

# Administrative Appeals

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Superior Court Judge  
NC Conference of Superior Court Judges  
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1  
Determine Jurisdiction: Appellate or Original

Appellate Jurisdiction unless:  
(a) Agency-specific statute invokes original jurisdiction, or  
(b) GS 150B-51(c) exception applies (*for cases commenced < 1/1/12*)

Original Jurisdiction

Appellate Jurisdiction

2  
Conduct hearing:  
consider evidence  
anew; disregard  
findings of agency

2  
Review decision of agency for errors  
of law based upon record below.  
Apply "whole record review" to fact-  
based assignments of error, "de novo  
standard of review to law-based.

3  
Enter order with  
findings of fact  
and conclusions  
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relief accordingly

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Enter order adopting, reversing,  
modifying, or remanding agency  
decision. Generally, do not include  
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# Jurisdiction of Superior Court

- There is no inherent or inalienable right of appeal from an agency to superior court
- Trial court's subject matter jurisdiction over appeal of an agency decision depends upon whether the General Assembly has enacted any statutory provisions authorizing such review

# Jurisdiction

- GS 7A-250(a): The superior court is “the proper division, without regard to the amount in controversy, for review by original action or proceeding, or by appeal, of the decisions of administrative agencies, according to the practice and procedure provided for in the particular action, proceeding, or appeal.”

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# Original Jurisdiction

- Requires court to disregard facts found at earlier hearing and engage in independent fact finding.
- It is a new trial on the entire case – that is, on both questions of fact and issues of law – conducted as if there had been no trial in the first instance.

# Appellate Jurisdiction

- Traditional function of appellate courts to review lower court decisions for errors of law or procedure while generally deferring to findings of fact of the lower court

- Unless otherwise stated by statute, appeals to superior court from administrative decision-making bodies invoke the appellate jurisdiction of the superior court, not the original jurisdiction.

## What is the Sup. Ct.'s Jurisdiction?

- “In any judicial proceeding under this section, the findings of fact by the Commission, if there is any competent evidence to support them and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law.” GS 96-15(i) [Employment Security Commission Appeals]

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- Appellate Jurisdiction

## What is the Sup. Ct.'s Jurisdiction?

- . . . and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this Article. [GS 25-25 DMV License revocation, suspension or denial – non-mandatory]

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- Original Jurisdiction



## What is the Sup. Ct.'s Jurisdiction?

- Any party may appeal to the superior court from any final order of the Commissioner. [GS 106-500 - Certain orders of the Commissioner of Agriculture]
- Appellate jurisdiction – since the statute does not state otherwise.

## What is the Sup. Ct.'s Jurisdiction?

- The matter shall be heard de novo and the judge shall enter his order affirming the act or order of the Commissioner, or modifying same. . .

[GS 20-279.2 – Orders of DMV enforcing Financial Responsibility Act]

# What is the Sup. Ct.'s Jurisdiction?

- The matter shall be **heard de novo** and the judge shall enter his order affirming the act or order of the Commissioner, or modifying same. . . [GS 20-279.2 – Orders of DMV enforcing Financial Responsibility Act]
- A "*de novo*" hearing or trial conducted pursuant to a specific statutory mandate requires judge or jury to disregard the facts found in an earlier hearing or trial and engage in independent fact-finding. [**Original Jurisdiction**]
- The "trial *de novo*" concept **should not be confused** with the "*de novo*" standard of review that applies when the trial court acts in the capacity of an appellate court. *N.C. Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649 (2004)

# Administrative Procedure Act (APA)

- Art. 4 of APA – Judicial Review
- GS 150B-43: Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute.

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# Jurisdiction under APA

150B-51(b) . . . in reviewing a final decision, the court may affirm the decision of the agency or remand the case to the agency or to the administrative law judge for further proceedings. It may also reverse or modify the agency's decision, or adopt the administrative law judge's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
- (6) Arbitrary, capricious, or an abuse of discretion.

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- The appellate jurisdiction described by the GS 150B-51(b) is the “default jurisdiction” of the Superior Court over all administrative appeals.
- Unless one of three exceptions apply, the Court’s jurisdiction is appellate.

# Three Possible Exceptions to Appellate Jurisdiction

- Agencies entirely exempt from APA
- Agency-Specific jurisdictional statutes
- GS 150B-51(c)

## Exception 1:

# Agencies Exempt from APA

- GS 150B-1 entirely exempts certain agencies, or certain tasks from the scope of the APA.
- These exempt agencies include:
  - Utility Commission
  - Industrial Commission
  - Employment Security Commission
- Must review agency-specific statute to determine whether Superior Court's jurisdiction is appellate or original

## Exception 2:

# Agency-Specific Statutes

- Recall GS 150B-43: Any person who is aggrieved by the final decision. . . is entitled to judicial review of the decision under this Article [Art. 4 of the APA], **unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute.**

# Agency-Specific Statutes

- There are over 60 agency-specific statutes that detail the procedure that is to be followed for administrative appeals to superior court
- These include:
  - Division of Motor Vehicles – license suspension and revocation
  - Social Services – denial of benefits
  - Department of Insurance – license revocations and other orders
  - Banking Commission – seizure of assets
  - Secretary of State – revocation of corporate charters
  - Agriculture Department – permits and stop-sale orders
  - Board of Elections – registration and candidate challenges

# Agency-Specific Statutes

- Some of these agency-specific statutes explicitly invoke only appellate jurisdiction of the Superior Court
- A number require review to be “as provided in Art. 4 of 150B” – i.e. appellate review
- Some are silent, thereby implicitly invoking only appellate review

# Agency-Specific Statutes

- However, some of these agency-specific statutes require the superior court to exercise its original jurisdiction.
- “matter shall be heard *de novo* in superior court”
- “take testimony and examine facts”

## Example of Agency-Specific Statute Social Services & Public Assistance

- GS 108A-79(k) The hearing shall be conducted according to the provisions of Article 4, Chapter 150B, of the North Carolina General Statutes.



