

Hearing on the Merits Checklist (Stage Three)

<p>This document provides a checklist of actions and decisions that need to be completed during the full Hearing on the Merits (“HOTM”).</p> <p>These items must be completed in order for the Commission to decide whether or not a violation has occurred and in order to determine the appropriate penalty to be assessed to any violations found.</p>	
<p><input type="checkbox"/> Item 1 Setting the date of the Hearing on the Merits (Executive Director)</p> <p>See page 23 of the Guidebook</p>	<p>The Executive Director (“ED”) will <u>schedule the hearing</u> on the merits (“hearing”), and deliver written notice of the date, time, and location of the hearing to each respondent at least 30 calendar days prior to the commencement of the hearing.</p> <p>The ED should allow sufficient time to address preliminary matters and should give the parties sufficient time to submit their hearing briefs under the deadlines contained in the Enforcement Regulations (see Item 2).</p>
<p><input type="checkbox"/> Item 2 Hearing Briefs (Parties)</p> <p>See pages 22-23 of the Guidebook</p>	<p>Parties must follow the <u>timeline</u> when submitting their Hearing Briefs:</p> <ul style="list-style-type: none"> • Hearing Brief – Executive Director: due 30 calendar days prior to the hearing • Response Brief – Respondent(s): due 15 calendar days prior to the hearing • Reply Brief – Executive Director: due 5 calendar days prior to the hearing <p>Briefs must include legal arguments, evidence, and witnesses to be presented at the hearing. Copies must be delivered to the Commission and all parties, using the form and method established during the preliminary matters phase.</p>
<p><input type="checkbox"/> Item 3 Hearing on the Merits (Full Commission or Hearing Officer)</p> <p>See pages 24-31 of the Guidebook</p>	<p><u>Hearing Officer</u></p> <p>The Commission may choose to delegate authority to preside over a hearing to a hearing officer. The Commission may make this delegation at the time it appoints an Assigned Commissioner for preliminary matters or at any other point before the Hearing commences. If it does not delegate this authority, the entire Commission will preside over the hearing.</p> <p><u>General Hearing Protocols</u></p> <p>The Commission or Hearing Officer should ensure that all general protocols are followed throughout the hearing process, including ensuring that hearings are open to the public and recorded; following the California Administrative Procedure Act’s rules of evidence; and providing access to a translator.</p>

	<p><u>Presentation of the Case</u></p> <p><i>Opening/Closing Argument:</i> Each party is allowed up to 15 minutes (combined) to offer opening and closing arguments, with 3 minutes for rebuttal. Parties should follow the order established during the preliminary matters phase.</p> <p><i>Case in Chief:</i> Parties are not subject to a time limit when presenting evidence, including documents and witness testimony.</p> <p><i>Exhibits:</i> Parties may use exhibits to introduce evidence during the hearing, including emails, objects, recordings, and photographs. Unless stipulated by the parties, the Commission or Hearing Officer must determine whether each exhibit is admissible. Parties and the Commission should follow rules established during the preliminary matters phase, including regarding the authentication of exhibits.</p> <p><i>Witnesses:</i> Parties may call witnesses to offer testimony. Witnesses will be examined via direct, cross, and re-direct examinations, followed by Commissioner questions of the witnesses. Witnesses must be sworn in by the Commission. Parties and the Commission should follow other rules established during the preliminary matters phase, including regarding time limits and potential video testimony.</p>
<p><input type="checkbox"/> Item 4</p> <p>Findings and Orders (Full Commission or Hearing Officer)</p> <p>See pages 31-34 of the Guidebook</p>	<p><u>Findings</u></p> <p>The Commission must vote on whether to find that a violation has occurred for each count alleged in the ED’s hearing brief. Any finding of violation must:</p> <ul style="list-style-type: none"> • be supported by findings of fact and conclusions of law, • be based exclusively on the record of proceedings, and • take place within 45 days of either the hearing or receipt of the report and recommendation. <p><i>Hearing Officer:</i> If a Hearing Officer presided over the hearing, he or she must submit a report and recommendation to the entire Commission within 30 days of the hearing. The recommendations are not final until approved by the Commission, which must meet in open session to review and vote on Hearing Officer’s report and recommendations.</p> <p><u>Orders</u></p> <p>If the Commission finds any violations of law, it must then vote to issue orders and penalties, which may include a monetary penalty, remedial action, forfeiture of contributions or other undue benefits, or any other relief the Commission deems appropriate and within its authority. The Commission should follow the timeline established during the preliminary matters phase.</p>

	<p><i>Default Orders:</i> The Commission may issue a default finding and default order if all notice procedures have been followed and the respondent(s) failed to appear at the hearing. The Commission should follow procedures established during the preliminary matters phase.</p>
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