

Slide 1 - Competency Hearings



**Slide notes**

Course Description:

This course teaches learners about the changes to competency hearing request procedures and how to conduct hearings.

## Slide 2 - Objectives



## Competency Hearings

### Objectives

- Recall the hearing request changes
- Define hearings
- Schedule hearings
- Prepare for hearings
- Conduct hearings
- Transcribe hearings
- Evaluate hearings

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**Slide notes**

Instructor Notes:

At the end of this lesson, given the training and references, the learner will be able to do the following:

Recall the hearing request changes

Define hearings

Schedule hearings

Prepare for hearings

Conduct hearings

Transcribe hearings

Evaluate hearings

## Slide 3 - References

The slide features a blue header with a circular seal on the left and the text "Competency Hearings" in white. Below the header, the word "References" is written in blue. A bulleted list follows, containing three items: "M21-1, X.v.1.D.", "38 CFR 3.103", and "38 CFR 3.105(i)(1)". At the bottom, a grey footer contains the text "Pension and Fiduciary Service" on the left and the number "3" on the right.

 **Competency Hearings**

## References

- M21-1, X.v.1.D.
- 38 CFR 3.103
- 38 CFR 3.105(i)(1)


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**Slide notes**

Instructor Notes:

These are the relevant references pertaining to this course. Please take the time to review these references after the conclusion of this course.

## Slide 4 - Definition



## Competency Hearings

### Definition

- A **hearing** is a formal, recorded proceeding wherein a party presents sworn or affirmed testimony, other evidence, and/or argument relevant to an issue pending adjudication before the decision maker.
- Pre-determination

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.1.a.

Instructor Notes:

A hearing is a formal, recorded proceeding wherein a party presents sworn or affirmed testimony, other evidence, and/or argument relevant to an issue pending adjudication before the decision maker.

Hearing requests received related to incompetency proposal due process are pre-determination hearing requests. Pre-determination hearings are on matters related to an adjudicative issue that is pending an initial decision.

## Slide 5 - Purpose

The slide features a blue header with the Department of Veterans Affairs seal on the left and the title "Competency Hearings" in white. Below the header, the word "Purpose" is written in a large blue font. A bulleted list follows, detailing the goals of the hearing process. At the bottom, a grey footer contains the text "Pension and Fiduciary Service" on the left and the number "5" on the right.

 **Competency Hearings**

## Purpose

- Satisfy due process right
- Opportunity to present evidence
  - Own testimony
  - Witness testimony
  - Other evidence
- Opportunity to present argument
- Emphasize credibility of evidence

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.1.b.

Instructor Notes:

The purposes of an RO hearing include

- to satisfy the claimant or beneficiary's due process right to a requested hearing
- to provide a claimant or beneficiary with the opportunity to present, in person, evidence material to the issue(s) including
  - his/her own testimony
  - testimony of witnesses, and/or
  - other evidence (exhibits)
- to provide a claimant or beneficiary (and/or his or her representative) an opportunity to present argument on the hearing issue(s), or
- to emphasize the credibility of testimonial evidence through the personal presentation of testimony before the decision maker.

Do not schedule a hearing solely for a representative to offer arguments, absent a witness to offer testimony. Arguments can be presented in writing or in an informal conference.

## Slide 6 - Testimony



## Competency Hearings

### Testimony

- Person recounting factual matters
- Experiences
- Opinions
- Sworn or affirmed
- Predominantly oral
- Written evidence
  - Affidavits
  - Certified statements
  - Transcripts from other proceedings

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.1.c.

Instructor Notes:

Testimony refers to a person recounting factual matters he or she experienced and/or offering opinions premised upon other facts. It usually denotes a sworn or affirmed evidentiary use in an adjudication context.

Hearing testimony is predominately oral. Written testimonial evidence includes affidavits or other certified statements, or transcripts from another proceeding.

## Slide 7 - Argument

The slide features a blue header with a circular seal on the left and the title 'Competency Hearings' in white. The main content area is white with a blue title 'Argument' and a bulleted list. A grey footer contains the text 'Pension and Fiduciary Service' and the number '7'.

 **Competency Hearings**

## Argument

- Effort to establish point by course of reasoning
- Types:
  - Legal
  - Factual
  - How law applies to fact
- Forms:
  - Verbal statements
  - Written contention
  - Brief

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.1.d.

Instructor Notes:

Argument is an effort to establish a point by a course of reasoning. There is legal argument, factual argument, and argument on how the law applies to fact. For example, a claimant and his representative might make arguments that

- certain items of evidence are competent, credible, and establish facts
- established facts meet the legal requirements
- the evidence is in relative balance regarding a point such that the benefit of the doubt may be applied
- a regulatory term has a particular meaning, or
- a particular case is precedential.

Forms of argument at a hearing include verbal statements made at hearing by the claimant/beneficiary or representative in an introductory or closing statement, or a written contention, or a brief filed at the hearing.



## Slide 8 - Who Conducts Hearings



## Competency Hearings

### Who Conducts Hearings

- 38 CFR 3.103
- Original Determinative Authority
  - Fiduciary Service Representatives (FSRs)
- Adverse Actions
  - Employees who did not participate in proposal
- Hearing official must make decision

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.1.e.; f.; i.

Instructor Notes:

VA's due process regulation, 38 CFR 3.103, provides only that all hearings must be conducted by an employee with original determinative authority over the issue(s).


Original determinative authority means, with respect to hearings, that in assigning hearing duties, management will assign a hearing to a person with the appropriate job title and decision-making authority to render a decision on the issue that is the subject of the hearing. For due process incompetency hearings under Fiduciary Hub jurisdiction, this employee would be an FSR.

