How to Write a Decision
Part 4 of a 4-Lecture Series on the Basics for ALJs

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National Association of Hearing Officials
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This paper provides a brief overview of some of the resources available to an administrative law judge (ALJ) in writing a decision following a hearing on the merits. This presentation builds on the methods discussed in Parts 1-3 of this series: How to Conduct a Prehearing Conference (Session 4), How to Conduct a Hearing on the Merits (Session 7), and Practicum Mock Prehearing Conference and Mock Hearing on the Merits (Session 9).

I. The ALJ’s case-related duties
   A. Case management: management of resources outside the hearing process
   B. Conducting hearings: conduct of formal proceedings for the receipt of evidence and legal argument.
   C. Preparing written orders, proposals for decision, and final decisions

II. Why prepare a written decision?
   A. Most state administrative hearing laws require an ALJ to submit a written decision including separate findings of fact and conclusions of law.
      1. In some jurisdictions, the findings and conclusions are the sole permitted format for decisions.
      2. In other jurisdictions, the written decision may include a detailed review of the case history, a statement of facts, an examination of the governing law, and the ALJ’s analysis—all followed or preceded by findings and conclusions.

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1 All references to the writing of decisions apply equally to the writing of proposals for decisions. For the purposes of this paper, the difference between the two types of documents is irrelevant.
B. Whatever format governs an ALJ’s decision-writing, the act of writing does more than simply lay out an ALJ’s statement of which side prevailed.

1. The act of writing helps the writer organize his or her thoughts to reflect the deliberative work required to reach a series of findings and conclusions that form the decision.

2. Just as importantly, the act of writing well helps the reader understand the ALJ’s logic in leading to the findings and conclusions.

3. Without some opportunity for analysis, whether in findings and conclusions or in detailed review, the ALJ’s decision is little more than a posted score showing which side prevails.

III. What resources are available to an ALJ in preparing a written decision?

A. Governing laws, including:

1. The organic statute that creates the agency hearing the case
2. The rules of procedure that govern the case
3. The substantive laws that apply in this case, including:
   a. The source of jurisdictional authority;
   b. The statutes that describe the scope of the state agency’s regulatory power;
   c. The agency rules adopted under those statutes;
   d. The agency’s formal policies that interpret its governing laws; and
   e. Any final appellate opinions that interpret the application of laws relevant to this case.
4. The case materials that precede the hearing on the merits:
   a. The live pleadings
   b. The completed exhibit log (not to be confused with the parties’ exhibit lists)
   c. All written orders that the ALJ issued during the course of the case
   d. Any pre-hearing briefs
   e. The ALJ’s pre-hearing notes
5. The case materials developed during or after the hearing:
   a. Recording or transcript of the testimony
b. Admitted exhibits

c. Any post-hearing briefs

d. The ALJ’s hearing and post-hearing notes

B. Any forms on which an ALJ may rely in the preparation of a decision:
1. Some forms are actual fill-in-the-blank protocols, most of which are used in high-volume caseloads in which the range of issues is limited.
2. Some forms may be previously issued written decisions that the ALJ has selected because they offer similar fact patterns or legal issues.

C. Style manual: Depending on an office’s level of interest in the quality of decision-writing, an ALJ may have available a style manual, either office-generated or office-adopted.²

IV. Getting started

A. For a case that lasts a day or longer, the ALJ should spend the first hour or two after the conclusion of the hearing in preparing a list of thoughts about the case.

B. The important quality of the list is that the ALJ be frank in assessing his or her thoughts about the case, including some of the obvious:
1. Which side clearly prevailed? If neither side prevailed, which side clearly didn’t? Can you tell yet?
2. Who was the better (or best) advocate? Will that conclusion influence your decision? Should it?
3. What prejudices, if any, did the parties want you to adopt?
4. Do you have a clear understanding of the facts? What was the chronology of events?
5. Did the parties’ pleadings guide your understanding of the parties’ respective cases-in-chief? Did the parties abandon any issues? What was the legal consequence of abandonment?
6. Did the party with the burden of proof carry that burden? If not, what was missing?
7. The quality and clarity of testimony:

²More about this resource will be discussed in the course of this presentation.
a. Did any witness have particularly credible testimony?
b. Was the testimony of any witness so weak or unbelievable that you are prepared to disregard it?
c. Is there testimony that you want to re-examine before writing your decision?

