

Working with Pro Se Parties

*How to ensure everyone
gets the most out of our
processes and feels
heard, while protecting
the record and applying
the law*

Kristen Edwards

Commission Counsel

South Dakota Public
Utilities Commission

Disclaimer

I am here speaking on my own behalf, not on behalf of my employer or the State of South Dakota. Nothing I say and none of my opinions should be attributed to the State of South Dakota, the Public Utilities Commission, or any of the Commissioners.

This presentation was put together based upon my experience as a whole, as well as that of several other attorneys that I reached out to and should not be attributed to any specific docket, party, or proceeding before the PUC or any other agency.

All litigants want to know that they have been heard and feel they have been treated fairly.

When don't they feel like they got to tell their story or feel they were treated fairly, they won't respect the final decision because they feel they didn't get their day in court.

Help where you can.

- Send out reminders of deadlines and examples.
- Emails to all parties explaining what to expect at the hearing.
 - Order of presentation of evidence
 - Order of direct and cross examination

Try to refer to the Pro Se litigant by their name, rather than by their role (Intervenor, Complainant, Respondent).

Cross-Examination

- Their cross:
 - Patience, patience, patience!
 - They've probably never done cross before, so when they're crossing your witnesses, you're going to have to exercise restraint.
 - It's not our job to humiliate our opponent, so if the objectional cross is harmless, let it go.
 - Just focus on protecting your witness and your record.
- Your cross:
 - Try to keep a conversational tone.
 - Keep your questions short.
 - Never be a bully.

Views from the bench...

- There has been an increase in pro se cases in recent years.
 - Prisoner cases (state and federal habeas cases, 1983 claims, etc.)
 - Non-prisoner cases (civil rights, claims against the federal government, employment claims, etc.)
- Significant amounts of the court's time and resources are often spent on frequent challenges with pro se cases:
 - Paying the filing fee or establishing inability to pay
 - Establishing jurisdiction (If it is in federal court, is it actually a federal claim?)
 - Proper service of defendants.
- Discovery and motions practice
 - Pro se litigants are often unaware of the rules that apply to discovery and motions practice. This requires being **very patient and very clear in orders and with articulating expectations**.
- Use of AI by pro se litigants is adding a new challenge, particularly with false case citations.

Views from the bench...

- Patience, patience, patience!
- “Tell it to me in your own words.”
 - Use this phrase to help steer them in the right direction with the Rules of Evidence.
- Be sympathetic, though not helpful. It’s not your job to make their case.
- Err on the side of more due process, not less.
- You may need to help them stay focused.
 - Tip: Ask them questions to keep them focused. Interrupt to keep them on topic, then ask a question to steer them back in the right direction. Be kind.
- Let them know they were heard.
 - Refer to their evidence or arguments to let them know that they were considered.

Ethical Considerations

- While it is good to be kind and helpful, never give legal advice!
 - The pro se intervenor still needs to be responsible for their own case, you should not be giving legal advice or making their case for them.
- Advise them that you are not their attorney and that they should consult a private attorney for legal advice.
- Follow up conversations with emails summarizing what was said and reiterating that you are not their attorney .

Appendix I – Practice Tips

- Make a trial notebook, whether you are an ALJ or litigator
 - Important statutes for quick reference
 - Witness List
 - Exhibit List
 - Motions throughout the proceeding
 - List of desired findings of fact
 - List of common objections
 - Cheat sheet for foundation
 - Outline of direct examination questions
 - Legal Theories

Practice Tips (continued)

- Print off Motions as they are filed and keep them in a binder.
- This will help you keep track of what is pending and make sure nothing gets missed.
 - If your job is to rule on motions, you'll want to make sure that at the end of the proceeding your "Pending Motions" tab is empty.

Practice Tips (continued)

- **Draft the material findings of fact BEFORE the hearing and bring them with you!**
 - Print out a list of findings you need to have included in the final order.
 - This will help you focus on information you need to get from witnesses.
 - Jot down a note next to the FOF when you get supporting testimony to make it easier to find later.
 - This will be a lifesaver when you go to draft your proposed FOF for the final order!
 - And if you're the decisionmaker, it makes any evidentiary holes glaringly obvious.

Appendix II – useful documents for evidentiary hearings for both hearing examiners and party attorneys

- If you would like Word docs of any of these templates, please feel free to email me at Kristen.Edwards@state.sd.us. I am happy to share

