

Administrative Hearing Practice and Procedure

[*Editor's note:* This article is adapted from NEW ENGLAND REGIONAL TRAINING CONSORTIUM, ADMINISTRATIVE HEARINGS MANUAL: A GUIDE TO PREPARATION, PROCEDURE AND PRESENTATION (2000). The full manual, which includes a lengthier discussion of the topics covered here as well as materials and forms on case management, analysis, planning, and development, is available at www.nlada.org/DMS/Documents/1003610973.28/admin-p.pdf.]

Administrative hearings are similar to trials, but some differences exist in procedure and practice. The following is a general overview of practice and procedure in administrative forums and tips to make your presentation more persuasive.

Administrative Rules and Procedures

Prior to any administrative hearing, learn and understand the administrative rules and procedures that will govern the conduct of the hearing. These rules, which

vary by agency and the subject matter of the hearing, have four basic sources:¹

- The organic statute that creates an agency or vests it with certain powers and that may specify administrative procedures for hearings before the agency.
- Procedural regulations, rulings, policy manuals, or internal operating procedures that the agency may have adopted to govern its hearings.
- The federal Administrative Procedure Act and equivalent state administrative procedural requirements of general applicability.²
- Constitutional requirements of due process and other “common law” procedural requirements that federal and state courts have made applicable to administrative agencies.

Consider every possible source of procedural law in your case and know the rules and regulations that will govern your hearing. Insisting on procedural for-

¹ For information on due process and hearing rights in the Medicaid program, see Jane Perkins, *Medicaid*, in this manual.

² Administrative Procedure Act, 5 U.S.C. §§ 500–596.

malities is one way to safeguard clients' rights, including the due process right to a full and fair hearing.³

The hearings office staff and other advocates who have conducted hearings before the agency or hearing officer in question can give additional information. Observing, reading the transcripts, or listening to tapes of other hearings is often helpful.

Practice Tip: Gather information from other advocates about the particular practices of the hearing officer or administrative law judge whom you will face. How active a role does the hearing officer play in taking testimony from witnesses? How does the hearing officer handle exhibits? Does the hearing officer apply any evidentiary rules? Is the hearing officer knowledgeable about the substantive law? What is the hearing officer's attitude toward clients, witnesses, and advocates? Should you be prepared for anything unusual about the hearing officer's conduct during hearings?

Discovery

The statutes and regulations governing some administrative forums define and permit certain types of discovery. Formal discovery can include, for example, rights to a case summary describing the factual and legal basis of agency action, to access and copy the client's records, and to request documents or answers to interrogatories; formal discovery can also include subpoenaing witnesses or records. Subpoenaing is typically used after you have identified what is needed through discovery and must force testimony or production of evidence at the hearing. State freedom of information statutes may provide access to records to which agency

rules do not refer (e.g., internal e-mails and memoranda to field offices on how to implement a regulation). Attorneys have subpoena power defined by state statute. The agency, often through the hearing officer, may entertain (though not necessarily grant) requests that it subpoena witnesses and records, seek information through third parties (e.g., agency requests for birth records), or arrange for independent evaluations (e.g., medical evaluations in a social security disability case or evaluation of a learning disability in a special education case).

Informal discovery is limited only by the imagination. It can include searches for potential evidence (e.g., reviewing police records to determine when calls were made related to domestic violence and the outcome of police intervention), interviewing potential witnesses and others who may have information about the client's claims (including potential adverse witnesses), discussing aspects of the case with agency personnel, and reviewing the publications of an expert whom the agency or an adverse party will call.

Reviewing Agency Records

In virtually all situations clients have a right to access their own agency records and obtain copies of various items.⁴ To gain access to a client's records, you typically need a written, signed authorization for release of information by the agency. Some agencies require appointments for record reviews.

Knowledge of agency policy and practices can be useful when seeking agency records, which may include far more than the client's paper "file." To ensure thorough review, ascertain whether records pertaining to the client exist beyond the paper file.

