Handling High-Profile Cases

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I. Introduction

An administrative law case that attracts media and public attention comes along more often that you might expect. You may one day be required to preside over a case involving a public figure or one which is of interest to an activist group. No matter the subject matter, high-profile cases require special handling. Courts, including quasi-judicial administrative tribunals, must balance providing information to the press and the public while providing due process to the parties and maintaining the appropriate decorum in the hearing. Advance preparation can help to ensure a calmer, more orderly experience for everyone.

II. Inherent Problems Associated With High-Profile Cases

A. There is a significant difference in what the media wishes to find out (everything, including that which may be sensationalist but irrelevant and what your decision will be even before you've heard the case) as opposed to what the system is designed and intended to disclose.

B. Neither the media nor activist groups fully understand your role in the hearing, the ethical implications associated with a high-profile case, or the various problems that could arise if the case isn't handled properly, *nor do they care*. They have their own agenda which may be all-important to them and which they may believe supersedes all else….including the desires of the judge and fairness to the parties.

C. Discerning what media really needs and is entitled to as opposed to what they say they need; *e.g.* should they have access to sidebar or "in chambers" discussions?

D. Without the help and oversight of the judge, the media can miss the most important message they could convey to the public. Even if they're in the courtroom for the entire proceeding, their tendency is often to report the more interesting tangential matters rather than what is really at issue in the hearing. In some cases, they don't appear to understand what has transpired. For instance, the media often reports the U.S. Supreme Court's docketing decisions, specifically denials of certiorari, as if they were decisions on the merits of the underlying cases. A "plain English" summary of what the case is about and what was actually decided should be provided to the media by the court at the earliest possible opportunity to prevent an erroneous or misleading story from being presented and being picked up by other news outlets.

III. Identifying the High-Profile Case In Advance

While high-profile cases may simply present themselves, they, unfortunately tend to do so just as the hearing is about to commence. No judge wants to arrive to preside over a hearing only to find that he or she is caught in an unexpected media frenzy. Here are some suggestions that may help you to identify high-profile cases in advance:

Be vigilant in reviewing your case files and dockets for cases of *significant local public interest*, such as:

A. Cases involving someone who is known by the public such as celebrity or political figure. A case may be high-profile even if the person is only well-known locally.

B. Cases of interest to an activist group (labor unions, Sierra Club, PETA, etc.)

C. Cases of political, civic or public interest (re-zoning, property tax cases, etc.)

IV. Setting the High-Profile Case for Hearing

In instances involving high-profile cases, it is necessary to give more thought to where the hearing will be held and who will preside over it.

A. Presiding Judge Selection

1. Experience: A judge that has had more experience conducting hearings is typically preferred over a judge with less experience;

2. Training: Preferably, the case can be assigned to a judge that has received training on handling high-profile cases and dealing with the media.

3. Knowledge of the issues: A judge that is particularly knowledgeable about the issues in the high-profile case is helpful.

4. Calm under pressure: A judge that is likely to remain undaunted by the media is a valuable asset. The judge should also have a temperament that allows a firm but gentle hand with the media.

B. Venue Selection

1. Is the room typically used for hearings large enough to accommodate:
    a. Parties and their counsel
    b. Witnesses
    c. The media
    d. The public

2. Is the room one that clearly sets the proper tone for a judicial proceeding?

3. Will it be necessary to provide space other than the hearing room for:

    a. Witness sequestration
    b. The media

4. Do court staff and/or hearing participants need an entrance that is separate from the entrance used by media and the general public? What about the judge, can they enter and exit without unnecessary interaction with the media?

5. Is the parking area adequate for:

    a. Television satellite trucks
    b. Hearing participants
    c. Court staff
    d. The public
    e. Protest groups

V. Safety and Security Measures

A. It may be preferable to collect the cell phones of everyone not authorized to photograph or record the hearing.

    1. Designate security/law enforcement personnel to collect phones at the door to the hearing room.

    2. Arrange for a secure place to store the phones during the hearing.

B. Develop and maintain working relationships with agencies that can assist with additional security measure in the event of a high-profile case.

C. Arrange, if necessary, for security screening of hearing attendees upon entrance into the building where the hearing is scheduled to take place.

D. Designate secure (and separate) places for court staff and hearing participants to wait until they can enter the hearing room.

E. Camera placement should be designated by the presiding officer to:

    1. Prevent the cameras from interfering with/distracting from the proceedings;

    2. Ensure that camera cables are not a tripping hazard.

3. Consider pooling of coverage limiting TV crews to one camera fed to all interested outlets.

F. Additional security may also be needed to:

1. Ensure that attendees do not park in unauthorized spaces; and

2. Ensure protestors remain in designated protest zones and do not disrupt the hearing, do not harass those entering or leaving the building and do not endanger hearing attendees.

