

Immigration Court Hearing Preparation

Tips and Advice for Preparing You & Your Client for Your Immigration Court Merits Hearing

This document is intended to be a guide for Tahirih attorneys and pro bono attorneys preparing for an individual merits hearing. It is a non-exhaustive resource, including some tips and things to remember in immigration court. It provides you with information to share with your client to try to alleviate some of the anxiety she may be feeling around testifying in immigration court. The idea is that you would review this document and have a meeting with your client to go over the contents prior to your merits hearing “prep session,” where you will practice the direct exam and potential cross-exam questions with your client. For questions on immigration court practice, you should consult and be intimately familiar with the Immigration Court Practice Manual, available here: http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm.

Make sure you have with you:

- ✓ Your complete filing
- ✓ Copies of any key cases that you think determine the outcome of your case (for you, for trial counsel, and the Judge)
- ✓ A copy of the Immigration and Nationality Act
- ✓ A copy of AILA’s *Asylum Primer*, *Kurzban’s Immigration Law Sourcebook*, or other resources
- ✓ Any original documents – your client’s passport, birth certificate, etc., and any documents that were submitted where you does have an original available.
- ✓ Notepad and paper to take notes on the proceedings. It is preferable to have another person in the courtroom who is not conducting direct examination, defending on cross exam, or delivering opening/closing statements is useful. If you have another attorney on your case, you could switch off taking notes.

To review with your client:

- ✓ Setup of court room
- ✓ State appearances for the court
- ✓ Right to a private hearing if anyone else is in the room
- ✓ Confirming that the Respondent speaks standard American English or swearing in an interpreter
- ✓ Oath
- ✓ Labeling exhibits
- ✓ IJ asks DHS if background and security checks are current and complete

Logistics:

- ✓ Make sure your client knows where the court is and has a plan for getting there early to get through security and find the courtroom. Discuss the

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cost of parking or public transportation and make sure your client has the means to cover those costs.

- ✓ Explain that your client will need to bring any ID, original documents, the hearing notice, etc. If they are in possession of fingerprints notices, that would be good to bring, too.

The Courtroom:

- ✓ Explain how this will differ from a master calendar hearing – i.e. the only people in the room will be:
 - Client
 - Judge
 - Trial attorney
 - Occasionally the Judge's clerk or legal assistant
 - Interpreter, if needed
 - You (the attorney) and any of your support staff or other attorneys from your office – be sure to actually get the client's permission for these people to attend
 - Any expert witnesses or other witnesses
 - Anyone else the client chooses to invite to be present at the hearing.

Attire:

- ✓ Advise client to dress somewhat formally – no jeans, sneakers, or flip-flops, or anything revealing.
- ✓ Cultural/traditional attire from country of origin is OK.
- ✓ Attorneys should be wearing suits or suit equivalent

Direct Examination Questions:

- ✓ Open ended questions – Who, What, When, Where, Why, How, Describe
- ✓ Listen for the answer and make sure you're getting the information you need before moving on.
- ✓ Questions should be short, simple, and straightforward.
- ✓ Use looping – repeat the good facts that your client says often if possible.
- ✓ You will be sitting down, rather than standing up, when you ask your direct exam questions.

Direct Examination:

- ✓ Explain that YOU will be asking questions, but, that the Judge could interrupt and ask questions. Too.
- ✓ Explain the concepts of "objections" – that the trial attorney may object to the questions that you ask your client or any witnesses and vice versa.
- ✓ Explain to the client that the hearing is recorded so that a transcript can be made if an appeal is necessary and that they need to make sure they are speaking somewhat near the microphone and that the Judge can hear what they are saying. Judges get frustrated if they have to ask a client to speak up multiple times.