8. Can you identify any materials for which the record was left open for the parties’ later submission?

9. Have you issues of law about which you need specific briefing from the parties?

10. What is your best estimate about how long you will need to prepare a first draft?

V. The initial post-hearing order

A. If the facts warrant, the ALJ should issue as soon as possible an initial post-hearing order to guide the parties in their compliance with post-hearing deadlines.

B. Typically, deadlines are set by the ALJ near the conclusion of the hearing on the merits and after consultation with counsel.

C. Often, these deadlines include:
   1. Exhibits that may need to be located, updated, or supplemented;
   2. Party agreements about submission of non-exhibit materials; and
   3. Post-hearing briefs.

D. The ALJ may also include in a post-hearing order requests for clarification of matters not addressed at the conclusion of the hearing.

E. Although the ALJ may have expressed clearly and completely at the end of the hearing all the remaining post-hearing details, the ALJ’s issuance of a post-hearing order creates a document to which all may easily refer.

F. Since many firms rely on paralegals and other staff who may not have been present at the conclusion of the hearing, the ALJ’s issuance of a post-hearing order may avoid confusion about post-hearing deadlines.
POST HEARING ORDER NO. 1

The hearing on the merits concluded on September 1, 2017. Before the adjournment, the administrative law judge (ALJ) adopted the parties’ agreed post-hearing schedule:

1. By 5:00 p.m., October 1, 2017, Staff will provide Dr. Wakefield and the ALJ with a copy of the Board’s most current disciplinary matrix.

2. By 5:00 p.m., October 15, 2017, the parties will:
   a. Provide the ALJ with clean copies of Staff Exhibits 4 and 57 and Wakefield Exhibits 22 and 141, and
   b. Confer and report to the ALJ in writing whether the parties need additional time in which to conduct post-hearing settlement negotiations.

3. By 5:00 p.m., November 1, 2017, the parties will file post-hearing briefs.

4. By 5:00 p.m., November 8, 2017, the parties will file post-hearing response briefs.

Further, the ALJ orders that the parties’ post-hearing briefs include a discussion of these issues:

   a. What provisions of law, if any, prohibit a licensed psychologist from describing to an insurer a covered patient’s diagnosis and a potential contributing factor of the patient’s problems, all for the purpose of receiving reimbursement?
   b. How specific may that description be?

VI. The summaries of the facts
A. The two chronologies
   1. Typically, a decision will include a brief chronology of the important facts that led to the filing of the case and the case’s administrative history.
   2. The two chronologies may be dovetailed into a single narrative:
On January 21, 2017, Dr. Wakefield began therapy with Patient X, a 28-year-old attorney. Dr. Wakefield agreed to accept payment under Patient X’s employer-provided mental health benefit plan (Plan). Patient X signed a form allowing Dr. X to disclose “any information necessary for an insurer to make a determination of coverage and compensation of benefits.”

Dr. Wakefield obtained from the Plan administrator the forms to initiate Plan payments. The form required Dr. Wakefield to provide her diagnosis of Patient X’s mental health condition and a treatment plan. Dr. Wakefield wrote these words on the form: “Patient X presents with clear symptoms of depression. She is stressed by her law firm’s requirement that she work long hours on complex high-profile litigation with a difficult client. I estimate that Patient X’s initial treatment will require 12 weekly sessions.”

Unknown to Dr. Wakefield was that the Plan administrator was also the business officer of Patient X’s law firm. Within a few days of Dr. Wakefield’s submission of the form, the law firm terminated Patient X’s employment.

On March 30, 2017, Patient X filed a complaint with the Board. On April 1, 2017, Staff filed with the State Office of Administrative Hearings a request for a hearing on the merits. On April 15, 2017, the ALJ was assigned to the case, and on May 1, 2017, the ALJ held a telephonic pre-hearing conference.

On August 25, 2017, the ALJ convened a hearing on the merits, concluding on September 1, 2017. The parties timely filed post-hearing briefs and other materials.
3. The chronology includes only a recitation of the significant legal events, the order in which they occurred, and a few of the dates.

B. A third chronology—one that should not be included
1. The sequence of events that occur during the hearing is rarely made part of the written decision.
2. Except in unusual cases, the ALJ need not chronicle the order of the witnesses who testified, objections made to evidence offered, the ALJ’s rulings on motions, or most of the rest of events that occur during a hearing.
   a. In the rare exceptions in which the parties’ presentations at the hearing constitute a legal issue, the law usually requires a separate hearing for the determination of the issues.
   b. In these cases, the events at the hearing may become appropriate subjects for the overall decision.
   c. An example would include an allegation during the hearing that a party has created a falsified document offered into evidence for the purpose of deceiving the finder of fact.

