents, or pleadings permitted by § 102.150 or by § 102.152 shall be filed with the chief administrative law judge in Washington, DC, the associate chief judge in San Francisco, California, or the associate chief judge in New York, New York, as

the case may be, not later than 3 days before the due date of the document. Notice of the request shall be immediately served on all other parties and proof of service furnished.

■ 10. Revise appendix A to part 102 to read as follows:

Appendix A to Part 102—NLRB Official Office Hours

(Official Office Hours of the Regional and Subregional Offices are listed in numerical order except that Subregions appear directly under their respective Regions. Official office hours of the field offices also can be found on the NLRB Web site at <https://www.nlr.gov/who-we-are/regional-offices/>.)

NLRB Headquarters, Business Hours (Local Time):		
Washington, DC		8:30 a.m.—5:00 p.m.
Division of Judges, Business Hours (Local Time):		
Washington, DC		8:30 a.m.—5:00 p.m.
San Francisco		8:30 a.m.—5:00 p.m.
New York		8:30 a.m.—5:00 p.m.
Regional Office Business Hours (Local Time):		
1—Boston		8:30 a.m.—5:00 p.m.
Hartford		8:30 a.m.—5:00 p.m.
2—New York		8:45 a.m.—5:15 p.m.
3—Buffalo		8:30 a.m.—5:00 p.m.
Albany		8:30 a.m.—5:00 p.m.
4—Philadelphia		8:30 a.m.—5:00 p.m.
5—Baltimore		8:15 a.m.—4:45 p.m.
Washington, DC		8:15 a.m.—4:45 p.m.
6—Pittsburgh		8:30 a.m.—5:00 p.m.
7—Detroit		8:15 a.m.—4:45 p.m.
Grand Rapids		8:15 a.m.—4:45 p.m.
8—Cleveland		8:15 a.m.—4:45 p.m.
9—Cincinnati		8:30 a.m.—5:00 p.m.
10—Atlanta		8:00 a.m.—4:30 p.m.
Winston-Salem		8:00 a.m.—4:30 p.m.
Birmingham		8:00 a.m.—4:30 p.m.
Nashville		8:00 a.m.—4:30 p.m.
12—Tampa		8:00 a.m.—4:30 p.m.
Miami		8:00 a.m.—4:30 p.m.
Puerto Rico		8:30 a.m.—5:00 p.m.
13—Chicago		8:30 a.m.—5:00 p.m.
14—St. Louis		8:00 a.m.—4:30 p.m.
Kansas City		8:15 a.m.—4:45 p.m.
Tulsa		8:15 a.m.—4:45 p.m.
15—New Orleans		8:00 a.m.—4:30 p.m.
Memphis		8:00 a.m.—4:30 p.m.
Little Rock		8:00 a.m.—4:30 p.m.
16—Fort Worth		8:15 a.m.—4:45 p.m.
Houston		8:00 a.m.—4:30 p.m.
San Antonio		8:00 a.m.—4:30 p.m.
18—Minneapolis		8:00 a.m.—4:30 p.m.
Milwaukee		8:00 a.m.—4:30 p.m.
19—Seattle		8:15 a.m.—4:45 p.m.
Portland		8:00 a.m.—4:30 p.m.
Anchorage		8:15 a.m.—4:45 p.m.
20—San Francisco		8:30 a.m.—5:00 p.m.
Honolulu		8:00 a.m.—4:30 p.m.
21—Los Angeles		8:30 a.m.—5:00 p.m.
San Diego		8:30 a.m.—5:00 p.m.
22—Newark		8:45 a.m.—5:15 p.m.
25—Indianapolis		8:30 a.m.—5:00 p.m.
Peoria		8:30 a.m.—5:00 p.m.
27—Denver		8:30 a.m.—5:00 p.m.
28—Phoenix		8:15 a.m.—4:45 p.m.
Albuquerque		8:15 a.m.—4:45 p.m.
Las Vegas		8:30 a.m.—5:00 p.m.
29—Brooklyn		9:00 a.m.—5:30 p.m.
31—Los Angeles		8:30 a.m.—5:00 p.m.
32—Oakland		8:30 a.m.—5:00 p.m.

Dated: December 2, 2015.

By direction of the Board.
William B. Cowen,
Solicitor, National Labor Relations Board.
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