Moreover, 38 CFR 3.103, provides that hearings held in connection with proposed adverse actions can only be conducted by employees who did not participate in the proposed action. Since incompetency proposals are generated by the VSC or PMC and not the fiduciary hub, this regulation should not eliminate any FSRs from consideration.

The hearing official must issue the subsequent decision based on the hearing testimony. This means that the FSR who conducts the hearing must be the same FSR who renders the rating decision.

The rationale for this is that a key facet of the hearing due process right is the right to present testimony in person before the decision maker. The in-person interaction gives the hearing official the ability to observe the appearance and demeanor of the witness, which may emphasize or highlight the credibility of that evidence among any conflicting evidence of record.

## Slide 9 - When Official is Unable



## Competency Hearings

### When Official is Unable

- When hearing official cannot make decision
- Notify claimant/beneficiary
  - Written
  - Oral (must document on VAF 27-0820 and send a copy to the representative)
- Options
  - Appear at another hearing before a new official
  - Proceed without a new hearing

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.1.j.

Instructor Notes:

In some cases the hearing official may not be available to make the subsequent decision. For example, an employee may

- receive a promotion to management
- transfer to a different office in VA, or
- retire.

In such a case, notify the claimant/beneficiary that

- the hearing official is not available to make the decision, and
- he/she must elect one of the following options:
- appear at another hearing before a new hearing official, or

- proceed without a new hearing; the decision maker will review the prior hearing transcript in rendering the decision.
- Notification can be oral or in writing. However, in the event of oral communication document the conversation with VA Form 27-0820, Report of General Information, and send a copy to the representative if one exists.
- Although in the second option the claimant/beneficiary loses the potential for personal interaction with the decision maker, this is at his/her election. Evidence is generally taken at face value and a witness should only be found lacking in credibility as provided in M21-1, Part III, Subpart iv, 5.A.2.b.

## Slide 10 - Where to Hold Hearings

The slide features a blue header with the Department of Veterans Affairs seal on the left and the title "Competency Hearings" in white. Below the header, the main content area has a white background with a blue title "Where to Hold Hearings" and a bulleted list of points. A grey footer bar at the bottom contains the text "Pension and Fiduciary Service" on the left and the number "10" on the right.

## Competency Hearings

### Where to Hold Hearings

- Station of Jurisdiction
  - Fiduciary Hub
- May be held at another RO that is nearer
  - Videoconference
- When videoconference is not available
  - Claim remains under hub jurisdiction
  - Claimant must agree in writing
  - Transcript will be sent to the hub

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.1.n.

Instructor Notes:

Hold hearings at the Station of Jurisdiction. For due process incompetency hearings, that will be the fiduciary hub.

A hearing may be held at another RO that is nearer to the claimant's residence with the following qualifications:

- This hearing should be before a hearing official at the fiduciary hub via videoconference whenever possible.
- In the event that a videoconference hearing is not available, the hearing may be conducted by a hearing official at the RO nearer to the claimant's residence. However, in such cases
  - The claim remains under the jurisdiction of the fiduciary hub and the decision must be made by the hub.
  - The claimant must be informed (and agree in writing) that he/she waives the right to have the decision made by the hearing official. (Retain this waiver in the claims folder.)
  - The hearing official will send a transcript of the proceedings and any other evidence obtained to the hub.

- An employee of the fiduciary hub will make the decision based on the transcript and other evidence of record.

Subject to available resources, and at the option of VA, a formal hearing may be held at any other VA facility or Federal building where suitable hearing facilities are available. This hearing will be conducted by an employee of the fiduciary hub.

## Slide 11 - Facility Requirements



## Competency Hearings

### Facility Requirements

- Designate a permanent hearing room
- Not a work area
- Privacy
- Clean
- Display United States flag

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.1.o.

Instructor Notes:

If RO facilities allow, designate a permanent hearing room. The following requirements apply to hearing facilities:

- Do not conduct hearings in a work area, or any location where the witnesses must pass through a work area with open access to restricted personally identifiable information on other claimants and beneficiaries.
- The hearing facility should provide privacy for witness testimony, including walls and a door.
- Ensure that the hearing room is clean and straightened for each hearing.
- Display the United States flag appropriately.

## Slide 12 - Attendance



## Competency Hearings

### Attendance

- Attendance is mandatory
- Failure to report
- Without good cause
- Cancellation
- Proceed with decision
- Excused
  - Rescheduled or canceled beforehand
  - Hearing notice was mailed to the wrong address
  - Extenuating circumstances

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.1.q.

Instructor Notes:

Attendance at an RO hearing by the claimant/beneficiary and witnesses on the date and time scheduled is mandatory.

When the claimant fails to report for the hearing without good cause, make a record annotation and update applicable systems indicating that the hearing was canceled for failure to report. Proceed with development or a decision as applicable.

