



On the Civil Side

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Jurisdictional Traps in Appeals from Administrative Decisions

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When a person is aggrieved by an agency action, they have the right to seek relief. Following the proper procedure to obtain that relief can be complicated. Failure to follow it can lead litigants into traps that deprive the administrative tribunal or court of jurisdiction to hear the dispute. This post looks at two such traps discussed by recent opinions published by the North Carolina Supreme Court (NCSC) and North Carolina Court of Appeals (NCCOA).

Administrative Procedure in General

The North Carolina General Assembly enacted the Administrative Procedure Act (APA) in 1973 “to establish as nearly as possible a uniform system for administrative procedure for State agencies.” S. Law 1973-1331. The APA, codified in **Chapter 150B of the General Statutes**, has been amended numerous times, and includes significant amendments adopted in 2011. While some agencies are exempt from all or part of the APA, for many agencies these statutes govern their rulemaking authority and the procedures they must follow when disputes arise. North Carolina policy encourages agencies and people to resolve disputes through “informal procedures” that do not involve sworn testimony, **G.S. 150B-22(a)**, but if a dispute cannot be resolved that way, “either the agency or the person may commence” a **contested case**, G.S. 150B-22(b). A contested case is defined as an “administrative proceeding ... to resolve a dispute between an agency and another person that involves the person’s rights, duties, or privileges, including licensing or the levy of a monetary penalty.” **G.S. 150B-2(2)**. The APA sets out the rules for procedure in a contested case. Importantly, “[a] contested case shall be commenced by paying a fee ... and by filing a petition with the Office of

Administrative Hearings.” G.S. 150B-23(a).

The Office of Administrative Hearings is the quasi-judicial agency that assigns an Administrative Law Judge (ALJ) to make a decision in many types of contested cases. Not every administrative case is heard by an ALJ. Some agencies hear their own cases. In those that an ALJ does hear, the ALJ can conduct hearings, receive exhibits, take sworn testimony, and “[r]ule on all prehearing motions that are authorized by G.S. 1A-1, the Rules of Civil Procedure,” **G.S. 150B-33(b)(3a)**, among other powers.

Here is where it gets tricky. While the Rules of Civil Procedure influence, and sometimes even apply to, administrative procedure, litigators who rely on their knowledge of civil procedure in superior court may find themselves trapped by the nuances of administrative procedure.

Basics of Administrative Appeals

Notably, ALJs have the authority to issue a final decision in a contested case. If a party does not like that decision, **Article 4 of Chapter 150B** gives that party the right to seek judicial review. For many contested cases, the superior court has jurisdiction to conduct that review.

A detailed description of the law of administrative appeals is beyond the scope of this blog post, but I do want to provide some context for a discussion of procedural traps. When reviewing the final decision of an ALJ, most of the time the superior court will be sitting as an appellate court. Appellate jurisdiction means that the superior court will defer to the ALJ as the finder of fact. The superior court will only reverse or modify the ALJ’s decision on limited grounds. Grounds for appeal are that the ALJ’s decision is:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible ... in view of the entire record

as submitted; or

(6) Arbitrary, capricious, or an abuse of discretion.

G.S. 150B-51(b). In **an article on administrative law in North Carolina**, Charles Daye categorized these grounds as either law-based or fact-based. Charles E. Daye, *Powers of Administrative Law Judges, Agencies, and Courts: An Analytical and Empirical Assessment*, 79 N.C. L. Rev. 1571, 1587 (2001). When reviewing a decision on law-based grounds, the superior court determines the legal question de novo. G.S. 150B-51(c). Since the superior court sits as an appellate court, the de novo standard of review is not the same thing as trial de novo. In reviewing a law-based decision de novo, the superior court acts “as though the issue had not yet been considered by the agency.” *Semelka v. Univ. of N. Carolina*, 275 N.C. App. 662, 672 (2020).

When reviewing a decision on fact-based grounds, the superior court uses the whole record test. *Id.* The whole record test looks at the entire record to determine whether the findings of fact are supported by substantial evidence. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Meads v. N.C. Dep’t of Ag.*, 349 N.C. 656, 663 (1998). It is more than a scintilla of admissible evidence or a permissible inference. *See Thompson v. Wake County Bd. Of Ed.*, 292 N.C. 406, 414 (1977). This standard of review “does not allow the reviewing court to replace the [agency’s] judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result.” *Id.* at 410.

With that context, let’s turn to two traps for petitioners engaged in disputes with administrative agencies. Since the General Statutes create jurisdiction for these disputes, a petitioner must take care to follow the statutes to preserve their ability to bring or appeal a contested case.

Trap #1: Late filing of a contested case deprives the ALJ of subject matter jurisdiction

A person whose rights are affected by an agency action has 60 days to petition for a contested case before an ALJ unless a statute or federal regulation says otherwise. **G.S. 150B-23(f)**. In ***Bradley Home v. N.C. Dep’t of Health and Human Servs., 220PA24***, slip op. at 3 (N.C., May 22, 2026), the agency mailed petitioner a notice that it had decided to revoke the petitioner’s licenses. Sixty-three days after

the agency placed the notice in the mail, the petitioner filed a petition for a contested case. *Id.* When the agency moved to dismiss the case, the petitioner argued that the “mailbox rule” allowed it three extra days because the agency had delivered its notice by mail. The ALJ disagreed and found the petition untimely. *Id.* at 2–3. After review by the superior court and NCCOA, the NCSC agreed with the agency’s decision to dismiss the case.

