

The Good, the Bad, and the Ugly

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Public Utility Commission of Texas

ABA/YLD Fall National Public Service Conference
Austin, Texas
October 8, 2004



The Good, the Bad and the Ugly . . .

. . . In the Hearing Room



Preparation

- The Good – Has prepared a line of questioning that helps build his theory of the case and carry any applicable burdens.
 - Must know the law.
- The Bad – Spends time on a line of questioning that is irrelevant to her case.
- The Ugly – Is so poorly prepared that the questions asked actually help the opposing party.



Witnesses

- The Good – Answers the question that is asked within the range of directness.
- The Bad – Avoids answering the question that was asked and instead argues with opposing counsel.
- The Ugly – Answers the question he wishes had been asked, giving a pre-rehearsed speech.
 - Hint - It is the questioning attorney's responsibility to control the witness.



Objections

- The Good – Makes appropriate objections to questions and testimony.
 - Tip of the Day - “non-responsive” is an underutilized objection.
- The Bad – Doesn’t ever object, because “this is an administrative hearing.”
- The *Really* Ugly – Counsel falls asleep during the hearing.



You have to ask yourself,
“Do I feel lucky?” . . .

. . . before you let your cell phone ring
during an Open Meeting.

with apologies to “Dirty Harry” Callahan



Candor

- The Good – Understands and complies with the duty to reveal contrary controlling precedent and to appropriately distinguish it.
- The Bad – Omits to mention relevant law and information that might harm the case.
- The Downright Ugly – Outright misrepresentation of fact or law.
 - Remember – Ethical rules do apply to administrative proceedings.



Evidence

- The Good – Provides evidence necessary to carry the burden on each element of his case.
- The Bad – Fails to provide sufficient evidence to meet the burden of proof (but thinks he should win anyway).
- The Ugly – Relies on hyperbole, conjecture, or anecdotal evidence (but thinks he should win anyway).



Conduct

- The Good – Counsel conducts herself in a professional and mature manner at all times.
- The Bad – Counsel engages in personal attacks and side-bar comments.
 - This includes head shaking, making faces, etc.
- The *Very Ugly* – Counsel falls asleep while reading the newspaper during a hearing, snoring loudly while his cell phone rings.



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. . . in Motions and Briefs



Brevity

- The Good – Clearly and concisely presents the relief requested and the principal arguments in the opening paragraphs.
 - Our attention spans are not what they used to be (nor our eyesight).
- The Bad – Makes us read 20 pages to figure out what it is she wants us to do.
- The Ugly – Uses the entire allowed page limit, cheats on the margins, and we still don't understand the argument.



Professionalism

- The Good – Always treats opposing parties, counsel, and their arguments with respect.
- The Bad – Attacks the opponent with offensive comments or inappropriate personal remarks.
- The Uglier – Attacks Commission Staff with offensive comments or inappropriate personal remarks.



Citation to Authority

- The Good – Carefully cite-checks the work to be sure cited authority is appropriate.
- The Bad – Provides little or no citation to controlling law or rules.
- The Ugly – Provides citations to cases and other authorities that don't actually support the asserted position.
 - Again, the rules of ethics do apply at the PUC.



Details

- The Good – Has someone carefully proofread each document before filing.
- The Bad – Relies exclusively on “spell-check” to edit the pleading.
 - Hint – spell check doesn’t fix correctly spelled words used incorrectly. (*i.e.* “abusive discretion”)



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. . . In Other Situations



Ex Parte

- The Good – Carefully avoids discussion of issues pending in open dockets.
- The Bad – Relies on the Commissioner or Staff to stop her from discussing forbidden topics.
- The Ugly – Attempts to lobby the Commissioner and Staff at every opportunity, without regard to the ex parte rules.



Meeting Conduct

- The Good – Has a clear agenda and information for each meeting.
- The Bad – Hasn't really thought about what message he wants to deliver, and the conversation lacks direction.
- The Ugly – Uses the meeting to get a “commitment” from Staff or a Commissioner, often without revealing all pertinent facts.



Top 10 List – How to make friends and influence people at the PUC



1. Present your chief points in the first few paragraphs of any paper that you file.
2. Provide summary-of-argument language that can be used by Staff for preambles and orders.
3. Know and comply with all PUC rules.
4. Accept the fact that we are bound to follow the law. (Show us how to do what you want.)
5. Present specific, verifiable evidence to prove your case.



6. Bring a person with decision-making authority to major hearings.
7. Use appendices for background information. Tab them.
8. File attractive papers – use a generous font and spacing.
9. Understand and follow the ex parte rules.
10. Show respect for other parties, counsel and Staff.

