

Basics of Quasi-Judicial Decision-Making

What does it mean to be acting in a quasi-judicial capacity?

- Acting like a judge
- Deciding the rights, duties or obligations of a specific person or entity
- Making a decision based on facts developed at a hearing
- Making a decision by applying existing standards or criteria to the facts

Are we always in a quasi-judicial capacity?

- No, some actions are legislative, and others are administrative
- *Legislative* actions are more general and permanent, typically involve policy-making, usually don't relate to a single person or entity, and affect rights in the abstract
- *Administrative* actions carry out existing policies and purposes, are generally temporary in operation or effect, and typically don't involve the need for notice or a hearing

So, what are some examples?

<u>Quasi-Judicial</u>	<u>Legislative</u>	<u>Administrative</u>
<i>Think like a:</i>		
Judge	Legislator	Executive
Rezoning Land Use or Development Plan Variance (Use and Non-Use) Conditional Use Appeal Certain liquor licensing actions	Zoning Annexation Vacating a road Subdivision Amendment to the UDC Health/safety ordinance Adoption of tax	UDC Interpretation Buying equipment Appointing boards Acting on contracts Operating policies Determining benefits

Why are there special constraints on how we handle quasi-judicial matters?

- Because the due process clause and other laws require that we ensure *fundamental fairness in the decision-making process*, which mandates the applicant and other interested parties have notice and a meaningful opportunity to be heard before a neutral and impartial decisionmaker
- Failure to adhere to these principles can increase the risk of personal liability and the risk that your decision will be overturned

So, what should I do/not do in relation to quasi-judicial matters?

- DO stick to the relevant, pre-existing decision-making criteria - use the criteria list from your staff report or similar summary if needed.
- DO avoid ex parte (outside the hearing) contacts; that is, do not discuss quasi-judicial matters outside of the noticed hearing.
- DO disclose unavoidable ex parte contacts.
- DO avoid inappropriate confrontations or inquisitions.
- DO take time to decide - entering a written decision is best practice.
- DO ask for staff advice as needed on how the criteria operate.
- DON'T make your decision based on irrelevant criteria.
- DON'T become a witness in a proceeding where you are the "quasi-judge."
- DON'T participate if you weren't there for the whole hearing (or at least listened to the tape of any portion you missed).
- DON'T participate if you have a conflict of interest...and know that even an appearance of impropriety can be as damaging as an actual conflict.
- DON'T sign any "pro" or "con" petitions.
- DON'T make up your mind before the hearing (bias).
- DON'T ignore the record of the hearing; if all the evidence points to yes...

Another way to look at quasi-judicial decision making is to remember that you are acting like a judge, and ask yourself:

- Would a judge seek out citizens and invite or ask them to come and testify as witnesses in a case pending before the judge?
- Would a judge allow himself/herself to be "lobbied" on a pending matter at home or at the local supermarket?
- Would a judge compromise the appearance (and possibly reality) of fairness by singling out one side or another to be overly friendly with?
- Would a judge decide a matter in which the judge had a financial interest, or on which the judge's mind was already made up?
- Would a judge make a public statement that could come back to haunt him/her later on in terms of displaying a possible bias?

****This handout is for general reference only and not legal advice. Specific legal and other questions should be referred to the entity's own legal counsel and staff as appropriate.***