VII. The outline of the decision
A. An outline is an exercise in the elements of literary architecture, including consideration of these questions:
   1. How will the reader experience the opening paragraphs?
   2. What works well in the pathway from the introduction?
   3. When will the reader learn the facts, both agreed and contested?
   4. At what point will the reader understand the scope of the applicable law?
   5. What did the parties contend to be the issues in dispute?
   6. Of which positions was the ALJ persuaded and why?
   7. What is the ALJ’s conclusion about the claimant’s request for relief?
B. An outline is the ALJ’s list of the sections—in their sequence—that define how the decision will be structured.

C. The complexity of an outline depends on the needs of the writer—ranging from a bare listing of the roman-numeraled headings that will anchor the decision, like this:

| I. | Introductory paragraph |
| II. | Statement of facts |
| III. | Case history |
| IV. | Governing law |
| V. | Issues—see briefs, not pleadings |
| VI. | Analysis and decision |
| VII. | Findings of fact |

D. Or an outline may provide the ALJ with a sequence of notes-to-self about the items and issues that should be addressed within a section, like this:

| I. | Need something at the outset to show that Staff amended its pleadings during opening statement. What was he thinking? |
| II. | Use the statement of facts material found in the amended complaint. Not bad and not significantly contested, but remember to include a paragraph about the last witness—massage therapy? Give me a break. |
| III. | Case history is a mess. Print out the series of pre-hearing rulings on venue and jurisdictional disputes. Ask Alex to give me thoughts on this. |
| IV. | Governing law—still need copies from Staff of both versions of the Board’s rules. Which applies? Are there any recent published opinions about this? |
| V. | Issues—cut and paste the obvious. |
| VI. | A&D: dunno; what is the scope delegated to the Board? |
| VII. | F&F & CL to follow |
E. The goal for every ALJ in creating a draft outline is to create a script to which the ALJ may return with a clear understanding of what should follow.

VIII. Telling the story
A. Every case involves a set of facts, whether contested, agreed, or some of both
   1. Rarely does a case present facts that are entirely contested or entirely agreed
   2. The ALJ’s goal is to summarize as much of the story as necessary to introduce the legal issues
   3. In fairly presenting the summary of facts, the ALJ risks revealing (or leaving the impression) that the ALJ begins with a set of pre-judgments that will dictate the outcome of the case.
   4. The ALJ’s obligation is to create a summary of facts that describe a set of events and to identify the points, if any, about which the parties disagree.
      a. Here is an example of a fact summary with improperly embedded prejudices:

At Patient X’s first session with Dr. Wakefield, she complained bitterly about the stress created by her work at the law firm. Dr. Wakefield's questions to the patient revealed that the psychologist was eager to gain a foothold as a therapist within the legal community. Patient X repeatedly asked Dr. Wakefield whether any of her treatment notes would ever be revealed to the public, and Dr. Wakefield assured her that she would never release her treatment notes. Dr. Wakefield was neither honest nor accurate in her statements to her patient.

b. In contrast, an evenhanded recitation of the agreed facts gives the reader an understanding that the parties disagree about some the points in the story:

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At Patient X’s first session with Dr. Wakefield, she complained bitterly about the stress created by her work at the law firm. Dr. Wakefield asked Patient X a series of questions about her work. As will be discussed in the sections that follow, Staff contends that Dr. Wakefield’s questions were intended to help her gain a foothold as a therapist within the legal community. What is not disputed is that Patient X repeatedly asked Dr. Wakefield whether any of her treatment notes would ever be revealed to the public, and Dr. Wakefield assured her that they would not.

5. In lining up these opposing contentions, the ALJ communicates to the reader that:
   a. The parties disagree about important points of fact and agree about others;
   b. The issue of Dr. Wakefield’s alleged motives is in play;
   c. The ALJ will need to address these differences, including whether they are relevant to the claims at issue.

