Analysis of Video project

Since the enactment of the APS Central Registry legislation, the role of the Case Manager for APS has evolved to that of Investigator and Witness for the Division. Eventually, every case manager will propose a case for substantiation on the Central Registry, a public registry that sets forth the names of individuals found to have abused, neglected or financially exploited vulnerable adults through an administrative hearing process. The Case Manager will play an integral role in this process.

The Case Manager provides evidence to the fact finder to establish the legal elements of the alleged offense against a vulnerable adult in support of substantiation. This is accomplished by oral testimony, identification of exhibits and the rendering of expert opinions. The Case Manager will provide important information for the fact finder through the direct examination that establishes the prima facie case. The Case Manager must also be prepared for cross examination by opposing parties and their attorneys.

Direct examination

This is the "who, what, where, how and why" of the state's case.

WHO: The case manager identifies self and position, education and work history. The goal is to lay foundation for qualifying the case manager as an expert for possible expert opinion testimony. The credentials of the case manager also lend credibility to the case manager's testimony.

WHAT, WHERE, HOW: The case manager identifies and describes the facts that bring the matter to hearing with particular focus upon who is the client and what is the client's condition, who is the alleged perpetrator of abuse, neglect or exploitation against the client, and what collateral sources have provided trustworthy and reliable information to the case manager about the case.

WHY: Why are we in the hearing process – to obtain substantiation of the allegation. The case manager must provide testimony that meets each of the elements of the allegation in order to provide a prima facie case for substantiation. This is done by oral testimony, admission of exhibits and reliable hearsay that is relevant and contains substantial guarantees of trustworthiness. The case manager should in response to a question on direct ask the court to substantiate.

CROSS EXAMINATION

After you complete your direct examination, the other side will have an opportunity to ask you questions to test your knowledge and memory regarding the case.

Glossary of Terms you might hear at the hearing.

Bias – This term can be used to refer to a witness' inclination toward a certain result – a condition of the mind that that renders the individual unable to be impartial.

Burden of Proof – The burden of proof is typically on the party seeking to receive some relief or some outcome from the tribunal. In these cases, the burden of proof is by a preponderance of the evidence. This standard has been interpreted to mean "more likely than not." If you had to measure the evidence, preponderance requires that 51% of the evidence out of 100% needs to be in favor of the winning party.

Closing Argument – Each party has a chance to argue the facts and law at the close of the evidence. It is not the time to present new information, but the party may assert facts testified to at the hearing or received in the form of exhibits to convince the fact finder to find in that party's favor.

Continuance – A rescheduling or delay in the hearing.

Cross Examination of Case Manager – the opposing party's opportunity to test the reliability and credibility of the evidence produced by the case manager. This is done by asking leading questions and is designed to accentuate the inadequacies of the state's case. All witnesses who testify on direct examination are subject to cross examination by the opposing party. The attorney or party questions the opposing party's witness and may ask leading questions – these are questions that suggest the answer in the question. "Isn't it true that you were arrested three times last year for DUI?" (For example)

Direct Examination – When the attorney or party questions his own witness. Typically open ended questions are asked during direct examination. These are the who, what where, when questions.

Exhibits – Any tangible evidence that illustrates or documents a factual point.

Expert Witness – A witness who has specialized knowledge, experience or education that allows the witness to testify to his or her opinions if those opinions may assist the trier of fact. This individual, through education and professional experience, can testify to opinions, in addition to facts. An example of an expert witness is a medical doctor in a

personal injury case. An expert witness can testify to her opinions based upon a review of the records, review of the literature, or actual involvement in the case.

Hearing Officer – The presiding judicial official aka "ALJ" at an administrative hearing.

Hearsay – An out of court statement made by someone who may or may not be present that is presented to prove the truth of the matter asserted. Hearsay evidence is allowed in Administrative Hearings as long as it contains substantial guarantees of trustworthiness and reliability. Although hearsay might be admissible, if it is not deemed reliable, the ALJ will not give the hearsay evidence much weight.

