

MIAMI-DADE COUNTY COMMISSION ON HUMAN RIGHTS

HOW TO CHAIR A HEARING PANEL GUIDE

General Responsibilities of the Hearing Panel Chair:

- It is the responsibility of the Chair to conduct the hearing in such a manner so that the issues presented for resolution are determined fairly.
 - Both parties should have a full and reasonable opportunity to present such evidence as may be relevant to the issues involved.
- The Chair should exercise such control as is necessary for the orderly, effective and reasonably expeditious progress of the hearing.
- The Chair should ensure hearings are conducted with dignity and decorum.

Opening the Hearing

- The hearing should commence promptly at the time stated in the notice of the hearing.
 - Leeway may be allowed whenever local transportation, parking or weather conditions may be the possible cause of delay.
- **Call to Order:**
 - "IT IS NOW ____ (time) ON ____ (date), THE MIAMI-DADE COUNTY COMMISSION ON HUMAN RIGHTS WILL NOW COME TO ORDER AND I NOTE FOR THE RECORD THAT A HEARING PANEL IS PRESENT FOR A HEARING IN CHARGE NUMBER _____ FILED BY THE CHARGING PARTY _____ AGAINST THE RESPONDENT _____. THIS IS A PROCEEDING PURSUANT TO CHAPTER 11A, CODE OF MIAMI-DADE COUNTY. IN THESE PROCEEDINGS, STRICT ADHERENCE TO THE RULES OF EVIDENCE OBSERVED IN COURTS IS NOT REQUIRED. ALL RELEVANT AND MATERIAL EVIDENCE, ORAL OR WRITTEN, SHALL BE RECEIVED, EXCEPT THAT HEARSAY EVIDENCE IS ADMISSIBLE AND WILL BE ACCORDED SUCH WEIGHT AS THE CIRCUMSTANCES WARRANT. IRRELEVANT, IMMATERIAL AND UNDULY REPETITIOUS EVIDENCE SHOULD BE EXCLUDED."
- **Roll Call:** The Chair should identify himself/herself and ask that the panel members, County Attorney and staff to state their name and official title for the record.
- Note for the record that there is a Hearing Panel present (3 members).
- **Agenda Approval: Does the Chair hear a motion to approve the agenda?**
 - Once a motion has been passed, the Chair should proceed with the hearing.

Appearances

- Ask the parties and/or their legal representatives to state their names for the record.

CHR File as Evidence

- The Chair should note for the record that the board file will be entered into evidence as "Board Exhibit 1."

Non-Appearance of Party

- If a party fails to appear for the scheduled hearing and a reasonable time has elapsed since the hearing's scheduled starting time with no word from the party, confirm that the party received notice of the hearing (e.g. certified letter mailed to party's last known address).
- Once it has been established that the party was duly notified of the hearing and/or there is a strong probability that the nonappearance is deliberate and that the party has abandoned his/her case, the panel should consider a motion to dismiss the case.
- If there is some evidence that the party may not have received notice of the hearing and/or a showing of good cause for the non-appearance, the panel may consider rescheduling the hearing.

Opening Statements

- Ask whether the parties wish to make an opening statement.
 - The opening statement gives each party an opportunity to set before the panel the "story" which the party's ensuing proof will tell.
 - Opening statements by the parties should be encouraged, since they summarize the issues and outline the positions of the parties, allowing them to begin their presentation in a more informal, less stressful manner. However, they are not legally necessary and a party may decline to make an opening statement.
- The Charging Party will typically make the first opening statement.

Preliminary Motions or Objections

- After both parties have presented their opening statements, any preliminary motions or objections may heard and disposed of by the Chair at this time, or they may be tabled for later discussion.

Presentation of Proof

Order of Proof

- Typically, the Charging Party presents his/her case first.

Mode of Proof

- The party who goes first in presenting evidence will present the proof, testimonial and/or non-testimonial, that the party believes is necessary for securing the sought-after relief.
- **Witnesses**
 - The order in which witnesses and exhibits are presented is generally left to the parties themselves.
 - **Oaths and Affirmations**
 - A witness must declare by oath or affirmation that the witness will testify truthfully as a precondition to testifying.
 - Ask the witness: "**Do you solemnly affirm that the testimony you will give will be the truth, the whole truth and nothing but the truth, under penalty of perjury?**"
 - If the witness refuses to take an oath or affirmation, the witness must not be permitted to testify.
 - Each witness should be sworn individually, immediately prior to the giving of testimony.
 - Once a witness is sworn, it is not necessary to swear the witness again when the witness resumes testifying, whether after a recess or adjournment.
 - The Chair may note for the record that in such instances the witness is still under oath or affirmation.
 - **Interpreters**
 - Where a witness is unable to speak or understand the English language, there will be a need to receive the witness's testimony through an interpreter.
 - Ask the interpreter: "**Do you solemnly swear (or affirm) that you will truthfully and accurately translate all questions put and all answers given, to the best of your ability?**"
- **Direct Examination**
 - When presenting testimony, the party will conduct a "direct examination" of the party's called witness, eliciting that witness's relevant knowledge.
- **Cross-Examination**
 - After direct examination, the other party gets a turn to ask questions, this time by "cross-examination."
- **Redirect Examination**
 - When cross-examination is finished, the calling party may engage in "redirect examination," questioning the witness on matters brought up on the cross-examination.
- **Recross Examination**
 - The other party may then engage in "recross-examination," questioning the witness on matters raised on redirect.
- The parties may then engage in further similar round(s) of questioning, provided the questioning does not become repetitive.

