

The Nuts and Bolts of a SOAH-Contested Case Hearing (including Virtual Hearings)

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What is a Contested Case Hearing?

- ◆ A contested case hearing is an administrative hearing before the State Office of Administrative Hearings (SOAH)
- ◆ Similar to a legal trial
- ◆ Governed by agency and SOAH rules
- ◆ Range of matters referred to SOAH – today using TCEQ as a case study

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Recent CCHs for Cities

- ◆ Protests of MUD creations
- ◆ Wastewater discharge permits
 - ◆ Both protesting and as applicant
- ◆ Alignment with other cities/counties
- ◆ Rate challenges

Who are the players in a CCH?

- ◆ Administrative Law Judge
- ◆ Applicant
- ◆ Protestant(s) (can be aligned)
- ◆ Referring Agency Staff/Attorneys
- ◆ Public Interest Counsel
- ◆ Experts and Witnesses

Getting started

- ◆ Starts with an application to the Agency
- ◆ Administrative process must be followed
 - Notices, administratively complete application, etc.
- ◆ Timeline to request a CCH
 - Only affected persons can move forward as parties
- ◆ Agency grants a request for a CCH and refers to SOAH
 - Includes issues to be adjudicated
- ◆ Determine standing and party status

SOAH procedures (Pre-hearing)

- ◆ Preliminary hearing
 - Procedural schedule and naming parties
- ◆ Discovery
 - Similar to traditional litigation
 - Check rules for limits on interrogatories/requests for production
- ◆ Depositions are allowed

◆ Direct testimony

- Prefiled written testimony versus live testimony
- Protestants typically file first, then Applicant and Agency
- Written objections to prefiled testimony

◆ Prehearing conference

- ALJ rules on any pending motions
- Decide conduct of contested case hearing

SOAH Hearing on the Merits

- ◆ Hearings are conducted before an ALJ
 - In-person
 - Hybrid (In-person and virtual)
 - Fully virtual

- ◆ Hearing consists of opening statements (possibly) and cross examinations based on the prefiled testimony

Virtual/Hybrid Hearing Troubleshooting

- ◆ Determine where your witnesses/experts will be
- ◆ Document sharing on screen versus handing exhibits during cross
 - For hybrid you will need both
- ◆ Trial runs are useful to anticipate any tech issues
- ◆ Miscellaneous tech issues:
 - Extension cords for hybrid hearings
 - Sort connection issues in advance
- ◆ Be prepared for frustrations
 - Other parties may have more limited connectivity and tech savviness
- ◆ Clarity for court reporter



Post-Hearing Procedures

- ◆ Closing arguments and responses – all in writing
- ◆ ALJ will issue a Proposal for Decision (PFD)
 - Parties can file exceptions/replies to exceptions
- ◆ PFD goes before the referring agency for a final decision
- ◆ Losing party may file motion for rehearing
- ◆ Eventual file suit in state court



Questions?

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