

Quick Guide to Administrative Hearings

Anders Sleight: Welcome back to the Litigators Lounge devoted to the intricacies of commercial litigation with Offit Kurman, commercial litigators. I'm joined by Niall McMillan partner and commercial litigator from our Bethesda Maryland office. Niall, welcome. How you doing?

Niall McMillan: Doing well, Anders.

Good to see you. Thanks for having me.

Anders Sleight: Good. What are we going to get into today?

Niall McMillan: So today I thought we'd talk about administrative proceedings and how they're different than your typical civil proceedings or you're in court and what to expect from there.

Anders Sleight: Great. What are some differences that might come off in the administrative context versus your average court proceeding?

Niall McMillan: And first, it's a broad category, what we mean by administrative proceedings that can do anything from licensing and regulatory agencies. What I'm just speaking about is agencies and their actions against you and your company. That can deal with [00:01:00] if you are a licensed for educational purposes or education facility or if you're licensed for a liquor license or something like that.

There's different agencies with different controls. The procedures will vary for each agency. However, generally what it looks like is that an agency will take a licensing action against you, such as close down your business for a violation. In Maryland and D.C., Typically that would go to what's called the Office of Administrative Hearings. It could go to the Liquor Licensing Board, but it'll go to the regulatory or the administrative agency. What happens there is you either have the option sometimes to do what's called emergency appeal.

If they shut down your business, you can appeal that. That's a quick process to appeal that emergency shutdown. And now you'll typically get that court date within a week then a decision within about 10 days from there. Other than that, for a longer process, you will go through an entire tribunal in front of an administrative judge.

You'll have a chance to state your case and call your own witnesses. Then the state, [00:02:00] typically they're represented by attorney from the Attorney General's Office of the state or D.C., And they'll have their chance to make their case as well. The burdens do change depending on what the case or violation is.

But you'll have to meet that burden too. One of the big differences here is that in civil litigation we can issue discovery before the hearing. And on the wide range of issues that aren't necessarily directly tied to what's at issue in the case. In office administrative hearings, both D.C. and Maryland, discovery is not as of right, so you have to seek permission from the court. And even then the court has a very limited scope to exactly what the case is about that you can issue discovery for. You can also issue subpoenas though to witnesses to come testify at the hearing and to produce documents beforehand or at the trial.

But in general, you're going to have limited discovery, limited amount of information to produce other than what you know yourself.

Anders Sleight: It sounds like a pretty quick process. [00:03:00] Are there any appeal rights if things go against your business or the license holder? How does that process work?

Niall McMillan: Yeah, one thing to say, it's designed as a quick process. They are a little bit backed up though. And so once the case is over, the judge, they'll issue a written order on your case. Anything from the emergency situation, they're mandated to do it within 10 days.

The other situations, they don't necessarily have a timeline there. And it could take anywhere between a month to a year. I've seen both. But from there, what you'll have the difference between a civil case where you appeal to an appellate court, here, you're either going to be appealing to the trial court in your jurisdiction or in D.C., you can appeal directly to the Court of Appeals of D.C., For the hearings context. Other regulatory agencies, you wouldn't be able to do that. So you're going to have an extra step before you get to actual appellate court.

Anders Sleight: Are there any advantages or disadvantages to, if you need to act quickly having counsel in those [00:04:00] proceedings with you, or can you do it all yourself if it's something that just lands in your lap really quickly?

Niall McMillan: Yeah, if you're an entity, so that's if you own your LLC or if you're doing business or your corporation, anything like that, typically you would have to be represented by counsel. If they come after you individually then you can represent yourself. I definitely recommend that you have an attorney in there because you're going to have well seasoned attorneys for the state on the other side.

And they do this day in and day out. They know the rules, they know the regulations. You want someone there who knows it just as well. And something else to say about this is that, one thing that can be a plus in the administrative context, especially in the licensing or regulatory administrative hearings, is that the goal for the agencies and the state ultimately is compliance.

And so a lot of times you can reach a compliance agreement through these proceedings and you're not dealing necessarily with someone on the agency side who maybe you haven't been able to work well with. You have another attorney with the attorney general's office who also wants to see compliance.

[00:05:00] And so there's good opportunities there to reach a settlement.

Anders Sleight: That's great to hear. It's always worth exploring a resolution rather than leaving it in the hands of a neutral party to make a decision. Lots to learn and great information. Niall. Thank you.

Niall McMillan: Thank you.

Anders Sleight: If you need any help with any administrative or licensing related hearings, please reach out to Niall. Just as a reminder, Offit Kurman is a full service law firm with offices from coast to coast providing litigation services ranging from employment, financial services, construction, government contracting as well as administrative hearings.

So please reach out to Niall or myself if we can help you out with any matters that require attention. Thanks so much for joining us in the lounge.