HON. MARY D. LONG, CALJ (PA)
HON. RICHARD M. MURRELL, CALJ (TN)

PREHEARING MATTERS: MOTIONS AND DISCOVERY

WHY ARE YOU HERE?

Effective management of motions and discovery is essential to managing your hearings

LEARNING OBJECTIVES

- Understand how motions and discovery can effect hearing efficiency
- Learn the standards for considering common types of motions

MANAGING MOTIONS EFFECTIVELY

WHAT IS A MOTION?

- A motion asks the hearing official for a ruling or order directing that something be done that is favorable to the party who files the motions
- A motion can be in writing or presented orally

WHERE TO START?

- Review your pleadings an other filings
- Review your procedural rules
  - Is the motion timely?
  - When does a response have to be filed?
  - When do you have to make a decision?
  - What documents are you allowed to consider?

PRACTICE TIP: WHO ARE YOUR PARTIES?

- Lawyers?
- Self-represented litigant?
- Both?

COMMON MOTIONS AND STANDARDS OF REVIEW

PROCEDURAL MOTIONS

- Motion for a continuance: issues to consider
  - "For good cause shown"
  - Prejudice?
  - Your calendar?

OTHER PROCEDURAL MOTIONS

- Motion for Expedited Proceedings
- Motion for Stay of Proceedings
- Motion for change of venue or format of the hearing

SUBSTANTIVE AND EVIDENTIARY MOTIONS

MOTION TO DISMISS

Legal Defects: jurisdiction; standing; insufficient pleading; timeliness; statute of limitations

MOTION TO DISMISS: GENERAL STANDARD

- If all the facts are considered in the light most favorable to the non-moving party
- There is no important issue of fact in dispute
- AND the law is so clear that the moving party is entitled to judgement as a matter of law

MOTION TO DISMISS: WHAT YOU CAN CONSIDER

- Pleadings
- Lack of pleadings or response
- The law

SUMMARY JUDGEMENT

Purpose: to dismiss an issue or dismiss a case in its entirety because there are no factual issues to resolve

SUMMARY JUDGEMENT: GENERAL STANDARD

- Moving party has the burden of proof
- No important fact is in dispute (no genuine issue of material fact)
- All doubts as to the existence of an important fact in dispute must be resolved against the moving party
- The right to judgement is clear

SUMMARY JUDGMENT: WHAT YOU CAN CONSIDER

- Pleadings
- Discovery materials: depositions, answers to interrogatories, admissions
- Supporting affidavits

PRACTICE POINTERS

- Non-moving party has to be ***specific*** about any disputed facts and can not simply rely on denials
- Affidavits and other material in support of the motion or response must be properly authenticated i.e. affidavits must be sworn or verified and must be based on personal knowledge

EVIDENTIARY MOTIONS

Motions to Exclude or Limit Evidence aka Motion in Limine

- Can be useful to limit irrelevant evidence
- Should not be a disguise for a motion to dismiss or motion for summary judgment

OTHER MOTIONS

- Motion for Sanctions
  - Failure to obey the orders of the hearing officer
  - Failure to comply with discovery or discovery orders

MANAGING DISCOVERY EFFECTIVELY

A BALANCING ACT

PURPOSE OF DISCOVERY?

- Allows each party to obtain facts and information about the case from the opposing party, in order to prepare for an administrative hearing.
- Should be calculated to lead to reliable and probative information

PRACTICE POINTER

- In some cases, parties may have another related matter pending in court.
- The administrative forum should not be viewed as an opportunity to obtain information solely for use in another court proceeding.

IN MOST JURISDICTIONS, LIMITED DISCOVERY IS AVAILABLE AS A MATTER OF RIGHT

Discovery generally applies only to a contested case proceeding, as defined by statute, that is required to be heard by and administrative law judge or hearing official.

BROADER DISCOVERY MAY BE ALLOWED IN THE DISCRETION OF THE HEARING OFFICIAL

- Potentially equal to that obtainable under the rules of civil procedure
- Party requesting information must show that the information is necessary to an element of their case

LIMITATION ON ALL DISCOVERY

Care should be taken to prevent discovery from becoming unnecessarily burdensome.

HOW DOES DISCOVERY AID IN DELIVERING ADMINISTRATIVE DUE PROCESS?

- A common theme is the exercise of regulatory authority over a licensed profession by a Board or Commission.
- Many of the regulatory agencies have broad investigative powers and secure complete information before filing a Notice of Hearing and Charges.

HOW MUCH PROCESS IS DUE PROCESS?

It depends …

- Where the state action determines eligibility for benefits (Greenbelt, Unemployment Insurance payment).
- Where the state action has a punitive character (prohibiting a Respondent from practicing their profession).

AS THE STAKES GO UP, THE PROCEDURAL SAFEGUARDS BECOME MORE EXTENSIVE.

The rationale for discovery is to enhance fairness by reducing the possibility of surprise at trial.

WHAT WOULD A RESPONDENT NEED TO KNOW?

BASIC INFORMATION IS LIKELY REQUIRED BY YOUR JURISDICTION FOR A NOTICE OF HEARING

OTHER INFORMATION

- Names and addresses of proposed witnesses.
- Statements made by others if acts or omissions of the Respondent toward the are the basis of the administrative proceeding.
- All documentary evidence including investigative reports

SCOPE OF DISCOVERY IN ADMINISTRATIVE HEARINGS

- Statute
- Rules
- Agency Discretion
- Generally, all applicable requirements apply equally to agencies and persons

THE ALJ MUST DETERMINE IN A MOTION PROCEEDING THAT THE DISCOVERY

(1) is needed for the proper presentation of a party's case,

(2) is not requested for purposes of delay, and

(3) the issues or amounts in controversy are significant enough to warrant such discovery.

TOOLS IN ADMINISTRATIVE DISCOVERY PROCESSES

- Subpoenas
- Interrogatories and requests for admissions
- Depositions

WHEN A PARTY WON'T OBEY THE RULES…

- Willful noncompliance
- Bad faith
- Fault (wrong action when done with intention or malice)
- Persistent dilatory tactics

SANCTIONS

Exclusion of evidence is to be used only as a last resort where the failure to provide discovery is willful, and prejudice to the opposing party can be avoided by no other practical means.

PREHEARING CONFERENCE

While not a discovery tool per se, a pre-hearing conference may be used to seek clarity regarding issues that are in dispute.

PRETRIAL ORDERS

- Direct the the parties to exchange documents and/or lists of witnesses and exhibits intended to be used during the hearing.
- Set deadlines for discovery steps is useful.
- Require early disclosure of experts and requiring filing of the expert's report may be useful.