³ Some sources of information are more helpful than others. E.g., the Social Security Act and Regulations do not describe in much detail the procedures for a disability hearing before an administrative law judge. The most useful source for learning and understanding these procedures is OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION, HEARINGS, APPEALS AND LITIGATION LAW MANUAL (HALLEX), *available in part at* www.severe.net. You can get further information about hearing procedures from secondary sources, e.g., THOMAS E. BUSH, SOCIAL SECURITY DISABILITY PRACTICE (2d ed. 1998); NAT'L HOUS. LAW PROJECT, H.U.D. HOUSING PROGRAMS: TENANTS' RIGHTS (2d ed. 1994 & Supp. 1998); James M. McCreight, *Public and Subsidized Housing Evictions and Terminations of Subsidy*, PRO BONO DESK REFERENCE (Mass. Continuing Legal Educ. ed., 1999).

⁴ In nonwelfare situations, you may be charged for copies.

Sensitive materials (e.g., psychological or counseling files that fully reflect the nature of a student's problems, the school's knowledge of the problems, and how it reacted) may be kept in separate files. Increasingly the paper file may not reflect computerized records of phone conversations, actions taken on a case, notices, benefits paid, and other information.

An agency may attempt to limit access by releasing only records it deems relevant to your inquiry. This is improper without your permission because inadvertently or intentionally the agency may withhold useful information.

When reviewing records, note documents or records you want to copy. (*Post-its* are helpful.) Ask questions if something is confusing, request to see documents that you think should be in the file or that are referred to in the file but not there, and ask if any other agency records pertain to the client. Consider talking to the client's agency worker about the client's situation. This may reveal information not reflected in the formal record and may allow you to narrow issues in dispute. Take notes so that there is a clear record of what you reviewed, with whom you spoke, and what information is not reflected in the copies of documents or other records you obtained.

Determine whether the client has other relevant documentary evidence that is not in the agency record. For example, letters from clients to the agency or its employees may not appear in the agency files, but the client or someone else may have copies.

Negotiation and Settlement

When you have a clear theory of the case and are reasonably sure of the facts and the potential outcomes that will meet the client's goals, consider settlement negotiations.

Negotiating may help

- produce discovery regarding the case;
- narrow the issues for hearing;
- produce a settlement that gives the client all the benefits at issue.

On the other hand, you may want to avoid negotiations that

- have no current potentially useful result or
- notify the opposing party of your involvement in the case, thereby allowing the opponent to prop up a weak position for the hearing.⁵

Setting of the Hearing

Administrative hearings are held in a variety of settings, often informal, such as meeting rooms and conference rooms. Most hearings are private, and observers may be present only with the permission of the parties and the hearing officer.

Practice Tip: Visit the hearing room in advance to learn what it looks like; where the judge and judge's staff sit; where you and your client should sit in relation to the judge; whether there is a chalkboard, easel, exhibit stand, television, videocassette recorder, or other necessary equipment; and whether there is a place nearby where you and your client can meet and confer before or during recesses in the hearing.

Components of the Hearing

The components of an administrative hearing vary according to the type of hearing and the agency involved. The following elements are usually standard:

- Opening comments by the hearing officer or administrative law judge.
- Opening statements by the parties or their representatives.
- Testimony of the parties and other witnesses and introduction of evidence into the record.

⁵ You might consider delaying the contact for negotiation until too late for the opposing party to gather evidence that would bolster the opponent's case, or until after the opponent has prepared a hearing summary or brief locking in a weak position. Since delays in contacting opposing parties and agencies also may mean compromising early access to potential discovery for your client, you must carefully weigh this approach.

- Closing arguments by the parties or their representatives.

Practice Tip: You often have to ask the hearing officer or administrative law judge for permission to make an opening statement and a closing argument. If possible, do so in advance of the hearing, either orally or in writing, or at the beginning of the hearing.

Opening Statements

Your opening statement should be short and direct, stating succinctly your theory of the case and highlighting the most impor-

Your role as an advocate in conducting direct examination is to elicit facts of the case from your witnesses, not to state facts yourself.

tant evidence that supports your theory.⁶ An effective opening statement orients the judge, your client, the opposing party, and anyone else in the hearing room, including expert witnesses, to the chief factual and legal strengths of your case. Opening statements in administrative hearings typically should last no more than two to three minutes. If your case is unusually complex, address difficult or complicated issues in a prehearing brief or memorandum and simply refer to the brief or memorandum in your opening statement.

Evidence

Administrative hearings are often less formal than court proceedings, and formal rules of evidence normally do not apply. With some exceptions, applicants have the burden of showing that they are eligible for benefits, while in termination cases the agency, not the recipient, generally has the burden of proof.

