

## PREPARING FOR HEARING

A production of the Office of Administrative Hearings.

It is important to us at the Office of Administrative Hearings that we make our process as accessible and nonthreatening as possible. Our procedures are streamlined and common sense. Our staff is friendly and you will be welcomed when you come for your hearing. Our hearing rooms are comfortable and designed to put you at ease.

It is important to us that our process be as fair as possible. Our Administrative Law Judges are independent of any agency that appears before us. The Judge will decide a case based solely on the evidence presented by each party. The Judge will give you a full opportunity to present your case.

But it is up to you to present your case.

It is natural to be nervous about appearing at a hearing, but following the pointers on this video will make your presentation more effective and your experience more enjoyable.

We have prepared segments dealing with Direct Examination, Cross-Examination, Opening Statement, Closing Argument, Exhibits, Making Objections, The Record, Your Experience at the OAH.

Review these segments often when you prepare your case. Also, review the many articles that appear on our Website dealing with these and other points about the hearing process.

Let's begin.

#### **DIRECT EXAMINATION**

How do you know what kinds of questions to ask in your case?

Make a list of everything that you want the Judge to know about your case. You should think about what your dispute is about. What do you have to prove or defend against?

Identify who you will bring to the hearing. Is there a witness who has seen, heard, or done something in your case? Is there a witness with special expertise? Does the witness have an opinion that you want the Judge to hear?

Choose your best witnesses. Having many people saying the same thing is not useful.

Decide which witness can give the Judge which

piece of information. Make a list, matching the person with the facts that the person knows.

Write questions for each fact that you want that witness to testify about. When in doubt, ask who, what, when, where, why, and how.

Here is an example.

This witness is the building inspector. The building inspector has made certain observations and formed an opinion based on what she saw.

Note how the party elicits responses to three basic questions.

- Who is the witness?
- What did the witness do?
- What is the opinion of the witness?

\* \* \* \*

COMPLAINANT: Please state your name.

THE WITNESS: My name is Wilma Handell.

I'm a building inspector.

COMPLAINANT: What is a building inspector trained to do?

THE WITNESS: I conduct building inspections for the agency.

COMPLAINANT: Did you do something in this case?

THE WITNESS: Yes, I did. I inspected the

floor.

COMPLAINANT: Based upon your inspection, do you have an opinion about the workmanship?

THE WITNESS: Yes. I believe that the floor wasn't done properly.

\* \* \* \*

Here is another example.

This witness is a doctor. This witness has an opinion that is based on her expertise and what she did in the case.

Note how the party sets up asking the witness her opinion by establishing:

- Her expertise;
- The basis for the opinion; that is, what facts she examined or took into account.

\* \* \* \*

COMPLAINANT: Can you please state your name for the record.

THE WITNESS: My name is Dr. Jane.

COMPLAINANT: And what is your background?

THE WITNESS: I'm an orthopedic surgeon.

COMPLAINANT: And how are you involved in this case?

THE WITNESS: I'm your doctor and I've been treating you for two years.

COMPLAINANT: Did you review any of your records in preparation for this hearing?

THE WITNESS: Yes, I have. I have examined the records provided to the agency.

COMPLAINANT: And do you have an opinion whether or not I need crutches?

THE WITNESS: Yes, I do. I believe they're medically necessary. You can't walk without them.

\* \* \* \*

Avoid testifying while asking questions. You should never provide the answer to the witness. You should never testify when you should be asking questions.

Here is an example. Note closely:

- When the party begins to testify;
- How an objection was made by the other party;
- How the Judge rules.

\* \* \* \*

COMPLAINANT: Please state your name for the record.

THE WITNESS: My name's Barbara Smith, and I work for the Respondent.

COMPLAINANT: We kept calling you. We left you messages. Seven months went by; you never returned our calls. And you never came back and fixed the floor.

COUNSEL: Objection. He's testifying, not

asking the questions.

ADMINISTRATIVE LAW JUDGE: That objection is sustained. Your questions are not testimony and only the witness can testify. You need to ask nonleading questions; open-ended questions. That's who, what, where, and when to the witness to allow me to understand what his knowledge is, not yours. If you'd like to testify, you may do so later.

#### CROSS-EXAMINATION

What is cross-examination? Cross-examination is the chance to ask questions of the other side's witness. In cross-examination, you can challenge the witness's knowledge, opinion, perception, motive, memory, bias, credibility.

Here is an example. Note how the party:

- Challenges the basis for the opinion;
- Challenges expertise;
- Challenges memory;
- Challenges opinion.

\* \* \* \*

THE WITNESS: I am the doctor for the agency. I reviewed the records in this case.

