



# BEING AN EFFECTIVE TITLE IX ADVISOR: FROM INVESTIGATION TO HEARING

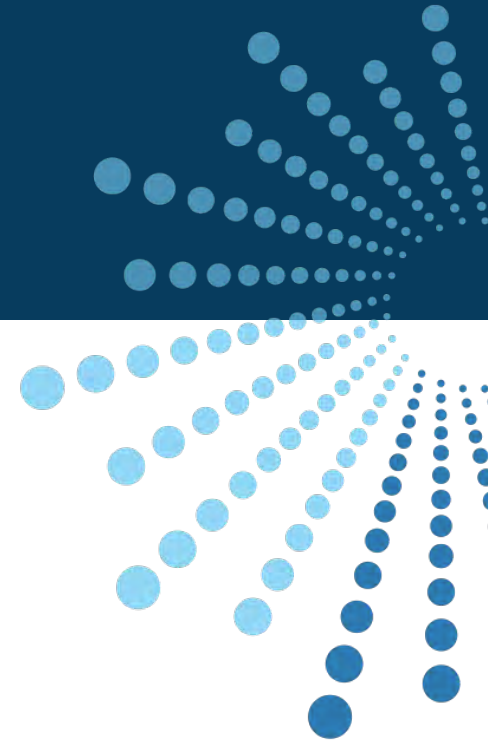
# AGENDA



- | The Types of Advisors
- | Hearing Advisors
- | Preparing for the Hearing
- | Wrap-up

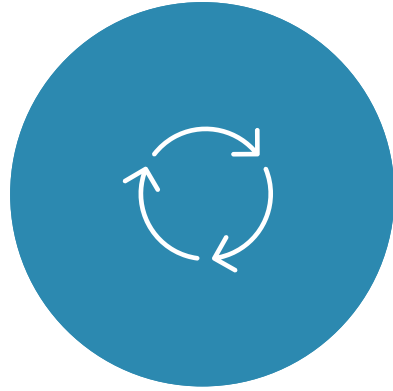


# THE TYPES OF ADVISORS



01

# THERE ARE TWO TYPES OF ADVISORS



Advisor of Choice  
(throughout whole process)



Hearing Advisor (hearing,  
for purposes of asking  
questions)

# ADVISOR OF CHOICE

Parties are entitled to an advisor of choice.

The advisor of choice can be anyone.



This advisor may accompany the party to any interviews/meetings and the hearing.

The advisor can conduct cross examination of the other party and witnesses at the hearing.

# WHAT DOES AN ADVISOR OF CHOICE DO?

- Assist advisee in understanding the policy
- Assist in the identification of witnesses and evidence
- Assist in providing the investigator with information
- Assist in preparation for investigative interviews
- Accompany advisee to investigative interviews and advise throughout as appropriate
- Assist with review of evidence and report and development of response



# HEARING ADVISOR

An advisor of choice may serve as a hearing advisor.

If a party does not have their own advisor, the institution must provide one for the live hearing.



The hearing advisor's role is typically limited to asking questions for the purpose of cross examination.

Some institutions may permit the hearing advisor to have a role in helping the party to prepare for the hearing.

# HEARING ADVISORS



02

# CONSIDERATIONS TO BE AWARE OF

- Confidentiality v. Privacy
- Perception of Conflicts of Interest
- Time Commitment
- Impact of Criminal Proceedings 
- An Advisor Can be Anyone (Including an Attorney)
- Advising Complainants and Respondents

# EXPECTED DOCUMENTS

- Notice of Allegations/Investigation
- Investigation Report and Evidence
- Be Aware of the Policy



