

## What Happens When a Judge Dies Before Rendering a Verdict?

I've got an interesting case which was tried last year. 28 days of testimony plus thousands of pages of exhibits. No verdict yet. What happens if the judge dies before he issues his verdict? Never seen that one before. Anyone?

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Is this a purely hypothetical question, or is the judge ill?

Lisa Solomon  
New York

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Hypo

David Zachary Kaufman, Virginia

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I would start with Federal Procedure rule 63. Your state likely has a similar rule.

Erin M. Schmidt, Ohio

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I had a two week trial before an administrative law judge. Lots of exhibits. Out of town trial. No verdict.

Week after trial he retired. Our choices were re-trial or let new judge rule based on recordings.

Patricia L. Dennis, Illinois

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In SSA if the ALJ can't rule for one reason or another they order new hearings.

Which of course stinks when the previous hearing was going to result in an approval.

Erin M. Schmidt

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I think you have to try the case again.

Reta McKannan, Alabama

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Wow. Was retirement planned or due to a last-minute issue? I thought they tried to limit caseload for judges as they approached retirement so things could be wrapped up. Such as writing those decisions and enter judgments that people have been waiting on.

Phil Taylor

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I was an ALJ for nearly 4 years at a state agency. This was not a rare occurrence for my agency, and our options were to stipulate to a new ALJ ruling on the current record or starting anew. We were not in a position to lighten caseloads because at times we only had 2 active ALJs. Our hearings process had a habit of being quite long and drawn out, with only a few days of hearings occurring over several months. Also, many have a habit of keeping their private deliberations about retirement close to the vest so it is often difficult to lighten caseloads, even if that were an option.

One memorable time this situation arose, an attorney requested that we not start the hearing over but refused to stipulate to the new ALJ reviewing the current record.

Daniel Gerber, Illinois

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Years ago, I served as a prosecutor for our Supreme Court in Attorney disciplinary cases. After literally hundreds of hours of testimony, the referee unexpectedly passed away. Our Supreme Court ordered a new hearing and I had to start all over.

Jim Winiarski

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I'm thinking more of a situation with a judge that has a mandatory retirement age so that situation is predictable.

Phil Taylor

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Let's hope no one dies, because we don't want people to die.

That being said, be prepared to start over - unless there's some sort of recording rule. How the judge perceives the litigants, attorneys, etc. are all matters of discretion. Those go to the grave, so new trial.

Dwayne Thomas

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Good luck with that. Everyone dies, eventually. Hopefully, just not before ruling on the case. Not being cynical, but I'm a probate lawyer and that's one thing I've figured out; sooner or later everyone dies.

That being said, be prepared to start over - unless there's some sort of recording rule. How the judge perceives the litigants, attorneys, etc. are all matters of discretion. Those go to the grave, so new trial.

Pretty much, except for the "law of the case", to the extent that there are written orders, decisions, on certain matters- i.e. maybe partial SJ or stuff like that, yeah, you'd have to start over.

Ronald Jones, Florida

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The issue/subject of judges/magistrates/justices dying or becoming incapacitated midstream in cases is common.

I would think that some, if not all, state judicial training centers might have materials on this issue.

If you check on this and learn something, please let the list know.

Rob V. Robertson, Texas