

PCBA CLE PROGRAM

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**“Hearsay, Hearsay: Everything You Ever Wanted to
Know About Administrative Hearings
But Were Previously Afraid to Ask”**

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Top Ten Tips From A Central Panel ALJ

1. **Read the Notice of Hearing** carefully, in its entirety. Note applicable statutes and administrative rules pertaining to the issue or issues on appeal. Note deadlines for submitting exhibits. Note the exact date and time of the hearing. Note participation logistics.
2. **Read the applicable statutes and rules** for each hearing. Each state agency has its own governing statutes and rules for the substantive issue(s) and procedural matters for various types of administrative appeals.
3. **Read relevant court opinions** relating to the subject matter and procedure. Some common issues are considered and interpreted by Iowa's appellate courts on a regular basis.
4. **Prepare for the hearing.** Submit exhibits to the ALJ assigned to your hearing and to the opposing party's representatives, at least five days before the hearing. Submit exhibits to the ALJ and other parties via email or fax if feasible. Obtain contact information for your witnesses to enable the ALJ to connect them to the telephone conference call at the time their testimony is needed during the hearing. Better yet, ask most witnesses to attend the hearing with you and your client, to help the hearing run as efficiently as possible. Hearsay is generally admissible in these administrative hearings, so you may submit written statements in lieu of live testimony if necessary. Request an administrative subpoena for witnesses and/or exhibits if needed. (See 481 IAC 10.14.)
5. **Show up for the hearing** at the exact time it is scheduled to begin. You snooze, you lose. Most of these hearings are conducted via telephone conference call, utilizing a conference calling system. The ALJ need not wait more than five minutes for all the parties to call in to participate in the hearing. Often, the ALJ will immediately prepare and upload a default decision after a party fails to appear for the hearing. (See No. 7)
6. **Know your burden of proof** and the opposing party's burden of proof. (See Nos. 1, 2, 3 above.) The burden of proof varies widely depending on the agency involved and the issues involved. The burden of proof in the administrative proceeding may be completely different from the corresponding criminal proceeding. For example, in a DOT OWI license revocation proceeding, the individual appellant bears the burden of proof. In most DHS public assistance denial hearings, the Department bears the burden of proof. The governing statutes and rules typically set forth the burden of proof for appeals from other agency decisions.
7. **Use your time wisely.** Present your case efficiently during the hearing. You are probably limited to an hour, or less, to present your case, due to the ALJ's daily hearing schedule. The ALJ most likely has several hearings scheduled that day, in one hour time slots, with another hearing immediately following yours. For example, hearings for the Department of Transportation (DOT), the agency with the highest volume of ALJ hearings, are usually scheduled every hour on the hour. Likewise, hearings for the Department of Human Services (DHS), the other agency with the highest volume of ALJ hearings, are usually scheduled in one hour time slots, with another hearing scheduled immediately following your client's hearing. More time is typically allotted for more complicated cases, but the general efficiency rule applies to all administrative hearings.
8. **Read the decision.** Note the result. Note the next step for further appeals. Each state agency (and sometimes each division within an agency) has its own appeal process. The next step may be an appeal to the agency director. The next step may be an appeal to another designated state agency. The ALJ's decision may be the final agency action, and the next step would be to the district court. Each written decision will include this information.
9. **Note deadlines** for any next steps in the review process. Some deadlines are jurisdictional.
10. **Respect the tribunal.** ALJs do not wear black robes or use a gavel. ALJs do make decisions that often impact the daily lives of your clients. Treat an administrative hearing and the ALJ with the same deference you would use in a district court proceeding.

GENERAL RESOURCES

General website for Division of Administrative Hearings:

<http://dia.iowa.gov/page10.html>

The website includes a FAQ – Intended for the general public, but may be useful for attorneys who are unfamiliar with the administrative hearing process.

General Statutory and Iowa Administrative Rule Resources:

Iowa Code Chapter 17A

481 Iowa Administrative Code Chapter 10

DOT Administrative Rules for contested case hearings: 761 IAC 620.4

DHS Administrative Rules for contested case hearings: 441 IAC Ch. 7

IWD Administrative Rules for contested case hearings: 871 IAC Ch. 26

GENERAL RULES FOR DIA AHD CASES

Hearsay is admissible. An ALJ is likely to allow hearsay in testimony and via exhibits. An objection to the proper weight or reliability of the hearsay evidence is appropriate, but please do not object to evidence purely on hearsay grounds.

Exhibits are accepted, by the DIA AHD (central panel) ALJs, via email, fax, or regular mail. Email attachments are preferred, to make sure that the ALJ assigned to your hearing actually receives your exhibits. Regular mail can take at least five days to actually reach the ALJ, so allow extra time when mailing exhibits.

Motions for continuances and withdrawals may be communicated via email. Be sure to include the opposing party in any communications with the ALJ. Faxed motions and withdrawals are also acceptable. **BE SURE TO INCLUDE THE ALJ'S NAME AND THE CASE NUMBER ON ALL MOTIONS AND COMMUNICATIONS!!!**

Ex parte communications are not allowed, of course. Most ALJs are happy to answer procedural questions for attorneys who are not familiar with a certain type of administrative hearing. All or most ALJs in the DIA AHD will accept continuance requests or appeal withdrawals or dismissals via telephone in DOT cases, because of a general DOT policy regarding these matters. An ALJ may ask you to contact the other party and agree on a new date. Or, the ALJ will start an email message series with the appropriate parties to avoid *ex parte* communications and to be efficient.

Clear and Concise is best. Cite relevant statutes, administrative rules, and case citations to the ALJ in your closing argument. Formal briefing is rarely required.