

PREPARING FOR AN ADMINISTRATIVE HEARING

When you get a notice of an alleged regulatory violation that affords you the opportunity to have an administrative hearing, there are some important steps to take before the actual hearing takes place. This article attempts to address some of those steps that you can take in order to assist you in your preparations for an administrative hearing.

1. Appeal on Time

The first step to take, assuming you do not agree with the government's allegation, is to appeal on time. The citation or notice of the violation should specify the timeframe in which you must appeal and the procedure you must follow in order to appeal. This timeframe is the most important thing to pay attention to at this stage of the appeal. If you fail to appeal on time, you may lose any right you have to an administrative hearing. If you lose your right to a hearing, you will have no opportunity to contest the government allegation.

2. Read the Notice Carefully

The second step to take is to make sure you read the notice affording you the opportunity to have an administrative hearing carefully. This notice may contain certain steps you must follow in order for the administrative tribunal to hear your case. For example, the hearing office may want you to include certain documents along with your appeal. The failure to follow these directions may allow the agency to argue that you did not properly appeal and that as a result, no administrative hearing should be heard.

3. Be Informed

Often times clients will come to me unsure of why the government is taking action against them or what they can do to find out. In most cases though, you will have a government contact, such as a social worker or investigator that you can ask questions of to find out more information. There is also the Public Records Act, chapter 42.56 RCW, which affords you the right to request records pertaining to your case. If you can't get answers from your government contact, make a public records request.

4. Review the Washington Administrative Code (WAC)

Often times the notice or citation that you received may reference the WAC or the RCW (state law) that you or the company you own has been alleged to have violated. Look up the WAC or state law, and read it. This will help you prepare for your case and understand what the State will be alleging at the hearing.

5. Attend the Pre-Hearing Conference

In the majority of administrative hearings, there will be a pre-hearing conference. This conference is usually a joint telephone call between you, a representative for the agency, and the hearing officer or Administrative Law Judge. The purpose of this pre-hearing conference is usually to identify the issues for hearing and to set the date for when the hearing will be held. Other deadlines will be set for each party to produce a witness list, exhibits as well as an exhibit list. If you fail to attend this hearing, an

order of default may be entered against you. Although you can appeal this Order of Default, there usually must be a good reason why you could not attend. Although the pre-hearing conference is just a formality, you sometimes can get valuable information from the agency and the administrative law judge regarding what the exact issue(s) for hearing will be.

6. Identify Witnesses

After the pre-hearing conference, it is important for you to identify witnesses in support of your case and secure their attendance at the hearing. Do this well in advance of the witness deadline so that you are not struggling to complete this by the witness list deadline. Think about what you are going to ask the witnesses and why. Sit down and figure out why you need each witness and how they will help you prove your case.

7. Identify Exhibits

Exhibits that are in support of your position and that are relevant will need to be identified to the judge and other side in advance of the hearing. To accomplish this, you will need to make sure you have all of the relevant documents prior to the deadline set for disclosure of exhibits. If you do not believe that you have all the necessary documents, you can request them from the agency through discovery, or through the Public Records Act, as explained above.

8. Keep the Agency and ALJ/Hearing Officer Informed

If issues arise during preparations for the hearing, it is best to keep the agency representative and if necessary, the Administrative Law Judge or Hearing Officer informed. For example, if you cannot make a deadline and need a continuance, tell the Hearing Officer or administrative law judge as soon as possible via a motion for a continuance. The old adage of doing something wrong and asking for forgiveness later does not apply in administrative hearings.

Administrative Law is among Stephen Manning's areas of emphasis. Prior to joining Bean, Gentry, Wheeler & Peternell in Olympia, Stephen served as an Assistant Attorney General for the Washington State Attorney General's Office. In that capacity, Stephen represented the Health Care Authority and DSHS in cases ranging from administrative hearings to disputes at the Washington State Court of Appeals.