

ALJ ANTONOWICZ TOP TEN THINGS TO KNOW BEFORE
YOU DO A SOCIAL SECURITY HEARING

1. Be an ADVOCATE and NOT an ADVERSARY.

2. Construct a meaningful record.

3. Know your record before you go in and assist the ALJ in completing the record.

Related: make every effort to get records and be prepared to prove that you have done so prior to asking the ALJ to request or subpoena evidence for you.

Specifically, 20 CFR 404.935; 416.1435 provide that evidence should be submitted within 10 days after the hearing request, if possible. Obviously, this is a rather tight deadline and you may not have a hearing for some months after requesting one and the file would need to be updated. Thus, the modifier “if possible.” However, the regulation goes on to state that each party will make every reasonable effort to ensure that the ALJ receives *all of the evidence* or *all of the evidence available* at the time and place of the hearing. “Evidence” is defined under 20 CFR 404.1512 and 416.912 and that definition has been expanded recently , to wit:

You must inform us of about or submit all evidence known to you that *relates* to whether or not you are blind or disabled. This duty is ongoing and requires you to disclose and additional related evidence about which you become aware.

Prior to the change the operative language provided that the individual should “bring to our attention everything that shows that you are blind or disabled.” Which has been practically interpreted by many representatives that they were not required to submit records in their entirety if portions of them would prove that their clients were not disabled, i.e. “I don’t have to submit the bad MRIs.”

4. Be prepared to offer a theory of the case, to wit:
 - a. Listing
 - b. RFC
 - c. Grid

Better yet, submit a written memorandum before the hearing.

5. *FULLY* prepare your client prior to the hearing (not for 5 minutes in the hallway).

6. Try to avoid overly leading questions, i.e., don't testify for your claimant.

The rules of evidence don't apply and a bit of leading is fine if your client is having a problem articulating his or her symptoms. There are many nervous or unsophisticated claimants who will have difficulty expressing themselves in this forum. That's fine. However, at least give them an opportunity to try before starting to lead. If after prepping your client, you know they will have major problems in the hearing, talk to me about it and we'll work out a way to proceed.

7. Don't ask the same question over and over

The claimant and the representative have the right to question witnesses. A claimant or representative is entitled to conduct such questioning as may be needed to inquire fully into the matters at issue. The ALJ should provide the claimant or representative broad latitude in questioning witnesses. *However, this latitude does not require the ALJ to permit testimony that is repetitive and cumulative or questioning that is designed to intimidate, harass or embarrass the witness.*

The ALJ determines when they may exercise this right. The ALJ usually allows the claimant and the representative the opportunity to question a witness when the ALJ completes his or her initial questioning of the witness. If necessary, the ALJ may recall a witness for further questioning. Subpoenaed witnesses are subject to such cross-examination as may be required for full and true disclosure of the facts. **HALLEX I-2-6-60 B**

8. Don't ask your client to play doctor-in other words, don't ask your client to reiterate the diagnoses already in the record. Rather, ask your client to tell you how they feel. You can reiterate the diagnoses and argue how the complaints are supported by them in an opening or closing.

9. When questioning a VE, ask full and meaningful hypotheticals.

The following applies to ALJs in the context of preparing VE interrogatories:

-Phrase each interrogatory in a way that will not suggest any specific conclusion but will elicit a clear and complete response that can ultimately be expressed (to the extent possible) in lay terms. (See sample interrogatories in the Document Generation System (DGS));

-Ensure each interrogatory is case specific and tailored to the facts of the individual case at issue;

-Include any interrogatory needed to identify or address possible conflicts in the record regarding vocational issues. (See Social Security Ruling (SSR) [00-4p](#): Titles II and XVI: Use of Vocational Expert and Vocational Specialist Evidence, and Other Reliable Occupational Information in Disability Decisions);

-If applicable, include any interrogatory that is appropriate for a VE response to assist the ALJ in evaluating the effects of mental impairments on a claimant's ability to work. (See [SSR 85-15](#): Titles II and XVI: Capability To Do Other Work- The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments);

-Leave sufficient space between the questions for the answers.

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I think that these provide guidance for questioning a VE at a hearing. In other words, ask a fair question that is supported by the evidence and allow the VE to answer that question.

10. Post-hearing-if you say you are going to do something, do it. If you say you are going to get something, get it. If you cannot, let me know.