3. Have a policy regarding signage in the hearing room.

VI. Managing the Hearing

A. Facility Concerns:

1. If it appears there will be more media and public/spectators than seats, determine allocation of seating (lottery, first come first served, passes, etc.) or alternatively provide an overflow area with a live TV feed.

2. Devise a means by which seats may be reserved for those who must be in attendance.

3. Establish how seating restrictions will be enforced and who will enforce the restrictions.

4. If there are more members of the media that want to attend the hearing than is reasonable or more than the venue will accommodate, devise a means of issuing press credentials and press seating passes to designate which members of the media are authorized to be in the hearing room.

5. Creating special signage designating the parking areas for television satellite trucks, the media and the public/spectators traffic congestion in the parking lot and ensure that convenient parking will be available for parties, counsel, witnesses, court staff and the building employees.

6. If there are protesters, you may want to set up "protest zones" for pro and con groups. It is not required that these zones be immediately adjacent to the hearing facility (*e.g.* the protestors can be across the street).

B. Issuing Orders and Notices:

You may want to issue an order relating to media management and/or to provide basic information to those unfamiliar with court procedures.

1. Media Management Orders

   a. List of who can and cannot be filmed (this is particularly important when juveniles are involved in some aspect of the hearing process).

   b. When filming will begin and end (Will the media be permitted to film everything from the time the record opens until it closes or are their restrictions regarding when filming may take place?). Will cameramen be allowed to roam around the room during the hearing.

   c. Courtroom decorum: When media leaves the courtroom, they may only re-enter during one of the court's natural breaks. If the hearing resumes prior to the media's re-entry into the hearing room, the media must wait until the next break to re-enter the hearing room.

   d. Prior to the commencement of the hearing, there should be a communications plan in place regarding the manner in which the media will be notified in the event the hearing is delayed or postponed (if the judge or a witness becomes ill, if the power air-conditioning goes out at the hearing room, etc.).

2. Public Notices

It is best to put general information regarding the schedule and decorum for a high-profile hearing on a website which the public (and the media) can access. This notice should include:

   a. When the hearing will convene ("promptly at ____"), when breaks are normally taken, when the evening recess occurs, etc.

   b. Courtroom Decorum

      i. Spectators may leave the courtroom only during designated breaks in the hearing (you don't want spectators continually traipsing in and out of the hearing room).
      ii. When spectators leave the courtroom, they may only re-enter during one of the court's natural breaks. If the hearing resumes prior to someone's re-entry, they must wait until the next break to re-enter the hearing room.
      iii. Spectators must remain quiet throughout the hearing. Failure to remain quiet will result in expulsion from the hearing.

iv. Spectators may not bring photographic or audio recording equipment into the hearing room, including cellular telephones. Anyone found with such equipment, including cellular telephones, will be permanently removed from the hearing room.
v. There will be no food or beverages allowed in the hearing room.
vi. Generally speaking, minors under the age of ___ should not be brought to the hearing room unless they are going to appear as a witness. All minors must be accompanied by a parent or legal guardian.

C. Presiding Over the Hearing

1. Immediately prior to the hearing, provide the media with a "plain English" summary explaining the issues in the case, quoting the appropriate statutes and/or regulations.

2. Have a least one (more, if the hearing room is large and crowded) additional pair of eyes in the hearing room (preferably uniformed and/or intimidating) to watch for inappropriate behavior and unauthorized audio or video recording or photography and to expel those who violate the rules.

3. As soon as the record opens, make the announcement that media personnel and/or cameras are in the hearing room. (Optional: May identify by name each reporter and/or news outlet or station.)

4. Briefly review, on the record, behavior that is prohibited during the hearing for both the media and spectators (reiterate Media Management Order and Public Notice):

a. Media

i. Who may film or record audio and who may not
ii. When recording may begin and end
iii. Media may enter or exit only when you've recessed the hearing. The station/news outlet of any reporter disrupting or interrupting the hearing by entering or leaving at times other than recesses will be permanently expelled from the hearing.

b. Public/Spectators

i. Must remain quiet throughout the hearing.
ii. No small children, food or beverages.
iii. May not bring photographic or audio-recording equipment (including cell phones?) into the hearing room.

iv. May enter or exit the hearing room only during recesses which you have called.
v. Violators will be permanently expelled from the hearing.

