

1979 WL 42970 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 2, 1979

***1 Re: Presentation of Evidence and Closing Statements During Grievance Hearings Before the State Employee Grievance Committee**

Dr. Jack S. Mullins
South Carolina State Budget and Control Board
Personnel Division
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Dr. Mullins:

You have asked this Office for its opinion as to the order in which parties should present evidence during a grievance hearing and as to the order of closing statements. The Administrative Procedures Act, [Section 1-23-320\(e\) of the 1976 Code of Laws of South Carolina](#), as amended, provides:

Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

It is the current practice of the State Employee Grievance Committee to require the agencies to present evidence and to make closing statements prior to the grievant's presentation of evidence or closing statement, respectively. It is also the practice of the Grievance Committee to allow an agency to present additional information after the grievant's presentation of evidence, if the grievant has presented unanticipated evidence. Although the present practice of the Grievance Committee comports with [Section 1-23-320\(e\) of the Code](#) a change of the present procedure is recommended.

While the Administrative Procedures Act does not require that the procedural rules of the Courts of Common Pleas be followed, the Act does require that the rules of the civil courts be followed in certain circumstances. For examples, civil court rules must be followed when taking depositions to be used in an administrative hearing (See 1-23-320(c)) and civil evidentiary rules apply to administrative hearings (See 1-23-320(1)).

In the Court of Common Pleas the party with the burden of proof, who is ordinarily the plaintiff, presents his case first. The defendant would present his case first if he agreed with all of the plaintiff's allegations. Similarly, the grievant should ordinarily present his case first. One of the main reasons the grievant should go first is that if the agency knows exactly what the issues of the grievance are, the agency can limit its presentation of evidence to those matters that meet the grievant's charge. To require the agency to present evidence first requires it to put forth a too-broad and possibly unduly lengthy presentation in anticipation of the grievant's case.

With regard to closing statements, in the Court of Common Pleas the plaintiff may speak both first and last. Sometimes the plaintiff may waive his first argument, allowing the defendant to close first, and speak in rebuttal only. If the Committee would like to make its procedure similar to that in a civil court, it would have to offer the grievant, and not the agency, the choice of closing first or last.

Sincerely,

Barbara J. Hamilton
State Attorney

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