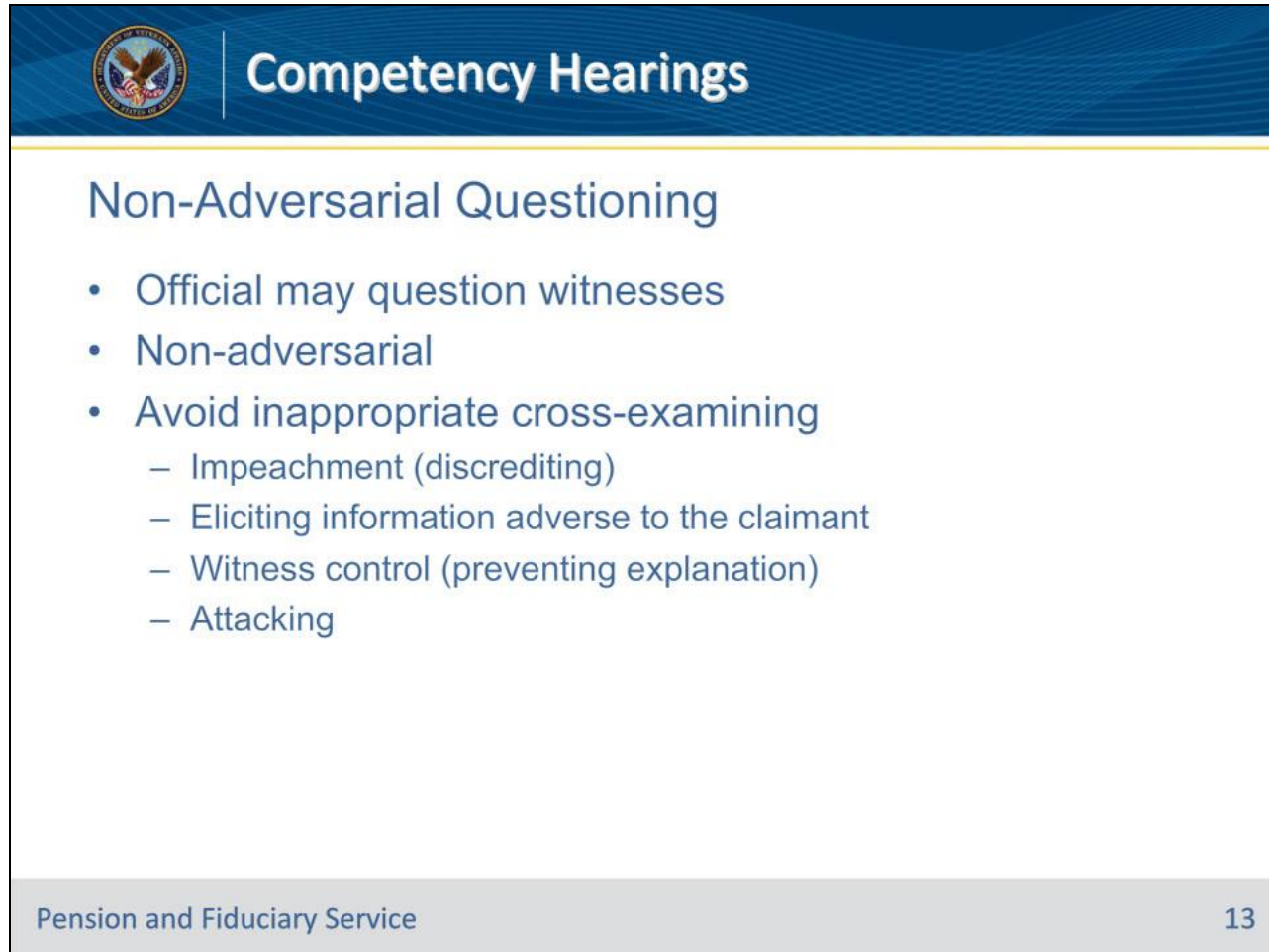
Exceptions: Non-appearance at a scheduled hearing by the claimant/beneficiary will be excused if

- the hearing was rescheduled or canceled up to the scheduled time of the hearing
- VA mailed the hearing notice to an incorrect address, or
- there are extenuating circumstances such as
- incapacitation from a serious medical condition



- hospitalization
- death of an immediate family member, or
- incarceration.

## Slide 13 - Non-Adversarial Questioning

The slide features a blue header with the Department of Veterans Affairs seal on the left and the title "Competency Hearings" in white. Below the header, the main content area is white with a blue title "Non-Adversarial Questioning" and a bulleted list of points. A grey footer bar at the bottom contains the text "Pension and Fiduciary Service" on the left and the number "13" on the right.

## Competency Hearings

### Non-Adversarial Questioning

- Official may question witnesses
- Non-adversarial
- Avoid inappropriate cross-examining
  - Impeachment (discrediting)
  - Eliciting information adverse to the claimant
  - Witness control (preventing explanation)
  - Attacking

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.2.a.

Instructor Notes:

The hearing official may question witnesses, structuring all questions to fully explore the basis for claimed entitlement. However, proceedings before VA are non-adversarial in nature. VA does not oppose a claim. Accordingly, the hearing official must avoid inappropriate cross-examining style of questioning.

Cross-examination denotes supplemental questioning of a witness, called to testify in support of a party, by the advocate of the opposing party for one or more of the following purposes:

- impeachment (discrediting the witness by eliciting facts or opinions that diminish credibility or the weight of evidence offered by the witness)
- elicitation of facts or opinions that may be useful for additional development adverse to the party for whom the witness's testimony was offered, and
- witness control (to prevent explanation or elaboration).

The term also connotes an attacking or aggressive style of questioning with a belligerent/antagonistic, sarcastic or skeptical tone that permits only “yes” or “no” answers.

The fact that an appropriate question by the hearing official may lead to information that results in, or is followed by, testimony that may show an inconsistency or otherwise negatively impact the witness’s credibility or the weight of evidence on a particular matter does not mean that the hearing official engaged in cross-examination or that the testimony is not admissible. This is not intent to refute evidence or discredit the claimant’s statements.