B. Two methods of telling the story
   1. Method 1: summaries of related testimony
      a. Unless required by law or agency policy, the ALJ’s decision should avoid the practice of summarizing each of the witnesses’ testimony.
      b. The reader often has no need or interest in learning the details of each witness’s testimony, even in summary form.
      c. Although the ALJ’s notes may accurately reflect a witness’s testimony, the significance of all evidence, whether documentary or testimonial, is how it integrates into a single narrative.
   2. Method 2: the integrated narrative
      a. The integrated narrative tells the story as the reader wants to hear it: who is involved, what happened and in what sequence, and what were the consequences of the events.
Summary of testimony

Three witnesses presented testimony during the hearing, two for Staff and one for Dr. Wakefield.

Staff witness Allan Tate serves as the Board’s chief ethics officer. A graduate of the University of California at Davis, Mr. Tate holds a bachelor’s and master’s degree in psychology. Mr. Tate practiced as a clinical psychologist for 20 years before joining the Board Staff. He testified that the Board’s statutes and rules prohibit a licensed psychologist from disclosure of any information, no matter how minor, to third persons without the express written consent of the patient. Form disclosure agreements—including those promulgated by the Board, testified Mr. Tate, must describe with specificity the type of disclosure permitted. In this instance, Mr. Tate explained, the form signed by Patient X was limited to “insurers” and did not include non-insured employee benefit plans.

b. The ALJ’s use of the integrated narrative permits the ALJ to guide the reader with fairness through the thicket of data to the information actually needed for a decision.

c. The use of the integrated narrative also helps establish the factual issues and their resolution in the findings of fact.

3. Here is an example of the differences between a summary of testimony and an integrated narrative

a. Summary of testimony

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Summary of testimony cont’d

Staff witness Jordan Peterson, CPA, is Dr. Wakefield’s accountant and professional advisor. Mr. Peterson testified that Dr. Wakefield’s practice had been expanding from primarily family-related patients and patient groups to include professionals. Patient X was an example of Dr. Wakefield’s expanded practice. On cross-examination, Mr. Peterson explained that Dr. Wakefield demonstrated increased success in her financial and professional life.

Dr. Wakefield testified for over seven hours. On adverse direct, Dr. Wakefield denied Staff’s allegations that she: (1) improperly disclosed Patient X’s record of treatment; (2) was in financial distress to creditors; (3) was screening potential patients based on their insurance benefit levels, or (4) failed to understand the Board’s legal requirements for maintaining a psychologist’s license.

Further, Dr. Wakefield contended that the Board chair, Phineas Crutchman, Ph.D., Dr. Wakefield’s former business partner, had a vendetta against her. In support of that allegation, Dr. Wakefield’s evidence included professional articles published by Dr. Crutchman in which he criticized Dr. Wakefield’s term as president of the state Association of Licensed Psychologists.

Contrast this with an integrated narrative:
Integrated Narrative

The evidence offered by Staff witness Allan Tate, the Board's chief ethics officer, reflected that Dr. Wakefield received from Patient X a signed disclosure form. The form authorized Dr. Wakefield to disclose patient information for purposes of insurance reimbursement. The form had been promulgated by the Board.

The parties did not dispute that Dr. Wakefield had been expanding her practice, the expansion included professionals seeking treatment, or that Patient X was among Dr. Wakefield’s professional patients.

Staff offered cross-examination of Dr. Wakefield’s accountant, Jordan Peterson, to prove that Dr. Wakefield was in financial distress. As will be discussed, the witness's credible testimony showed that Dr. Wakefield was doing well financially. Staff offered no proof on this issue other than the testimony of Dr. Wakefield and Mr. Peterson.

Staff also sought to show through direct and cross-examination that Dr. Wakefield failed to understand the Board’s legal requirements for maintaining a psychologist’s license. Dr. Wakefield sought to show that Phineas Crutchman, Ph.D., Board chairman, was using the complaint filed in this proceeding to punish Dr. Wakefield for a personal dispute. As will be discussed, the relevance of these two fact issues is nominal, at best.