5. Conduct the hearing just as you would if the media were not present. Don't allow their presence to intimidate you into altering your behavior or affecting your rulings.

6. Be serene. If you can't be serene, appear serene.

7. Announce, just before the close of the record, that you will provide the media with a (plain English) summary of exactly what was decided and the law on which the decision was based. Without some assistance, the media often misses the point, reporting on the peripheral but more enticing aspects of the case, or misunderstands and misstates the decision. (Optional: Announce that you will be available for clarification of the summary or to answer questions regarding procedure.)

VII. High-Profile Case *Pre*planning: Be Proactive

A. Before the need arises, develop a plan specific to your agency and the type of hearings you conduct regarding handling and management of high-profile cases. Draft a rule or regulation to:

1. Define "media" and "news organization" [1]

2. Require the media to report their intent to cover any public administrative hearing to the presiding officer at least two days prior to the hearing;

3. Require the media to request permission of the presiding officer to record any electronic, audio, video or still photographic coverage of any public administrative hearing at least three days in advance of the hearing;

4. Establish a procedure regarding how high-profile cases generally will be conducted which includes both hearings and prehearing conferences;

5. Provides the content of or a template for a Media Consent Form which:

   a. Sets clear rules and expectations in writing, preferably via statute or regulation, regarding:

[1] There are those who consider themselves "news media" if they've ever posted a statement on an internet blog. Social activists or special interest groups may also consider themselves media and request they be allowed to tape or record the proceeding . Thus, defining "media" is important and essential in determining who will have access to the hearing.

i. Use of cell phone and other electronic devices both in and out of the hearing room;

ii. Rules and expectations regarding real-time broadcasting from the hearing room via Twitter or other simultaneous means;

iii. Use of cameras, including cell phone cameras, both in the hearing room and in areas adjacent to the hearing room; and

iv. Repercussions for violators of the rules, such as revocation of media credentials, removal from the premises, and loss of hearing room seating privileges.

6. Require members of the media to sign a Media Consent Form (see above), indicating that they have read and understood the rules regarding media access, hearing attendance, and repercussions for violating the rules established for media management.

7. Creates criteria for the issuance of media credentials/authorization badges to identify those who have been confirmed as media and have been approved for access to your hearing room and designate, by job title, the person responsible for doing so;

8. Provides a plan for the allocation of seating in the event the persons interested in attending the hearing will exceed the capacity of the hearing room and designates, by job title the person responsible for allocating seating and enforcing seating restrictions;

9. Furnish additional security, armed if necessary, and in uniform in the event the high-profile case calls for it; and

10. Provide a page on the agency's website with information regarding the procedure to be followed in high-profile cases[2];

B. Draft a regulation establishing rules regarding the use of cameras, cell phones, tablets and other electronic devices by staff, the media, parties, witnesses, counsel and the general public while they are in your hearing room. Include this information on the agency website.

C. Conduct training for hearing officers and their staff on working with the public and the media, public access to court documents (and the lack of access to documents that are in the case file that are not a part of the record of the hearing),

[2] The ability to refer callers to a website will save the staff time and labor. The process for reaching the page of the website containing the pertinent information can be included in an audio recording on a telephone line for public information.

the handling of high-profile cases generally, and hearing room security during high-profile cases. At a *minimum*, training for staff should include:

1. Review, in detail, of all procedures for handling high profile cases including all statutes, regulations and rules pertaining to hearings of this type with special attention to how to deal with media requests for documents or information;

2. Instructions to always communicate problems and concerns to the judge as soon as they arise using the form of communication the judge has designated (email, text, phone call, etc.).

3. Utilizing Public Information Officer for media management whenever possible including help in drafting a press release prio to the hearing;

4. Reminder that anything you say to the media can be taken out of context and reported online or elsewhere;

5. Instructs court reports and other staff members that may be in the hearing room during the hearing that they should show no emotion or physical reaction to testimony or to the events in the hearing room at any time;

6. Reminds all personnel not to comment on pending cases, whether high-profile or otherwise;

7. Instructs all personnel to limit casual remarks to other staff, "friendly" attorneys, etc.—you never know who may be listening or what might transpire because of idle comments; and

8. Reminds everyone to act with the utmost courtesy and to display the ultimate in professional conduct.

D. Plan to utilize the services of a Public Information Officer (PIO) whenever possible. While the hearings section may not have a dedicated PIO, the agency may have one. The agency PIO may not be accustomed to working with the hearings section of the agency, but he or she will have had ample training and experience in dealing with the public and the media and might be able to act as the liaison between the hearings section and the media. They are usually familiar with members of the media and can often "smooth the way: for you.