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- ✓ Explain to the client that you will be asking questions, but that any information shared by the client is like “gold” – it is worth much more than anything the attorney can say. You’ll be helping the client to share the parts of her story that are really important, but it’s better if you don’t have to do as much prompting and if the client gives the details herself.
- ✓ Let your client know the worst thing she can do on the stand is to lie.
- ✓ Let the client know that she doesn’t have to produce an answer just because she is being asked a question by you, the trial attorney, or the Judge.
- ✓ Let the client know that she can tell the Judge know how she is feeling – tell the Judge what is inside her head.
 - I’m sorry, I don’t remember.
 - I’m sorry, I’m confused.
 - I don’t know the answer.
 - I’m very nervous at the moment/I didn’t sleep/I am feeling afraid.
- ✓ Fix it for your client
 - How are you feeling right now? (Client can then say they are nervous, overwhelmed, confused, frightened, etc.)
- ✓ Emotions: Let your client know it is OK if she cries or shows emotion in the hearing. If she gets very emotional, the Judge may give her a little break. Little breaks are not a bad thing because it means that you can speak with her about how things are going.
- ✓ Memory: Let your client know it is OK if she forgets something on the stand, that’s only human. It may actually be more suspect if she remembered every single detail – may seem like the story has been bought/fabricated and memorized. If she isn’t sure, she can tell the Judge that she isn’t sure about the date/number/details, etc.
- ✓ Client should have reviewed their declaration at some point, but, ask them not to study it extensively before the hearing to avoid your client sounding too rehearsed. A rule of thumb is that they should not read the declaration for *at least 2* full days prior to the hearing.

Cross Examination:

- ✓ Practice leading questions with your client (i.e., “Isn’t it true that...” or, ending with “right, correct?”).
- ✓ Practice a string of questions that your client will say “yes” or “no” to you so that you can lead them into answering a question in the wrong way.
- ✓ Tell your client that she should think about *explaining* her answers on cross-examination (i.e., “Yes, but...” or “No, but...”).
- ✓ Advise your client to stay calm and not answer quickly just because the trial attorney is speaking very fast.
- ✓ Your client should also ask for the trial attorney to break down the question, repeat the question, or rephrase the question.
- ✓ Advise the client that the trial attorney could be unfriendly, or may be very friendly – either way, the trial attorney is NOT on their side. Even if the

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trial attorney is rude or not very friendly, this will not ultimately affect the Judge's decision in the case. The client needs to remember that it is her job to remain calm and to never be rude or get frustrated on the stand.

Cross Examination for Client's Attorney:

- ✓ Be ready with objections; they must be timely.
- ✓ Listen for buzzwords (for example, speculation words like "It seemed, it's possible, I think...")
- ✓ Lack of foundation
- ✓ You may not want to object at all. You risk highlighting an issue, and it might be better to "just let it go," or, let the Judge see that the trial attorney is badgering the witness.
- ✓ Other common objections: relevance, asked and answered, assumes facts not in evidence

Re-direct Questions:

- ✓ You will be given the opportunity to conduct re-direct – asking your client questions to rehabilitate her or clarify any issues that came up on direct.
- ✓ Remember that the scope of your re-direct is limited to issues raised during cross-examination.
- ✓ Consider that sometimes if your client has done a good job on cross-examination, it's OK to ask few or no questions on re-direct. You don't want to risk annoying the Judge by taking additional time if the issues were resolved on cross-examination.

Witnesses:

- ✓ Explain to your client that they are usually called first to testify, but that there will be other witnesses. These may include the client's therapist, professional who conducted a psychological evaluation, witnesses to any persecution/threats, family members, or country conditions experts. Explain to the client that the witnesses will all have to be outside of the room while the client is giving her testimony. Any individuals there to support the client who the client feels comfortable having in the room may be there throughout the client's testimony, as long as they are not testifying.
- ✓ Explain if there will be any telephonic testimony.

The Decision:

- ✓ Explain the various forms the decision may take, including:
 - Judge may make an oral decision without any accompanying opinion read out.
 - Judge may make an oral decision with a long explanation of his/her ruling.
 - Judge may ask for another hearing to hear or receive additional evidence.
 - Judge may inform your client that he/she will mail out the decision.

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- It's also possible that you may not get through presenting all of your evidence and the Judge may schedule another hearing a few months, or longer, into the future.

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