The analysis that follows will examine the burden of proof, the requirements of the Board’s laws, and the quality of proof of the various allegations.
C. The exception: testimonial disagreement on facts
1. In some cases, the issue of proof depends on the degree to which the ALJ is prepared to accept one witness’s testimony over another’s.
2. The ALJ must often decide:
   a. Had the driver been drinking (as reflected by the officer’s statements about the smell on the driver’s breath), or had the driver not been drinking (as reflected by the driver’s testimony that he does not drink alcohol in any form)?
   b. Did the nurse sign the patient’s falsified hospital records (as shown by the Staff’s copy of a hospital report with the nurse’s name on it), or did the nurse sign nothing (as shown by her non-similar handwriting examples appearing on other forms)?
   c. Was the environmental recharge zone covered in permeable soil before the applicant filed the application (as contended by the agency staff) or was the zone never covered in permeable soil (as contended by the applicant)?
3. In these types of binary questions, the ALJ must make a choice between who has the more credible version of the events.
4. In those instances, the use of a witness summary method may be helpful because it allows the reader to understand:
   a. The elements of the specific testimony that were before the ALJ;
   b. The contrasts between one witness’s version of the facts and the version offered by the other witness; and
   c. The basis for the ALJ’s analysis in reaching a conclusion about the version of the facts adopted.

IX. Presenting the issues
A. The parties typically provide the ALJ with two—and sometimes three—opportunities to identify the legal issues to be addressed in the decision
1. The pleadings
a. These are the parties’ written statements about what they propose to prove at the hearing.
b. Keep in mind that in many jurisdictions, the respondent may have no obligation to file a written pleading beyond a general denial.

2. The parties’ arguments at the hearing
   a. Parties often have the opportunity to present opening and closing arguments about what will be—and has been—the issues in dispute
   b. Keep in mind that a party may waive an issue by its failure to offer evidence if that party has the burden of proof

3. Post-hearing briefs
   a. These materials often have the greatest currency for the ALJ’s purposes.
   b. By the time a brief has been filed, the party may have had time to assess which issues are worthy of assertion and which aren’t.
   c. Post-hearing briefs have the additional advantage of reflecting the ALJ’s requirement that the parties’ confer about the issues to be addressed in the briefs and the order in which they will appear.

B. When the parties’ submissions are not helpful
   1. The ALJ should be cautious about relying solely on the parties’ pleadings, oral or written arguments, and briefs to define the scope of the issues.
   2. As difficult as it may be to imagine, sometimes the parties’ written materials may contain:
      a. Poorly written or undecipherable drafting;
      b. Inaccurate or unverifiable statements of the law; and even
      c. Undeleted remnants from previous filings made by the author in other cases.
C. The ALJ’s draft of the issues
1. The ALJ may limit the issues to those presented cogently in the pleadings, the presentation of evidence, the legal arguments, or the briefs.
   a. This approach places most of the burden on the parties.
   b. To rely on this approach, an ALJ must be careful to include a discussion of the issues that have at least the appearance of merit.
   c. A party that does not prevail after an ALJ determines the party has failed to present an issue may seek to appeal the decision based on the party’s argument to the contrary.
2. However, unless precluded by law or policy, the ALJ may identify and rule on issues that the ALJ believes deserves a ruling—whether addressed by the parties after they have rested their respective cases.
   a. For example:
      (1) A party presents evidence at the hearing on an affirmative defense;
      (2) The party has not asserted the affirmative defense in pleadings;
      (3) The opposing party makes no objection to the evidence;
      (4) Neither party identifies the affirmative defense in closing arguments or post-hearing submissions.
   b. May the ALJ decide the issue? Should the ALJ decide the issue?
      (a) The determination may depend on the rules and practices of each jurisdiction.
      (b) However, in general ALJs enjoy a broad latitude in the drafting of their decisions.

D. The form of the issues
1. The traditional approach is to frame the issue as a question:
a. “May the Board revoke a plumber’s license based on a hearsay affidavit of a minor, not subject to cross-examination?”

b. “May the Board of Teacher Certification revoke a teacher’s certificate if: (1) the teacher tests positive for marijuana; (2) the marijuana was consumed while the teacher was on vacation; (3) the vacation was in a jurisdiction in which marijuana consumption is legal; and (4) the testing shows amounts of active psychochemicals at such low levels not to affect the teacher’s ability to teach?”

2. The issue should be framed clearly, leaving the ALJ with the obligation to provide a yes or no answer.

3. The ALJ’s answer should be similarly clear, although the ALJ may state any allowances that he or she believes should be considered in taking administrative action.

X. Summarizing the law

A. The law under which the case proceeds should be stated specifically in the claimant’s pleadings.

1. Many jurisdictions’ rules of civil judicial procedure provide a method by which an opposing party may move for a more definite statement if the pleadings are unclear.