Direct Examination. The primary objective of direct examination is to prove a prima facie case.⁷ However, do not 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.

Direct examination is your main opportunity to make a complete record:

- Cover all the essential legal and factual points.
- Present an orderly, coherent story in a persuasive manner.
- Begin and end the testimony on strong points.
- Have the witness make a good oral and visual impression.
- Prepare the witness properly.

Your role as an advocate in conducting direct examination is to elicit facts of the case from your witnesses, not to state facts yourself. Your questions and statements are not evidence and do not establish facts. Do not lead your witnesses: by doing so you conceal their testimony with your own statements. Do not express opinions about a witness' testimony while examining the witness. Reserve comments on the credibility or weight due a witness' testimony for your closing argument.

Practice Tips:

- Be prepared for the possibility that the hearing officer or administrative law judge will conduct an initial examination of your client and your other witnesses before your direct examination. In many cases, this is standard practice. However, you may wish to consider carefully any objections you may have to the practice. If you do not object or if, despite your objection, the hearing officer conducts the initial examination, you should be prepared to follow up with additional questions not addressed by the hearing officer. As a practical matter, you may wish to cross-reference the hearing officer's questions with your written list of questions to eliminate from your list any questions already asked. You will then be prepared to question your witness without fear of repetition.

⁶ Not all hearing officers allow an opening statement.

⁷ For a more detailed discussion of witness examination techniques, evidentiary issues, and general trial practice, see THOMAS A. MAUET, *FUNDAMENTALS OF TRIAL TECHNIQUES* (3d ed. 1992).

■ Do not treat as an adverse party a hearing officer who conducts an initial examination. Always be tactful and polite. If you find a hearing officer's question objectionable (e.g., it seeks information that is irrelevant to the subject matter of the hearing), carefully consider the costs and benefits of objecting before doing so. If an objection is necessary to protect your client's appeal rights, then you should object and succinctly state your reasons for objecting. If an objection is not necessary to preserve the issue for appeal, consider whether you can correct the problem without objection. For example, you may be able to bring the issue to the hearing officer's attention in a posthearing legal memorandum, or you may be able to address the problem with follow-up questions to the witness at the hearing itself.

■ Ask your questions slowly to elicit the critical parts of the witness' testimony in short, easily digested segments. Listen carefully to each answer your witness gives before moving to the next question.

■ Monitor the hearing officer's reactions and be alert for indications that the hearing officer does not understand or comprehend the witness' testimony. If, judging from the hearing officer's reactions, your witness apparently is not coming across, ask the witness to clarify the testimony immediately.

■ Remember that each witness need not tell the entire "story," but keep your presentation orderly and coherent. When necessary during your examination of a witness, refer to prior or anticipated testimony.

Cross-Examination. Recall that the main purposes of cross-examination are to elicit from your opponent's witnesses testimony and other evidence that is favorable to your client's position and to discredit any adverse testimony from your opponent's witnesses.⁸

Prepare cross-examination questions for each opposition witness, and know

your opponent's probable theory of the case. However, you may have to wait until the hearing itself to decide whether to cross-examine a particular witness. Base your decision on the following considerations:⁹

■ *Has the witness hurt your case?* If not, cross-examination is not necessary.

■ *Is the witness important?* If so, you should do some cross-examination. If not, do not bother.

■ *Was the witness' testimony credible?* If not, you may want to leave well enough alone and avoid giving the witness an opportunity to establish credibility.

■ *Did the witness forget to bring up damaging testimony on direct?* If yes, you may want to consider forgoing cross-examination to keep the damaging testimony out of the record. If you open the door by conducting cross-examination, you may give the witness or the witness' advocate a second chance to raise the damaging testimony.

■ *What are your realistic expectations?* Unless you realistically expect to score points, you may want to avoid or limit cross-examination.

■ *What risks do you need to take?* If your case is solid, minimize your risks. If however, you have a weak case, you may need to take risks on cross-examination in the hope of striking gold.

Practice Tips:

■ It is your job to control an adverse witness during cross-examination. This is best accomplished through well-drafted questions that leave no room for any answer other than "yes" or "no." Each question should introduce no more than one new fact, and questions should progress logically toward a specific goal. Never ask open-ended questions.

