



Issue Date: 05 October 2021

Case No.: 2021-MIS-00006

In Re:

CASES INVOLVING FOREIGN PARTIES, WITNESSES, AND/OR EVIDENCE

ADMINISTRATIVE NOTICE

Proceedings before the Office of Administrative Law Judges (“OALJ”) involving foreign parties, foreign witnesses, and/or foreign evidence may present complex adjudicative issues, particularly when a party is located outside the territorial jurisdiction of the United States, or when a party seeks to present testimony of a person located outside the territorial jurisdiction of the United States and/or evidence obtained outside the territorial jurisdiction of the United States. I issue this Administrative Notice in order to minimize the risk that the parties may take, or that OALJ unwittingly facilitates, enables, or condones, actions potentially inconsistent with applicable law in cases involving foreign parties, witnesses, and/or evidence.¹

Certification of Compliance

Parties have the responsibility to comply with all applicable laws when participating, offering witness testimony, and obtaining evidence for use in administrative proceedings before OALJ. The presiding ALJ may make inquiry into such compliance. Thus:

- (1) when a party, and/or that party’s representative, seeks to participate in an OALJ proceeding from a location outside the territorial jurisdiction of the United States, that party should be prepared to certify in writing or on the record that all applicable legal requirements concerning such participation have been satisfied;
- (2) when a party seeks to elicit testimony from a witness located outside the territorial jurisdiction of the United States, the proponent should be prepared to certify in writing or on the record that all applicable legal requirements concerning such testimony have been satisfied, including requirements concerning the administration of an oath to a witness; and

¹ This Administrative Notice is not intended to interfere with the qualified decisional independence the Administrative Procedure Act affords each administrative law judge.

(3) when a party seeks to offer documentary evidence obtained outside the territorial jurisdiction of the United States (including a deposition transcript) into the hearing record, the proponent should be prepared to certify in writing or on the record that all applicable legal requirements have been satisfied.

*Testimony and Evidence in a Foreign Language
Offered into the Hearing Record*

The proponent of testimony in a language other than English shall arrange for the interpretation of that witness's testimony into English. Upon a timely request, however, OALJ will provide interpretation services at the hearing to a party with limited English proficiency. The proponent of documentary evidence in a language other than English shall arrange for the translation of that foreign-language documentary evidence into English and shall offer both the foreign-language documentary evidence and its English-language translation into the hearing record.

Hearing on the Written Record

In light of the issues addressed above, litigants may conclude that they are best served by waiving an oral evidentiary hearing, and instead submitting the matter for a decision on the written record. *See* 29 C.F.R. § 18.70(d).² A hearing conducted on the written record is one in which the decision is based on a record consisting of the relevant written evidence submitted by the parties, together with any pleadings the parties may submit with respect to the issues in the case. It is thus essential that litigants in cases before OALJ that may involve parties, witnesses, and/or evidence located outside the territorial jurisdiction of the United States meet and confer early in the proceeding and determine whether they prefer that the matter be submitted on a written record — and if so, promptly advise the presiding ALJ. Presiding ALJs may also specifically order such a discussion as part of the prehearing conference. *See* 29 C.F.R. § 18.44.

Nothing in this Administrative Notice changes the authority of the presiding ALJ as stated in 29 C.F.R. § 18.12(b).

SO NOTICED.

STEPHEN R. HENLEY
Chief Administrative Law Judge

² Some U.S. Department of Labor regulations have rules of special application relating to waiver of an oral evidentiary hearing. *See, e.g.*, 20 C.F.R. §§ 702.346 (longshore and related cases), 725.461 (black lung cases).