COMPLAINANT: Isn't it true that you've never met me before?

THE WITNESS: Yes, that's correct. I examined your records that were provided to the agency.

COMPLAINANT: Isn't it true that you don't have any specialized training in orthopedics?

THE WITNESS: No. I don't specialize in orthopedics, but I reviewed the records with a colleague who is an orthopedic specialist.

COMPLAINANT: But didn't you review these records over a year ago?

THE WITNESS: Yes, that's true. But I reviewed my notes so they're fresh in my mind.

COMPLAINANT: Why don't you think I need crutches, if my doctor does?

\* \* \* \*

What to avoid in cross-examination? Don't repeat the same type of question.

\* \* \* \*

COMPLAINANT: Have you ever talked to my doctor?

THE WITNESS: No, I haven't.

COMPLAINANT: You haven't even met my doctor before; have you?

THE WITNESS: No, I haven't.

COMPLAINANT: You can't say if my doctor's opinion is true because you've never even talked to him;

have you?

COUNSEL: Your Honor, I object. She already answered the question.

ADMINISTRATIVE LAW JUDGE: The objection is sustained.

\* \* \* \*

Don't interrupt the witness.

\* \* \* \*

COMPLAINANT: I want to know, have you ever met my doctor before?

THE WITNESS: No, but I --

COMPLAINANT: You really haven't even seen my doctor before; have you?

THE WITNESS: No. But we talked on the --

COMPLAINANT: You can't say if my doctor's opinion is true because you've never even seen my doctor.

THE WITNESS: Well, I --

COMPLAINANT: Well, have you ever seen my doctor?

COUNSEL: Your Honor, I object. He's not letting the witness finish testifying.

ADMINISTRATIVE LAW JUDGE: That objection is sustained.

\* \* \* \*

Don't argue with the witness.

\* \* \* \*

THE WITNESS: I'm the doctor for the agency. I reviewed the case.

COMPLAINANT: Doctor -- is that what you call yourself? You don't even know what you're talking about. You haven't done anything in this case at all. You're a big liar. Shame on you. I don't believe anything you said. Nothing you said is true.

ADMINISTRATIVE LAW JUDGE: This is not proper cross-examination. It is never proper to call a witness names or to argue with the witness. The purpose of cross-examination is to challenge the witness's knowledge, opinion, motive, perception, bias, or memory.

If you disagree with what a witness says, you don't argue with them. You say contrary testimony for your case in chief. You may testify to the contrary or you may present an expert witness to testify to the contrary, but you never argue or call a witness names on cross-examination.

\* \* \* \*

What if you disagree with the witness's testimony? Disagreement with a witness can only come in the form of contrary evidence.

**OPENING STATEMENTS**

What is an opening statement? It's the chance to give the Judge a brief preview of your case. It's not the time to present evidence. Simply tell the Judge what your case is about.

This opening statement gives the Judge a brief preview of the case.

\* \* \* \*

RESPONDENT: The complaint alleges that I have violated the State's contracting laws, and I have four witnesses who will address the workmanship issues in this complaint. In addition, I have two other witnesses who will address why we believe we were denied access to the job site.

\* \* \* \*

Compare this opening statement. Does this tell the Judge anything about the case?

\* \* \* \*

COMPLAINANT: I didn't want to be here. I called him three times. I'm a nice person. I do volunteer work. I have a cat. I don't want his license to be disciplined. He just hasn't treated me right, and I don't like it. I'm here on principal. I don't want anyone else to be treated like this again.

ADMINISTRATIVE LAW JUDGE: What I need you

to do in an opening statement is to provide me your position on the case, the issues in the case, and also to give me a brief overview of what you think your evidence will prove.

### CLOSING ARGUMENTS

What is a closing argument? It should briefly summarize the evidence presented during your hearing. It should explain why the Judge should decide the case in your favor.

Here is an example of a proper closing argument.

\* \* \* \*

COMPLAINANT: I believe that the evidence proved that the crutches that I requested were medically necessary. I submitted letters from my doctor and testimony from several witnesses. For those reasons, I feel like my case has been proven.

\* \* \* \*

You may not present new evidence during your closing argument.

\* \* \* \*

COMPLAINANT: You know, I failed to mention this during the hearing, but I have another doctor who says that I need these crutches. He is willing to state

that if I don't have these crutches that my legs will be permanently damaged. And I have a letter from him. Here it is.

COUNSEL: I object. He didn't mention that during the hearing.

ADMINISTRATIVE LAW JUDGE: The objection is sustained. Closing argument is not the time to present new evidence. Closing argument is the time to summarize your best evidence, tell me why you think you should prevail, and what it is that you want me to do.