## Slide 14 - Decorum



## Competency Hearings

### Decorum

- VA personnel expectations
  - Act with decorum
  - Present a professional appearance
- Decorum
  - Treat all parties with courtesy
  - Pay close attention
  - Be objective and fair

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.2.b.

Instructor Notes:

When conducting a hearing, VA personnel are expected to

- act with decorum, and
- present a professional appearance.

Decorum means that hearing officials must

- treat the claimant, witnesses, and representative with courtesy, even when witnesses may be angry, irritable, or critical
- pay close attention to the proceedings, and
- be objective and fair in questioning or comments made during the hearing.
- Do not express personal feelings or biases or allow those to influence the hearing proceedings.

- Do not express skepticism, sarcasm, or anger in response to testimony.
- Do not engage in a cross-examining style of questioning.
- Do not give any suggestion of having prejudged the issue.

Professional appearance must be judged by local office directives for the standard of dress expected for interaction with claimants. Except in the case of unusual or unforeseen circumstances (for example, an employee is assigned the task of holding a priority hearing the same day and an alternative hearing official is not available), casual outfit such as tennis shoes, shorts, tee shirts, and jeans, are not acceptable.

## Slide 15 - Expectations



## Competency Hearings

### Expectations

- Obligation to assist the claimant
  - Openly positive interest
  - Make helpful suggestions
- Must not communicate expected decision
- Inappropriate behavior by attendees
  - Hearing official can terminate hearing
  - Examples: repeated interruption, yelling, insults, sexual comments, threats, physical contact

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.2.c.; d.; e.

Instructor Notes:

VA is obligated to assist the claimant in developing facts pertinent to the claim. Express an openly positive interest in assisting the claimant and, as indicated by the claims folder and the hearing proceedings, make suggestions to the claimant as to the submission of evidence that

- the claimant may have overlooked, and
- would be advantageous to his/her position.

The hearing official must not communicate a planned, anticipated, or expected decision or imply that a decision has been reached during the hearing.

If the claimant/beneficiary, representative, or other hearing attendee asks what the decision will be, the hearing official may say only that the decision will be communicated in writing after all the evidence is obtained and considered.

The hearing official has discretion to terminate a hearing for inappropriate (abusive, disrespectful, aggressive, or violent) behavior by hearing attendees. Such behavior includes, but is not limited to,

- repeated interruption of the hearing official
- yelling
- insults or demeaning/disrespectful comments directed at the hearing official or any other hearing participant
- sexual comments directed at the hearing official or any other hearing participant or that do not bear on the issues (for example, a sexual assault posttraumatic stress disorder issue)
- threatening/menacing behavior, and/or
- inappropriate touching, assault, or battery.


If there is any perceived risk of violence/harm to any hearing attendee, then follow local office emergency/security procedures. In emergency circumstances, the hearing official is not expected to notify the hearing attendees that the hearing is being terminated.

If behavior from a hearing attendee is grossly inappropriate, or repeatedly inappropriate, then follow local office emergency/security procedures if warranted by the facts. In non-emergency circumstances, inform the hearing attendees that the hearing is being terminated for inappropriate conduct.

If inappropriate conduct is not violent or not otherwise grossly inappropriate, consider giving a warning before terminating the hearing. Inform the hearing attendees in a courteous manner that the behavior is inappropriate, and further instances of inappropriate behavior will result in the hearing being terminated. If, in the judgment of the hearing official, termination is warranted, inform the hearing attendees in a courteous manner that the hearing is terminated for inappropriate conduct.

- In exercising discretion over whether to terminate the hearing where inappropriate behavior does not rise to the level of an emergency, the hearing official should keep in mind that for many individuals a hearing is their only exposure to an actual VA employee involved in their claim. It is understandable that they may be frustrated or angry at the claim process or a decision they have received. They may also have serious disabilities, such as a mental disorder or traumatic brain injury, manifested by social impairment, diminished impulse control, or anger that predisposes them to inappropriate behavior.
- In any cases where a hearing is terminated for inappropriate behavior, annotate the claims folder and applicable systems.
- In any case where a hearing is terminated for inappropriate behavior, rescheduling will be permitted only upon RO discretion, and rescheduling may be conditioned on the availability of additional security for the hearing.

## Slide 16 - Scheduling and Preparing



## Competency Hearings

### Scheduling and Preparing

- Schedule for the earliest available date
- Expedite when appropriate
- 38 CFR 3.105(i)(1)
  - Requires VA to notify beneficiary in writing of time and place of hearing at least 10 days in advance
  - Waiver is permitted by mutual agreement
- Review all issues and evidence in preparation

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.3.a.; b.; c.

**Instructor Notes:**

Schedule hearings within a reasonable amount of time from the date the request is received. Since due process incompetency hearings are pre-determination hearings, schedule the hearing for the earliest available date.

Expedite scheduling of hearings for all cases entitled to priority handling.

When a beneficiary timely requests a hearing in response to a notice of proposed adverse action, 38 CFR 3.105(i)(1) requires VA to notify the beneficiary in writing of the time and place of the hearing at least 10 days in advance of the scheduled hearing date.

A waiver of the 10-day advance notice is permissible by mutual agreement between VA and the beneficiary, and/or his/her representative (if any).

To prepare for the hearing, review all of the issues and evidence.



## Slide 17 - Conducting the Hearing

The slide features a blue header with the Department of Veterans Affairs seal on the left and the title "Competency Hearings" in white. Below the header, the main content area has a white background with a blue title "Conducting the Hearing" and a bulleted list of four items. At the bottom, a grey footer contains the text "Pension and Fiduciary Service" on the left and the number "17" on the right.