Impeachment – Any witness may impeached by prior inconsistent statements, whether made in the form of oral testimony or memorialized in case notes or other documents.

Interpreter - If the appellant's native language is not English, and you feel an interpreter is needed, advise the AAG assigned to handle the case.

Objections – Attorneys may object at any time during a witness' testimony to a question they feel is not relevant or is inappropriate for some reason. The witness must stop answering the question while the objection is discussed by the attorneys and the judge. If the judge overrules the objection, the question should be answered. If the judge sustains the objection, that means the question is inappropriate as asked. The attorney may attempt to rephrase the question in order to make is non-objectionable or may just move on to another area of inquiry.

Offer of Proof – When an attorney attempts to introduce evidence and is denied, the attorney makes an offer of proof in order to preserve the record for possible appeal and to give the judge an additional opportunity to reverse himself. This is accomplished by the attorney indicating to the judge that she would like to make an offer of proof. The judge indicates that the attorney may proceed, and the attorney makes a narrative statement describing what she sought to introduce.

Opening Statement – Each party has the opportunity to make an opening statement. An opening statement should be a brief overview of what that party believes the evidence will prove. This is not the time for argument.

Pre-hearing – the time prior to the hearing when both parties are present and may engage in settlement negotiations. This is the time when the parties are allowed to attempt to compromise. This could be manifested by a slight change to the substantiated statement.

Preliminaries – The time when the judge introduces himself to the parties, explains the process to the litigants, plays a video, and takes up preliminary matters like sequestration.

Recorded Recollection – Sometimes a witness never knew a specific in a case but made a contemporaneous note in the file regarding the facts. In that case, it is not appropriate to attempt to refresh recollection because it was never in the witness' memory. In that

situation, the witness is asked a question to which the answer is something to the effect, "I don't have independent recollection of that." The attorney then would ask if the information was recorded in the case file contemporaneously. Your reply is yes – you would identify where the case note is located, and that note would go into evidence assuming foundation that it was reliable and recorded in the normal course of job duties at or near the time the information was received. The record would then be marked as an exhibit and admitted into evidence.

Refreshing Recollection – Sometimes a witness will not recall specifics like a date or time, a series of figures or other important information that is not committed to memory. Case Managers maintain case notes in order to refresh their recollection while a case is open. Likewise, if during a hearing, you are asked a question to which you do not recall the answer, but know that the answer is in your case notes, you should say "I cannot recall." Or "I do not remember, but it is written in my case notes." The attorney can then ask you to refer to your case notes. Do so momentarily in order to remind yourself of the information sought and then put the notes down. The attorney will ask you if your memory is refreshed to which you reply "Yes." You then will answer the question without looking at the notes and testifying from your memory.

Sequestration or Invoking the Rule – the Administrative Law Judge may upon request by one or both of the parties in a hearing order witnesses to be excluded from the hearing until it is time for them to testify and to abstain from discussing their testimony amongst themselves.

SPECIFIC ADVICE FOR TESTIFYING IN ADMINISTRATIVE HEARINGS

1) Tell the truth no matter how much you are concerned that it might hurt the case. Do not exaggerate or overstate your case.
2) Listen carefully to each question. If you don't know the answer to a question, say "I don't know."
3) If you don't understand a question, don't try to answer what you think is being asked. Say "I don't understand the question."
4) If you cannot remember a fact, say "I cannot remember."
5) Think about your answer before you speak – try to avoid being sucked into the rhythm the opposing attorney seeks to set.
6) If the question can be answered with a yes or no, answer and stop. Do not volunteer information. If an explanation is necessary, say so.
7) Be definite – don't say "I believe" or "I think."
8) Do not ask questions.
9) Do not try to argue with the person asking you questions or the Judge.
10) Do not try to give information you want the Judge rather than the answer called for the question.

