

Hearing Basics

Courts Division



63

Road Map

- ❖ The Basics: Setting the tone for your hearings
 - Judge's role
 - Setting the stage
 - Decorum
- ❖ Meeting the Goals: Why do we have hearings?
 - Opportunity to be heard/decisions on the merits
 - Procedural fairness
 - Ground rules & communication
 - Presentation and order of evidence

64

Putting on your "Judge Hat"



65

A judge should uphold the integrity and independence of the judiciary.


Canon 1, NC Code of Judicial Conduct

66

Order in the Court!

- ❖ A judge should maintain order and decorum in proceedings before the judge.
- ❖ A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity, and should require similar conduct of lawyers, and of the judge's staff, court officials and others subject to the judge's direction and control.

NC Code of Judicial Conduct, Canon II.A.2, 3



67

Set up your room?

Suggestions

Clerk

Witness

Respondent(s)

Petitioner(s)

Clerk

Respondents

Petitioners

68

Put on your robes?



69

Set your rules?

In court, North Carolina lawyers are
“at all times to conduct themselves with dignity and propriety.”



Gen. R. Prac. 12

70

Courtroom Decorum of Counsel

Demeanor toward the court:

- Should address the court from a standing position behind counsel table (except objections).
- Should not approach the bench except with the court's permission.
- Should not address matters directly to opposing counsel.
- Should “yield gracefully” to the court's rulings.



Gen. R. Prac. 12

71

Courtroom Decorum of Counsel

Demeanor toward witnesses:

- Should examine witnesses from a seated position.
- Should not approach witnesses except to present, inquire about, or examine a document.
- Should treat adverse witnesses with fairness and due consideration.



Gen. R. Prac. 12

72

Hearing Goals:

- Opportunity to be Heard
- Decisions on the Merits

73

Hearing Goals

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74

Procedural Justice: Their Day in Court



Studies show that:

- Process matters
- People pay attention to it
- In fact, people care more about a fair process than a favorable outcome!

75

Judge's Role: Ensuring their Day in Court!

- ❖ A judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

NC Code of Judicial Conduct, Canon II.A.

- ❖ A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law...

NC Code of Judicial Conduct, Canon III.A.4

76

Hearing Goals

- Opportunity to be Heard
- Decisions on the Merits

77

"On the Merits"

- A decision "on the merits" comes from the law as it applies to the particular evidence and facts presented in a case.
- A hearing should help you be able to reach a decision based on the neutral application of the law to the facts of the case

78

Hearing Goals...

- ... How do we get there?

79

As Judge...



1. You determine the legal rule and its elements
2. You explain the process to the parties
3. You question the parties to get the information you need
4. You apply the law to the facts of the case

80

As Judge...

1. You determine the legal rule and its elements
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81

Read the File... Prepare, Prepare, Prepare!



82

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83

Consider...

starting a hearing

84

For a Level Playing Field



85

Set the Ground Rules

1

Introduce yourself and state your title.



Plain Language Script: My name is _____, and I am [title] of [county].

86

Set the Ground Rules

2

State the Nature of Hearing and ask the parties announce themselves



Plain Language Script: We are here today in the matter of _____ v. _____ on the issue of _____. Mr./Ms. _____ is requesting an order for _____ and will need to provide evidence to prove the issues raised in his/her petition. Is [petitioner] here? Is [respondent] here?

87

Set the Ground Rules

3

Explain the Order of Hearing



Plain Language Script: "First I will hear what Mr./Ms. _____ (Petitioner) would like for me to know about the case and then I will listen to what Mr./Ms. _____ (Respondent) would like for me to know about the case."

88

Set the Ground Rules

4

Set the Timing



Plain Language Script: [Optional: How much time do you think you will need? Do you have any witnesses?] I will give each side _____ (enough time) to tell me what they want me to know.

89

Set the Ground Rules

5

State the Rules of Decorum



Plain Language Script: "Do not interrupt while the other party is speaking or presenting evidence. Wait until the person asking the question finishes before answering. And wait until the person answering the question finishes before asking the next question."

90

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91

This hat asks questions!



- *Judicial independence* assures that cases will be decided *on their merits*.
- Decisions are based on the neutral application of law to the facts of the case
- In order to do this, you *need* all the necessary information!

92

What information could you need?

- What relief is a party asking for?
- What is the statutory authority?
- What legal arguments are the parties making?
- What is the evidence?
 - Did Steve ask the mechanic for an estimate?

93

What information could you need?

- What relief is a party asking for?
- What is your statutory authority?
- What legal arguments are the parties making?
- What is the evidence?

94

Let's talk about evidence...



95

"Burden of proof"

- The obligation to establish ("prove")—with competent evidence—the issues brought before the court.
- Petitioner bears the burden of proof regarding the matters raised in the petition.



96

General Order of Evidence

1. Petitioner's Evidence
2. Respondent's Evidence

97

General Order of Evidence

N.C. Rule of Evidence 611

Mode and order of interrogation and presentation

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

98

General Order of Examination

N.C. Rule of Evidence 614

Calling and interrogation of witnesses by the court

(a) Calling by the court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by the court. The court may interrogate witnesses, whether called by itself or by a party.

99

General Order of Examination

Parties represented by Counsel

- Witness takes "stand"
- Direct examination
- Cross-examination by opposing counsel
- Redirect examination
- Re-cross examination by opposing counsel (rare)

Parties Unrepresented

- Witness takes "stand"
- Witness testifies
 - Clerk often asks questions
- Opposing party/ies may cross-examine
- Witness may give clarifying testimony
- Opposing party/ies may re-cross (rare)

100

"Direct examination"

The initial questioning (examination) of a witness, by the party on whose behalf the witness is called.

Usually:

- Petitioner questioned by own counsel.
- Petitioner's witness questioned by petitioner's counsel.

101

"Cross examination"

Questioning (examination) of a witness who has already testified in order to check or challenge the witness's testimony, knowledge, or credibility.

Usually:

- Petitioner (or petitioner's witness) questioned by Respondent's counsel.
- Respondent (or respondent's witness) questioned by petitioner's counsel.

102

Objections

"Objection"

When a party/attorney calls to the court's (clerk's) attention that the other side's evidence is improper or in violation of the Rules of Evidence.



- "Objection, Madam Clerk, hearsay."
- "Your honor, objection. That's not relevant."
- "We object. Attorney Smith is asking the same thing over and over."

103

Responding to Objections

3 General Options for the Clerk:

1. **Sustain the objection:** The Clerk agrees with the objection, and stops the evidence from continuing (or notes that the Clerk will not consider the evidence).
2. **Overrule the objection:** The Clerk disagrees with the objection (thinks the evidence is proper), and allows the evidence to continue.
3. **Take the matter under consideration:** The Clerk allows the evidence to continue for now. The Clerk notes the objection, and will decide later whether to consider that evidence when making a decision. [This can be a good option for the clerk because there's no jury to shield from hearing the information.]

104

Openings and Closings

Opening statement:

Before the evidence. A party's introduction to their case or defense. A forecast of the party's evidence. Not an argument of facts or law. The statement is not evidence. The parties may opt not to do openings (may "waive" opening).

Closing statement (or closing "argument"):

After the evidence. A party's argument of the facts and the law. The argument is not evidence. Optional in non-jury trials. It's up to the clerk to allow these statements or not. Many clerks find it helpful.

105

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106

QUESTIONS?

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107



108