Exhibit Tracker for Evidentiary Hearings

	Exhibit #	Description	Stipulated?	Offered?	Admitted?
Petitioner					
	CM-1	Prefiled Direct Testimony of Clark Meyer;	X		X
	CM-2	Prefiled Direct Testimony of Clark Meyer Exhibit A	X		X
	CM-3	Prefiled Direct Testimony of Clark Meyer Exhibit B	X		X
	CM-4	Prefiled Rebuttal Testimony of Clark Meyer	X		X
	CM-5	Exhibit 1 First Responses to Joint Data Requests of Sioux Valley et al, dated 12/2/25	X		X
	CM-6	CM-6 Exhibit 2 First Responses to Joint Data Requests of Sioux Valley et al dated 12/2/25	X		X
Xcel					
	STK-1	Steve T. Kolbeck's Pre-filed Testimony	X		X
	STK-2	Steve T. Kolbeck's Pre-filed Testimony Confidential	X		X
	BLS-1	Bradley L. Sylliaasen's Pre-filed Testimony	X		X
	BLS-2	Schedule 1 to Bradley L. Sylliaasen's Pre-filed Testimony	X		X
Sioux Valley					
	TS-1	Resume	X		X
	TS-2	Sioux Valley Energy Distribution Map	X		X
	TS-3	Exhibits A and B of Clark Meyer's Pre-Filed Testimony	X		X
	TS-4	Extract of Knife River Conditional Use Application dated June 26, 2025	X		X
	TS-5	Knife River CAD File Overlaid on Sioux Valley Energy Distribution Map	X		X
	TS-6	Testimony of Ted Smith, on behalf of Sioux Valley-Southwestern Electric Cooperative, Inc., February 17, 2026 (Confidential)			
	TS-7	Testimony of Ted Smith, on behalf of Sioux Valley-Southwestern Electric Cooperative, Inc., February 17, 2026 (Public)			
	TS-8	Rebuttal Testimony of Ted Smith, on behalf of Sioux Valley-Southwestern Electric Cooperative, Inc., March 2, 2026			

Cheat sheet for laying foundation

- Example:
 - I have handed you what has been marked for identification purposes as _____. Do you recognize this document?
 - What is it?
 - Did you create this document?
 - At the time you created _____, was it true and correct to the best of your knowledge?
 - I move for admission of Exhibit _____.

Sample starter questions for direct examination

- Sample starter questions:
 - Please introduce yourself for the record.
 - By whom are you employed?
 - What is your job title?
 - What are your job duties?
 - Do you hold any professional certifications?
 - Flesh that out as needed.
 - Did you file prefiled written testimony in this matter?
 - Was it true and correct to the best of your knowledge at the time it was filed?
 - Do you have any additions, corrections, or deletions to make?
 - If I asked you the same questions as in your prefiled testimony today, would your answers be the same?

List of common objections

1. Admitted.
2. Argumentative.
3. Assumes facts not in evidence.
4. [Best evidence rule](#).
5. Beyond the scope of direct / cross / redirect examination.
6. Completeness.
7. Compound question / double question.
8. Confusing / vague / ambiguous.
9. Counsel is testifying.
10. Form.
11. Foundation.
12. [Hearsay](#) (rules 801, 802, 803 and 804).
13. Improper impeachment.
14. Incompetent.
15. Lack of personal knowledge.
16. Leading.
17. Misstates evidence / misquotes witness / improper characterization of evidence.
18. Narrative.
19. [Opinion](#) (rules 701 and 702).
20. Pretrial ruling.
21. Privileged communication.
22. Public policy.
23. [Rule 403](#) (undue waste of time or undue prejudice/immaterial/irrelevant/repetitive / asked and answered / cumulative / surprise).
24. Speculative.

National Association of Attorneys General Objections List



**NATIONAL ATTORNEYS GENERAL
TRAINING & RESEARCH INSTITUTE**
THE TRAINING & RESEARCH ARM OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

COMMON OBJECTIONS AT OR BEFORE DEPOSITION - FED. R. CIV. P. 32(D)

	BASIS FOR THE OBJECTION		EXAMPLES OF OBJECTIONS & RESPONSES TO OBJECTIONS
Authentication - Voices ¹	The question calls for the testimony authenticating the voice of another person. Fed. R. Evid. 901. The witness lacks familiarity with the other person's voice and/or there is lack of circumstantial evidence for the authentication.	32(d)(3)(A) ²	<p>Examining Attorney: "I am now going to play a portion of P-1 for identification, which is the recording of the call Acme received at 10:03 a.m. on January 10 of last year and ask you to identify the voice of the caller."</p> <p>Defending Attorney: "Objection, lack of foundation."</p> <p>Examining Attorney: Can play the tape and then ask, "Mr. Jones, can you identify the caller's voice?"</p> <p>Witness: "Yes, it is Carol Smith."</p> <p>Examining Attorney: "How do you know it is Ms. Smith?"</p> <p>Witness: "I have spoken with her numerous times."</p>
Authentication - Writings, Recordings & Photographs	The question calls for testimony establishing the identity and authorship of a writing, recording, or photograph. Fed. R. Evid. 901. Insufficient evidence to show that the instrument is what it purports to be. The witness is unable to establish its identity and authorship. ³	32(d)(3)(A)	<p>Examining Attorney: "I am showing you P-1 for identification. What is it?"</p> <p>Defending Attorney: "Objection, lack of foundation."</p> <p>Examining Attorney: Can have the witness answer, or can begin anew by asking, "Mr. Jones, do you know what P-1 is?"</p> <p>Witness: "Yes, it is an order form that Acme received from Metco signed by Ms. Smith."</p> <p>Examining Attorney: "How do you know it was signed by Ms. Smith?"</p> <p>Witness: "I have received various order forms and other correspondence from Ms. Smith over the years."</p>

THANK YOU!

*Public business must always be done by somebody...
If wise men decline it, others will not; if honest men
refuse it, others will not. -John Adams*