■ If the witness evades a question, simply repeat it. If the evasion continues,

⁸ For more detailed information on cross-examination, see LARRY S. POZNER & ROGER J. DODD, *CROSS-EXAMINATION: SCIENCE AND TECHNIQUES* (1993 & Supp. 1998); THOMAS A. MAUET, *TRIAL TECHNIQUES* (5th ed. 2000).

⁹ MAUET, *supra* note 7.

repeat the question politely until you get an answer.

- Avoid arguing with the witness about the adequacy of an answer; instead, ask the hearing officer to instruct the witness to answer the question.

- As your opponent conducts direct examination of an adverse witness, listen for testimony that may contradict a prior statement by that witness. During your cross-examination, you can impeach the witness with the witness' prior inconsistent statement.¹⁰

Redirect Examination. If necessary, you may ask the hearing officer for the opportunity to reexamine your witnesses after your opponent or the hearing officer has questioned them. The purposes of redirect examination are to correct misstatements, inconsistencies, and misleading impressions that may have been created during cross-examination; to rehabilitate your witness' credibility; and to reinforce and clarify your witness' favorable testimony. During the hearing, note each inconsistency or confusion raised and rehabilitate each inconsistency or confusion, if possible.

In most judicial proceedings, you may not normally use redirect examination to introduce issues not already raised in direct or cross-examination. This may or may not be the case at your administrative hearing, depending on the forum, the applicable rules, and the hearing officer's predilections. Regardless, withholding an important part of your witness' testimony from direct examination to save it for redirect is always dangerous. Even if the hearing officer allows it, the testimony may not be as convincing as if raised on direct since the hearing officer may view it as an afterthought. And if your opponent declines to cross-examine, you may have forgone an opportunity to introduce important testimony.

Exhibits. In most cases, witness testimony, without more, is not sufficient to prove your case. Exhibits, including documents and other forms of evidence, are often necessary. Depending on the type

of case, submitting this evidence to the hearing officer in advance of the hearing may be appropriate. For example, in social security disability cases, what is customary and preferred is for advocates to submit the claimant's medical records, affidavits from the claimant's treating doctors, and other documentary evidence, to the administrative law judge before the hearing. However, in other types of cases, such as unemployment compensation cases, presenting evidence at the hearing itself, often during the course of witness testimony, is customary.

The procedure for introducing exhibits at an administrative hearing is less formal than in judicial proceedings. Nevertheless you should follow a logical sequence so that the way the exhibit comes into evidence ensures that the hearing officer clearly understands its meaning, credibility, and significance. Although you probably may introduce exhibits into evidence at an administrative hearing without much (or any) formality or foundation, you should avoid doing so. Without a logical presentation and explanation of the exhibit and its connection to the witness and the case, the purpose, nature, authenticity, and reliability of the exhibit will be lost on the hearing officer as well as the appellate tribunal.

Practice Tips:

- Some hearing officers like to admit all documents and other evidence before going "on the record," that is, before officially commencing the hearing. If you are merely stipulating to the admissibility of unobjectionable documents, this practice may present no problems. However, if you intend to object to the admissibility of a document, insist that your objection take place on the record.

- Prepare your exhibits in as convenient a form as possible. If an exhibit contains a large volume of records, you may wish to include a brief, written summary.

- Always bring copies of your exhibits for your opponent.

- Before the hearing, prepare a list of the evidence you need to have admitted.

¹⁰ You can find techniques for impeaching witnesses in *id.*

Effective Administrative Representation: A Judge's View

- *Know the law and understand the issues.* Read the hearing notice sent to your client. This is the procedural due process document that governs the hearing. The issues listed in the hearing notice will be considered at the hearing. Normally neither the agency nor your client may raise other issues without a waiver of notice. Understand the basic framework of the governing law. For example, the preamble to the California Unemployment Insurance Code states that unemployed people are entitled to benefits if they lost their job through no fault of their own. A preamble often lays out the most fundamental and important elements of a prima facie case.
- *Investigate and test the facts.* Administrative hearings are generally scheduled on short notice. You have to be prepared to do the best you can in most circumstances: most administrative agencies frown on continuances. Prepare your client by testing the client's testimony. Do not accept at face value statements or versions of facts that strain common sense or perception. Ask your client difficult questions. Do not be surprised at the hearing.
- *Attend a hearing to familiarize yourself with the judge's procedure.* This will alleviate any anxiety that you or your client may have. Note if the judge questions first (many do). Does the judge want oral argument or prefer a letter brief? Are there any procedures that seem specific to the administrative law judge? Check with your colleagues to get tips and suggestions on appearing before specific judges.
- *Show empathy for your client.* Do not distance yourself from your client if your client's version of facts strains common sense despite preparation. The judge should be impressed with your belief that the client has the right to the appeal and to be heard.
- *Courteous behavior almost always will win the day.* Administrative law judges spend a lot of their time trying to keep the proceedings somewhat formal and the record for appeal legally understandable. Do not hinder this effort. Be effective by being organized, succinct, and understated.

