

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

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

Canon 1, NC Code of Judicial Conduct

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Order in the Court!

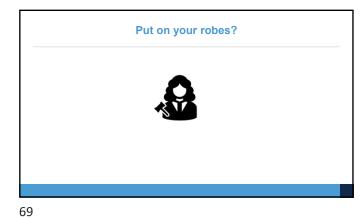


- $\ \, \clubsuit \,$ A judge should maintain order and decorum in proceedings before the judge.
- * A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity, and should require similar conduct of 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, ${\bf 3}$

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Set up your room? Suggestions Clerk Witness Respondent(s) Petitioner(s) Petitioner(s)



Set your rules? In court, North Carolina lawyers are "at all times to conduct themselves with dignity and propriety."

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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.

Courtroom Decorum of Counsel

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. 1

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Hearing Goals:

- Opportunity to be Heard
- Decisions on the Merits

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Hearing Goals

- Opportunity to be Heard
- Decisions on the Merits

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!

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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

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Hearing Goals

- Opportunity to be Heard
- · Decisions on the Merits

"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

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Hearing Goals...

• ... How do we get there?

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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

As Judge	
 You determine the legal rule and its elements You explain the process to the parties You should question the parties to get the information you need 	
4. You apply the law to the facts of the case 4. You apply the law to the facts of the case	
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Read the File Prepare, Prepare!	
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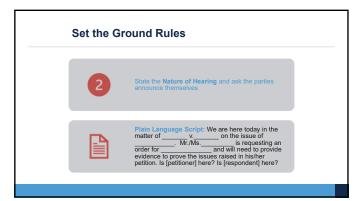
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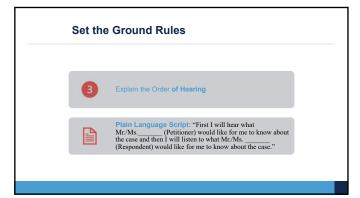
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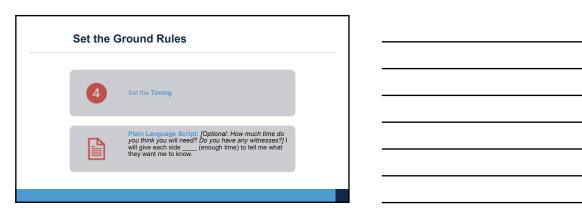


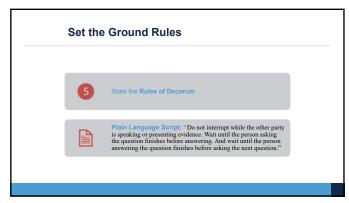












As Judge... 1. You determine the legal rule and its elements 2. You explain the process to the parties 3. Consumer the legal rule and its elements 4. You apply the law to the facts of the case

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!

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?

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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?

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Let's talk about evidence...



"Burden of proof"

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



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General Order of Evidence

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

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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.

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.

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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 crossexamine
- Witness may give clarifying testimony
- Opposing party/ies may re-cross (rare)

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"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.

"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.

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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.



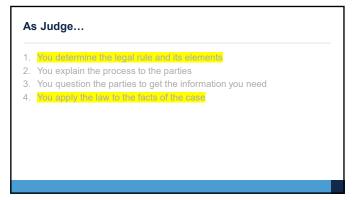
- "Objection, Madam Clerk, hearsay."
- "Your honor, objection. That's not relevant."
- "We object. Attorney Smith is asking the same thing over and over."

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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 $\underline{\text{continue}}$.
- 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.

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.	





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