# MEETING WITH YOUR ADVISEE

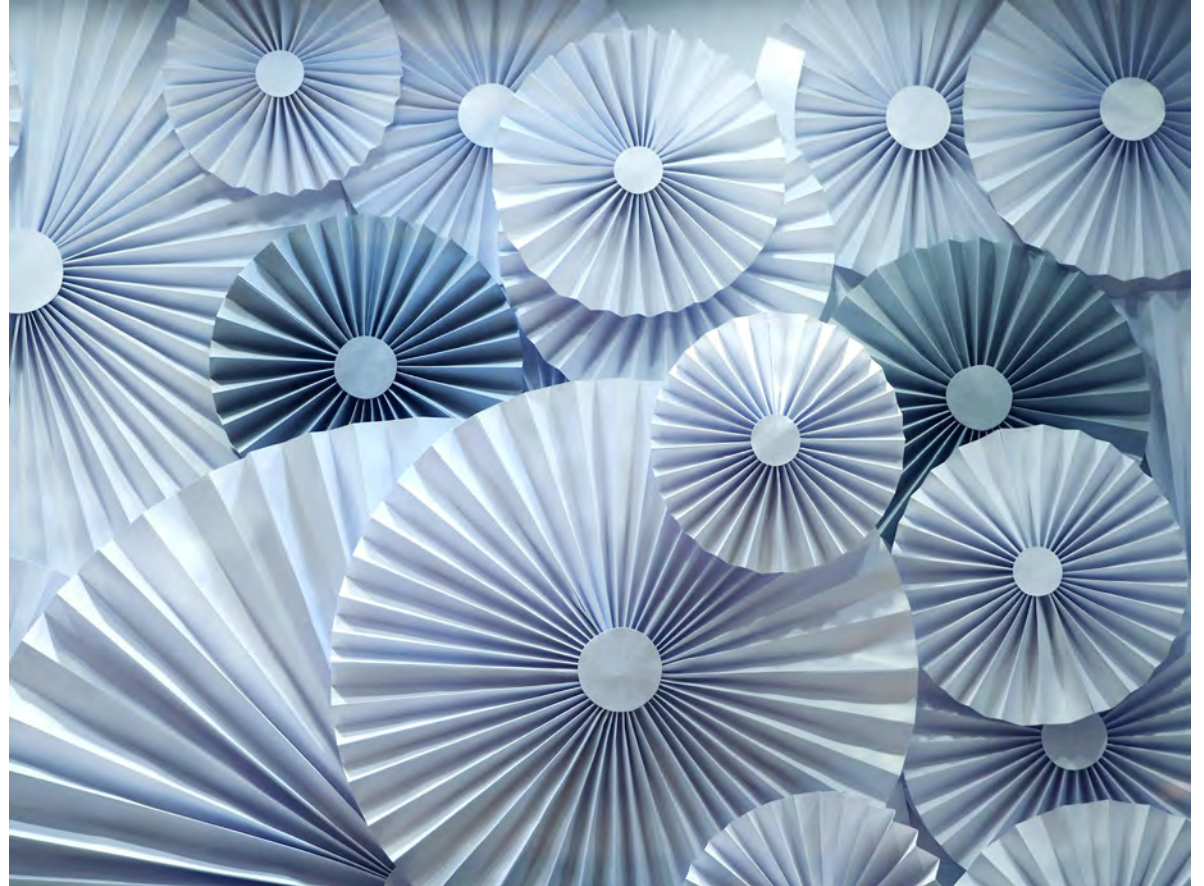
**Build:** Build Rapport

**Explain:** Explain your role

**Advise:** Advise them that their conversations with you are not privileged

**Go Over:** Go over the policy and process with them

**Discuss:** Discuss the evidence



# CONSIDERATIONS WHEN MEETING WITH YOUR ADVISEE

- Non-Responsive Advisee
- Difficulties Coping
- Varying Levels of Support
- Advisee Shares New Information
- Advisee Participation



# PREPARING FOR THE HEARING

03



# PURPOSE OF A HEARING



To provide parties an opportunity to present relevant information to a decision maker as well as cross-examine the other party and/or witnesses.



To determine if a policy violation occurred based on the relevant information.