2. Many administrative offices adopt similar rules of clarification.

3. Where the ALJ is unclear about the specific law under which the claimant is proceeding, the ALJ may have the authority to seek clarification before a hearing proceeds.

B. The decision should give a citation to the law and quote from the portions of the law that govern the case

1. For example, assume that a case involves a state Nursing Board’s attempt to discipline a nurse for showing up for work with alcohol on her breath.

2. The statute on which the Board relies in seeking to discipline the nurse reads:
No nurse may report for performance of nursing services, as defined in the Board’s regulations, if the nurse has: a) been convicted of a felony; b) been convicted of a misdemeanor involving moral turpitude or harm to a minor or senior citizen; c) any amount of alcohol in her system; or d) any amount of a drug that may impair her ability to render nursing services.

3. If only out of kindness to the reader, the ALJ should strongly consider summarizing the law as follows:

No nurse may report for performance of nursing services, as defined in the Board’s regulations, if the nurse has: . . . c) any detectable amount of alcohol in the nurse’s system . . . .

or better:

The statute prohibits a nurse from reporting for duty if the nurse has “any detectable amount of alcohol in the nurse’s system . . . .”

XI. Analysis of the case

A. The ALJ has the obligation to analyze the parties’ versions of the facts, their arguments about the application of the laws, and to make clear and definite findings of fact and conclusions of law.

B. Most jurisdictions’ laws or appellate decisions require the ALJ’s analysis to provide the ALJ’s string of conclusions that led to the final decision and how those conclusions were reached.

C. If the agency promulgates a form that the ALJ is expected to use, the form itself must provide some indication of the sequential thinking used by the ALJ in getting from allegation to evidence to argument to decision.

D. Although an ALJ’s case analysis may be rote, it may not be blind to the variations in facts and issues that sometimes arise.
E. At the core of every decision is the ALJ’s explanation of which set of facts persuaded the ALJ to make the determination of the case’s merits.
F. That explanation relies on the basic principles of clear thinking as expressed in clear writing.

XII. Plain English
A. Plain English is a movement fostered in May 1954 by San Antonio Congressman Maury Maverick.
   1. Congressman Maverick complained in the Congressional Record about the incomprehensible language used by lawyers and bureaucrats.
   2. He said that their writing reminded him of the sounds made by turkeys in the barnyard, and he coined the term “gobbledygook” to describe that style of writing.
   3. The congressman included in his life’s work the task of making fun of bad legal writing.
   4. His work helped launch the Plain English Movement in the United States.
B. One of the clearest statements of Plain English was written by Theodor Geisel, otherwise known as Dr. Seuss, who wrote, “Writing simply means no dependent clauses, no dangling things, no flashbacks, and keeping the subject near the predicate.”
C. Consider a 1995 administrative decision issued by an ALJ at the U.S. Department of Housing and Urban Development. It opens with this opaque two-sentence introductory paragraph that is still in use by the Department today:
This proceeding arose pursuant to 24 C.F.R. § 24.700 et seq. as a result of action taken by the Assistant Secretary of the Department of Housing and Urban Development ("the Department" or "HUD" or "the Government") on March 23, 1993, suspending and proposing to debar Respondents from participating in covered transactions as either participants or principals at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts at HUD for a period of five years beginning October 5, 1992. The action taken by HUD on March 23, 1993, was based on allegations that Respondents had failed to fulfill their contractual obligations to HUD in connection with their operation of two apartment complexes.

D. Next, consider a 2017 decision of the United States Supreme Court written by Chief Justice Roberts. He begins:

The Missouri Department of Natural Resources offers state grants to help public and private schools, nonprofit daycare centers, and other nonprofit entities purchase rubber playground surfaces made from recycled tires. Trinity Lutheran Church applied for such a grant for its preschool and daycare center and would have received one, but for the fact that Trinity Lutheran is a church. The Department had a policy of categorically disqualifying churches and other religious organizations from receiving grants under its playground resurfacing program. The question presented is whether the Department’s policy violated the

Justice Roberts ends his decision, ruling against the Department, with this observation and ruling:
The consequence [of disqualifying churches from receiving rubber playground surfaces] is, in all likelihood, a few extra scraped knees. But the exclusion of Trinity Lutheran from a public benefit for which it is otherwise qualified, solely because it is a church, is odious to our Constitution all the same, and cannot stand.