- Upon completion of the examination of the initial witness, the party may then call other witnesses, and the same process is engaged in with such other witnesses.
- When the party has finished calling witnesses and introducing exhibits, the party will "rest."
- At that time, the other party may then present evidence, testimonial or non-testimonial, on the issues raised by the initiating party or other relevant issues, to show that the initiating party is not entitled to the relief sought.
 - The witnesses called will be subject to the same manner of examination previously described.
 - Once the party has finished calling witnesses and introducing exhibits, the party will rest.
- **Rebuttal**
 - After both parties have put on their case, the party who went first has a "rebuttal" opportunity.
 - Rebuttal is generally limited to denying some affirmative fact that the other party has attempted to prove.
 - It may not be used simply to put in additional proof that could have been presented during the party's initial presentation of proof.
 - Once a rebuttal case is made, the other party has a similar opportunity.
 - The presentation of witnesses during rebuttal is subject to the previously described mode of examination.
- **Interruptions**
 - When a party is presenting the party's case, **the other party should not be permitted to interrupt the presentation of the party's case** (unless there is an objection).

The Taking of Testimony

- Limit the undue extension or repetition of testimony, whether on direct or cross-examination.
 - Questions should be truly interrogatory and not statements or contentions.
 - Only one question at a time should be asked.
 - If the interrogation consists of multiple questions put at one time, the Chair should see to it that they are divided into single questions.
- **Direct Examination**
 - On **direct examination**, the questions should be **non-narrative and non-leading**.
 - A narrative question is one that asks for a broad recitation of facts without interruption, rather than a single fact.
 - The preference is for short, focused questions which seek a single item of factual information.
 - The Chair has the discretion to permit narrative questions, which is frequently done where the witness has testified on numerous prior occasions.

- Leading questions are not preferred because the aim of the direct examination is to elicit what the witness knows, and not what the examiner has knowledge about.
 - Whether the question is leading will turn upon the form of the question, e.g., "isn't it a fact that . . . "; "you know, don't you, that . . ."; as well as the tone of the examiner's voice or body gestures, the content in which the question is asked, and the tenor of the testimony already introduced.
 - While the Chair has the discretion to permit leading questions, such discretion should be used sparingly and only when leading questions are truly necessary to develop the witness's testimony, e.g., witness is confused.
- Do not permit the bullying or intimidation of witnesses.
- Immediately put a stop to any acrimony, altercations or any other form of disorder.
- Except by an objection to testimony, the Chair should not permit the interruption of the testimony of a witness by the opposing party, either by comment or questions.
- The Chair and/or the panel members should not interfere with the development of the case by making gratuitous comments, observations and/or asking questions.

Cross-Examination

- The right of cross-examination does not include the right to an unlimited cross-examination.
- The Chair should limit cross-examination which is becoming repetitious as well as cross examination that is delving into irrelevant or collateral matters.
- *Note: Cross examination should only be limited to the scope of the direct examination.*

Questioning by the Hearing Panel

- Ordinarily, a case will be presented and developed by the parties' questioning of witnesses.
- The Chair may permit panel members to question any witness called by the parties.
 - The discretion to question should be exercised sparingly – it is not a license to take over questioning merely because the Hearing Panel believes it can do a better job.
- Questions by the panel members should be limited to clarifying confusing testimony of a witness which is not clarified by the questioning of a party, or which is confusing as a result of a party's questioning, and to instances when a party fails to elicit vital and necessary information
- **Important to Remain Neutral**
 - When the panel engages in questioning of witnesses, the members must not act as if they were the advocate for one party or the other party, and

avoid any partisan attitude by such questioning.

- In order to avoid appearing to be not impartial or neutral, Hearing Panel members should avoid dominating a witness with excessive questioning, but should rather allow the parties to present their case.

