

## PRE-HEARING CONFERENCE

If Conciliation fails you will receive a letter in the mail telling you the date, time, and place of your Pre-Hearing Conference. There are a number of things that will occur at this conference that will involve you, the Hearing Examiner (who is the person making a decision as to whether or not discrimination happened), a Conciliator, and the other party.

**Here are some topics you can expect to discuss at the Pre-Hearing Conference:**

### ◉ SETTLEMENT

You will have the opportunity to settle your case. Be prepared to discuss the possibility of settlement and the minimum things the other party would have to agree to for this to happen.

### ◉ THE ISSUES THAT WILL BE EXAMINED DURING THE HEARING

Come ready to state the issue(s) of the case as you understand them. A legal explanation of your issue is in your Initial Determination.

### ◉ DETAILS OF THE HEARING

You will talk about a number of things—such as the number of witnesses you might have, how many days will be needed for the Hearing, and any documents you might need to obtain.

The process of gathering information from the other party is called “Discovery.” To understand how to legally collect facts that can be used during the Hearing read our pamphlets *Gathering Information Before Your Hearing on the Merits: The Discovery*

*Process and Gathering Information Before Your Hearing on the Merits: Preparing Witnesses.*

Finding information that will help support your case is your responsibility.

### ◉ DATES AND DEADLINES FOR WITNESS LISTS AND EXHIBITS

#### *Witness Lists*

Dates will be set for both the first and the final exchange of witness lists. The final exchange of lists usually happens about four weeks before the Hearing. If your list is missing the name of some of your potential witnesses, you may not be allowed to have their statements considered at the Hearing. The only exception to this rule is if you can show that there is good reason why you could not include their names on your list.

In addition to documenting important events and comments, it helps your case if you find people who witnessed the discrimination you experienced. The Commission does not call these witnesses. It is your responsibility to subpoena them.

To learn more about how to subpoena your witnesses and collect statements (called depositions) from the other party’s witnesses read our brochure *Gathering Information Before Your Hearing on the Merits: Preparing Witnesses.*

#### *Exhibits*

Also, the Hearing Examiner will set a deadline for the last possible time both parties may add exhibits. Exhibits are any documents or other physical evidence that you want the Hearing Examiner to consider when making his/her decision. Some examples of exhibits that you may want to collect are paychecks, work schedules, applications, and photos, etc.

To learn more about collecting exhibits read our brochure *Gathering Information Before Your Hearing on the Merits: The Discovery Process.*

You must provide a copy of any exhibits to the Hearing Examiner and the other party before the deadline.

## HEARING ON THE MERITS

The Hearing on the Merits is very similar to a courtroom trial. Each party may present evidence, call their own witnesses and ask questions of the other party’s witnesses. Also all testimony is taken under oath or affirmation.

Decisions by the Hearing Examiner can only be based on what is presented at the Hearing. It is important to remember that information included in your case file from the investigation **WILL NOT** be considered unless you or the other party choose to introduce it as evidence at the Hearing.

During the Hearing, it is your responsibility to persuade the Hearing Examiner that you were discriminated against by the Respondent.

It is important to understand that the cases heard here are not like cases heard in a criminal court. Here it is not necessary for the Complainant to “prove without a doubt” that he or she was discriminated against. Rather, the Complainant must use as much evidence as possible to show that it is more likely than not that he or she was discriminated against.

## OUTLINE OF HEARING ON THE MERITS

### 1. OPENING STATEMENTS

At the beginning, each party has the opportunity to lay out a roadmap of what it will be trying to prove during the Hearing. This is a good chance for you, the Complainant, to make a clear statement of what has occurred and your position.

### 2. WITNESS TESTIMONY

After the opening statements are heard, each party may present its witnesses. You present your witnesses first. This means that your witness will be in the room and you will ask him or her questions to present your side of the case.

When you finish asking this witness questions, the Respondent has the opportunity to question this witness. The Respondent will try to make the witness's testimony seem less convincing.

After the Respondent questions the witness, you can ask additional questions as long as they are directly related to those posed by the Respondent. **NEXT**, the Respondent has the opportunity to question the witness again. His questions will be limited to the scope of your questions.

This continues until both parties no longer have questions for this witness. When the first witness is done, the Complainant has another witness sit down and answer questions.

This process continues until all of the Complainant's witnesses have had the opportunity to answer questions. Then, the process begins again with the Respondent presenting witnesses. During the process the Hearing Examiner may ask the witnesses questions to clarify the case his/her understanding of the case.

### 3. INTRODUCTION OF EXHIBITS

At this time both parties have the chance to introduce any other evidence that was not already brought out during the questioning of witnesses.

### 4. THE DECISION

When everyone has presented their witnesses and discussed any exhibits, the Hearing will end. At this time the Hearing Examiner offers both the Complainant and the Respondent the chance to submit a "brief" (a written argument) to him or her that further argues their side. This brief is generally due a few weeks after the hearing.

After receiving the briefs, the Hearing Examiner will consider the testimony of witnesses, exhibits and other evidence presented at the Hearing along with the filed briefs. Based on these things the Hearing Examiner will make a recommended decision as to whether or not discrimination happened.

**This decision will include either a finding that:**

- a) discrimination occurred and the reasoning of the Hearing Examiner, as well as, any damages owed to the Complainant.
- OR**
- b) discrimination did not occur and the reasoning of the Hearing Examiner.

The Hearing Examiner's decision can be appealed by either party to the full Commission for review.

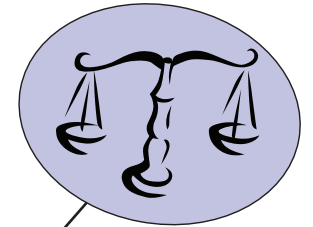
#### PLEASE NOTE:

If you need materials in alternate formats or other accommodations in order to access this service, please contact the Department of Civil Rights, Equal Opportunities Division.

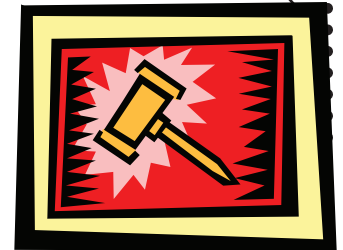
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## HEARING ON THE MERITS



In many ways a Hearing on the Merits is different from any other part of the complaint process you have gone through so far.



Therefore, it is important for you to learn exactly what will occur and what will be expected of you.