## Competency Hearings

### Conducting the Hearing

- Escort parties to hearing room or waiting area
- Witnesses must sign:
  - VA Form 5571 and/or
  - VA Form 21-0589, as appropriate
- Introduce yourself and other VA personnel
- Explain nature and purpose of hearing

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.4.a.

Instructor Notes:

- Escort the claimant, witnesses, and his/her representative to the hearing room or appropriate waiting area.
- Where witnesses will be present at the hearing, ensure that VA Form 5571, Authorization to Disclose a Record in the Presence of a Third Party, and/or VA Form 21-0589, Authorization to Disclose a Record in the Presence of a Third Party (as appropriate), is completed.
- Introduce yourself and other VA personnel present, and begin the hearing without delay.

Notes:

- Listen carefully to the correct pronunciation of names.
- VA Form 5571 authorizes VA under the Privacy Act of 1974 to review and discuss VA records on a specified topic relating to the Veteran or claimant in the presence of an accompanying person.

- VA Form 21-0589 permits VA to review and discuss records containing medical treatment for specified conditions in front of named persons. The claimant can include or exclude information on drug abuse, alcoholism or alcohol abuse, human immunodeficiency virus, or sickle cell anemia.

Explain the nature and purpose of the hearing

## Slide 18 - Conducting the Hearing (Cont.)



## Competency Hearings

### Conducting the Hearing (Cont.)

- Explain necessity for recording equipment
- Tell the claimant that a copy of transcript is
  - Placed in the claims folder
  - Sent to claimant if requested
- Tell claimant that they may go “off the record”
- Explain necessity of an oath of affirmation

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.4.a.

Instructor Notes:

Explain the necessity for and use of recording equipment.

Tell the claimant that a copy of the transcript is

- placed in the claims folder, and
- sent to the claimant, if requested.


Tell the claimant and witnesses that they may “go off the record” to

- collect their thoughts, or
- clarify any matter

Explain the necessity of an oath or affirmation.

The above steps may be done before the transcription recording is started. If so, once on the record, briefly state that the matters were discussed beforehand.

## Slide 19 - Attorneys



## Competency Hearings

### Attorneys

- When an attorney is present, emphasize:
  - Informal nature of RO hearings
  - Federal Rules of Evidence do not apply
  - Leading questions are permissible
  - Hearing official may ask clarifying questions

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.4.b.

Instructor Notes:

When the claimant's representative is an attorney, emphasize the informal nature of RO hearings, specifically

- that the Federal Rules of Evidence do not apply
- that leading questions are permissible, and
- that the hearing official may ask questions to clarify testimony or ensure that facts important to the legal standard of entitlement are addressed; the questioning will not constitute cross-examination.

## Slide 20 - Rights to Representation



## Competency Hearings

### Rights to Representation

- When the claimant is not represented
  - Explain availability
  - Inform no obligation, charge, or requirement
  - If the claimant requests representation
    - Take claimant and witnesses to chosen representative
    - Explain situation to representative
    - Set a new time for hearing
    - Allow time for representative to review evidence
  - If claimant declines representation
    - Proceed with hearing

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.4.c.

Instructor Notes:

Follow these steps when the claimant is not represented by an attorney, VSO, agent, or other third party.

Explain the availability of

- a representative, or
- assistance by a member of the RO.


Inform the claimant of the following:

- there is no obligation to join a Veterans service organization
- there is no charge for representation, and
- representation is not mandatory.

Did the claimant request a representative?

- If yes,
  - take the claimant and his/her witnesses to the chosen representative
  - explain the situation to the representative, and
  - Set a new time for the hearing to begin, and
  - allow adequate time for the representative to review the evidence.
- If no,
  - proceed with the hearing

## Slide 21 - Before Testimony Begins



## Competency Hearings

### Before Testimony Begins

- State the issues
- Confirm understanding of issues
- Administer oath or affirmation
  - VA Form 4505
  - Ask claimant and witnesses to stand and raise their right hand
  - Administer oath: “Do you swear (or affirm) the testimony you are about to give will be the truth and nothing but the truth?”

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.4.d.; e.

Instructor Notes:

State the issue(s) in detail before testimony begins. This will not be used to limit the scope of the relevant issue(s) or indicate to the claimant that testimony is to be curtailed.

Ask the claimant and his/her representative if this is their understanding of the issue(s) and clarify any misunderstandings at this time.

All hearing testimony is to be given under oath or affirmation. Administer the oath or affirmation before recording begins.

The hearing official has the authority to administer oaths and certify documents as evidenced by VA Form 4505, Identification Card-Delegation of Authority.

Follow these steps to administer the oath or affirmation:

Step 1: Ask the claimant and his/her witness(es) to stand and raise their right hand.



Step 2: Administer the oath substantially as follows: “Do you swear (or affirm) the testimony you are about to give will be the truth and nothing but the truth?”

## Slide 22 - Starting the Hearing



## Competency Hearings

### Starting the Hearing

- Hearing Official starts recording with opening statement which includes:
  - the fact that a hearing is being held
  - the date and time of commencement of the hearing
  - the name of the hearing official
  - the names of the claimant and any witnesses
  - the name of the representative (as applicable)
  - the file number
  - the claimant and witnesses have been duly sworn
  - a brief statement of issue(s), and
  - a summary of matters discussed before going on record

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.4.f.