11) Be familiar with your case, your case notes, the law and issues surrounding the case.
12) Point out issues of concern to your attorney before the hearing if you are aware of them.
13) Answer the questions directly – hedging or trying to avoid a question on cross-examination will only encourage the attorney to continue asking the question in an attempt to pin you down, and such conduct spotlights your behavior for the fact finder.
14) "Isn't it possible?" questions – isn't anything possible?
15) If you determine that you misspoke, correct the mistake.
16) When there is an objection being decided, stop talking. Sneaking in your answer is not appreciated by the Judge.
17) Your job is to testify to facts, not your thoughts or speculations.
18) If you are quoting someone else or paraphrasing, indicate that in your answer.
19) Remain calm – losing your temper or giving flip or sarcastic answers can lose your case. Remain courteous at all times – this is a part of your job, so don't take it personally. A detached professional approach is the best demeanor for a department witness. Being humorous may not be received well by the Judge.
20) Never offer to furnish anything without checking with the attorney.
21) Answer audibly – the tape recorder can not pick up the shaking of your head.

Case Synopsis

Clarence Smith is an 87 year old gentleman who is widowed and has three sons. He owns a home in Mesa, AZ, but currently lives in a skilled nursing facility in Litchfield Park, AZ. He has a trust that he established in Colorado in 2005. He has designated his two sons, Roger and Keith as financial powers of attorney, and Henry Smith is the Medical Durable Power of Attorney. Clarence has a multitude of diagnoses which include dementia. APS considers Clarence to be a vulnerable adult.

Last summer, Henry allegedly accessed Clarence's bank accounts and used his father's funds to pay off his credit card bills. He paid three credit card bills using his father's money in three bank transfers online. A call came into the hotline alleging that Henry was financially exploiting his dad.

The caseworker investigated this case and interviewed numerous individuals. She spoke with Henry who advised that he had the authority to incur expenses for his father as medical power of attorney and that he had permission to use the funds from Clarence Smith. He indicated that he needed the money to allow him to travel to Arizona to oversee his dad's care and to set up therapies for his dad. He indicated that his dad was not getting treatment he needed. Henry when asked about contacting the financial poa's stated he left a message but never got a return call. He indicates that he accessed his father's money using the instructions his dad gave him and with his permission to use the money.

The caseworker talked to Roger Smith, fire chief for a local municipality, who indicated concern over the accessing of his father's money by Henry and that he is communicating with law enforcement over the incident. He indicates that the family is contemplating a guardianship and was provided information about private fiduciaries. He indicates that during a previous report it was determined that Henry was accessing Clarence's funds also. He denies receiving any messages from Henry.

The caseworker went to visit Clarence Smith and viewed his chart at the nursing facility. Clarence has diagnoses that include dementia, CVA, CAD, Atrial Fibrillation, allergies, obesity, edema, asthma, diabetes, hypertension, left sided weakness. Notations in the chart indicate that in December 2005, two doctors determined that Clarence is disabled and needed others to manage his affairs.

The worker spoke with Clarence who did not remember meeting the worker on the previous incident. Clarence denied knowing that nearly $4000 was taken from his account. He also indicates that his sons Roger and Keith have accused Henry of taking his money, but states "My son wouldn't take a penny from me." Clarence denies any knowledge of his banking matters. The case worker attempted to administer a mini mental status exam but did not complete the exam because Clarence did not know the day month or year or who the president was.

The caseworker obtained copies of the bank statements showing the debits made to pay Henry's Capital One account. The bank has credited Clarence's account per the report of Keith Smith. Keith indicates that the family is concerned about establishing a guardianship because Clarence had indicated Henry as his designee if a guardian needed to be appointed. He also denies receiving messages from Henry.

The caseworker obtained copies of the two doctor's letters noted in the chart from Keith Smith. The worker reviewed receipts provided her by Henry Smith. The caseworker identified a receipt for Oxygen treatment and attempted to ascertain the details regarding that treatment. Caseworker checked with the nurse at the nursing facility to determine that there is no note that Clarence left the facility to go for the treatment. There is no sign-out book at the facility, however. Nurse indicates Clarence is a "two-person lift." Caseworker did not have contact with Clarence on this date. Caseworker contacted law enforcement who indicated that the bank is now the victim, and there is some question whether the crime occurred in AZ or FL. They decline to pursue the matter unless the bank files a complaint.

The department seeks to substantiate the allegation of financial exploitation against Henry Smith.

TESTIFYING IN COURT
Reflections on the Department's Witness

An integral part of any investigation must include preparing to take the case to court. This requires that the petitioning party must provide a live witness to attest to the events, the evidence and the conclusions sought by that party. In these Central Registry matters, the Department will bear the burden of proof to prove by a preponderance of the evidence that the elements of the statutes relating to vulnerable adult abuse, neglect and/or exploitation have been met.

Department witnesses are routinely qualified as experts in their field of social work and, as such, are allowed to offer opinions on ultimate issues of fact. These expert witnesses are expected to review the case facts, consult with other collateral sources and experts, in developing their opinions. Department witnesses also act many times as fact witnesses in that they testify to facts they observed, experienced or gathered. They can identify and authenticate photographs, physical evidence gathered and statements taken from witnesses and alleged perpetrators.

In order to be an effective witness on behalf of the Department, it is necessary that the witness undertakes to conduct an organized and detailed investigation of the case. The best cases provide all the necessary landmarks to lead the Judge to the desired conclusions. This requires reflection and review of the case as it is being investigated. As the Department representative, you will be viewed as the case expert – you control what you investigate and how. You further control how the information is recorded, whether taped, videotaped, preserved as physical evidence or memorialized in a report. When it comes time to testify at the hearing, this is your opportunity to be the individual with the most knowledge about the facts and the law. It is important to keep an eye on the law as you investigate your case and analyze how each fact fits into the elements of the offense you are seeking to establish. Proving a case is like stacking up building blocks to create something you did not have previously. Until the case is built and proven, you do not have a substantiated case.

The effective witness consults with the attorney handling the case well in advance of the hearing. In some complex cases, these consultations should be ongoing in order to provide the necessary evidence to prove the case. The effective witness will be familiar with exhibits and will have reviewed the questions provided by the attorney. Witnesses should never be hesitant to question why a question is being asked in a certain manner or to suggest a better way to ask it. The best direct examinations of witnesses do not appear rehearsed, but have a flow and energy that keeps the listener interested and moves through the facts efficiently, but thoroughly. To encourage active listening on the part of the Judge, it is helpful to refer to exhibits during the witness' testimony. Voice variation is helpful – reading testimony or a monotone response is not engaging to the listener. The witness is not an actor and should not adopt an artificial demeanor – with practice,

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the witness will develop a style, rhythm and tone to testifying that is unique. Hearings are not flamboyant exhibitions of emotion for Department witnesses most of the time. The depictions shown on television are not what you should seek to emulate as a witness for the Department.

It is advisable to be on time, appropriately attired and prepared for the hearing. It is imperative that you never guess if you do not know the answer to a question – your credibility is priceless, so do not jeopardize it for any case. The goal is to be a reliable witness upon whose reports and testimony the Judge can rely. Because the hearings are recorded, it is important to always answer verbally and into the microphone so your response will become part of the record. It is never appropriate to address another party in the midst of a hearing.

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Report Writing

When writing a report to document an investigation, it is necessary to keep a number of things in mind:

Who is your intended audience?
What is the purpose of the report?
How do you wish to organize the report? Chronologically or categorically.

AUDIENCE

Reports have a wide array of uses in all aspects of business and industry. Each industry has its own accepted protocol for report writing that should be followed in order for your report to be given validation by your peers. It is imperative that reports be compiled according to the accepted practice among the persons who will be asked to use the report.

In adult protection, reports will have a wide range of uses. In the first instance, it documents what a worker has done for purposes of recording it in a client's file, insuring that proper case management has been utilized, and for planning future case management for the client. This is the basic use of every report – it is primarily written for the author to memorialize what he or she experienced as a result of the contact with the client or others on the case. In order to fulfill the needs of the author, nearly any type of report writing that is understandable to the author is acceptable. However, because in our jobs, we are not always available to decipher what a report says or means, it becomes necessary to write in such a manner that the information is readily available to others who may need to rely upon the information in the file.

Thus, it is important to write all reports and records in such a way that others can access the information easily. This means that a somewhat formal writing style is adopted such that individuals are adequately identified throughout the text. This ensures that the reader will not be confused as to what the author is trying to communicate about individuals. Abbreviations and shorthand phrases which are understandable to the author but not widely utilized in the workplace culture should be avoided.

If you anticipate that other disciplines outside of your workplace culture will need to review or utilize your report, you must write with that audience in mind. It is unproductive for others to have to consult you to determine the meaning of your report and embarrassing to have your report read aloud verbatim in an open forum like a meeting or courtroom when it is not written in a manner that is clear and stylistically formal. Slang, profanity, and personal comments or opinions are never appropriate in a report.

When you anticipate that a report will be forwarded on to law enforcement, the attorney general's office or other legal entities, it is imperative that you write with clarity in a logical and organized format. Utilize spell check and ask a co-worker to review your

grammar, punctuation and writing style if you have concerns about your writing ability. The acid test for you may be to read your report aloud. Often, we have reviewed a document so many times that we miss simple errors or can not discern them until we hear the text aloud.

PURPOSE OF REPORT

If the purpose of the report is to document your activity, the manner in which you write the report is less important than if you are writing the report in order to advise another agency of the needs of the client or to provide information necessary to ongoing activities of the other agency. If you are writing your report in order to obtain substantiation of an incident of elder abuse, be aware that your report will likely be reviewed by attorneys and ultimately be offered as an exhibit in a hearing. Do not assume that all readers will have the same fount of knowledge you possess. Where necessary, supplement your report with explicit references in the text to statutes, rules, policies that influence your conclusions or findings in the report. If it is important to refer to something outside your report, be sure the information is readily available in the body or in an easily accessible attachment that is clearly marked. Every reader has had the experience of reading something with references to resources outside the document. Without the reference available, we may note that we need to look that up later, but oftentimes, later never comes. This is human nature – we take the path of least resistance. If you want to cause a result, you have to do the work and make it easy for the reader to act. In fact, you want to make it so easy that it is nearly impossible for the reader to refuse to act.

If you want the police to investigate an elder abuse case, you have to have enough evidence that the police can see clearly that a crime occurred. Where the subject matter in the case is obscure, like a financial exploitation case, extra care must be taken to ensure that the police will see the crime and be intrigued to follow the trail you set before them. Police tend to understand crimes like burglary – "someone broke in and took my stuff when I was at work." Murder – a dead body is found lying around. Robbery – "someone with a gun took the money out of my cash register." All of these crimes are clear and understandable to crime fighters.

Crimes involving "Tillie's grandson got $5000 from Tillie to buy a new car" are less accessible to the typical police officer. Much more information and detail must be provided. The writer must identify in a very organized manner what he or she is attempting to communicate in a convincing manner. A report format that is utilized repeatedly by adult protection service workers will be received favorably by other agencies. A format allows the reader to discern quickly if the elements necessary are present. It also requires the writer to quantify the information in such a way that it becomes apparent to the writer when deficiencies are present. This format will also be favorably received by hearing officers who will need to read these reports in making determinations if elder abuse violations should be placed on the central registry.

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Persuasion is a very important tool in writing a report geared to elicit a response from another agency. The key is to make the case early in the report, support it throughout the report in a manner that makes the conclusion and the requested action unnecessary. In other words, the best reports are well written, detailed and factual and cover all the bases. There are no loose threads left – no witnesses uncontacted, records unretrieved, or explanations unresolved.

The worker may wonder why he or she "has to do the job" for the other agency. The answer is that in order to obtain the desired response, one must provide all the pieces to the decision maker. Hearing officers and judges are not the only decision makers we encounter in our jobs. Police, prosecuting attorneys, our supervisors - all are decision makers whom we must convince in order to advance our cases. All of these actors have plenty of other reports and cases that are easy to figure out. We need to make our cases "easy" to understand and to pursue.

ORGANIZATION

When writing a report for presentation to an outside agency for the express purpose of eliciting a responsive action, pay attention to the way the report is organized. Decision makers have plenty of reports to read and obligations on their time. By organizing a report in a manner that walks the reader through the report and alerts the reader to the different matters contained in the report, the writer keeps the reader interested and involved in the content. It is stressful for a reader to be faced with pages of text in long paragraphs that seemingly go on forever with no roadmap. Headings, paragraph breaks and introductory sentences provide the guidance for the reader to navigate through the report, while remaining calm and focused on the content of the report. Brevity is preferable, but clarity is most important. Thus, while most writers are comfortable writing chronologically, their comfort is not the issue. It makes sense for us to write first that we received a telephone call – we called back – we talked to the reporter – we found out there was a problem – we asked what the problem was – the reporter wasn't sure but was suspicious because she hadn't seen her elderly neighbor recently – could the neighbor be visiting family or friends – no, the neighbor has no family, but recently some younger folks have moved in and are driving the elderly neighbor's car...

While all this information is important, it is much more helpful to the decision maker to know going in that ultimately you believe that an elderly person has been financially exploited. The decision maker knows where the report is going and is able to weigh the supporting information in light of the allegation as he or she reads the report. If the reader has to search to figure out why the report was written in the first place, the reader has a high probability of missing the point due to distractions or simply not bothering to weed through the report trying to find the point of it.

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RECORD TO BE SENT TO OAH

1) The allegation that you seek to propose for substantiation.
2) The hotline report (redacted)
3) Case notes (redacted)
4) Reports obtained from other agencies
   a) Police Reports
   b) Medical Records
   c) Other State Agency Records
5) Any documents submitted for consideration by the target.
6) Any Court records detailing POA, Guardianship, etc.
7) Photographs

Putting Your Best Case Forward

By Daniel G. Martin
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Director's note: OAH is committed to fairness and making hearings accessible to all. This article is part of a series of informational articles to educate the public and parties who appear before us about the hearing process and how to better present their cases. The following article may be found at OAH's website at www.azoah.com along with all previous articles published in the OAH Newsletter.

In virtually every proceeding before the Office of Administrative Hearings, one of the parties will have the burden of proof. Generally speaking, it is the party asserting a claim, right, or entitlement that has the burden of proof. See Arizona Administrative Code ("A.A.C.") R2-19-119(B)(1)). In addition, the party asserting an affirmative defense to a claim (such as the application of a statute of limitations) has the burden to establish the elements of that defense. See A.A.C. R2-19-119(B)(2).

The standard of proof in almost all administrative proceedings is preponderance of the evidence. See A.A.C. R2-19-119(A). A "preponderance of the evidence" is "evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary (6th ed. 1990). In order to prevail, the party with the burden of proof must not only present sufficient evidence to convince the Administrative Law Judge that the party's position is correct (also known as the burden of producing evidence or the burden of going forward); the party's evidence also must be sufficient to convince the Administrative Law Judge that the party is entitled to the relief that he or she is seeking (this is known as the burden of persuasion).

Given the importance of the burden of proof, one of the first issues that a party to an administrative proceeding must address is the type of evidence that he or she will present in order to establish his or her claim (or defense). The most common types of evidence are witness testimony and documentary evidence; however, there are many other forms of evidence, such as physical objects, photographs, audio and video recordings, and summary evidence (such as graphs and charts). In every proceeding, it is crucial to select the evidence that will best convey the facts of the case to the Administrative Law Judge assigned to hear the case.

