An Open Letter to the Administrative Law Judges

As we begin our ninth year at the OAH, I can only thank you for the efforts you have given to your cases and the parties who have come before you. My words are in many ways distillations of what I have seen in you. We can never be too mindful of the effect we can have on parties. We can never know enough, there will never be an end to the refinement that only experience, and yes, mistakes, can give us. We must be less distressed about an incorrect citation to the law, or a mistaken finding of fact. Those can be cured. It has been said that people will often not remember what we say, but they will remember how we made them feel. Let our greatest distress be for those times that we could have been more patient, chosen our words a little better, explained something yet again to a confused party.

When I was a pro tem judge appearing in various courts throughout the Phoenix area, I created a simple ceremony of sorts that I used when I put on the black robe. I reminded myself that putting on that robe was a small death, a temporary setting aside of myself: my needs, my wants or preferences, my prejudices. I reminded myself that I had an obligation to the parties to do nothing, by word or by deed, to undermine the trust that the robe represented. It didn’t matter how I felt, who I liked, what I was used to, or how sophisticated the parties were.

This moment of recollection was born not out of innate judging skills so much as the desire to measure up to the standards that I had seen in judges that I had admired. I was designed to be user-friendly, accessible to the unrepresented, efficient, so that whatever ill could be addressed with the minimum of stress and trauma, personal, financial or otherwise.

Central to OAH’s effort in this regard is the attention that we place on the character and demeanor of the Administrative Law Judge. It is with this in mind that I address my comments in this issue to the Administrative Law Judges of the OAH.

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As Administrative Law Judges of the Office of Administrative Hearings, you do not wear robes. Instead, you hold yourselves accountable through the evaluations that you bring to the attention of the parties at your hearings. Even more so than any symbolic representation of your positions, they flatly challenge you to measure up to explicit expectations of a judge.

Socrates said that there are four things important for a judge: to listen patiently, to speak wisely, to deliberate soberly and to decide impartially.

**To decide impartially**
It has been said that the opposite of love is not hate, but disinterest. Dispassion should not be mistaken for impartiality, since excessive bloodlessness can rob the judge of the necessary impetus to word a decision so as to respect all parties as people with real live interests, emotions and sensitivities. The ideal judge is one who is impartial, not because dispassionate or uninterested, but because equally passionate for and interested in the needs of both parties.

Consistent with these principles, you ask parties to reflect on your attentiveness, your effectiveness in explaining the hearing process, your use of clear and neutral language, your impartiality, and your effectiveness in dealing with the issues of the case. You ask whether they have been given sufficient space, free from distractions, and whether they have had their questions responded to promptly and completely. You want to know whether they have been treated courteously by all.

As any judge must necessarily admit, we do not always measure up to our standards. We are a human institution. However, we become increasingly refined as we remain open, approachable and teachable. Citizens would be heartened to know how vigorously we strive to receive comment and how seriously we take it when we receive it. Let us all renew our commitment to provide full, fair, impartial, independent and prompt hearings to all who come before us. For my part, I promise to support you in your continuing education, listen when you have concerns, and challenge you to meet the highest levels of public service that you can provide.

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**Open Letter**
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appeared before for many years as a prosecutor. It was born of the knowledge that I could be abrupt if I was not careful. That I could wrongly assume that the parties knew more about the process than they did; that I could forget that the parties often were less comfortable than they appeared, that judges can look very scary, and that people want to believe that win, lose or draw, they were given a fair shake to explain their side before someone they could respect. Therefore, I must speak more slowly, react less frequently, take a little more time to explain, express compassion, and be aware of my expressions.
2042 Cases Filed October 1, 2004 - December 31, 2004

*Note: Appealable Agency Actions are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. Contested Cases involve actions yet to be determined by an agency. An example would be proposed discipline on a professional license with the possibility of suspension or revocation. Parties are entitled to a hearing before the OAH prior to the agency acting.
Evaluations of OAH Services

Note: The four major groups of those who responded are: represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The evaluations are filled out immediately after the hearing, and the evaluations are not disclosed to the ALJ involved. They are used by management to improve the OAH process and do not affect the decisions issued.

Questions:
1. Attentiveness of ALJ
2. Effectiveness in explaining the hearing process
3. ALJ’s use of clear and neutral language
4. Impartiality
5. Effectiveness in dealing with the issues of the case
6. Sufficient space
7. Freedom from distractions
8. Questions responded to promptly and completely
9. Treated courteously

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