

HEARING PREPARATION CHECKLIST FOR JUDGES & ADJUDICATORS

1. Who are the parties? Who is asking for what, and why?
2. What stage is this proceeding at?
3. What factual issues are not disputed?
4. (If applicable) What is/are the factual issues I need to decide?
5. (If applicable) Do I have all the evidence I need to make the findings requested? If not, what's missing?
6. What legal issues are not disputed?
7. What is/are the legal issues I need to decide?
8. Do I have all the information I need to decide the legal issues? If not, what's missing?
9. What statutory provisions do I need to consider?
10. What case law do I need to consider?
11. (If applicable) What standard of review applies? Do the parties agree on the applicable standard?
12. What questions do I have as I read the materials that I need answered in the hearing?
13. What is my initial impression?

It's as useful to identify what you *don't* need to decide as to identify what you *do*. This will help focus your writing and will save you the hassle of cutting passages where the reader will otherwise reasonably ask, "Why are you telling me this?"

You'll find in the hearing that some "questions" (i.e. things that were unclear as you prepared) are really submissions you don't accept. Distinguish between these in your hearing notes and jot notes to yourself about why you accept or don't accept a submission. You might not remember why you felt strongly about an issue when you return to write it up days or weeks later.

Use different colours or fonts to distinguish between the notes you made for yourself before or during the hearing, and notes of the parties' submissions. For example, when you prepare, highlight important passages from the authorities or the record in yellow. Highlight passages the parties direct you to at the hearing in red.

POST-HEARING CHECKLIST FOR JUDGES AND ADJUDICATORS

1. Fill in any gaps from the pre-hearing checklist.
2. (If applicable) make a list of items to follow up on. (For example, re-reading a particular portion of the record; re-reading key cases; researching a contested point of law.)
3. Create a brainstorm of how you would decide the case. Dictate, handwrite, or type – however the ideas flow easiest. Don't worry about structure or style; this is just for you. (Bonus: you can use this as a draft introduction when you start writing.)
4. Assign the case to a category so you'll know how to file it on your mental to-do list: Easy or Hard? Settled or Novel? Jot a note to yourself explaining why you categorized it as you have. This categorization will also help set the tone of your decision.
5. Estimate how long the decision should be in pages. For example, an “easy/settled law” case might not warrant more than, say, 10 pages. A “hard/novel” case might require more.
6. Estimate how long it will (realistically!) take you to write a solid draft.
7. Schedule the writing time into your calendar. Be strategic—triage your reserves and aim to write only one at a time.

The case is never going to be as fresh in your mind as it is right after the hearing. Schedule time the same day to complete this post-hearing checklist—your future self will thank you.

Annotate your pre-hearing checklist using your hearing notes. Fill in: pinpoints you were directed to, admissions, abandoned arguments, altered positions, memorable turns of phrase, illuminating answers to questions.

Estimating how long you think the decision should be will stop you from getting carried away when you write. It will also be a useful guideline when you get to the structural edit. Think of it this way: you wouldn't set out to build a house without knowing the target square footage.

Professional writers block off protected time to write. They are also realistic about what they can accomplish in a given amount of time. For example, if you know it takes you a day to write an introduction, put that in your schedule and don't plan to write anything more that day.

Decision Editing CHECKLIST

You're no longer the brilliant writer; you're the skeptical reader. Read the decision through the losing party's eyes.

Step 1: First read

Read your decision all the way through. Mark obvious errors and spots that need work, but don't fix anything yet.

Can the reader understand the gist of the decision by skimming the headings and subheadings?

Step 2: Structural edit

Do you have a clear and compelling overview that identifies the deep issues (the precise issues you must decide)?
Do you give context before details at every opportunity?
Is there both an interior structure and an overall structure to the decision?
Do you use transition and signpost words to help the reader navigate?

Distinguish between the information you need to decide the case from the information your reader needs to understand your decision. Give them the shortcut.

Step 3: Substantive edit

Have you articulated the parties' positions accurately and fairly?
Have you situated your decision in the governing legal framework?
Have you explained why you decided the issues as you have? Remember the magic word: *Because*.

Be conscious of tone. A good diagnostic: If it felt therapeutic to write it, you should probably cut it. Be cautious about including unnecessary personal information.

Step 4: Stylistic edit

Break up long sentences and paragraphs. Vary the length of both. Pick simple words over their fancy-pants synonyms. Cut unnecessary words, double-negatives, abbreviations, and legalese. Use the active voice, unless there's a good reason to be passive. Turn nominalizations (e.g. words ending in -tion, -sion, -ment, -ence) into verbs. Cut unnecessary details by asking: Does the reader need to know this? Use block quotes sparingly, and preview them in your own words.

When you cite statutes and cases, try ordering your sentence so you can append the citation to the end.

Step 5: Technical edit

Check all facts and quotes for accuracy.
Note up all the cases and statutes you've cited.
Put your citations in the proper format.

If you can spare the time, leave the draft overnight before you return to proofread it. Enlist a lay reader if you can.

Step 6: Proofread

Add party names and other unfamiliar words to your computer dictionary before you run a spellcheck.
Ctrl-F commonly-misspelled words (e.g. "trail" for "trial", "statue" for "statute"), or create an exclusion dictionary to catch the repeat offenders.
Read your decision out loud, slowly, to hear how it sounds.