

COMMON MISTAKES MADE AT MLCC VIOLATION HEARINGS

By: Michael J. Brown/December 2000

Sooner or later, practically every licensee will be cited by the MLCC for some kind of violation. When it happens, many licensees simply choose to acknowledge the violation in writing by mail. In many instances, that is the best strategy, saving the licensee time and money by not hiring an attorney to defend against the violation. This is particularly true if the violation appears to be an "open and shut" case where there is little dispute as to what happened and whether a violation has occurred.

Other times, however, many licensees decide that requesting a hearing to challenge the violation makes more sense. The licensee may or may not hire an attorney, depending on the circumstances of the violation, and the licensee's ability to pay for legal counsel. This article discusses some of the more common mistakes made by licensees (and some attorneys) in connection with MLCC violation hearings.

1. **NOT BEING PREPARED.** Although this sounds simple, many licensees show up at the hearing without first thinking about what witnesses might be needed, what documents might be needed, or how they will actually prove their case. Many licensees (and some lawyers, too) mistakenly believe that if they simply tell their side of the story, the hearing commissioner or administrative law judge will "take their word for it" in deciding what really happened. Usually, to be successful at the hearing, a licensee needs to prepare in advance what each witness will say, what documents are necessary to support the witness' testimony, and what documents will create the best impression of the licensee (TAM certificates, letters of recognition from the local police or MLCC investigators, etc.). Failing to prepare or bring with you the documents or witnesses necessary to prove your version of the story often means the difference between winning and losing at the hearing.

2. **REMEMBER YOUR ISSUES.** Every successful defense to a MLCC violation has a key issue. Remember what that issue is, and stick to it. Do not be led astray should the Assistant Attorney General prosecuting the case harp on irrelevant issues. Trust the hearing commissioner or administrative law judge to sort those things out. You should stick to the issues you wanted to discuss when you first decided to challenge the violation. For example, you may wish to prove that an alleged minor actually used a fake i.d., or that an allegedly intoxicated person was showing no visible signs of intoxication. Similarly, you may wish to show that a sting operation was conducted improperly or that the witness(es) for the State simply cannot be believed for one reason or another. Whatever your issue, stick to it and do not be led astray.

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3. **THERE IS STILL TIME TO TALK.** The written acknowledgement form is not the only means to resolve a violation case without a hearing. Prior to the start of the hearing, after reviewing your documents and talking to your witnesses, you may then decide that you no longer want a hearing. You can still acknowledge the violation, either in writing, or in person when you first get to the hearing. In many cases, you can also request the Assistant Attorney General handling the case negotiate a possible settlement of the charges against you. There is no obligation on the part of the Assistant Attorney General to negotiate a settlement with you, but many will do so if your violation record is not too bad and the violation(s) pending against you are not too serious. In a negotiated settlement, you and the Assistant Attorney General agree on a specific penalty to be imposed against you, in exchange for which you agree to abide by that penalty and not appeal. Remember, however, this is a "negotiated" settlement, and the Assistant Attorney General may not always offer you the "best" deal as a first offer. As with any negotiation, you should prepare yourself with sufficient information to know whether the deal you are being offered is a good one or a bad one. If you do not know whether the deal you are being offered is good or bad, you probably should not take it since you are also waiving any appeal rights. Once again, preparation is the key to success.