

# Administrative Adjudication\*

## Section 1.4

### Role of the Hearing Officer in a Disciplinary Hearing

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#### **Introduction**

Administrative tribunals were created to relieve the courts of the burden of adjudicating many thousands of actions, disputes, and other proceedings, and in many respects, have become an extension of our American judicial system. The administrative Hearing Officer occupies a primary position in this process and shoulders substantial responsibility.

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#### **Hearing Officer's responsibilities**

Although not occupying the judge's chair in the traditional courtroom setting, the Hearing Officer is every bit as much a judge. Resolving conflicts and dispensing justice, the Hearing Officer's function is often indistinguishable from that of his/her judicial counterpart. These individuals are the keystone of the administrative law system, rendering judgments and decisions having far reaching effects upon the rights and obligations of everyone.

In many instances, Hearing Officers act as both judge and jury by making the determination as to the facts in a particular case, in addition to the ultimate decision as to the appropriate laws, rules, and regulations to be applied. An additional burden is placed upon the Hearing Officers when the claimant or accused is not represented. In that instance, Hearing Officers have a greater responsibility to develop evidence and to assist the unrepresented party in the presentation of his or her case.

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#### **U.S. Supreme Court opinion on administrative adjudication**

Hearing Officers should heed the admonition of the U.S. Supreme Court when it noted that administrative adjudication should be simple, flexible, and adaptable to a variety of problems. These guidelines should be adhered to, as hearings are conducted within the appropriate standards of due process of law. Not only the Hearing Officer's attitude and conduct, but the procedures and the entire hearing process should make the persons involved feel that they are being dealt with fairly.

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# Role of the Hearing Officer in a Disciplinary Hearing, Continued

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**Who *can* and *should* be the Hearing Officer?**

The Hearing Officer *can* be anyone the county agricultural commissioner (CAC) or Director feels is qualified by training or experience to act in the capacity of a Hearing Officer. The Hearing Officer *should* be someone who can understand and is familiar with the elements of the law(s) or regulation(s) alleged to have been violated, has good analytical skills, can write well, is willing to make written findings of fact based on the evidence introduced at the hearing, can apply the facts to the violation(s) alleged, will put in writing how those facts show the alleged violation(s) occurred, and write a well-reasoned proposed decision.

The Hearing Officer *should not* be someone who was involved in the inspection and/or investigation of the matter or involved in the decision that the evidence is sufficient to bring the action.

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**Delegated the role of Hearing Officer**

If the CAC or Director has delegated the role of Hearing Officer to another person, the CAC or Director should adopt the proposed decision as his/her own decision.

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**Demeanor of the Hearing Officer**

To a great extent, the tone of a hearing is determined by the demeanor of the Hearing Officer, who must assure that the hearing proceeds in a proper manner, that an adequate record is made, that all relevant evidence is received, and that all persons present are encouraged to speak freely about the issues under consideration. Not only must the hearing be a “fair” hearing, it must have the appearance of being a fair hearing.

Initially, the Hearing Officer should assume a calm, neutral, and business-like posture. All participants should be put at ease by being received in a respectful and courteous manner. Many of the people who may appear at an administrative hearing are doing so for the first time in their lives. It is not uncommon for them to be somewhat bewildered and confused or nervous. The Hearing Officer should give assistance to these people by explaining the hearing and questions to be decided. The hearing should be conducted in a patient, but deliberate fashion. The informality of the hearing should be readily apparent to all parties.

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## Role of the Hearing Officer in a Disciplinary Hearing, Continued

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### **Hearing Officer's obligation to the state, the county, and the Respondent**

The Hearing Officer's obligation to the state, the county, and the Respondent is to be impartial, make written findings of fact based on the evidence, and decide whether a violation occurred based on facts brought before him or her.

The Hearing Officer must be above reproach at all times, be unbiased, and focus upon the particular issues at hand.

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### **Impartiality**

Assuming the position of a Hearing Officer means adopting a role of impartiality. A Hearing Officer must be sensitive to the way in which words and conduct affect others. Often, it is merely an innocent act of friendship which may create the suspicion of partisanship.

The Hearing Officer must not engage in *ex parte* consultation with persons involved on one side or the other. Not only do such consultations violate the concept of fundamental fairness, they give the appearance of favoritism.

It is highly inappropriate for the Hearing Officer to form or express any opinion on factual matters connected with the hearing until all the evidence is admitted. A chance remark by the Hearing Officer may tend to show that a conclusion has been formed prior to hearing all the evidence. A good Hearing Officer is ever mindful of this human tendency. Making a decision prior to receiving all the evidence is an absolute derogation of the Hearing Officer's duties and responsibilities.

