THE ADJUDICATOR'S WRITING DESK

Mary Long, CALJ
Administrative Law Judge (PA)

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OBJECTIVES

- Learn best practices for preparing yourself to write a decision
- Understand the "steps" of the writing process
- Learn what to look for when editing your own decisions or someone else's

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DISCUSSION OR ANALYSIS: THE HEART OF YOUR DECISION

- Explains what the decision is
- Explains how the decision was reached

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BASIC ELEMENTS OF A GOOD ANALYSIS

- Position of each party
- Applicable law used to reach your disposition
- Your resolution of the factual disputes
- Your legal conclusions

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WHY?

- Which arguments did you accept and WHY
- Which arguments your rejected and WHY
- What evidence your heard but did not rely on and WHY
- Which testimony and exhibits were more credible or upon which you placed more weight and WHY

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DEMONSTRATING PROCEDURAL FAIRNESS IN YOUR WRITTEN DECISION

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Summarize the basic points made by each party

Shows that you listened

7

Explain the legal points that control the outcome

Gives the parties the tools to make their own judgment

8

Using names

Shows respect

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Transparently apply neutral legal rules

The Parties leave with a sense that the judge cared about them and tried to do what is right

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THE WRITING PROCESS

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BEFORE YOUR PUT THE HEARING FILE AWAY…..

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REVIEW THE RECORD

- Did you get all of the information that you need?
- Did you admit all of the necessary exhibits into the hearing record?
- Did you close your record?

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PRACTICE TIP: DON'T TRY TO REMEMBER IT ALL

- Make notes of important areas of witness testimony you want to review
- Sketch out initial impressions

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RESEARCH: KNOW WHAT YOU NEED TO KNOW

- Jot down important statutes or regulations
- Make a list of decision the parties cited that you want to read
- Is there some additional research you will need to do to answer a question or gray area?

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GET READY TO WRITING: CREATING A RITUAL

- Clean off your writing area
- Give yourself a "Power Hour"
- Gather your record, your research, your statute, your regs…

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"You can't double your intelligence in one hour, but you can use one hour to write something twice as clear. And ideas that are easy to read and easy to understand will make you seem smarter. The better you communicate, the more intelligent you appear."

James Clear

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FOUR ROLES IN A GOOD WRITING PROCESS

The Madman

The Architect

The Carpenter

The Judge

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THE MAD MAN

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Role: To generate thoughts, ideas and possible solutions

- Identify the main issues in the dispute that must be resolved
- Consider whether you need to any further legal research

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PRACTICE TIP:
THE MAD MAN IS MEANT TO BE A MESSY, FREE-THINKING PROCESS!

- Write down whatever comes into your brain
- You can discard bad ideas later when you become The Architect

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THE ARCHITECT

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Role: To put the ideas of The Mad Man into a logical order

- Outline of the Big Ideas and the Small Ideas
- Can be in the form of the issue statement followed by bullet points
- Can be a formal outline with roman numerals and letters

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PRACTICE TIP:

DO NOT SKIP THE ARCHITECT.

EVER.

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THE CARPENTER

25

Role:

Creates the initial writing following The Architect's plan

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PRACTICE TIP: DO NOT EDIT AS YOU WRITE; JUST WRITE

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THE JUDGE

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Role: Polish and Perfect

- Structure
- Language
- Grammar and spelling

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"JUDGING" YOUR WORK

30

PRACTICE TIP:

It is always a good idea to let your newly written draft "rest" before you begin editing

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REVISING AND PROOFREADING

- Have I said all that I needed to say?
- Have I been neutral and fair?

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STRUCTURE: ARE MY IDEAS IN A LOGICAL ORDER?

Readers understand information best if they understand its significance as soon as they receive it

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PARAGRAPHS

- Do I have transition from one paragraph to the next paragraph?
- Linking “old” information to “new” information
- Do I need headings?

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SENTENCES

- Do I have sentences that are too long or too short?
- Does one sentence flow into the next sentence, linking old information with new information.

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"English usage is sometimes more than mere taste, judgment, and education – sometimes it's sheer luck, like getting across the street."

E.B. White

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PREFER NOUNS AND VERBS

- Readers like to get past the subject to the verb as quickly as possible: keep your subject short
- Express key actions as verbs, not as nouns

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ARE THERE PLACES WHERE I CAN "TIGHTEN" THE LANGUAGE? USE FEWER WORDS?

- Delete words that mean little or nothing: very, all, kind of, actually
- Delete words that repeat other words; each and every, full and complete, first and foremost

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WRITE PLAINLY

Change unnecessary negatives to affirmatives:

- Not different = similar
- Not many = few
- Not consider = ignore

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USE THE PASSIVE VOICE **INTENTIONALLY**

- Must your readers know who is responsible for the action? Do you want them to know?
- Would the active or passive verb help your readers to move smoothly from one sentence to the next?
- Does the active or passive verb aid in creating a consistent focus?

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AVOID LATIN AND OLD-STYLE LEGAL WORDS

- inter alia – among others
- Pro se – self-represented
- To wit

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SOLVING PROBLEMS

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WRITER'S BLOCK AND TROUBLE STARTING

- Don't let the Judge stifle the Mad Man's sloppy creativity
- Avoid evaluating and discarding ideas at the Mad Man stage

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OUTLINE DOESN'T "FLOW" OR A LOGICAL STEP IS MISSING

- Return to the Mad Man; try a non-linear outline
- Don't ask the Architect to generate ideas AND sequence them

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DIFFICULTY THINKING OF TRANSITIONS

- Return to the Architect for a more complete outline that includes a sequence of full propositions

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YOU ARE SIDETRACKED BY EDITING

- Banish the Judge

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PROCRASTINATION

- You probably skipped the Mad Man and the Architect and just started writing….

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HOW TO IMPROVE YOUR WRITING

- Practice, practice, practice
- Be a better reader
- Make a commitment to continue to improve

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QUESTIONS?

- Mary.long@ naho.org

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