281—6.12 (17A) Appeal hearing.

6.12(1) *On stipulated record.* Upon the written agreement of the parties, the transcript of the record and proceedings as certified by the proper official and any other documents mutually stipulated may become the evidentiary basis for the hearing on appeal. In the event that the hearing is to be conducted on the stipulated record, the following procedures shall be followed:

a. At the established time, the name and nature of the case are announced by the administrative law judge. Inquiries shall be made as to whether the respective parties or their representatives are present.

b. When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the hearing may proceed. When any absent party has been properly notified, this fact shall be entered into the record. When notice to an absent party has been sent by certified mail, return requested, the return shall be placed in the record. If the notice was sent in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the administrative law judge.

c. The appeal hearing on stipulated record is nonevidentiary in nature. No witnesses will be heard nor evidence received. The controversy will be decided on the basis of the stipulated record and the arguments presented on behalf of the respective parties. The parties shall be so reminded by the administrative law judge at the outset of the proceedings.

d. Illustrative materials such as charts and maps may be used to illustrate an argument, but may not be used as new evidence to prove a point in controversy.

e. Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

f. The appellant shall present the first argument. The appellee shall follow with argument and rebuttal of the appellant's argument. A third party who was a party in the initial proceeding but not either appellant or appellee may, at the discretion of the administrative law judge, be allowed to make remarks. The appellant may then rebut the proceeding arguments but may not introduce new arguments.

g. Appellant and appellee shall have equal time to present their arguments and appellant's total time shall not be increased by the right of rebuttal. The time limit for argument shall be established by the administrative law judge and shall in most instances be limited to 30 minutes for each party.

h. At the conclusion of arguments, each party shall have the opportunity to submit written briefs or arguments, or additional written briefs if they have already done so. Any party submitting a written brief or argument must deliver a copy to all other parties, preferably in advance of the appeal hearing. In the event that all parties have not been furnished a copy of another party's brief at least two days in advance of the appeal hearing, each party shall be afforded the opportunity to submit reply briefs within ten days of the conclusion of the appeal hearing. The opportunity to submit reply briefs may be waived by any party and shall be entered into the record.

i. The appeal hearing is then closed upon order of the administrative law judge.

6.12(2) *Evidentiary hearing.* When the parties do not agree to a stipulated record, the following procedure shall be followed:

a. The appellant may begin by giving an opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence the appellant proposes to introduce and the conclusions which the appellant believes the evidence will substantiate.

b. With the permission of the administrative law judge, a third party directly involved in the original proceeding but neither appellant nor appellee may make an opening statement of a general nature.

c. The appellee may present an opening statement of a general nature which may include the type and nature of evidence proposed to be introduced and the conclusions which the appellee believes the evidence will substantiate. The appellee may present an opening statement following the appellant's opening statement, if any, or may reserve opening for immediately prior to its case-in-chief.

d. The appellant may then call witnesses and present other evidence.

e. Each witness shall be administered an oath by the administrative law judge. The oath shall be in the following form: "Do you solemnly swear or affirm that the testimony or evidence which you are

about to give in the proceeding now in hearing shall be the truth, the whole truth, and nothing but the truth?"

f. The appellee may cross-examine all witnesses and may examine and question all other evidence.

g. Upon conclusion of the presentation of evidence by the appellant, the appellee may call witnesses and present other evidence. The appellant may cross-examine all witnesses and may examine and question all other evidence.

h. The hearing panel members may address questions to each witness at the conclusion of questioning by the appellant and the appellee.

i. At the discretion of the administrative law judge, either party may be permitted to present rebuttal witnesses and additional evidence of matters previously placed in evidence. No new matters of evidence may be raised during this period of rebuttal.

j. The appellant shall make a final argument for a length of time established by the administrative law judge, in which the appellant may review the evidence presented, the conclusions which the appellant believes most logically follow from the evidence and a recommendation of action to the hearing panel.

k. The appellee may make a final argument for a period of time equal to that granted to the appellant in which the appellee may review the evidence presented, the conclusions which the appellee believes most logically follow from the evidence and a recommendation of action to the hearing panel.

l. At the discretion of the administrative law judge, a third party directly involved in the original proceeding but neither the appellant nor appellee may make a final argument.

m. At the discretion of the administrative law judge, either side may be given an opportunity to rebut the other's final argument. No new arguments may be raised during rebuttal.

n. Any party may submit written briefs. Written briefs by nonparties may be accepted at the discretion of the administrative law judge. Any party submitting a written brief or argument shall deliver a copy to all other parties, preferably in advance of the appeal hearing. In the event that all parties have not been furnished a copy of another party's brief or argument at least two days in advance of the appeal hearing, each party shall be afforded the opportunity to submit reply briefs within ten days of the conclusion of the appeal hearing. The opportunity to submit reply briefs may be waived by a party and the waiver shall be entered into the record.

o. Rules of evidence.

(1) Because the administrative law judge must decide each case correctly as to the parties before the panel and the administrative law judge must also decide what is in the public's best interest, it is necessary to allow for the reception of all relevant evidence which will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative, and relevant.

(2) Irrelevant, immaterial, or unduly repetitious evidence should be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The hearing panel shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

(3) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(4) Witnesses at the hearing, or persons whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

(5) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the hearing panel. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced.

(6) The hearing panel's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(7) No decision shall be made except upon consideration of the whole record or portions that may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.

6.12(3) *Telephone hearings.* Upon agreement of the parties, a hearing may take place by telephone conference call.