

ADMINISTRATIVE APPEAL OPTIONS NOW THAT YOU HAVE APPEALED AN AGENCY DECISION.

One of tricky components of administrative law is determining the often confusing appeal process put in place by the agency. Each agency is given authority by the legislature to promulgate rules under the Washington Administrative Code (WAC) that determine the procedure for having an administrative hearing and any appeals that will result from that hearing. No matter the process involved though, the initial hearing is extremely important. That is because any appeal that results from that initial hearing, will be based on the record created at that initial hearing. That means there likely will not be any further ability to have witnesses testify or have additional exhibits admitted. In most cases, it will be a closed appeal with the reviewing judge looking over the testimony, exhibits and arguments made to determine if the record supports the decision that was made.

For example, if the DSHS Resident and Client Protection Program issued a substantiated finding of abuse against a nursing assistant, which was timely appealed, an administrative hearing at the Office of Administrative Hearings would ensue. At this hearing, both the nursing assistant and DSHS would present witnesses and testimony in support of their case. After the hearing, the administrative law judge would issue its initial decision. For purposes of this example, assume that the administrative law judge affirmed the substantiated finding of abuse. The nursing assistant would then have the option of appealing to the DSHS Board of Appeals, who would then review the evidence and testimony submitted and issue a Review Decision and Final Order. This would be done without additional testimony being given or exhibits being offered.

In fact, if the Nursing Assistant wanted to appeal the initial decision, the only option at this point would be to appeal to the Board of Appeals. This is because a person appealing an agency order has to first exhaust the remedies available to them at the administrative level. Once that decision has been issued by the DSHS Board of Appeals, the Nursing Assistant would have the ability to seek judicial review in Thurston County Superior Court or the superior court in the county in which the Nursing Assistant lives. If the Nursing Assistant sought review at superior court prior to exhausting his or her administrative remedies, his or her appeal would likely be dismissed.

Judicial Review is often advantageous because it removes the case from an agency decision maker and moves it to a more neutral party. However, the appeal to superior court would still be based on the record created at the initial administrative hearing. In addition, there is no ability to bypass the administrative appeal process and jump straight to judicial review because the party appealing must exhaust all administrative remedies prior to appealing to superior court. This means that the party appealing must appeal to all available levels of the agency.

In order to prevail under such a judicial review, the aggrieved party would have to show that the agency factual determinations were not based on substantial evidence, that there was an error of law, or that the agency decision was arbitrary and capricious, among other appealable provisions of the Administrative Procedures Act. From this judicial review, the aggrieved party has the option of appealing to the Washington State Court of Appeals and beyond. The point of laying out this long appeal process is to show the importance of the initial administrative hearing.

Whether you ultimately win or lose your case will likely depend on the evidence and testimony received at the initial hearing.

Administrative Law is among Stephen Manning's areas of emphasis. Prior to joining Bean, Gentry, Wheeler & Peternell in Olympia, Stephen served as an Assistant Attorney General for the Washington State Attorney General's Office. In that capacity, Stephen represented the Health Care Authority and DSHS in cases ranging from administrative hearings to disputes at the Washington State Court of Appeals.

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