E. Administrative decision-writing need not be stilted.
   1. As ALJs, we have an obligation to simplify our writing style.
   2. Who among us would criticize the crisp and clear writing style of Chief Justice Roberts—or of anyone who writes as he does—as gobbledygook?

XIII. Editing
A. Editing is the part of the creative process by which a written work is challenged on multiple levels to improve the author’s meaning. Editing is usually divided into two categories: form and style
B. Questions when editing for form
   1. General format questions:
      a. Does the style at the top of the first page match the style used in the headers or footers on subsequent pages?
      b. Are sequential page numbers on every page but the first?
      c. Are the headings parallel in form?
      d. Are the margins and justifications the same on each page?
   2. Proofreading questions:
      a. Are there errors in spelling, grammar, or punctuation? If so, what does a review reveal?
      b. Be careful of relying exclusively on spell-checking software to correct errors, as shown in this frequently quoted poem on the subject:
I have a spelling checker,
It came with my PC;
It plainly marks four my revue
Mistakes I cannot sea.
I’ve run this poem threw it,
I’m sure your pleased too no.
Its letter perfect in it’s weigh,
My checker tolled me sew.

c. Does the document pass a edit review based on an approved style manual?

3. Footnotes
   a. Are they sequentially numbered?
   b. Do the footnotes follow an office-accepted format?

4. Ease of reading
   a. Does the format used in the document contribute to the reader’s ease of reading? For example:
      (1) Does the author rely on the same format for presentation of similar issues or evidentiary discussion?
      (2) Is the author’s repeated use of the same format useful to the reader’s understanding? If not, is the reason clear for the author’s varying the format?
      (3) Has the author appropriately combined elements of analysis that would limit the document’s length?
      (4) Has the author appropriately used tables for the presentation of large groups of data?
      (5) Where long lists are used (in the findings of fact, for example), are they logically grouped? Are they preceded by appropriate headings?
   b. Is the author’s use of footnotes and citation in proper proportion to the readability of the document?
C. Editing for style
   1. Voice
      a. A writer’s voice is the combination of elements that constitutes an author’s communication style.
      b. Voice may include syntax, diction, punctuation, and analytical style, among other elements.
         (1) Syntax, the use of words and punctuation to artfully form sentences.
         (2) Diction, the creation of tone through word choice.
         (3) Analytical style, the combination of syntax and diction to create a clearly understandable statement
            (a) Consider this analytical style in this recent administrative proposal for decision about Medicaid fraud:

Staff’s premise is that the quantity of program violations is so vast that it could not possibly be caused by anything other than fraud. Yet the evidence does not remotely support this claim. Even if one assumed that all deficiencies identified by [the prosecution’s expert] were, in fact, program violations, the total value of those violations would be in the range of $26,000. . . . This does not constitute credible evidence of fraud. Moreover, [the agency’s] rule in effect during the relevant time period expressly recognized that “not all actions resulting in overpayment to a provider [i.e., program violations] are necessarily fraudulent.” Staff made no effort to explain why the specific program violations alleged here rose to the level of fraud.

(b) The analysis begins with succinct conclusions about the prosecution’s gaps in evidence, moves to identification of the Staff’s gaps in observing procedural
requirements, and ends with a recognition of the prosecution’s failures in trial advocacy.

(c) The ALJs’ analytical style, including the direction and efficiency of the writers’ text, leaves no question that the ALJs have rejected every aspect of Staff’s case.

D. The style manual
1. Adopt a style manual so that all who write for the agency know the standards that the agency expects them to meet.

2. Benefit of a style manual: a convenient method for resolving common conflicts about the most basic differences of opinion in writing, including:
   a. commas,
   b. hyphens and dashes,
   c. capitalizations,
   d. abbreviations,
   e. formation of plural possessives,
   f. formatting,
   g. spelling conventions,
   h. placement of citations in footnotes or text, and
   i. the proper use of arabic numerals or spelled numbers.

3. Overriding benefit: the creation of a common reference for resolving future questions.

4. Sources for style manuals
   a. Create your agency’s own style manual.
   b. Adopt a commercially available style manual, like The Bluebook or The Chicago Manual of Style.

5. Keep in mind that not only do your agency’s ALJs write for your agency, so do the members of the bar that practice before your agency. They, too, should be expected to meet your agency’s writing standards.
   a. Adopt your style manual through formal or informal methods.
b. Consider having your agency sponsor a public information session on new writing standards for the submission of briefs and proposed orders.