

3/1/12

MEMORANDUM

TO: Parties to Formal Antidiscrimination Proceedings

FROM: Adjudication Division

DATE: Last Modified March 1, 2012

RE: Instructions for Litigating Antidiscrimination Claims

1. This is a de novo proceeding. This means that essentially you are starting over. The judge has no information that you gave to the Antidiscrimination Division. Everything you desire the judge to consider in making a decision on your case must be submitted again.
2. The judge is not an investigator. The judge will not contact your witnesses and interview them. The judge will not gather documents nor take any other action on your behalf. You are completely responsible to gather your own documents and witnesses and have them present at the trial for the judge to consider. Everything you desire the judge to consider in making a decision on your case must be submitted at the trial. If you do not bring witnesses or documents to the trial, the judge will not consider them.
3. This proceeding has been designated as a "formal" administrative hearing under the statute. The Utah Civil Rules of Procedure and Evidence are not directly applicable. However, they are used as general guidelines.
4. The judge will require you to authenticate and otherwise lay foundation for exhibits. Do not pre-file any exhibits; the judge will mark them as you introduce them in the course of your presentation at the hearing.
5. Hearsay is admissible. However, please consider that hearsay may not be as credible as firsthand knowledge and therefore under most circumstances it will not be given as much weight. The judge is prohibited from basing findings solely on hearsay when the facts are contested.
6. Parties should focus directly on the elements they are trying to prove. On his/her own initiative the judge can and will exclude evidence and witnesses that have a low degree of relevance or are unduly repetitive.

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7. Pleadings and documents filed with the Adjudication Division must be received and stamped by 5 pm on the deadline day. There is no allowance for mailing time - see Utah Administrative Code Rule 602-1-1(4).
8. A party who is a corporation or other business or government entity may have no more than two persons present as its representatives (in addition to the party's attorney) at the evidentiary hearing.
9. The exclusionary rule will be in effect at hearings.
10. All of the judges at the Labor Commission have a directive to move their caseload along. That means that even if the parties are both in agreement to extend this or that deadline, the judge won't necessarily grant the request. Usually the judge will only extend deadlines or continue hearings for good cause shown.
11. You are referred to Utah Administrative Code Rule 602-7-3 and URCP 37 for rules regarding discovery. The judge will ignore any motions to compel that are not filed at least 40 days before discovery cutoff. A motion to compel should comply with Utah Rules Civ. Proc. 37.
12. Motions for Summary Judgment are time consuming and discouraged. The Commissioner favors holding hearings on the merits. Motions for Summary Judgment are not to be used in lieu of discovery. Don't file an MSJ unless you are absolutely certain there is no dispute over the material facts and the law is clearly on your side.
13. Subpoenas are to be on the Commission's form and signed by the judge assigned to the case (not the attorneys). The judge will not sign subpoenas unless adequate time is given - make sure you calculate in time for service. See UAC Rule 602-7-3. The return of service is to be filed with the Adjudication Division.