

Best Hearing Practices in Contested Cases



**The Honorable Eric L. Lipman
Office of Administrative Hearings
Tuesday, October 18, 2016**



The Standard Disclaimers

The views expressed are my own.

They do not necessarily represent the views of:

- the Office of Administrative Hearings;
- my fellow Judges;
- Governor Mark Dayton; or
- my wife.

Our Road Map for Today

We will explore five propositions:

- There are specialized practices in contested cases
- Knowing them will save time, money and effort
- Implementing them can improve your results
- This learning can inform your approach elsewhere
- Being better, faster, easier and cheaper is good

The Answers Before the Test

The Best Practices Reflect Two Key Values:

- A. Transparency: "All Cards Face Up"
- B. Efficiency in the Use of Resources

A Notice that Provides ... Notice

- A. The Due Process Guarantee
- B. The MGDPA Canard
- C. Resist Being Too Clever By Half

See *In Re the License of Hoefker*, 2002 WL 32067783, at *5 (Off. of Adm. Hrgs. 2002).
Minn. Stat. §§ 13.39, subd. 3 and 13.46, subd. 3(a)(2)-(4) and 4(b)(1)(ii) (2016)

PHC – The Benefits

- A. Orienting *Pro Se* Litigants to the Process
- B. Entryway to ADR, Settlement Talks
- C. The Alternative to Planning is Risk
- D. Safeguarding Trial Resources

PHC – Timing Issues

- A. Human Services: Minn. Stat. § 245A.07, subd. 7
- B. Special Ed: Minn. Stat. § 125A.091, subd. 20
- C. Commerce: Minn. Stat. § 45.027, subd. 7(b)(2)
- D. Campaign Practice: Minn. Stat. § 211B.35, subd. 1

PHC – The Items to Resolve

Minn. R. 1400.6550 or Minn. R. 1400.8580:

- A. Pre-Filing of Exhibits and Witness List
- B. Accommodations for Witnesses
- C. Dates for Case Milestones and Hearing

Discovery

- A. Minn. R. 1400.6700
- B. Minn. R. 1400.8600
- C. The Agency File

Hearing Exhibits

- A. Sensible Labeling Conventions
- B. The Right Version of Documents
- C. Four Copies (Yours, Mine, Theirs, Ours)

Pre-Trial Preparation

- A. Legal Standards for Your Case
- B. The Benefits of a Short Opening
- C. Hearsay Rules: 1400.7300, 1400.8607
- D. Special Burdens of Proof
- E. A Pre-Hearing Call to the Other Side

Hearing Room Practice

- A. Qualities of the Hearing Room:
 - Access, Space, Neutrality
- B. Stipulations on Exhibits
- C. Time-Certain Arrangements

Post-Hearing Writings

- A. Page Limitation in Minn. R. 1400.6600
- B. Minn. R. 1400.8609, subp. 3
- C. The Essential Balancing

Recap – Number 1

The Best Practices Do Reflect Two Key Values:

- A. Transparency: “All Cards Face Up”
- B. Efficiency in the Use of Resources

Recap – Number 2

You now know:

- There are specialized practices in contested cases
- Knowing them will save time, money and effort
- Implementing them can improve your results
- This learning can inform your approach elsewhere
- Being better, faster, easier and cheaper is good

One Last Bit of Good News

Event Code

228896

Notes:

