

## **Tips for Testifying Before an Administrative Agency** **Landmark West!**

A public hearing is a legal proceeding. Such legal proceedings are guided by the particular administrative agency's rules of procedure. (Agency Rules are usually available to view on the agency's website.) An evidentiary or public comment hearing is almost always recorded - which may mean video; voice; and ultimately transcribed in written form.

Because an administrative agency<sup>1</sup> serves to process matters that can only be supported by a legal standard known as "substantial evidence." Without substantial evidence, the agency's decision may be appealed and remanded by a reviewing court.

A "hearing" is an essential part of "due process" under the First and Fourteenth Amendments to the U.S. Constitution. Due process requires notice to affected persons and an opportunity to be heard.

### **How to be an effective witness:**

Because an agency may impose a time limit or may rush you along, be organized, and have your points clearly delineated in notes.

DO NOT READ YOUR TESTIMONY. Reading aloud dulls your points and your speech becomes less animated and less persuasive. Read speech is boring, and destroys the very reason you are at the hearing.

HOWEVER: If you are reading "into the record" a statement *written by someone else*, you should read directly from the statement, since these are someone else's words. You should state the source clearly. This is the one exception to the rule.

Despite the rule of never reading your testimony -- which is essentially a rule about style -- you should type up your evidence and points and submit such written testimony to be sure that it is included in the record. This written testimony should mirror your spoken comments, which can be extemporaneous, but the purpose for written testimony is to be sure you have not appeared in vain, and in case the agency's tape recorder breaks, your comments will always be memorialized. Written testimony should have the date of the hearing, the name of the agency, the Docket Number or name of the issue or case, and the witness's name and contact information. Clear and concise written testimony is better than long, windy and emotional testimony, and has a better chance of being read (and heard) by the agency.

You are attempting to affect a deliberative process, therefore, be sure your statements have support.

### **Be Organized:**

Often an agency will hurry you along. Under pressure it is easy to omit important points or forget to offer significant exhibits. Because of the possibility of being cut off by the Chairman of the hearing, you may need to shorten your presentation, so always lead with your most important points. If you are cut off, ask permission to submit a follow up memorandum, attaching any documents or statements you wanted to make during the hearing.

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<sup>1</sup> An "agency" is any commission, council or bureau that is doing the work the state or federal legislature has delegated it to do.

### **Offer Exhibits into the Record**

Plans, pictures, graphs, charts, photographs, news articles, excerpts from books, printouts from websites, all of these are very effective A) persuasive tools, and B) evidence that can form the "substantial evidence" necessary to prevail on your case. Be sure to mark your exhibits with a reference: ("Exhibit A") and a label saying what it is, its title, author, publication date, where it is from (ie, website URL). If it is a photograph, provide the source, and any other available relevant information such as who took it, the date and the subject.

### **Know the Criteria Used by the Agency**

All agency decisions are based on the formal criteria set forth in the "enabling legislation" that guides the agency. That legislative mandate can be found in the statute that set up the agency which generally can be found on the agency's website, or can be found through the state laws posted on the state legislature's website.

You must know the criteria you are trying to support with evidence. These criteria are well known to the agency before which you are appearing but they may be new to you. Therefore, get to know the agency's mission and responsibility, and you will know the criteria by which the agency is making a decision. If possible, before drafting your testimony, read the enabling statute and its statement of purposes. It is these criteria you must address in your spoken comments, filed testimony and evidentiary exhibits.

### **Good Examples of Exhibits**

Be resourceful: Think of views or material that the applicant or representative has failed to disclose, or material that you know exists that you don't believe the agency has seen. These are useful and may be very persuasive, because they were not previously presented. Do creative sleuthing. Your library or your computer may be your best sources: excerpts from books and websites that are factual and will help persuade a deliberative body and even a reviewing court could be helpful tools.

### **Benefit in Numbers**

With regard to community-wide issues, when citizens appear before an agency, there is a material benefit for your cause for the agency to see large numbers of community supporters. Although this is not "hard" evidence, it is persuasive visual evidence of the outcry or significance to the community of the issue at hand. Therefore, urge fellow community members to turn out at a hearing, and to sign up for a time slot, or even just to submit written testimony.

No one is too remotely connected from an issue to speak or write. Tenants, schoolchildren, landlords, business owners, shop patrons, pedestrians on the street: as long as your testimony is relevant to the issue, you have a right to be heard.