

Section 1:
**Components of an Administrative
Hearing**

Hearing Officer

The hearing officer is an individual who is, by law, deemed to be impartial and who presides over the hearing. This person may also be known as the judge, the hearing examiner, or the review examiner, among other things. The hearing officer hears evidence, records it (usually by tape recorder) and decides the case. S/he may be passive or active during the hearing, may be well versed in the law or may be ignorant of or uninterested in it, and will generally be under time constraints. In order to receive a favorable decision for your client, you must persuade the hearing officer of the correctness of your position. Whenever possible, get as much information about the hearing officer assigned to your case as you can prior to the hearing. During the hearing, you should note the hearing officer's style of conducting a hearing and whether you were able to control any aspect of the hearing and/or the hearing officer.

Opening Statement

A brief statement of your client's position in the case, delivered at the beginning of the hearing, is called an opening statement. The opening statement sets the stage and frames the issues for the hearing. It should be clear, concise and direct. Note that not all hearing officers allow an opening statement.

Direct Examination

Direct examination consists of the questioning of your client and your client's witnesses by you to elicit testimony about your client and the circumstances that brought about the hearing. Most cases are won by careful direct examination, the primary objective of which is to prove a *prima facie* case. However, don't limit direct examination to the bare bones of a *prima facie* case. You must also persuade the hearing officer to resolve disputed issues in your client's favor. This requires that the facts and their interpretation are presented in a light most favorable to your client and in as interesting and compelling a fashion as possible. Certain factors should be considered in preparing a direct examination as you remember that this is your major opportunity to make a complete record:

- * Covering all of the essential legal and factual points
- * Presenting an orderly, coherent story in a way that is persuasive
- * Beginning and ending the testimony on a strong point
- * Having the witness make a good oral and visual appearance
- * Preparing the witness properly
- * Using questions that don't lead the witness

Cross Examination

The questioning of your opponent's witnesses should clarify, raise questions about, and possibly discredit the witness's testimony. In conducting a cross-examination, it is important to lead the witness and not to ask questions to which you don't know the answer.

Redirect Examination

Redirect examination consists of questioning your witness again, using direct examination, after your opponent has cross-examined him or her, when it appears that damage has been done to either the witness or to the case. This is your opportunity to clear up factual confusions, explain inconsistencies and highlight strong points. Prior to the hearing, make sure that the witness is prepared to deal with questions from the hearing officer. During the hearing:

- * Note each inconsistency or confusion raised during the hearing.
- * Rehabilitate each inconsistency or confusion, if possible.
- * Perform redirect examination if it would highlight the strong points of your case.
- * Perform redirect if it would strengthen your case in total.

Objections

An objection is an oral protest to the evidentiary admission of testimony or documents by an opponent. Objections are used for various legal and tactical reasons, such as when irrelevant, hearsay, or otherwise legally deficient evidence is about to be heard by the hearing officer. You may choose to make an objection, even if you know it will be overruled, to preserve your point in the record for possible appeal. Objections are also sometimes made for strategic purposes; i.e., to break up the flow of good, but damaging, direct examination from your opponent's witness, or to throw your opponent off balance. Objections can also be used to protect your witness from being badgered or led into a trap. Remember that, to be most effective, objections should be made before the objectionable question is answered. Consider these elements:

- Anticipate possible objections to your evidence and your response
- Make timely objections that can be sustained because of their solid legal basis
- Be well prepared so you can concentrate on whether or not to object to certain testimony or on how to respond to objections against your side's testimony
- Be aware of how and when you must object to preserve the record for appeal

Closing Argument

A closing argument is a clear, concise and direct summary of the law and evidence from the hearing that highlights your case and its strong points. This is your final opportunity at the hearing to persuade the hearing officer to decide in your client's favor.