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At the hearing, check off each item as it is admitted.

Evidentiary Objections. Prior to the hearing, reconsider the evidence you plan to introduce and its justification on evidentiary grounds (e.g., it is relevant; your witness has personal knowledge). Anticipate objections and your probable response. Think about the evidence that your opponent is likely to introduce and whether you may have a good basis for objecting to its admission. Be aware of how and when you must object to preserve the record for appeal.

Closing Arguments

After the last witness testifies, be prepared to give a concise and persuasive closing argument. You can summarize the facts and law in detail in a posthearing brief or memorandum.

If your adversary also gives a closing argument, you may wish to offer a rebuttal. You may need to ask the hearing officer in advance for the opportunity to do so, and the hearing officer may require you to reserve time from your closing argument for your rebuttal. These practices vary according to the type of hearing and the predilections of the hearing officer.

Posthearing Responsibilities

In many administrative cases you may request to keep the record open for a defined period of time to submit additional evidence or memoranda. Such posthearing memoranda are useful vehicles to summarize the facts and law or to address problematic issues that emerged at the hearing. Consult the applicable regulations to determine whether posthearing submissions are permitted and, if so, what procedures you must follow.

Outstanding Documentary Evidence.

If the hearing officer grants a request to leave the record open for the submission of additional evidence, it is your responsibility to obtain that evidence and to submit it as quickly as possible. If you absolutely need additional time (e.g., if you have been unable to obtain a particular piece of medical evidence but believe you will be able to get it), you may request an additional extension of the deadline. Such extensions are generally granted for good cause. However, remember that your client, whose livelihood, health care benefits, or housing may be at stake, is undoubtedly waiting anxiously for a decision. If you later find that you are unable to obtain the additional evidence (or if that evidence turns out to be unhelpful to your client's case), notify the hearing officer that the record may be closed and a decision rendered.

Hearing Memorandum. A hearing memorandum is a written summary of your client's case, organized as you hope the hearing officer will consider the case. Writing the memorandum prior to the hearing as a technique to assist you in organizing and understanding the case is often very useful. If you feel that the memorandum accurately summarizes the case as it was presented, you may decide to submit the memorandum at the hearing, generally after closing argument. In most administrative forums (check the applicable rules if you are uncertain), you also have the right to file a hearing memorandum after the hearing concludes. Procedurally, at the end of the hearing, you need to ask the hearing officer to keep the record open for a set period for submission of a memorandum. The advantage of revising the memorandum and submitting it after the hearing is that you can incorporate the actual testimony and evidence that was presented. This may be particularly important if the opposition introduced evidence that surprised you or requires explanation or analysis.

If you are requesting a favorable finding based on the record prior to the hearing, you must accompany that request with a memorandum that explains why the record is so compelling that it neces-

sitates a finding in your client's favor without testamentary evidence.

Preparing a hearing memorandum for each case is an effective way to influence the outcome of the hearing, and it can also ensure that critical issues are preserved for appeal. A well-written memorandum can assist the hearing officer by facilitating the process of organizing the evidence, as well as making and writing the decision. The written decisions of hearing officers often reflect the points, emphasis, organization, and even phrasing of well-written hearing memoranda. It may be useful to review decisions written on the same issues and decisions written by the same hearing officer to see how those decisions are organized and the points that they emphasize.

Various formats, including letters, proposed findings of fact and conclusions of law, and a more formal "legal brief" style, are acceptable for hearing memoranda. Learn what is permissible in your particular forum and which format is most customary.

In writing the memorandum, begin with the assumption that the reader knows nothing about your case and include these elements:

- *Issues.* Begin with a concise statement of the issues to be resolved, citing the statute and regulations where appropriate. You may present the issues in question form, phrased to lead the hearing officer to find for your client using your reasoning. By stating the issues first, you frame the discussion in your own terms and can pull the hearing officer into the course you set in your case strategy.