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## Role of the Hearing Officer in a Disciplinary Hearing, Continued

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### **Impartiality** (continued)

The Hearing Officer must always avoid any inclination to be either a partisan or an advocate for a particular position, listening with patience and fairness to all the testimony. Nor should the Hearing Officer be influenced by sympathy, passion, or prejudice towards any of the parties. In reaching a final conclusion, evidence to which a party has made a valid objection should be disregarded by the Hearing Officer. The Hearing Officer should never take as evidence the unsupported statements of an attorney or representative at the hearing. All the evidence should be heard and evaluated before the Hearing Officer begins the decision-making process.

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### **U.S. Supreme Court's ruling on administrative hearing bodies**

The importance of the Hearing Officer's impartiality has been emphasized by the U.S. Supreme Court's ruling on administrative hearing bodies.

A Hearing Officer who is believed to be biased, may be challenged. Bias is only found where the Hearing Officer has some type of personal involvement with the Respondent's case or where some other circumstance exists which may prejudice the case. The fact that the Hearing Officer conducted a hearing involving the same Respondent some time in the past is not sufficient to establish a finding of bias. However, if the Hearing Officer has formed opinions which would preclude objectivity towards this person as a result of prior contacts with the Respondent, the Hearing Officer should disqualify himself/herself.

Additionally, if the Hearing Officer has any personal interest in the outcome of a particular case or a close friendship with any of the parties, inferences of bias and prejudice may exist; the Hearing Officer should postpone the hearing and ask that another Hearing Officer be appointed.

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## Role of the Hearing Officer in a Disciplinary Hearing, Continued

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### **Proper decorum**

Proper decorum includes the following:

- The County Advocate (Advocate) should support the authority and the dignity of the hearing by strict adherence to the rules of decorum and by manifesting an attitude of professional respect toward the Hearing Officer, the Respondent, witnesses, and others in the hearing room.
  - When the hearing is in session, the Advocate should address the Hearing Officer, not the Respondent, on all matters relating to the case.
  - It is unprofessional conduct for the Advocate to engage in behavior or tactics purposefully calculated to irritate or annoy the Respondent.
  - The Advocate should comply promptly with all orders and directives of the Hearing Officer, but the Advocate has a duty to have the record reflect adverse rulings or conduct he/she considers prejudicial. The Advocate has a right to make respectful requests for reconsideration of adverse rulings.
  - The Advocate should be punctual in all court appearances.
  - The Advocate should take leadership in developing, with the cooperation of the Hearing Officer, a code of decorum and professional etiquette for proper hearing room conduct.
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### **Proper hearing room decorum**

Proper decorum in the hearing room:

- Both the Advocate and the Respondent should support the authority and the dignity while in the hearing room by strict adherence to the rules of decorum and by manifesting an attitude of professional respect toward each other, the Hearing Officer, witnesses, and others.
  - When the hearing is in session, the Respondent should address the Hearing Officer, not the Advocate directly, on any matter relating to the Advocate.
  - It is unprofessional conduct for the Respondent to engage in behavior or tactics purposefully calculated to irritate or annoy the Hearing Officer or the Advocate.
  - The Respondent should comply promptly with all orders and directives of the Hearing Officer, but he/she has the right to have the record reflect adverse rulings or judicial conduct which he/she considers prejudicial to his/her legitimate interests. The Respondent has a right to make respectful requests for reconsideration of adverse rulings.
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## Role of the Hearing Officer in a Disciplinary Hearing, Continued

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### **Preparing for the hearing**

To be fully prepared, the Hearing Officer should carefully review all material submitted prior to the hearing, note the contested issues, and consider the pertinent rules and regulations involved in the case. This review must be made with an open mind, realizing that a “quickie” judgment may result in an erroneous conclusion. This review should merely enlighten the Hearing Officer as to the issues and serve as a guide to the conduct of the hearing. Instant judgment based only on the supporting evidence should never occur. The Hearing Officer must remain objective while gathering and considering all evidence presented in the fact-finding stage.

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### **Selecting a hearing room**

The location of the hearing is also important to the overall hearing process. The Hearing Officer should insist on suitable arrangements for the hearing. The hearing site should not be demeaning to the process. The hearing room should be quiet and private enough to maintain confidentiality. A noisy, well-trafficked area is not appropriate for a hearing.