Instructor Notes:

The hearing official starts recording the hearing with the opening statement which includes

- the fact that a hearing is being held
- the date and time of commencement of the hearing
- the name of the hearing official
- the names of the claimant/beneficiary and any other witnesses who will testify
- the name of the representative (as applicable)
- the file number
- the fact that the claimant and any witnesses have been duly sworn

- a brief statement of issue(s), and
- a brief summary of matters discussed before going on the record such as the informal and non-adversarial nature of the proceedings, that the Federal Rules of Evidence do not apply, that the hearing official may ask questions but there will be no cross examination, or that an unrepresented claimant/beneficiary was advised of the right of representation.

## Slide 23 - Testimony: Stages

The slide features a blue header with the Department of Veterans Affairs logo on the left and the text "Competency Hearings" in white. Below the header, the title "Testimony: Stages" is displayed in blue. A bulleted list follows, detailing the stages of testimony. At the bottom, a grey footer contains the text "Pension and Fiduciary Service" on the left and the number "23" on the right.

## Competency Hearings

### Testimony: Stages

- Stage 1: Opening Statement
- Stage 2: Claimant provides testimony
- Stage 3: Hearing official asks questions
- Stage 4: Witnesses provide testimony
- Alternative order
- Excuse any witnesses that the claimant does not want present for questioning

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.4.g.; h.

Instructor Notes:

These are the stages of how to elicit testimony and ask questions.

Stage 1: Hearing official asks the representative, if present, and/or claimant if he/she desires to make an opening statement. A representative is allowed to introduce the claimant's testimony and ask questions about it.

Stage 2: Claimant provides testimony

Stage 3: Hearing official asks questions that are consistent with the non-adversarial nature of the hearing, and elicits all relevant testimony.

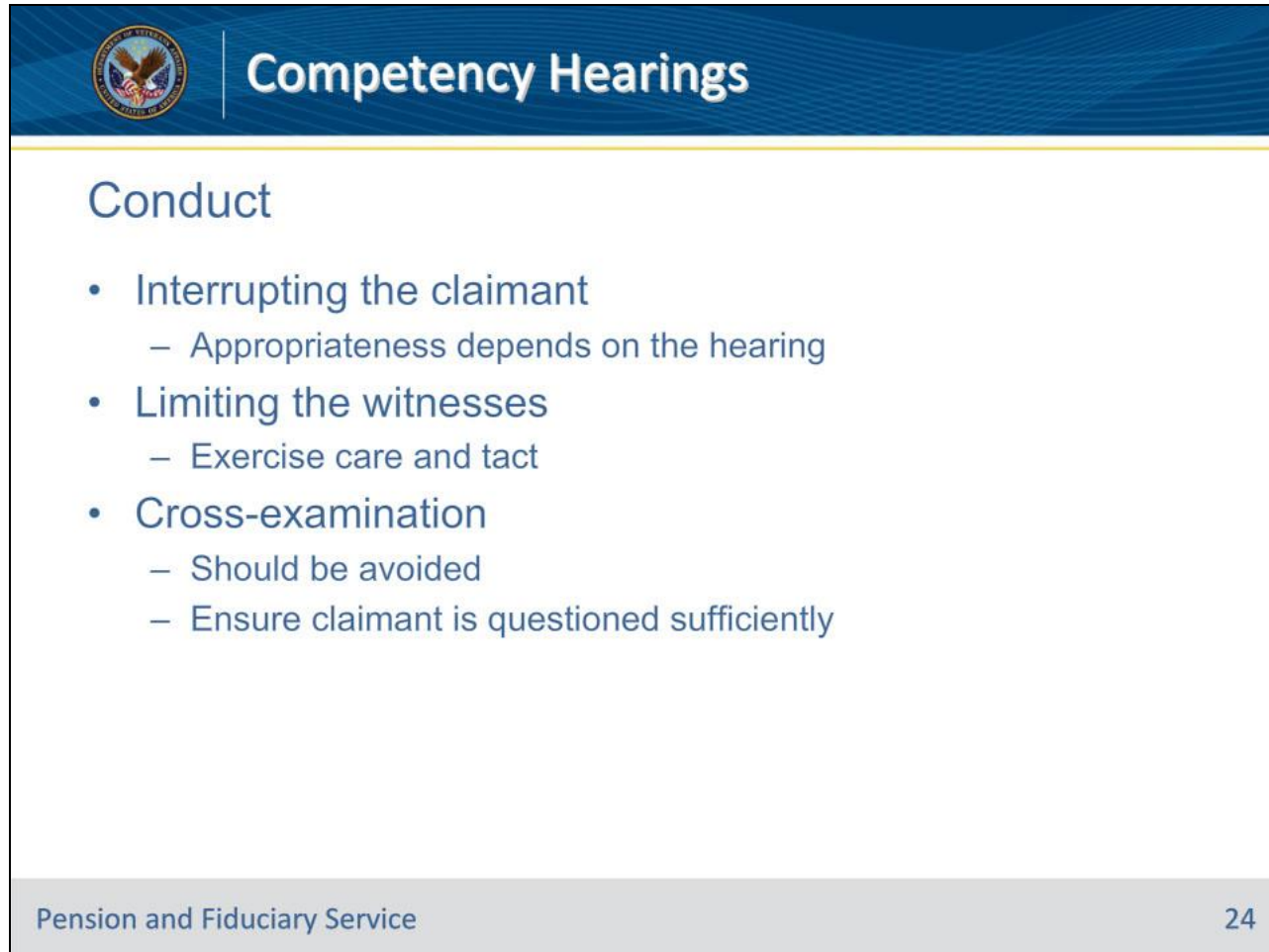
Stage 4: Witnesses provide testimony. Repeat stages three and four for any additional witnesses.

Some representatives may ask that the witness testify immediately after the claimant and before questioning. In this circumstance, question the claimant and witness after completion of all testimony.