- *Facts.* Next, briefly review the relevant procedural and factual history and the client's efforts to obtain relief. Portray the facts in the light most favorable to your client, but do not omit critical facts. For each fact, cite its source in the evidence (e.g., "testimony of claimant at hearing"; "Exhibit No. 3").

- *Discussion and Argument.* This section is the meat of your memorandum. Separate issues by using headings, usually in the form of an affirmative statement of your position. Often issues are best bro-

ken down into subissues, each of which should also have headings. Discuss the most central issue first, and begin with a clear assertion of your position. In your argument for each issue, cite the applicable statutory and case law, and show the relationship between the cited law and the facts of your case. However, use cases sparingly, avoid extensive quotes, and discuss only a few selected authorities. If you can make a good argument based on logic, make it, whether you have legal authority or not. If some case law appears to contradict your position, cite the case and explain how it can be distinguished from your case or why that law should not be applied. (Do not go so far as to make your opponent's case or appear too defensive.)

- *Conclusion.* The conclusion should summarize the answers to the issues raised at the beginning of the memorandum. You may state these in narrative form or in the form of proposed findings. Each proposed finding should state a conclusion of fact and law (e.g., “The claimant was discharged for misconduct within the meaning of the Unemployment Law, section 1”). Briefly support each assertion or proposed finding as needed, stating the requirements of the law and the facts showing that the law favors your client. Conclude by arguing for the client's right to the desired relief based on the evidence produced. Designate the date to which the requested relief should be retroactive, if applicable.

Client Follow-up

Stay in touch with the client until the hearing officer renders a decision. Be sure to use a monitoring system so that you can determine whether the decision is overdue. If the decision is unduly delayed, contact the hearings clerk to make sure that your client's case has not been misplaced, forgotten, or lost in the mail.

Once a decision is rendered, be sure that the client understands the decision and its ramifications. If the decision is favorable, see that it is enforced and that the client receives all the benefits that the decision mandates before you terminate your relationship with the client. This may require checking the accuracy

of the agency's benefit calculation. Before closing the case, make sure that the opponent or applicable review board has not appealed or requested review of the decision.

If the decision is unfavorable, explain its rationale to the client. Discuss any potential grounds for appeal and offer your best assessment of the likelihood of prevailing on appeal. In some situations, a client who is dissatisfied with a determination may request to have the case reopened and revised prior to appeal.

Miscellaneous Practice Tips

- *Hearing Etiquette.* Always make sure that you, your client, and your witnesses arrive at the hearing on time or early. Be polite to the hearing officer and all of the parties. Comport yourself in a professional manner. Although most administrative hearings are not as formal as judicial proceedings, you should never compromise your credibility or that of your client by lowering your standards of professionalism or courtesy.

- *Showing Deference to the Hearing Officer.* Accord the hearing officer the same level of respect and deference that you would accord a judge in a judicial proceeding.

- *Objecting to the Hearing Proceedings.* In many cases, there is an undeniable tension between showing deference to the hearing officer and effectively presenting your client's case and preserving your client's rights. This tension is particularly evident when a hearing officer allows your adversary to present evidence or arguments on issues about which you received no advance notice, or when a hearing officer does not allow you to present testimony or other evidence essential to your client's case. Carefully consider your use of objections at the hearing. When you must object, be concise and articulate your objection clearly. If the hearing officer overrules your objection, offer to submit a posthearing legal memorandum. This will preserve the issue for appeal. To continue arguing the point at the hearing, especially at the risk of further alienating the hearing officer, is not necessary.

- *Building a Record for Appeal.* You have an important obligation to build the record in case of appeal. Be sure to present all of the issues, testimony, and documentary evidence in your case at the hearing or, when permitted by the hearing officer, within a designated time thereafter. Make sure that your legal arguments and objections to your opponent's evidence are in the record.
- *Recording the Hearing.* Sometimes making your own recording of the hearing is helpful. You should be allowed to do so as long as your recording does not interfere with the conduct of the hearing. You may want your own copy of a hearing tape if you are going to prepare an extensive posthearing memorandum and would like to cite the hearing testimony of various witnesses or other portions of the hearing transcript. You may also want your own hearing tape if you anticipate the need to appeal and want to avoid any delays that waiting for an official copy of the tape may cause.