

## Standard 7.12 on Administrative Hearings

### STANDARD 7.12 ON ADMINISTRATIVE HEARINGS

#### STANDARD

*The practitioner should proficiently and zealously present a client's case in adjudicatory administrative hearings.*

#### COMMENTARY

Because many legal problems of legal aid clients involve disputes with government agencies regarding public benefits, a large number of contested cases are heard first, and often exclusively, in a proceeding before an administrative hearing officer. Practitioners should approach administrative hearings with a dedication to high quality legal work on behalf of the client.

Many of the considerations pertinent to litigation are applicable in administrative hearings. The practitioner should approach the case with a thoughtfully planned strategy<sup>1</sup> that is based on an appropriate factual investigation,<sup>2</sup> legal analysis and research, as necessary,<sup>3</sup> and a careful assessment of the strength and weakness of the case.

The practitioner should thoroughly understand hearing practice before the agency. Administrative practice is often relatively informal with few established rules of procedure. Advocacy should be appropriate to the level of formality and should strive to use the flexibility of such proceedings to the client's advantage. For example, in administrative hearings, the rules of evidence are generally relaxed and practitioners may have wide latitude to affect the scope of testimony and evidence that is introduced on behalf of the client.

The importance of legal argument in administrative hearings may vary widely. Frequently, the person conducting the hearing has limited authority or inclination to apply law beyond the regulations of the agency. The practitioner should cogently present the legal basis for the client's claim and frame the issues in the case in a way that supports a favorable resolution for the client and establishes a record for later review by a court or higher tribunal, if necessary. Often there is no systematized procedure for formally raising legal issues in writing. When it is particularly important to establish the legal basis for the client's position, the practitioner should consider filing a memorandum of law, if permitted, particularly in support of a non-lawyer practitioner who is representing the client.

Adjudicatory administrative hearings generally will not offer the same opportunity for formal discovery as is available in judicial proceedings. Nevertheless, practitioners should obtain as much information as possible pertinent to the client's case. The means available for discovery

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<sup>1</sup> See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 7.7 (on Case Planning); Standard 7.11-1 (on Litigation Strategy).

<sup>2</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.5 (on Investigation).

<sup>3</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.6 (on Legal Analysis and Research).

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are usually a matter of local practice with the administrative agency. Some information, such as medical records in disability claims will be crucial to the practitioner presenting the client's case. Sometimes, the pertinent information will be in the hands of the administrative agency that is the adverse party. Discussions with a caseworker may also be a valuable source of information regarding key facts and the position asserted by the agency. If the agency refuses to provide information that is essential to the client's case, the practitioner should seek the assistance of the person conducting the hearing to obtain access to the information, if possible.

The client's case should be thoughtfully and clearly presented. The practitioner should thoroughly prepare witnesses who will testify, including the client. The practitioner should explain the process for testifying and should be aware of the favorable and detrimental facts to which each witness might testify. To the degree possible, the practitioner should anticipate adverse facts and law, and should be prepared to counter them.

The practitioner should be aware of the necessary steps to follow-up on the administrative hearing, including the submission of supplemental materials on the client's behalf, if appropriate. The practitioner should be aware of deadlines for seeking a review or reconsideration of an adverse decision. The practitioner should have a clear understanding with the client regarding whether representation will be provided in an appeal or judicial review of the administrative decision.<sup>4</sup>

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<sup>4</sup> See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 3.4 (on Limited Representation); Standard 4.2 (on Establishing a Clear Understanding).