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### **Conduct and control of the hearing**

The Hearing Officer has three basic duties with respect to the conduct and control of the hearing:

1. Gather all relevant evidence relating to the matters in controversy.
  2. Evaluate all evidence admitted into the hearing.
  3. Make a sound decision.
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### **Opening the hearing**

The Hearing Officer determines the tone of the hearing. A friendly, relaxed atmosphere is essential in order to maintain informality in administrative hearings. The Hearing Officer should introduce himself and others present to the parties at the beginning of the hearing. The name and position of each person present in the hearing room should be ascertained so that the parties can be referred to by name during the hearing. However, the Hearing Officer should refrain from appearing overly friendly with staff to prevent appearances of favoritism. All participants in the hearing should be treated in a similar manner and with respect.

The Hearing Officer should, at the outset, explain the procedures to be utilized in the hearing and discuss them with the parties, remain mindful of the duty to develop a good record of the hearing, and identify the hearing as to time, date, and place.

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## Role of the Hearing Officer in a Disciplinary Hearing, Continued

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### **Taking testimony**

Frequently, a Hearing Officer will wish to take notes as testimony is given. Such notes are useful during a later determination although the Hearing Officer should avoid the appearance of constantly scribbling and not paying attention to the testimony itself. Note taking should also be done in such a manner as to not give the Hearing Officer the appearance of being passive; the participants in the hearing should feel that the Hearing Officer is in control of the hearing and is developing the case in a purposeful manner.

Personal preference determines how active a role the Hearing Officer will take during the hearing. It should appear that he or she is commanding the logical development of evidence, yet is not dominating the hearing, intimidating the parties, or misdirecting the testimony.

The Hearing Officer should not interfere with the case by making extraneous comments or observations, by adverting to collateral and irrelevant matters, or by breaking into testimony before an answer is completed. A sequential story obtained in an orderly fashion is the straightest and shortest line between the opening and closing of the hearing.

While gathering evidence in the hearing, great care must be exercised in the use of the Hearing Officer's questioning power. By asking leading questions or nodding sympathetically, the Hearing Officer may inadvertently suggest that a particular line or argument or evidence is decisive. The manner of questioning should encourage all persons to speak freely about the issues under consideration.

The Hearing Officer's approach to evidence gathering may be affected by the presence of an attorney. The attorney should assume the primary obligation for organization and development of the case, and because of this, the Hearing Officer may be able to take a less active role in the proceedings. The Hearing Officer's own questioning is generally limited to areas not covered by counsel, but which are germane to the matters at issue. Where a party is not represented by counsel, the Hearing Officer assumes greater responsibility for developing the facts and for assisting in presenting the Respondent's case. The responsibility extends to a more vigorous cross-examination of adverse witnesses and more in-depth questioning as to all matters.

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## Role of the Hearing Officer in a Disciplinary Hearing, Continued

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### **Disruptions during the hearing**

It is not unusual for a participant in a hearing to become angry or frustrated, and behave in a persistently disruptive manner. Verbal attacks on other participants will sometimes occur among the parties to a hearing. When such a tense situation develops, it is incumbent upon the Hearing Officer to maintain a deliberate calmness, even though he or she may also be angry and frustrated. Fairness or justice cannot be achieved in a hearing in which the parties are merely venting their hostilities. When facing difficult situations, the Hearing Officer should take extra care to discuss the issues and focus upon relevant evidence.

The Hearing Officer should immediately caution participants that proper order must always be maintained; insist on an orderly development of the testimony. A brief recess may be useful to restore tempers and allow the hearing to continue in a calmer and more orderly fashion. At such times, the Hearing Officer should display firmness, lack of emotional involvement, and make clear a determination to be neutral and impartial.

Under no circumstances should one person be allowed to verbally abuse or badger another. If the conduct of one or more participants is completely inappropriate and they appear unable to continue with the hearing, the Hearing Officer may want to exclude that person from the hearing or to grant a continuance, but this should occur very rarely.

If the Hearing Officer maintains control and handles tense situations correctly, the conclusion of the hearing will be possible.

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### **Closing the hearing**

The Hearing Officer usually extends a final opportunity to the participants of a hearing to add any last remarks to their testimony by asking if they have anything further to say before closing the hearing. This question gives witnesses a chance to complete their stories in their own way. Often, responses to such a question may be lengthy and irrelevant to the issues in the hearing; a Hearing Officer will have to tactfully limit such answers.

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## Role of the Hearing Officer in a Disciplinary Hearing, Continued

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**The Hearing  
Officer's  
responsibilities  
after the  
hearing**

After all the testimony has been presented, the Hearing Officer will begin the difficult process of evaluating the evidence and making decisions. The Hearing Officer should be familiar with relevant regulations, thorough in developing the record upon which the decisions will be based, and logical and clear in the expression of his or her opinion. Only with the fulfillment of these requirements will the role of the objective and impartial Hearing Officer be satisfactorily performed.

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