At the heart of this opinion is question about how courts count days. The “mailbox rule,” familiar to civil litigators as **North Carolina Rule of Civil Procedure 6(e)**, says that “[w]henever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.” G.S. 1A-1, Rule 6(e). The North Carolina Administrative Code states that Rule 6 governs “time computations in contested cases before the Office of Administrative Hearings.” **26 NCAC 03 .0116**.

The NCSC writes that “the 60-day limitation period at issue is not a time deadline *in a contested case*. Instead it is the time deadline to *commence* a contested case.” Slip op. at 8 (emphasis in original). A dispute with an agency is not the same as a contested case. The filing of a petition changes a dispute into a contested case. *Id.* Once a contested case has commenced, Rule of Civil Procedure 6 applies to the computation of time periods. Before then, it does not.

The calculation of the time limit to commence a contested case is critical because the agency or superior court reviewing the agency’s decision only has subject matter jurisdiction over administrative cases as defined by statute. Since G.S. 150B-23(f) states that a petitioner has 60 days to file a petition for a contested case, that deadline is mandatory and cannot be extended by either the agency or the superior court. A petition filed after that deadline does not confer subject matter jurisdiction on the Office of Administrative Hearings. *See, e.g., Nailing v. UNC-CH*, 117 N.C. App. 318, 327 (1994). Therefore no contested case may be brought after that deadline, creating a trap for practitioners who may see a reference to Rule of Civil Procedure 6 in the administrative code and mentally add three days to every deadline.

Let’s say the petitioner commenced the contested case by following the statute but then received an unfavorable decision on the merits. If the petitioner wants to appeal the ALJ’s decision, the petitioner must take care to follow statutes regarding judicial review or risk depriving the superior court of personal jurisdiction.

Trap #2: Improper service of petition for judicial review deprives the superior court of personal jurisdiction

Filing a petition for judicial review of an ALJ's decision vests subject matter jurisdiction in the superior court for most administrative agency appeals. See **G.S. 7A-250(a)**; see also G.S. 150B-43 (creating right to judicial review of agency decision) and G.S. 150B-45 (identifying proper venue for petition for judicial review). Once the petition is filed, the petitioner has 10 days to "serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings." **G.S. 150B-46**. Service is complete on mailing. 26 NCAC 03 .0102(c); see also G.S. 1A-1, Rule 5(b); cf. *Gummels v. N. Carolina Dep't of Human Res., Div. of Facility Servs., Certificate of Need Section*, 98 N.C. App. 675 (1990) (contrasting the meaning of filing and service of a petition for judicial review).

Importantly, the right to appeal is controlled by statute. "Service requirements under North Carolina General Statute § 150B-46 are jurisdictional; a case is properly dismissed where a party is not properly served." ***N. Carolina State Bd. of Educ. v. Minick***, 289 N.C. App. 369, 373 (2023); see also *In re State ex rel. Employment Sec. Comm'n*, 234 N.C. 651, 653 (1951) ("There can be no appeal from the decision of an administrative agency except pursuant to specific statutory provision therefor. Obviously then, the appeal must conform to the statute granting the right and regulating the procedure.") (internal citation omitted).

These procedures apply even when a tribunal other than an ALJ issues the final agency decision. In ***Ferris v. North Carolina Board of Architecture***, 296 N.C. App. 473 (2024), the petitioner served the petition for judicial review on the agency by email rather than by personal delivery or certified mail, the methods allowed in G.S. 150B-46. When the petitioner later served the petition by certified mail in an attempt to correct the error, the petitioner only served the certified mailings on the agency's general counsel and administrative law counsel, and not on the agency itself. *Id.* at 476–77. "Although service on an attorney of record would be appropriate in many other types of cases ... North Carolina General Statute § 150B-46 controls service in this context." *Minick*, 289 N.C. at 376. This is the second trap: a violation of G.S. 150B-46 deprives the superior court of personal jurisdiction over the respondent. *Id.* Litigators may be used to serving documents within a case by regular mail or by email. When appealing a case from an administrative

tribunal to the superior court, it is important to be clear about which statute applies and to follow the filing and service requirements of that statute.

Problems with personal jurisdiction are often not as intractable as problems with subject matter jurisdiction. First, objections to personal jurisdiction may be waived. Second, the 10-day deadline for service is not absolute. The superior has discretion to extend the petitioner's time to serve a petition for judicial review if the petitioner shows good cause. *NC Dep't of Pub. Safety v. Owens*, 245 N.C. App. 230, 234 (2016). That being said, if the superior court makes a reasoned decision not to extend the deadline, our appellate courts will not disturb that decision. See *Ferris*, 296 N.C. App. at 477.

If an administrative tribunal or court lacks subject matter jurisdiction, it simply cannot hear the case. But if personal jurisdiction is lacking, a petitioner may still be heard in some circumstances. For practitioners in administrative proceedings, knowing which statute governs the procedure of the case is critical to knowing whether the tribunal has jurisdiction to hear the case.