



NEBRASKA
State Bar Association

Best Practices in Administrative Hearings

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*Managing Attorney of the Health, Education & Law Project (HELP)
at Legal Aid of Nebraska*

TUESDAY

NOVEMBER 20, 2018

HRUSKA LAW CENTER - LINCOLN

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The NSBA Government & Administrative Practice Section presents

Best Practices in Administrative Hearings

Tues., November 20, 2018
12:00 pm - 1:00 pm

Hruska Law Center
635 S 14th Street, Lincoln

NE MCLE Accreditation
#163916 (Regular/live)
#163917 (Distance learning)
1 CLE hour

www.nebar.com

This presentation will cover the basics of representing clients in administrative hearings.

Subjects covered will include: 1) hearing preparation; 2) discovery; 3) prehearing negotiation; 4) other prehearing considerations; 5) representation at the hearing; 6) evidence submission and objections; and 7) post hearing concerns.

Speaker:

Ann C. Mangiameli, Legal Aid of Nebraska

REGISTRATION FORM: Best Practices in Administrative Hearings - November 20, 2018

- I will attend the live seminar at Hruska Law Center in Lincoln.
- I will attend the seminar via live webcast.
- \$65 - Regular Registration
- \$50 - NSBA dues-paying member
- Free - NSBA Government & Administrative Practice Section member
- Free - Law Students

Please let us know how you heard about this CLE event:

- Email (eCounsel, listserv, etc.)
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- Another NSBA CLE event
- NSBA print mailing
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Make checks payable to NSBA and return completed form to NSBA, 635 S 14th St. #200, Lincoln, NE 68508, or email to Karla Roscoe at kroscoe@nebar.com.

If you do not receive an email confirming your registration, please call (402) 475-7091.

If you need any special accommodation for attending this event, please contact the NSBA.

NSBA CLE Cancellation Policy: • A full refund will be granted only when a cancellation request is received at least 72 hours prior to the live or distance-learning CLE event. • A cancellation request made less than 72 hours of the live or distance learning CLE event or following the live or distance-learning CLE event will be refunded, less a \$30 processing fee. • You may send a substitute (e.g., someone from your firm) in lieu of cancelling. • The cancellation policy for a NSBA sponsored CLE event does not apply to independent third-party CLE providers, and attorneys are subject to their cancellation policy.

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Ann C. Mangiameli *Legal Aid of Nebraska*

Ann C. Mangiameli, JD, is the Managing Attorney of the Health, Education & Law Project (HELP) at Legal Aid of Nebraska. HELP partners with health care systems to provide legal services to patients to address legal needs which inhibit patient health. Mangiameli practices in the areas of Social Security Disability, Medicaid/Medicare, Guardianship and Advance Directives. Additionally, Mangiameli has served as a speaker at both local and national conferences on Medical Legal Partnerships. Mangiameli was appointed to the Advisory Council on Public Guardian for the State of Nebraska and served as the Vice-Chair. She is an Adjunct Professor at Creighton University School of Law and serves on the Law School's Health Law Program Board of Advisors. Ms. Mangiameli is a 1991 graduate of Creighton University School of Law.

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Legal Aid
OF NEBRASKA

HEALTH EDUCATION & LAW PROJECT
H.E.L.P.

THE BASICS OF PRACTICING BEFORE
ADMINISTRATIVE AGENCIES

ADMINISTRATIVE ADJUDICATIONS

Quasi judicial process where a bureaucratic agency determines a dispute between two parties similar to a judicial proceeding or;

Used if a person or a business is not in compliance with Federal Law such as cases before the Equal Employment Opportunity Commission (EEOC) or the Federal Trade Commission (FTC)

ADMINISTRATIVE ADJUDICATION

- ▶ Investigative agency is normally the same agency as the Administrative Law Judge (ALJ) who makes the determination at the administrative hearing.
- ▶ The Administrative Agency almost always has the original decision making power to the exclusion of the courts.
- ▶ You must exhaust all administrative remedies before turning to the courts.
- ▶ Judicial review is limited to the "administrative record already in existence" *Camp v. Pitts*, U.S. 138, 142 (1973)

Hearing Preparation:

1. Know the rules:
 - a. Enabling statute
 - b. Procedural Regulations
2. Know the Administrative Law Judge:
 - a. Opening statements
 - b. Witnesses
 - c. Ask other attorneys



HEARING PREPARATION CONTINUED

How long will you wait for your hearing? 20 days or years.

Do you need to be gathering evidence continually?

When do you need to submit your exhibits? If you do not get them in in time they may be excluded.



DISCOVERY

Agency will typically provide all information used in making their decision.

Administrative procedure of agency sets forth what discovery is permitted.

Administrative Law Judge has broad discretion to expand or deny discovery.



Subpoenas

Must request a subpoena issue to the ALJ

ALJ has broad discretion whether to allow subpoenas

Nebraska Revised Statutes 84-914
Feliciano v. Chater, 901 F. Supp. 50 (D.P.R. 1995)

BUILDING THE RECORD:

1. What is the purpose of your case;
2. Are you trying to establish or refute that an agency complied with applicable requirements; or
3. Establish the agency failed to engage in reason decision making.



FORMAL RULES OF EVIDENCE

Formal Rules of Evidence do not apply

Can request rules of evidence in formal hearings by delivering notice three days prior to the hearing.

Neb Revised Statute 84-914

Do you want evidence rules to apply?

PREHEARING CONFERENCES

Administrative Law Judge may determine to hold a prehearing conference

Parties can request a prehearing conference, why?

- explore settlement
- limit issues
- identify witnesses
- objections to evidence

Prehearing Considerations

Reasons to attempt to negotiate a settlement

Narrow the issues

Submit a prehearing memo to set out your argument



Other prehearing consideration

Know the record

Considerations on in person vs. telephonic/video hearings

Preparation of your client

We made it to the hearing....finally

Opening statements

The Administrative Law Judge may ask a lot of questions. They may not ask any questions. Prepare for both.

Some administrative hearings are not adversarial know the difference.

Direct examination, don't lead...follow



Exhibits:

1. How do you want to get them in?
2. Keep a list of exhibits you want to offer and cross them off as they are accepted.
3. If they have been stipulated to consider offering them at the beginning of your case lest you forget later.
4. If you offer them at the beginning, make sure you tie them in later with the appropriate witness. The exhibit means nothing if the ALJ doesn't have a context for why he/she is looking at it.

HEARINGS CONTINUED:

To cross or not to cross that is the question

Objections. They will be different if you choose to follow evidence rules.

Do not be married to your questions. Listening is key to a good record.

Official note Neb Revised Statutes 84-914

HEARINGS CONTINUED

Witnesses do I need them...all of them?

Do they add to your case?

Are they duplicative, repetitive?

Remember to ask to keep the record open if you need to submit further evidence.

Ask to submit a brief if it will help your case but only if it will help your case.

POST HEARING CONSIDERATIONS

Set expectations with your client.
Review how the hearing went and possible result.

If record was left open submit supporting evidence.

Submit a brief only if it is allowed and it would assist the decision maker.


