

Permit Challenges: Ethics and Strategies for TCEQ Contested Case Hearings

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Today's Discussion

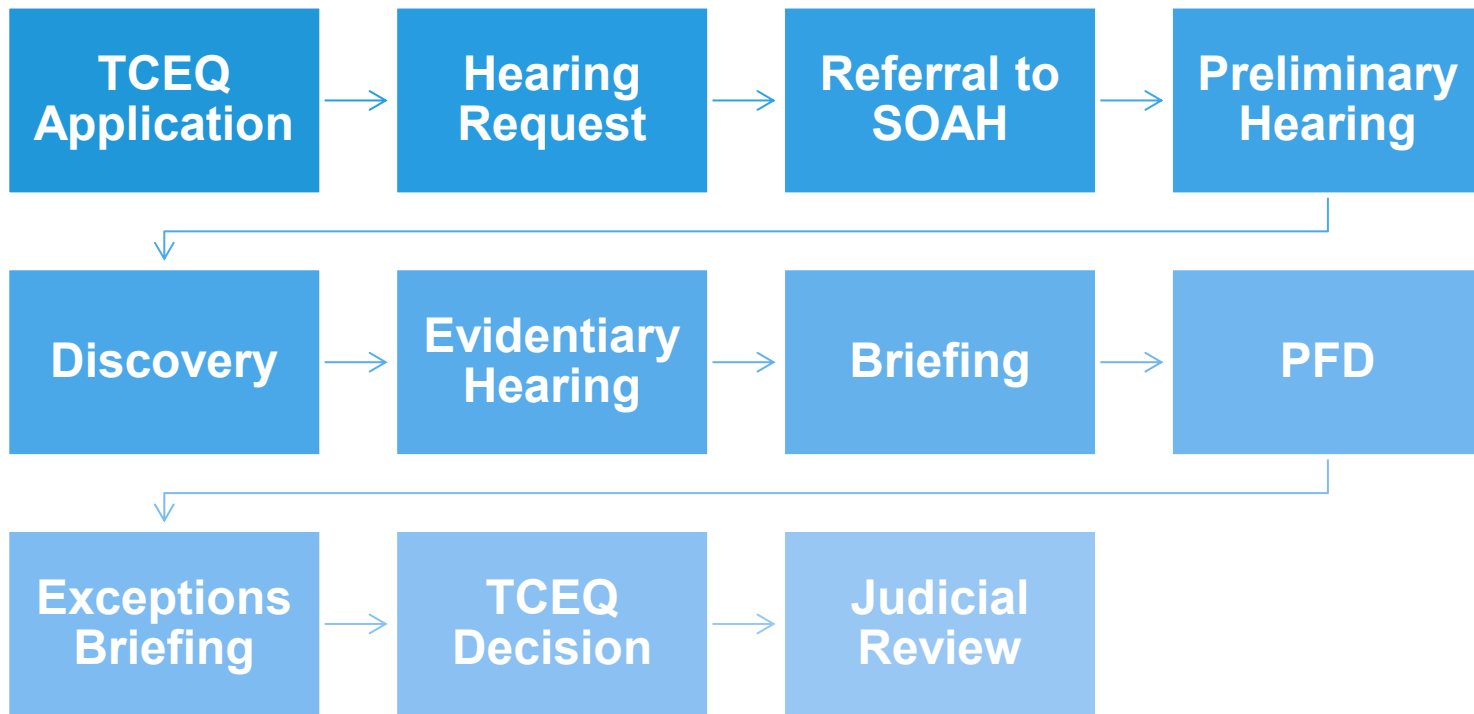
High-level contested case process overview

Key strategy points in permit challenges

Ethical risks—and how to manage them



Contested Case Flow



TCEQ Phase: Strategy + Ethics

STRATEGY

Build the administrative record

ETHICAL RISKS

- Confidentiality of client information (Rule 1.05)
- Duty of candor (Rule 3.03)
- Transparency in third-party advocacy (Rule 8.04)

SOAH Preliminary Hearing

STRATEGY

Navigate standing and party admission

ETHICAL RISKS

- Truthfulness in statements (Rule 4.01)
- Respect for third parties (Rule 4.04)
- Fair access to evidence (Rule 3.04)

Discovery

STRATEGY

Manage scope of requests and maintain privilege

ETHICAL RISKS

- Fairness in discovery (Rule 3.04)
- Confidentiality (Rule 1.05)
- Inadvertent disclosures (Rule 4.04(b))

SOAH Evidentiary Hearing

STRATEGY

Develop winning expert testimony

ETHICAL RISKS

- Proper witness preparation (Rule 3.04)
- Candor to tribunal (Rule 3.03)
- Duty to correct false testimony (Rule 3.03(b))
- Competence and diligence (Rule 1.01)

Post-Hearing to Final Decision

STRATEGY

Favorable PFD and Commission permit issuance

ETHICAL RISKS

- Avoid ex parte communications (Rule 3.05)
- Improper influence concerns (Rule 8.04)

Today's Discussion

Ethical risk arises in informal moments

- Pre-referral communications
- Expert development
- Agency interactions

Relationship-driven practice increases risk

Avoid unintentional ex parte and perceived influence



Questions?

Thank you!



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