

Tips for Preparing Clients for Privileged and Professional Licensing Hearings

BY JENNIFER GAYNOR, ESQ.

As a young attorney, I had the privilege to learn at the side of one of the best in the administrative law space: Bob Faiss. His specialty was gaming law, and I remember watching him accomplish some tasks that many would have said were impossible.

How did Faiss do it? Certainly not by luck. He spent hours and hours on preparation. He taught me the value of not only preparing yourself for an administrative hearing but preparing your client for the hearing as well.

I know what you may be thinking: *I'm the attorney. All my client needs to do is show up and watch me win this for them.*

This may be true in the world of civil litigation. However, in the world

of privileged and professional licensing, your client is the focus. Their honesty, integrity, and suitability to hold a license are on trial. And, in many cases, such as with gaming licensing in our state, the regulators hold all the cards. Even after a gaming license or registration is approved, the holder still has zero vested rights in that license or registration. The regulators may determine at any time that they are unsuitable to hold that license or registration and take it away.

In a world such as privileged and professional licensing, therefore, you need to thoroughly prepare your client for what they can expect in a hearing. Here are a few key tips on how to do just that:

Make it clear up front to your client that they must be absolutely forthcoming.

Regulators weighing your client's suitability to hold a privileged license prize nothing more highly than truthfulness and integrity.

And although these proceedings are not criminal trials, in many cases, the regulatory body has investigators, who may be officers of the law, working on the case. You should expect that the regulators at the hearing may know things that the client doesn't expect: things from long in their past, such as minor misdemeanor crimes. Their arrest



for streaking at a football game or public intoxication as a university student. The investigation into their license in another state that didn't lead to any official charges or citations. The bankruptcy they filed a decade ago. Everything.

I explain this possibility upfront to clients. I tell them that they must tell me *everything*: even things they believe may not be important or germane. Even things that were so long ago, they are fuzzy on the details. Everything. Because when applying for a license, disclosure is imperative. And in the hearing environment, there is nothing worse than an investigator or hearing officer presenting an arrest, an investigation, or a citation that you were not aware of and are not prepared to explain. And when it comes down to it, regulators may forgive many things, but a lack of honesty on the behalf of a licensee or applicant is not one of them.

Explain to your client what the regulator's key concerns are most likely to be.

Regulatory bodies generally have the same ultimate goal: to ensure that the industry they are in charge of regulating is conducted fairly and with integrity. They want to ensure that those to whom they grant the privilege of a license are worthy representatives of that industry. They want to protect the public from unsafe, criminal, or unfair activity.

The regulator's specific concerns may differ depending on the situation and the industry. However, it is very important to understand what those chief concerns are so that you can address them directly in your preparation for the hearing.

For example, if you are representing a tavern licensee during recent times, you can expect that one of the chief concerns of state and local regulators is that they are complying with COVID-19 safety precautions. And, generally, for liquor and gaming regulators, chief concerns include untruthfulness with the regulators, associations with unsuitable individuals, any activities that indicate a licensee has

been sloppy or deceptive with finances, or substance abuse or addiction problems that may lead to criminal or dangerous activities. If you are representing someone in the health care space, the priority for those regulatory bodies is protecting the health and private information of patients. In the industrial and construction space, the focus is on public safety. And so on.

For appeals of negative licensing decisions, you will generally have the advantage of the allegations being laid out for you in writing. Be sure that you review each allegation with your client and address each in your written response or hearing presentation. And as you do, keep the ultimate goals and concerns of that regulatory body in mind.

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Prepare a written statement.

Although it is generally not required, I find that preparing a written statement from your client to present as evidence at the hearing is incredibly beneficial.

By putting their responses and explanations in writing, you get to have some control over how your client comes across in the hearing. In many cases, they may be upset, angry, or emotional. Or they may just be nervous and unable to express themselves clearly in such a forum. A written statement provides your client with a safety net: they can refer to it or even read from it in parts during the hearing to give a better and more complete response than they may be able to on the spot.

In addition, that written statement will be read by the commission or hearing officer before, during or after the hearing, and can be utilized to put your client in the best possible light on the record. This includes the opportunity to provide positive details about them, such as a long, clean work history or commitment to community involvement, which you may not have opportunity to present during the hearing format. It also includes the opportunity to lay out their understanding of and contriteness for mistakes they made in the past, and to outline steps they have taken to avoid such mistakes in the future.

Finally, preparing a written statement is also a great preparatory tool. It forces you and your client to walk through each issue in depth before the hearing.

Let your client work out their frustrations when talking to you.

This last point is extremely important. I have had hearings where my client nearly snatched defeat from the jaws of victory because, even after they received a positive decision, they wanted “to say one more thing for the record.”

Sometimes there is no stopping a client from speaking (although you should certainly try!) I have had a couple of clients thank me after a hearing for interrupting them, changing the subject, and wrapping up without allowing them to speak. Because, once their heads cooled, they realized that expressing their frustration or anger at the process or feelings that the regulatory body was acting unfairly would not help their case.

It is for this reason that I encourage my clients to tell me about their frustrations in our preparatory meetings. This provides them the opportunity to express these feelings in a safe environment, rather than on the day of the hearing.

If you follow these tips, success is not guaranteed. However, you are guaranteed to have provided outstanding representation for your clients.

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