Before questioning the claimant,

- ask if he/she objects to any of the witnesses being present, and
- if so, excuse the witness(es).

## Slide 24 - Conduct

The slide features a blue header with the Department of Veterans Affairs seal on the left and the title "Competency Hearings" in white text. Below the header, the word "Conduct" is written in a large blue font. A bulleted list follows, detailing three main points: "Interrupting the claimant", "Limiting the witnesses", and "Cross-examination", each with a sub-bullet providing further context. At the bottom, a grey footer contains the text "Pension and Fiduciary Service" on the left and the number "24" on the right.

## Competency Hearings

### Conduct

- Interrupting the claimant
  - Appropriateness depends on the hearing
- Limiting the witnesses
  - Exercise care and tact
- Cross-examination
  - Should be avoided
  - Ensure claimant is questioned sufficiently

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.4.i.

Instructor Notes:

Interrupting the Claimant

The appropriateness of interrupting the claimant or the witness(es), or suggesting areas that should be further developed during the course of testimony, depends on the individual hearing.


Limiting the Witness(es)

Exercise care and tact in limiting the witness(es) and guard against any suggestion that the testimony is not important.

Cross-examination

While cross-examination should be avoided, it is important that the claimant be questioned sufficiently to elicit all relevant testimony.

## Slide 25 - Ending the Hearing



## Competency Hearings

### Ending the Hearing

- Give opportunity to make final statement
- Ask if anyone wishes to add anything
- Identify evidence referenced in testimony
- Explain VA procedures
- Note the time
- Have claimant complete any needed release
- Escort claimant and/or witnesses out

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.4.j.

Instructor Notes:

These are the steps to ending the hearing:

Step 1:

- Give the claimant and his/her representative an opportunity to make a final statement when
- testimony is complete, and/or
- discussion of any area raised by questioning has been concluded
- ask if anyone wishes to add anything, and
- identify any evidence referenced in the hearing testimony that
- the claimant has agreed to furnish, and/or

- VA will attempt to acquire.

Step 2: Explain VA's procedures regarding decision notification, specifically that the claimant will not be provided with oral or written notification of the formal written decision until it has been signed and, if necessary, approved.

Step 3:

- Note the time the hearing concludes for the record
- have the claimant complete any medical release forms needed to obtain private treatment records, and
- escort the claimant and/or witness(es) from the hearing area.

This procedure is not applicable for termination of the hearing due to inappropriate conduct by hearing attendees



## Slide 26 - Transcribing the Hearing

The slide features a blue header with the Department of Veterans Affairs seal on the left and the title "Competency Hearings" in white. Below the header, the main content area has a white background with a blue title "Transcribing the Hearing" and a bulleted list of instructions. At the bottom, a grey footer contains the text "Pension and Fiduciary Service" on the left and the number "26" on the right.

## Competency Hearings

### Transcribing the Hearing

- Follow local procedures for transcribing
- Create tracked item
  - “Awaiting Upload of Hearing Transcript”
  - Suspense “Request for Federal Records”
- Upload the transcript to VBMS eFolder
- If claimant gives permission not to transcribe
  - Ask claimant to sign statement
  - Secure recording or any other electronic record in claims folder for at least two years

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.6.

Instructor Notes:

Follow local procedures for transcribing hearings.

If processing the claim in VBMS, create a tracked item Awaiting Upload of Hearing Transcript with the suspense reason Request for Federal Records and a suspense date in accordance with local procedures while transcription of the hearing is pending.

Follow these procedures to add the hearing transcript to the claims folder:

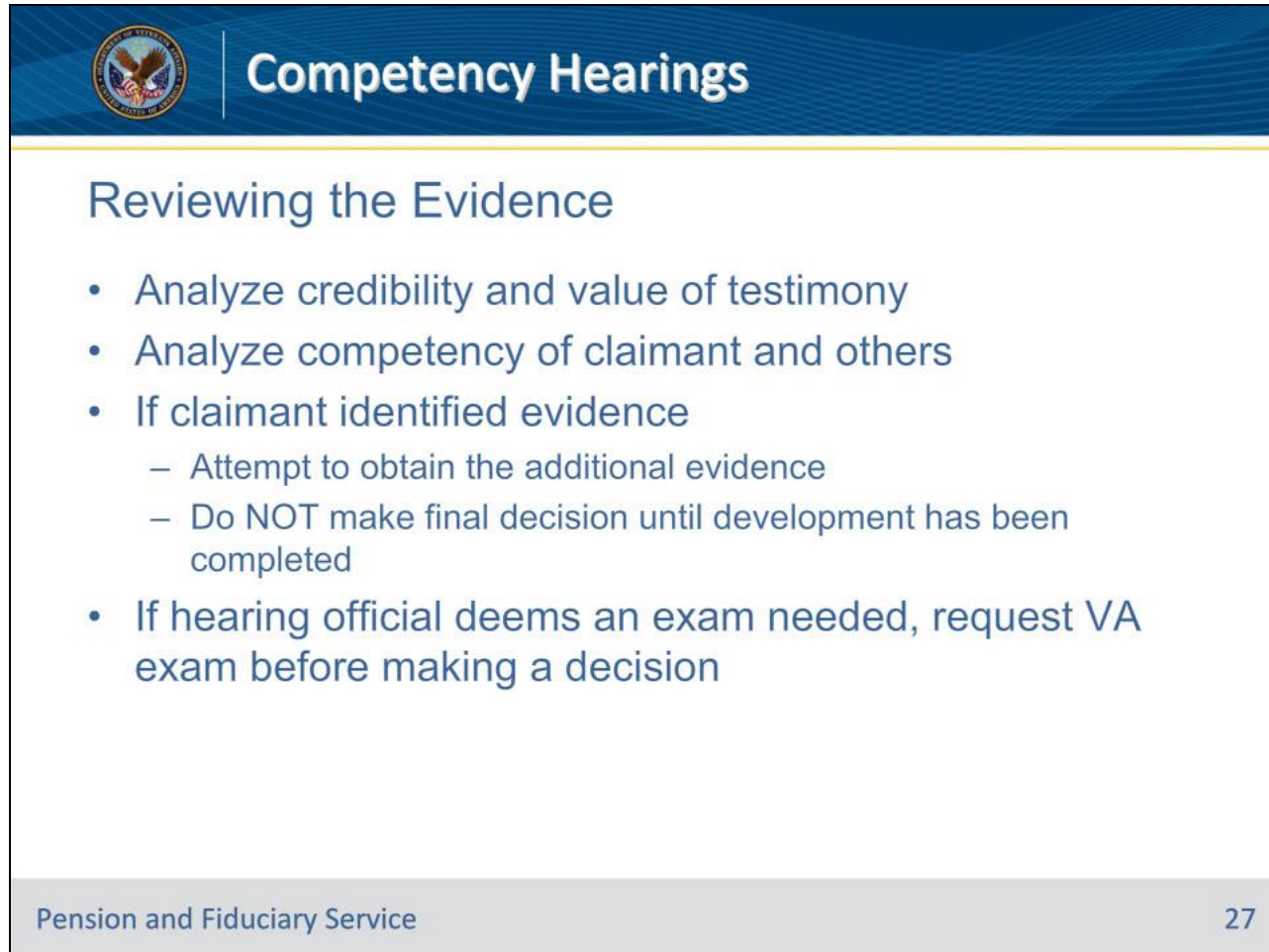
- If the hearing transcript is received electronically, upload the document to the electronic claims folder (eFolder) in VBMS.
- If a hard copy of the hearing transcript is received, send the transcript to the scanning vendor for upload into VBMS.

If the claimant gives his/her permission not to prepare a typed transcript of the hearing,

- ask the claimant to sign the following statement at the hearing: I hereby waive any requirement that the record of my hearing will be transcribed. A hearing transcript will be prepared if my records are eventually referred to BVA for a decision on this issue, and

- secure any tape recording or other electronic record in the claims folder for a period of at least two years after the hearing, at which time it will be recycled or destroyed.

## Slide 27 - Reviewing the Evidence

The slide features a blue header with the Department of Veterans Affairs seal on the left and the title "Competency Hearings" in white. Below the header, the main content area has a white background with a blue title "Reviewing the Evidence" and a bulleted list of points. A grey footer bar at the bottom contains the text "Pension and Fiduciary Service" on the left and the number "27" on the right.

## Competency Hearings

### Reviewing the Evidence

- Analyze credibility and value of testimony
- Analyze competency of claimant and others
- If claimant identified evidence
  - Attempt to obtain the additional evidence
  - Do NOT make final decision until development has been completed
- If hearing official deems an exam needed, request VA exam before making a decision

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**Slide notes**

Policy Reference(s): M21-1, X.v.1.D.7

Instructor Notes:

Analyze the credibility and value of testimony presented by the claimant and others who testified on the claimant's behalf. Take care to distinguish between testimony and argument.

Analyze the competency of the claimant and others who testified on the claimant's behalf to establish specific factual matters.

If the claimant identified sources of information or evidence while testifying that corroborates the claim,

- attempt to obtain the additional evidence, and
- do not make a final decision on the claim until development has been completed.

Example: The claimant states that he was treated by Dr. John Smith, and Dr. Smith's report is not in the claims folder. Reasonable efforts must be made to obtain that report before making a decision.

If, during the course of a hearing or review of the claims folder after the hearing, the hearing official concluded that an examination should have been or should now be ordered based on new evidence, request a VA examination before making a decision.

## Slide 28 - Questions?

The slide features a blue header with the Department of Veterans Affairs logo on the left and the title "Competency Hearings" in white text. Below the header, the word "Questions?" is written in blue. To the left of a bulleted list is a 3D illustration of a white figure sitting on a large blue question mark. The bulleted list contains seven items: "Recall the hearing request changes", "Define hearings", "Schedule hearings", "Prepare for hearings", "Conduct hearings", "Transcribe hearings", and "Evaluate hearings". At the bottom of the slide, a grey bar contains the text "Pension and Fiduciary Service".

 **Competency Hearings**

## Questions?



- Recall the hearing request changes
- Define hearings
- Schedule hearings
- Prepare for hearings
- Conduct hearings
- Transcribe hearings
- Evaluate hearings

Pension and Fiduciary Service

**Slide notes**

Instructor Notes:

(Recall) These are our learning objectives as stated from the beginning of the training:

Recall the hearing request changes

Define hearings

Schedule hearings

Prepare for hearings


Conduct hearings

Transcribe hearings

Evaluate hearings

Please submit any questions to the P&F Service mailbox listed on this slide.

## Slide 29 - TMS Survey



## Competency Hearings

### TMS Survey

- A satisfaction survey has been assigned to you in TMS.
- You should be able to complete the survey within ten minutes.
- Be sure to complete the survey to receive credit for this training.

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**Slide notes**

Instructor Notes:

A satisfaction survey has been assigned to you in TMS. You should be able to complete it within ten minutes.

Completing it will allow you to receive credit for this training.