Receipt of Exhibits

- Non-testimonial proof, whether documentary evidence, real evidence, or demonstrative evidence, may be offered into evidence as exhibits.
- The Chair should state into the record a general description of the evidence and state that it is "received in evidence as _____ (Petitioner/Respondent) exhibit _____."
 - Exhibits should be marked in consecutive order.

Evidentiary Objections and Rulings

- When a party wants to keep the opposing party's evidence out, thereby preventing it from becoming part of the hearing record, it is necessary for the party to make an objection.
- If no objection is made as to a witness's testimony in whole or in part or to an offered exhibit, the testimony or exhibit is received into evidence.
- The making of the objection must be noted in the record.
 - There is no required form that the objection must take.
- **Objections Should Be Timely**
 - Generally, the objection should be made at the time the question is asked or the exhibit offered, or a motion to strike made promptly after the witness blurts out an answer or the ground for objection becomes apparent.
- **Basis for Objection**
 - Where the basis for the objection is not given, and the Chair is unsure as to the possible reason why the evidence should not be admitted, the Chair should ask the party the basis for the objection.
 - The Chair also should ask the party who offered the evidence whether it has any responding argument for admissibility.
 - Note: As the technical rules of evidence do not apply in CHR hearings, there is no need for the Chair to become entangled in legal arguments as to the admissibility of evidence.
- **Ruling on the Objection**
 - Once the objection is made, and the Chair understands the basis for the objection and the offering party has an opportunity to respond to the objection, the Chair must rule (overrule or sustain) on the objection.
- Once the parties have offered and entered all of their evidence, the Chair should ask each party, "Have you anything else to add?"

- **Closing Statements**
 - When there is no further evidence to present, each party should be given the opportunity to make brief closing statements.
 - Such closing statements are an opportunity for the parties to summarize the evidence presented on the parties' behalf, and to argue why such evidence should be credited and why the opposing party's evidence should be rejected.
 - The order of making the closing statements is subject to the Chair's discretion, but it should generally be in the reverse order of the opening statements.
- After the parties make their closing statements, the Chair should direct the panel to begin deliberations.

Maintaining Order and Decorum

- The Chair must have complete control over the hearing and must not let it get out of hand, including but not limited to ensuring that the parties, witnesses and Hearing Panel members are civil and respect the process.
- The Chair should set the tone of the hearing through his or her dignified conduct, despite any provocations.
 - Mannerisms suggesting impatience or indicating the lack of time for a full exploration of the facts should be avoided.
- When parties, attorneys, or witnesses engage in disruptive acts, such as shouting at the panel members, opposing party or witness, or openly disregarding or mocking a ruling or request from the Chair, the Chair must immediately exercise control.
 - The first time a disruptive act is committed, the Chair should remind the person that such behavior will not be tolerated.

Dealing With Unrepresented Parties

- When a party appears at the hearing without representation and it is apparent that the party has little understanding as to the nature of the hearing, and lacks familiarity with its procedures, the Chair may guide the party through the hearing.
 - Note: Chair may "guide," but must not appear to "favor" the unrepresented party.
- Ask what the party's contentions are and what the party wants to prove.
- Explain the significance of references to laws and procedures.
- Summarize the witness testimony in plain and simple language.
- The Chair may also question the unrepresented party, not only to develop all the facts but also to assist the party in presenting the party's case fully.
 - As to other witnesses called by the party, the Chair may need to question them, especially when it is obvious the party does not know how to conduct a meaningful examination.
 - The Chair should also protect the party from objectionable cross-examination.
 - **REMEMBER TO REMAIN NEUTRAL AT ALL TIMES**

- There is an important distinction between the limited role of assisting the unrepresented party and the partisan role of advocating for the party.

Recesses and Adjournments

- Generally, recesses should be called only at an appropriate stage of the proceeding, e.g., lunch time, restroom breaks, close of examination of a witness, or at an appropriate time during the examination of a witness. Please note this policy can be adjusted to accommodate disabled persons or the elderly.
- Recesses should not be called at the request of a party when it may give that party a tactical advantage, e.g., disruption of an effective cross-examination of the party's witness.

Deliberations

- This is the part of the hearing when the Board members discuss their findings and make a decision.
 - No member can opt out or delegate responsibility in this phase.
- The Chair generally starts the process by asking for a review of the evidence on each issue that the Board faces.
 - Note: There may be a temptation to ask all members for their win-lose result right at the beginning. This should be avoided because all members should maintain an open mind until the group has reviewed the evidence.
- The members should review the rule(s) or the law(s) that apply.
- Members should fully articulate the reasons for their findings and conclusions.
 - Members should state what evidence supports any and all findings of fact and why they gave it weight over other evidence;
- The Hearing Panel must make clear findings of fact for all relevant legal elements.