

TIME TO BE HEARD: CIVIL PENALTY HEARINGS

Written By Ms. Alicia Scott

What is the purpose of a hearing? What happens at a hearing? Who will attend? We members of the Hearing Office Administrative Staff hear these questions often. The questions come both from Coast Guard units who have submitted cases to the Hearing Office, and from parties who have been charged with marine safety violations and have received a Preliminary Assessment Letter (PAL) from one of the Hearing Officers.

All parties charged with a marine safety violation and preliminarily assessed a civil penalty have a right to a hearing. A hearing is the party's opportunity to exercise one of his/her due process rights: the right to be heard. A hearing is not the only way to exercise the right to be heard, however. A party can also be "heard" by submitting evidence in lieu of a hearing in response to the Preliminary Assessment Letter they received.

Written responses presenting evidence in lieu of a hearing are the most popular choice and are treated just the same as a verbal hearing. When submitting your written response, you can provide any evidence you wish to present to the hearing officer. Evidence can consist of statements, pictures, copies of documents, receipts for purchases, or proof of repairs made.

Hearing Officers give the same consideration to evidence presented in writing (sent through the mail or email) as to evidence presented at a live hearing. See the article on this website, "RESPONDING TO CHARGES (*HEARINGS* vs. *WRITTEN RESPONSES*).

If you feel that a written response will not allow you to adequately present your case and you need to have a verbal hearing, one can be provided by Video Teleconference (VTC). There are currently eight locations where hearings are held.

- Miami, FL
- Cleveland, OH
- New Orleans, LA
- Alameda, CA
- Boston, MA
- Seattle, WA
- Honolulu, HI
- Washington DC (Non VTC Live Hearing)

When requesting a hearing, you **must** provide the issues in dispute in writing with your request. Once the Hearing Office has the party's issues in dispute, the Administrative Staff will contact one of the seven Coast Guard District Offices to schedule the VTC hearing. The staff chooses the District office closest to your home or office, unless you request a specific location listed above other than your closest location. The Hearing Officer may also agree to the use of VTC equipment at a more convenient location, such as a local Coast Guard unit or at a location selected by the charged party, at his/her expense.

Once scheduled, the Hearing Office contacts the District Chief of Prevention or the Chief of Response to request an escort for the party. What does the escort do? The escort greets the party, and any representative or witnesses. The escort will take them to the VTC hearing location at the District office. The escort will sit with the party and witnesses during the hearing. If needed the escort can email or fax documents (evidence, for example) to the Hearing Officer upon request. After the hearing the escort will escort the party and others out of the building or base. VTC hearings take an average of about 1 ½ hours.

Note: No one from the Coast Guard unit that generated the case participates at the hearing unless the party requests assistance from the Hearing Officer in securing a Coast Guard member's attendance (and the Hearing Officer determines that the testimony of the witness may materially aid the Hearing Officer in deciding the case), or unless the Hearing Officer requests the attendance of a Coast Guard witness at the hearing to address a particular issue.

Hearings are informal. The first order of business is for the Hearing Officer to explain and obtain acknowledgement from the party of his/her rights. After that, the party is free to present his/her case to the Hearing Officer. Hearing Officers afford the party a fair amount of leeway in presenting his/her case, but ensure that dignity and respect are maintained throughout the process.

To reiterate, whether a party presents evidence at a hearing, or presents written evidence in lieu of a hearing, the evidence is treated equally and weighed in the same manner by the Hearing Officer. What matters is the quality of the evidence—the thought and care that goes into presenting your side of the case, however it is presented.