BENCH SKILLS

A PRIMER

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WHY BENCH SKILLS?

CORE FUNCTIONS OF AN ADMINISTRATIVE HEARING OFFICIAL

To provide a fair and impartial hearing; and

To render a fair decision based on a full and complete record

ETHICAL DUTIES: NAHO MODEL CODE

- Competence
- Fairness
- Independence
- Impartiality
- Promote public confidence in the hearing process

SECTION II: COMPETENCE

Hearing officials should know the substantive and procedural law, including the principles of due process, to be applied in the hearings over which they preside, and should understand the principles of its application and interpretation. Hearing officials should be skilled in conducting hearings efficiently and fairly. Hearing officials should be skilled in discerning the facts of the cases presented to them. Hearing officials should be clear and fair-minded in their application of the law to the facts of each case, and should communicate their decisions completely and clearly. Hearing officials should regularly participate in continuing education to improve their competence and to stay current in their knowledge of the law.

SECTION III: IMPARTIALITY

Hearing officials should always strive to assure all persons involved that the proceedings will be conducted and decided impartially. "All persons involved" includes the appealing or petitioning parties and their representatives, the agency, agency staff or representatives, witnesses, interpreters, intervenors, observers, and any other person who appears before the hearing official, whether in person, in writing, or by electronic means.

WHERE GOOD PREPARATION BEGINS: KEEPING YOURSELF ORGANIZED

YOU'RE ASSIGNED A CASE!

Now What????

REVIEWING THE FILE

PARTIES AND SUBJECT MATTER?

- Who are your parties?
- Are they the right parties?
- Do you have jurisdiction?
- Contact information
- Did the parties receive proper notice?
- Is public notice (advertisement) required?

OTHER CONSIDERATIONS

Do you have all of the relevant pleadings?

Are any of your parties self-represented?

Are any parties required to be represented by an attorney?

Will you need an interpreter or other accommodation?

WHAT DO YOU NEED TO KNOW?

What is the relevant legal standard?

What facts do you need?

Who has the burden of proof?

PREHEARING PROCEDURE

PURPOSE OF PREHEARING ORDERS

Explaining procedure

Establishing expectations

Setting deadlines

WHEN YOU SHOULD CONSIDER A PREHEARING CONFERENCE:

- Does the case include self-represented litigants?
- Multiple parties?
- Complex Issues?
- Issues of first impression?

ANTICIPATING EVIDENTIARY ISSUES

The right witness?

The right documents?

PRACTICE TIP

Be very careful to maintain an open mind about who will prevail

Resist the urge to "over manage" the case

FAILING TO PLAN SHOULD NOT BE AN OPTION

CONDUCTING THE HEARING

THE CONDUCT OF THE HEARING IS ESSENTIAL TO THE PERCEPTION OF FAIRNESS

PERSONAL CONDUCT AND DEMEANOR

- BE ON TIME
- INTRODUCE YOURSELF
- GREET ALL PARTIES NEUTRALLY
- ADDRESS ANY TIMING CONCERNS OR OTHER EXTRANEOUS FACTORS
- USE PLAIN LANGUAGE

OPENING THE HEARING

To script or not to script?

Explaining process and expectations

CONTROLLING THE RECORD

Court Reporter

Ruling on Objections

Keeping Track of Exhibits

FULL AND COMPLETE RECORD?

TAKING NOTES

ASKING QUESTIONS

MANAGING THE PARTIES

SELF-REPRESENTED LITIGANTS

Reasonable Accommodations vs. Legal Advice

Explaining Procedure

LAWYERS

CLOSING

- Double check your exhibits
- Explaining what comes next

WHAT COULD POSSIBLY GO WRONG?

HAVING A PLAN

- You become frustrated or angry
- The parties are taking too much time
- Numerous (and possibly repetitive) exhibits
- A multitude of questions on process
- A legal issue arises and you don't have the answer

AFTER THE HEARING

WRITING THE DECISION

- Did you get all the information you need?
- Writing for your audience

OTHER HELPERS

A WORD ON MAKING MISTAKES…..

QUESTIONS?

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