SECTION 8
THE HEARING

A. PROCEDURE

When you arrive at the hearing location, inform the clerk of your presence and/or sign in. The required parties and witnesses will be called into an office-like room where the ALJ will conduct the hearing.

At the beginning of the hearing, the ALJ will identify all the parties, representatives, and witnesses and briefly outline the issues to be dealt with during the hearing. The parties, representatives, and witnesses will be required to take an oath or affirmation to tell the truth. The judge may request some witnesses to be sequestered, which means that the witness must wait outside the courtroom while other witnesses are testifying. Some judges also allow each side to make an **opening statement.**

It is important to answer questions clearly and to speak at a reasonable volume because the hearing is being recorded. It is also important to do your best to control any emotions or grudges that may remain following your job separation.

The recording of the hearing will be used to create a typed transcript for use and review during any higher levels of appeal. Additionally, any documents used at the hearing will become "exhibits," which will also be reviewed at higher levels of appeal. When you introduce exhibits for the record, clearly identify the document and state out loud what it shows.

Through this evidence and testimony, you should try and get as much of your story as clearly into the record as possible, because if you appeal the decision to the Board of Review, it is not likely that you will be able to present any more evidence or testimony.

Depending on the issues involved, and which party has the initial burden of proof, the side that goes first will have an opportunity to present their case by having their attorney/advocate/agent ask questions. This is called **direct examination.** See Sections 3-6, above, to see which sides have the initial burdens of proof for each issue.

During direct examination, your version of the facts is established through your testimony and the testimony of your witnesses. Facts are also established through documents and other physical evidence that can be introduced after a proper background and context to the document (called a "foundation") are established to show it is relevant. To introduce documents, foundation is either established by agreement of the parties or by direct examination of particular witnesses. Some ways to establish a proper foundation for admitting a document through the testimony of witnesses is to elicit testimony that the document was prepared by the employer (and is an admission of the opposing party) or that it is a business record, which was prepared and kept in the normal course of business.

During direct examination, the judge will not allow certain **"leading" questions.** These are questions that give away (or give hints toward) the answer the questioner is looking for. For example, the question, "But you didn't intend to leave the door unlocked, did you?" would probably not be allowed on direct examination. Instead, questions on direct should be more open-ended, like: "What happened next?"

During a party's direct examination, they'll also be allowed to present their **witnesses.** Witnesses may be present in person or may testify over the phone (with prior permission from the judge). They should testify regarding facts related to the case that they have personal knowledge of.

The judge may decide that the testimony of some witnesses is "cumulative," meaning that the witness is testifying to the same set of facts as witnesses who have already testified. If that happens, only the testimony of one witness will be allowed by the ALJ.

At any time during the hearing, the judge may ask questions of his/her own or have you or a witness clarify an answer. Answer just the question that is asked by the judge or your attorney.

After a witness is questioned by the party who called the witness during direct examination, then the other party has the ability to ask additional questions, known as **cross-examination**.

During cross-examination, your Advocate may try and discredit the other side's witness with evidence or testimony

that contradicts what they said during direct examination. This will help disprove any evidence used against you. The person asking the questions during cross examination is now allowed to ask the "leading" questions that are not usually permitted during direct examination. These questions usually start out with, "Isn't it true that….." - and tell a part of the other side of the story.

Throughout the proceeding, the judge will rule on objections as well as on what type of evidence can be admitted. Evidence that the ALJ determines is "hearsay" (see section below) may be excluded. After each side has had an opportunity to cross examine the opposing party's witnesses, the judge may allow each side to make a **closing statement** to go back through their side of the story, the applicable law, and why they should win. The judge will then close the hearing. Parties will usually receive the judge's decision within a couple of weeks.

B. HEARSAY

Hearsay is a statement that was made out of court by someone not present in court. Hearsay is sometimes offered at a hearing to substantiate a claim, but it will generally not be admitted into evidence. The theory behind preventing hearsay is that the person that made the statement should be at the hearing to testify about the truth of the statements. That way the person is sworn to tell the truth and they are subject to direct and cross examination. Therefore even things like notarized statements are considered hearsay at the hearings and probably won't be allowed by the judge.

Some hearsay evidence is admissible in unemployment insurance hearings – as long as it is "evidence of the type commonly relied on by reasonably prudent persons in the conduct of their affairs and carries an inherent reliability for administrative purposes." Examples include documents like drug tests, medical reports, doctor's notes, etc. Certain business records can also allowed, if the appropriate person is present to substantiate that they were kept in the ordinary course of the employer's business.

C. REVIEW

- **Show Up To The Hearing.** This is your last chance to introduce new evidence and ensure that the record will reflect your claim for UI benefits in the light most favorable to you. If possible, bring an attorney or advocate (see Section 7B above).
- **Read The Notice of Hearing Thoroughly.** The front of your Notice of Hearing will contain important information on the *who, what, when, where and why* regarding your hearing. The potential issues that will be addressed at the hearing will also be listed on the front. Other important information regarding obtaining an Advocate, interpreter, and other suggestions will be on the back.
- **Bring as many documents as possible that support your case or the testimony of a witness.** Documents can include doctor's notes, layoff notices, relevant letters or correspondence, written warnings, etc.
- During the hearing, **speak loudly, clearly and always politely.** The hearing will be recorded and transcribed.
- **Always know who has the burden of proof** and what must be done to meet this burden because whoever does this most successfully will ultimately win the case.
- It is important that you and your witnesses **speak truthfully and genuinely.**
- **Do NOT rely on HEARSAY!**