\* \* \* \*

In closing, after all is said and done, remind the Judge what was said and done.

Here are two good examples of a closing argument.

\* \* \* \*

COMPLAINANT: The evidence showed that the Respondent did not do a good job installing my floor; and the inspector said that when he testified. From the photos I submitted to you, you can see where the workmanship is bad. I want the Respondent's license to be disciplined, because I proved that he did not do a good job on my floors.

RESPONDENT: The Complainant said that we didn't install the floor correctly, but our expert

testified that the floor was installed properly. Our expert has been in business for 22 years and we think you should rely on his expertise. For that reason, we don't think that our license should be disciplined.

### EXHIBITS

It is essential that you bring copies of exhibits:

- For the Judge;
- For the opposing party;
- For yourself.

Note in this next example that the party has copies for the Judge and the other party. Ask yourself how you would like it if a party began referring to exhibits without your having a copy to refer to.

\* \* \* \*

COMPLAINANT: Your Honor, I would like to have these exhibits marked for identification.

ADMINISTRATIVE LAW JUDGE: That's fine, Mr. Walker. Do you have copies for the Court and for the Respondent?

COMPLAINANT: Yes, Your Honor. May I approach?

ADMINISTRATIVE LAW JUDGE: Yes, you may. Thank you, Mr. Walker.

\* \* \* \*

Here is a good example of a bad example. Don't let what happens next happen to you.

\* \* \* \*

COMPLAINANT: Your Honor, I would like to have these exhibits marked for identification.

ADMINISTRATIVE LAW JUDGE: That's fine, Mr. Walker. Do you have copies for the Court and for the Respondent?

COMPLAINANT: I'm sorry, Judge. I don't have any copies.

ADMINISTRATIVE LAW JUDGE: Mr. Walker, how did you expect for myself and the Respondent to follow along your presentation without having copies of your exhibits?

COMPLAINANT: I'm sorry, Judge. I didn't think about that.

ADMINISTRATIVE LAW JUDGE: Well, Mr. Walker, I'm going to give you time to think about that on your way over to Kinko's. We will recess for one hour while Mr. Walker makes copies of his exhibits.

Mr. Walker, I will expect you back here within that time with copies for myself and for the Respondent. I may, depending on how the proceedings go, limit your time based on this delay in the proceedings.

**SIZE OF EXHIBITS**

Exhibits must fit into a standard 8 1/2 x 11 folder. Large, unwieldy exhibits may not be accepted. Do not bring in exhibits which may be dangerous or which contain biohazardous materials.

In this next example, the Judge is confronted with a slightly unwieldy exhibit.

\* \* \* \*

COMPLAINANT: Your Honor, I want to introduce this piece of lumbar from my floor.

ADMINISTRATIVE LAW JUDGE: Mr. Walker, let me explain how we handle evidence of that nature. I am only able to accept evidence that is able to fit within this file folder, but what we can do is use it as demonstrative evidence; that is, you can show it to me, you can show it to the Respondent. We will not mark it as an exhibit and it will not be admitted into the record of this matter.

**ORIGINAL EXHIBITS**

Do not submit original exhibits to the Judge. Do submit clear, legible copies.

In this next example, does the party really want to do what she says she does?

\* \* \* \*

COMPLAINANT: Your Honor, I want to give you the original check that I paid the Respondent.

ADMINISTRATIVE LAW JUDGE: Ms. Rogers, I am willing to accept that check into evidence, but before I do, let me explain something to you. Once it is admitted into the record of this matter, it is going to stay in the record until this case is appealed or the time for appeal has run. Do you understand that?

#### INTRODUCING AN EXHIBIT

How do you know what exhibits to introduce? Will it help decide the issues in dispute?

How should you choose exhibits? Choose the exhibit that best represents what you want the Judge to know. Avoid presenting multiple exhibits showing the same thing.

In this next example, the Judge explains the procedure for marking and admitting exhibits.

\* \* \* \*

COMPLAINANT: Judge, I'd like to show you this exhibit.

ADMINISTRATIVE LAW JUDGE: Mr. Walker, let me explain how we're going to handle that.

First, we'll mark the exhibit and share a copy with the Respondent. I will give it back to you, and

then allow you to present evidence explaining to me what the exhibit is, how it relates to the case, and after that is done, you can offer the exhibit into evidence.

At that time, the Respondent will have an opportunity to object. If the objection is made, I will rule on the objection after argument, and that is how we will proceed with all of the exhibits in this case.

#### **LAYING THE FOUNDATION**

You must lay the proper foundation for an exhibit in order to have it admitted into evidence.

