

## C. TRIAL ATTORNEY'S DECORUM

### OVERVIEW:

Section [2423.31\(a\)](#), which concerns the conduct of a hearing, states, among other things, that an ALJ “shall conduct the hearing in a fair, impartial, and judicial manner, taking action as needed to . . . maintain order during the proceedings.” Further, the ALJ “may take any action necessary to . . . conduct, . . . and regulate the hearing . . . .” Although there are no specific statutory or regulatory references to decorum, this section of the Regulations authorizes an ALJ to exercise discretion in regulating the parties’ conduct at a hearing. Because this is a formal administrative procedure concerning a serious matter, the parties’ conduct is professional at all times.

### OBJECTIVE:

To provide guidance for Trial Attorneys in their conduct and responsibilities with respect to ULP hearings.


#### 1. COURTESY IS PRACTICED AT ALL TIMES AT THE HEARING:

a. *To whom is courtesy directed?*

The ALJ, the parties’ representatives, witnesses and any other person involved in the proceeding.

b. *How are individuals addressed?*

- Use appropriate language;
- Do not use familiar names;

- The ALJ is normally addressed as "Your Honor";
  - Adhere to ALJ requirements regarding whether to stand when addressing the ALJ or witnesses; and
  - Use best judgment, considering the court room setting, the formality of the proceedings, and the particular circumstances of the matter.
- c. *How to handle difficult situations:*
- Remain calm;
  - A request for a short break or recess may be appropriate in certain situations; and
  - Request a few minutes to confer with co-counsel, if available.
-  *Assertive advocacy in presenting the GC's case is not disrespectful conduct. Rather, it is appropriate and professional behavior that is necessary for the complete presentation of the case.*
- d. *The ALJ is responsible for controlling the hearing.*
- e. *Approaching the bench:*
- i. Each ALJ may have differing requirements with regard to how to approach the bench or how to approach witnesses.
  - ii. Always request permission to approach the bench at the beginning of the hearing; the ALJ will give any further instructions in this area.

## 2. HEARING ROOMS:

- a. *The OALJ is responsible for obtaining hearing rooms for the trial and the Trial Attorney assists in ensuring that the rooms are used properly.*

Adhere to rules of usage of Federal court houses and/or Federal office buildings at all times.

- b. *Use of the hearing room if a court room facility is not available:*

- Arrange furniture in a suitable configuration;
- Leave the hearing room in the same condition (or better), including replacing furniture and general clean up;
- Comply with no-smoking policies;

Most government buildings have no-smoking policies for working areas, which would include hearing rooms. Even if there is no specific smoking policy, smoking is not permitted in the hearing room at any time; and

- Comply with other rules, including rules regarding eating and drinking.


Eating and drinking are not normally allowed in hearing rooms, and particularly should not be allowed during the hearing. This is not professional behavior and detracts from the seriousness of the proceedings.

## 3. DRESS:

The Trial Attorney wears appropriate courtroom attire at all times. The Trial Attorney explains to the witness the importance of dressing appropriately for all courtroom appearances.

**4. MEDIA COVERAGE:**

Subject to the ALJ's discretion, administrative hearings are not subject to filming by individuals, activities, unions or news organizations. Photographs are usually not allowed, but, subject to the ALJ's discretion, may be permitted if all the parties agree, and such conduct is discreet and does not disrupt the proceedings. Because administrative hearings are open to the public, unless otherwise ordered by the ALJ, see § [2423.30\(a\)](#), reporters are allowed to observe, as other members of the public, as long as they are not disruptive.

 *If an issue arises regarding conduct at the hearing and/or use of hearing rooms, it is always appropriate to request a recess and call the RA or RD for guidance.*

Q [Part 2, Chapter D](#) concerning the ALJ's Involvement and Decorum at the Hearing.