# HEARING PARTICIPANTS

**Complainant**: the person bringing the complaint

**Respondent**: the person whom the complaint has been filed against

**Advisor**: one for each party; conducts cross examination

**Investigator**: may summarize the investigation and/or answer fact-based questions

**Witnesses**: may be called to answer questions; only present during their questioning

**Decision Maker**: facilitates the hearing, determines relevancy of questions in cross examination, determines if policy violations occurred, may determine sanctions

**Hearing Coordinator/Administrator**: coordinates all aspects of the hearing (people, space, technology, etc.), ensures a fair and equitable hearing process, acts as a resource for all participants

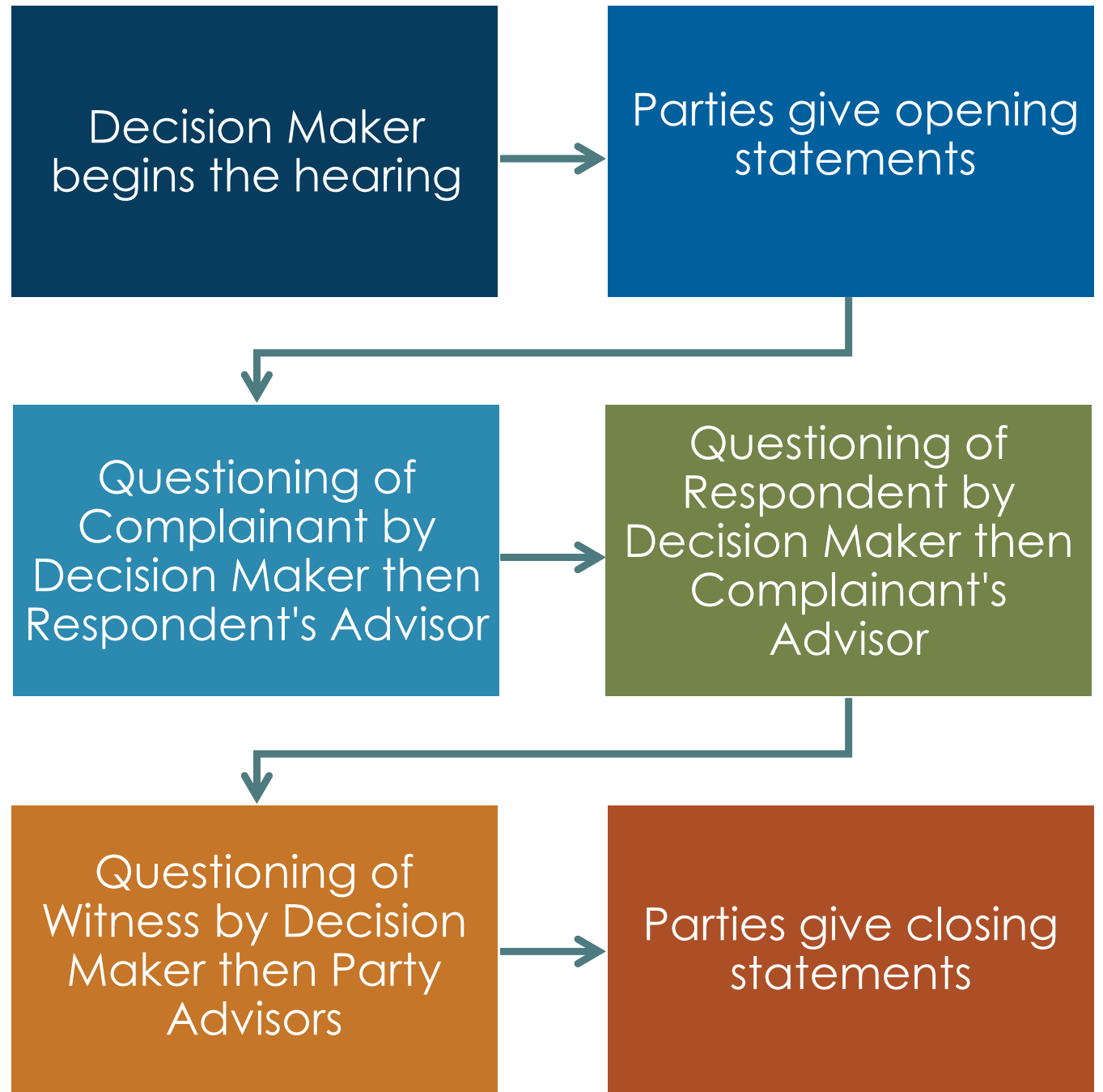


# ADVISOR'S ROLE IN THE HEARING

- Conduct Cross Examination
- Support Your Party
- Follow Rules of Decorum



# HEARING ORDER



# OPENING STATEMENTS

01

Must adhere to institutional guidelines

02

Thank everyone for being at the hearing and their attention to the matter

03

Highlight evidence the party wants the decision maker to focus on

04

Encourage your advisee to write out the opening statement prior to the hearing



# PURPOSE OF CROSS EXAMINATION

To ask **relevant** questions to show that a policy violation did or did not occur.

- Identify the disputed facts
- Outline the version of events your party wants to show the Decision Maker
- Highlight the evidence that supports your party's version of events and/or opposes the other party's version of events



# WHAT MAKES A QUESTION RELEVANT

The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence 401 Test for Relevant Evidence:

“Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”



# IRRELEVANT AND IMPERMISSIBLE QUESTIONS



- Information protected by an un-waived legal privilege
- Medical treatment and care
- Unduly repetitious or duplicative questions
- Information that is otherwise irrelevant
- Complainant's sexual history, with limited exceptions



# RELEVANCY DETERMINATIONS



- The decision maker will determine whether a question posed during cross examination is relevant and permissible.
- When the decision maker determines that a question is relevant, the party/witness may answer it.
- When the decision maker determines that a question is irrelevant, they must state their reason for the record.



# UNDERSTANDING HOW TO ASK QUESTIONS ABOUT POLICY

- What policies are alleged to have been violated?
- What are the elements of each policy?
- What are the definitions of those elements?
  - Consent
  - Incapacitation
  - Coercion
  - Force



# STALKING

Definition: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:  
Fear for the person's safety or the safety of others; or suffer substantial emotional distress.

## Questions to Ask:

1. Did Respondent engage in a course of conduct?
2. Was that course of conduct directed at Complainant?
3. Would Respondent's conduct cause a reasonable person to either
  - a. *Fear for their safety or the safety of others, or*
  - b. *Suffer substantial emotional distress?*



# CROSS EXAMINATION TIPS



Keep moving-don't  
rehash everything a  
party or witness has  
said

Stay  
professional-  
don't call folks  
liars or attack  
them

Be prepared to pivot  
as testimony is given

Keep  
composure-  
don't rant or  
lose your  
temper

Be efficient in  
your  
questioning –  
go event by  
event

Raise  
concerns  
about  
credibility  
and  
reliability

Focus on  
relevant  
information

Make your  
points  
through  
pointed and  
calm  
questioning

Observe and  
listen during the  
hearing

# CLOSING STATEMENTS

- Assist advisee in developing their closing statement
- Summarize evidence that the party wants the decision maker to focus on
- Bullet points
- May not provide a closing on behalf of an absent party



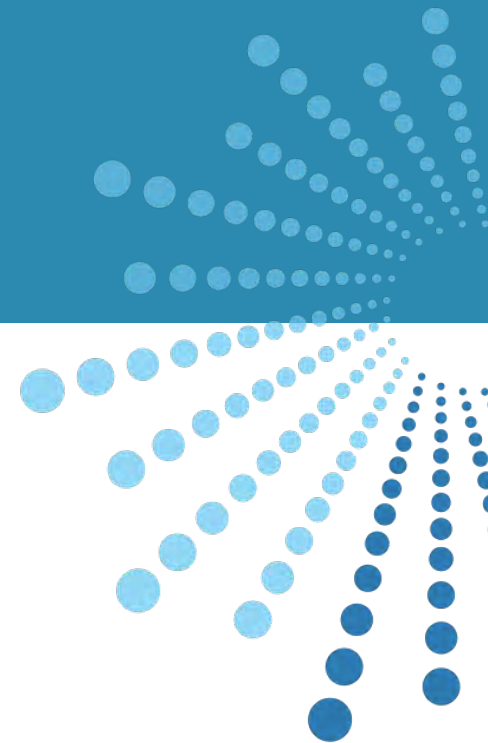
# AFTER THE HEARING



DEBRIEF

THE APPEAL

# WRAP UP



04



# Lessons Learned

- Advisors arguing relevancy?
- Asking an ill-advised question?
- Case by case



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