Think of "foundation" like the foundation of a building. If you don't build the foundation properly, the building will fall. Building the foundation for an exhibit is simple, but very important.

How do you lay the foundation to have an exhibit admitted? Answer two questions during the hearing:

- What is the exhibit?
- How does it relate to your case?

You must show the exhibit to the correct witness. Remember, you must show the exhibit to a witness who knows about the exhibit. A witness should be able to say what the exhibit is and how it relates to the case. If a witness doesn't know about the exhibit, the witness

can't testify about it.

In this next example, the party properly lays the foundation for an exhibit.

\* \* \* \*

COMPLAINANT: Your Honor, may I approach the witness?

ADMINISTRATIVE LAW JUDGE: Yes, you may.

COMPLAINANT: I've handed you a document. Do you recognize it?

THE WITNESS: Yes, I do.

COMPLAINANT: What is it?

THE WITNESS: It's the letter that I wrote to the Respondent, telling him about the job site inspections.

COMPLAINANT: Is there a date on the letter?

THE WITNESS: Yes.

COMPLAINANT: What is the date?

THE WITNESS: December 27th, 2003.

COMPLAINANT: Is there a signature on the letter?

THE WITNESS: Yes. That's my signature.

COMPLAINANT: Judge, I move for admission of Exhibit A.

ADMINISTRATIVE LAW JUDGE: Any objection to the admission of Exhibit A from Respondent?

Seeing none, Exhibit A is admitted.

### MAKING OBJECTIONS

The Judge will always ask the other party if there is any objection to an exhibit and the other party can object.

You can object to either an exhibit or a question. There must be a reason for your objection. Disagreeing with the other party or disliking the exhibit is not a reason to object.

You must have a legal reason for your objection. The most common legal objections are:

- Lack of foundation;
- and, Lack of relevance.

What is wrong with this party's attempt to question the witness about the exhibit?

\* \* \* \*

COMPLAINANT: I've shown you Exhibit A. Do you recognize it?

THE WITNESS: No. I didn't write this letter. I've never seen it before.

COMPLAINANT: Judge, I move to admit this letter into evidence.

COUNSEL: I object, Your Honor. This witness can't testify about this letter. She didn't write

it and she's never seen it before.

ADMINISTRATIVE LAW JUDGE: The Respondent is correct, Mr. Walker. This witness testified that she's never seen the letter. She didn't write it; she's not familiar with its contents. That testimony is insufficient to provide a basis to admit the letter into evidence, therefore, the objection is sustained.

\* \* \* \*

In the last sequence, there was no foundation for the exhibit. No evidence was presented to show:

- What the exhibit is;
- or, How it relates to the case.

Is the party in the next sequence making a proper objection?

\* \* \* \*

ADMINISTRATIVE LAW JUDGE: Mr. Walker, do you have any objection to the letter that has been marked as Complainant's Exhibit A?

COMPLAINANT: Yeah, I object. It's a lie. It doesn't -- I can't agree with anything this letter says.

ADMINISTRATIVE LAW JUDGE: Mr. Walker, the fact that you may disagree with the contents of the letter is not a proper basis for an objection. The issues are whether or not the letter is relevant to this case and

whether it is sufficiently reliable for me to consider it in my determination of the issues at hand, therefore, the objection is overruled.

\* \* \* \*

What is wrong with this party's attempt to move his exhibit into evidence?

\* \* \* \*

COMPLAINANT: Judge, I have a photograph that shows the floor is hollow-sounding.

RESPONDENT: I object. You can't tell how a floor sounds from a photograph.

ADMINISTRATIVE LAW JUDGE: The Respondent is correct, Mr. Walker. A photograph would not be able to show me that the floor is hollow-sounding, therefore, the objection is sustained.

#### **IRRELEVANT**

Could the exhibit offered in the last sequence have helped the Judge decide the case? Since it could not have, the exhibit was irrelevant and properly rejected.

In this example, a party asks the Judge to admit a letter dealing with the wood floor in a different home than in dispute.

\* \* \* \*

ADMINISTRATIVE LAW JUDGE: Mr. Walker, do

you have any objection to the admission of the letter that has been marked as Complainant's Exhibit A?

COMPLAINANT: I object. This letter is not relevant. It's about something entirely different. It's about a house -- a wood floor that was put in a house more than two years ago.

ADMINISTRATIVE LAW JUDGE: Mr. Sanchez, I'm going to sustain the objection. As I see it, this letter does not pertain to any matter at issue in this case, and therefore, is not relevant to this proceeding.

**IRRELEVANT**

In the last sequence, the exhibit didn't have anything to do with the case.