Previous articles in this newsletter, all of which can be found on the Office of Administrative Hearings website, http://www.azoah.com/index.html, as well as the video, "Preparing for Hearing", which also can be found on the website, explain in detail the manner in which a party should present his or her case. The purpose of this article is to focus on the type and quality of the evidence presented, and explain how the selection of that evidence can, in many instances, have a direct impact on the outcome of a case.

When considering the type of evidence to present at hearing, a party must ask two basic questions. The first question is whether the evidence is relevant; that is, does it relate to one or more of the issues presented for hearing. The second question is whether the evidence is probative; that is, does it tend to prove a fact that is at issue in the case. If the answer to both of these questions is yes, then the evidence will most likely be admitted at hearing. However, the determination that the evidence is admissible does not end the inquiry; of perhaps equal importance is the question of how much weight the Administrative Law Judge will assign to that evidence.

To illustrate this point, let us consider three scenarios arising out of the following hypothetical licensing case: John Smith applies for a real estate salesperson's license, but his application is denied after the Department of Real Estate discovers that he has several criminal convictions. Mr. Smith appeals the Department's decision, and his case is referred for hearing to the Office of Administrative Hearings. Mr. Smith has the burden of proof, and wants to present several witnesses to testify to his honesty and good moral character.

In the first scenario, Mr. Smith's witnesses do not testify directly. Instead, each of them writes a letter of reference attesting to Mr. Smith's honesty and good character. The Administrative Law Judge determines that the letters are both relevant and probative, and admits them into evidence. Although Mr. Smith has at this point presented evidence of his good character, that evidence is unlikely to be given much weight by the Administrative Law Judge because Mr. Smith's witnesses were not subject to examination regarding the basis for their opinions, and the Administrative Law Judge was unable to observe the witnesses and make a determination as to their credibility. In short, Mr. Smith may have met his burden of producing evidence, but not his burden of persuasion.

In the second scenario, Mr. Smith's witnesses appear telephonically and testify directly to his honesty and good character. In this scenario, the quality of evidence is better than the previous scenario because, although the witnesses cannot be directly observed (thus making it more difficult for the Administrative Law Judge to assess their credibility), they are subject to examination regarding the basis for their opinions.

In the third scenario, Mr. Smith's witnesses appear in person and testify directly to his honesty and good character. In this scenario, the quality of evidence is better than each of the previous scenarios because the witnesses are subject to examination and can be directly observed by the Administrative Law Judge.

If the issue of Mr. Smith's honesty and good character turned out to be the deciding issue in his case, one can see that the quality of his evidence on that issue would be critical. Under the facts of the first scenario, Mr. Smith might very well not be successful in his appeal because the evidence regarding his character, while admissible, was not entitled to receive much weight. On the other hand, Mr. Smith might very well prevail under the facts of the third scenario, because he presented his evidence in such a way that it could be afforded significant weight.

The principal that is illustrated by the above hypothetical has application to many types of evidence. In the case of documentary evidence, for example, the general rule is to bring the original document if there is any chance that the authenticity of the document might be subject to challenge. The original does not necessarily need to be made an exhibit, but it can be shown to the Administrative Law Judge and the opposing party in the event of a dispute. In the case of official documents (such as court records or police reports), certified copies bearing the stamp of the issuing court or agency are preferable to ordinary copies. In the case of photographs, originals are preferable to copies, and color copies are preferable to black and white copies.

Effective preparation is critical to success in administrative proceedings, and one of the key components to effective preparation is ensuring that the evidence a party presents at hearing is not only relevant and probative, but also persuasive. As can be seen from the above examples, the type of evidence a party chooses to present may often have a direct impact on the outcome of the case. Therefore, careful thought should be given in advance of the hearing to precisely determine what evidence the party intends to offer, and whether that evidence puts the party's best case forward.

Author