In this next example, a party asks the Judge to admit a letter dealing with the wood floor in a different part of the home than in dispute.

\* \* \* \*

ADMINISTRATIVE LAW JUDGE: Mr. Walker, do you have any objection to the admission of the letter that has been marked as Complainant's Exhibit A?

COMPLAINANT: I object. The letter is not relevant. It deals with the floor -- wood floor in the kitchen. In this case, we're only dealing with the wood floor in the family room.

ADMINISTRATIVE LAW JUDGE: I'm going to sustain the objection. The only issue in this matter pertains to the flooring in the family room. For that reason, any evidence pertaining to the flooring in a separate part of the house would not be relevant to this case and will not be admitted into evidence.

#### **IRRELEVANT**

In the last sequence the exhibit had nothing to do with the issue in dispute.

#### **THE RECORD**

What is the record? The record has two parts:

- The audio recording of your hearing;
- All of the exhibits that have been entered into

evidence.

How is the audio recording made? The Judge records everything that is said during your hearing on a digital recorder. This is a real-time digital recording and it is available to download on your computer.

Why is the audio record important? It reminds you what happened in your hearing. The audio record is important if you ever appeal your case. This is how another Judge will know what was said and done during your hearing.

How do you make a good audio record? Always give an audible response to a question. This means answering yes or no. Don't simply shake your head or shrug your shoulders. Avoid using "uh-huhs" or "uh-uhs." Don't chew gum.

\* \* \* \*

COMPLAINANT: Did you install the floor?

THE WITNESS: Uh-huh.

COMPLAINANT: Was there anything wrong with it when you left?

THE WITNESS: Uh-uh.

COMPLAINANT: Did you clean up the job when you left?

THE WITNESS: (Indiscernible.)

COMPLAINANT: What do you think is wrong with the floor now?

THE WITNESS: (Indiscernible.)

ADMINISTRATIVE LAW JUDGE: Ma'am, your responses need to be verbal. You've been shrugging your shoulders, you've been uh-uh, uh-huh. We're maintaining a record to preserve this testimony and you'll need to give a verbal response so that the record will reflect an actual answer.

\* \* \* \*

If you are making a gesture with your hand or

pointing something out, make sure you describe what you are doing. Make sure your witnesses follow these same rules.

Close your eyes in this next sequence and ask yourself how effective the witness is in an audio record.

\* \* \* \*

COMPLAINANT: Could you describe the floor?

THE WITNESS: Sure. The planks were this big; the floor was on a slope like this; there was a slight wave in the floor like this; over there, there was a gap like this big; over there, there was another gap like this big.

ADMINISTRATIVE LAW JUDGE: Ma'am, excuse me for interrupting, but you've been using hand gestures to show directions, and what I need for you to do, because we're digitally recording the hearing, is to give me some type of a measurement, as far as dimensions, and also talking directions. Are you going to the left? Are you going to the right? Are you going front? Are you going back? It's important that we have that accurate testimony so that we can preserve the record.

**YOUR EXPERIENCE AT THE  
OFFICE OF ADMINISTRATIVE HEARINGS**

The Office of Administrative Hearings will maintain a professional and pleasant environment. Each party will have its chance to be heard. The Judge will not allow any person to be abusive or disrespectful.

But quite aside from just good manners, consider this next sequence. Ask, How does this help a person's case?

\* \* \* \*

COMPLAINANT: Judge, I believe the evidence has shown that I have --

RESPONDENT: I have listened to this all day. You're a liar. Not only are you a liar, but you also bring in all these other liars with you. Your whole case is a fabrication of the truth.

COMPLAINANT: You're the one that's lying.

ADMINISTRATIVE LAW JUDGE: Gentlemen, that will be enough. Parties should be able to present their respective cases without the other party being argumentative or disruptive. Such behavior will not be tolerated. If such behavior continues in the future, the offending party will be excluded from the hearing room. If a party is excluded from the hearing room, the case will still proceed, but the party excluded will not be

permitted to finish its case.

\* \* \* \*

Disrespectful or disruptive behavior is not tolerated. If a person is disrespectful or disruptive, a person may be asked to leave the hearing room. If this occurs, the hearing will proceed in the person's absence.

#### **IN CONCLUSION**

Remember that preparation is key. Review this video while preparing.

Remember to make copies of your exhibits for the Judge and the other party.

Choose your best witnesses.

Think about what questions you will need to ask your witnesses to allow them to testify or to admit an exhibit.

Treat others as you would want to be treated at hearing.

We hope that your experience at the Office of Administrative Hearings is a pleasant one. Good luck.