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## Example of Agency-Specific Statute Social Services & Public Assistance

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- *Meza v. Division of Social Services*, 364 NC 61 (2010)
- This statute invokes both appellate and original jurisdiction.
- However, Superior Court must choose one or the other.
- Error to undertake appellate review based upon record below, and then also find facts.
- If court finds facts, it must take and consider evidence under its original jurisdiction.

## Exception 3

# The 150B-51(c) exception

- The final exception to the default rule of appellate jurisdiction is within Art. 4 of the APA itself
- This exception has been eliminated by the 2011 General Assembly for all cases commenced after January 1, 2012

- Some agencies are required to submit their contested matters to the Office of Administrative Hearing (OAH) for determination by and Administrative Law Judge (ALJ).
- Under current law, the decision of the ALJ is a “recommended decision”
- Agency may adopt recommended decision entirely, partially, or not at all.

- Under current law, if an agency does not adopt the recommended decision of the ALJ, and the matter is appealed to superior court, the review of that matter is governed by GS 150B-51(c).

## 150B-51(c) (pre- amendment)

- If the agency does not adopt the administrative law judge's decision:
- . . . the court shall review the official record, de novo, and shall make findings of fact and conclusions of law. In reviewing the case, the court shall not give deference to any prior decision made in the case and shall not be bound by the findings of fact or the conclusions of law contained in the agency's final decision. The court shall determine whether the petitioner is entitled to the relief sought in the petition, based upon its review of the official record.
- Invokes original jurisdiction (although fact-finding is limited to record below).

# Affect of 2011 Amendments

- General Assembly's 2011 amendments makes the ALJ's decision a final decision binding upon the agency.
- GS 150B-51(c) is removed from statute
- Instead, agency is given specific authority to appeal to superior court if it is dissatisfied



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# Scope of Appellate Review

- Whether agency's findings of fact are supported by the evidence,
- Whether the findings support the conclusions of law, and
- Whether the conclusions of law are proper statement and application of the law.

# Standard of Review

- Standard of review is the amount of deference given by one court in reviewing the decision of a lower court.

# Standard of Review

- If a fact-intensive issue, the standard of review is whether the agency's decision is supported by "substantial evidence based on the whole record."
- Frequently referred to as "the whole record" test

# Standard of Review

- For agency appeals to superior court the standard of review for issues of law is the *de novo* standard of review.

- The standard of review, namely whole record or *de novo*, is dictated by the substantive nature of the assignments of error.
- Under the APA, there are six, and only six, possible assignments of error that may be made on appeal.

Six Assignments of Error Permitted under APA  
GS 150B-51(b)(1) thru (6)

Fact-intensive assignments of error:

- Whether the decision was supported by substantial evidence
- Whether the decision was arbitrary, capricious, or an abuse of discretion

**WHOLE RECORD REVIEW**

Issue of Law assignments of error:

- Whether the decision was in violation of the constitution
- Whether the decision was in excess of statutory authority
- Whether the decision was made upon unlawful procedure
- Whether the decision was affected by other errors of law

**DE NOVO STANDARD OF REVIEW**

# Whole Record Review

- “Substantial evidence” is such relevant evidence as a reasonable mind might accept as adequate to support conclusion
- Substantial evidence is greater than “any competent evidence”
- Reviewing court should take into account whatever in record fairly detracts from the weight of the agency’s evidence.



# Whole Record Review

- Credibility of witness and resolution of conflicts in testimony are for agency, not reviewing court, to determine
- Superior Court cannot take new evidence – under APA, if reviewing court finds that new evidence ought to be received, court must remand for that purpose.

# De Novo Standard of Review

- Court should treat the matter as though the issue had not yet been determined.
- Reviewing court freely substitutes its own judgment for the agency's judgment
- Court traditionally accords some deference to agency's interpretation of statute, but these interpretations are not binding.

## Example – Issues of law and fact

- Petitioner, Dr. Wang, was a EPA non-faculty employee of the UNC School of Medicine.
- In 2004, Dr. Wang expressed some concerns to her superior about mouse genotyping protocols
- Emails were exchanged between Dr. Wang and her superior regarding lack of collegiality.


# Example

- In 2006, Dr. Wang's employment contract was not renewed
- Dr. Wang initiates grievance against UNC asserting violation of, among other things, Whistleblower Act.
- Board of Governors – final agency decision – petitioner had not been treated in an impermissible or unlawful manner

# Issues on Appeal:

- Does the Whistleblower act apply to EPA non-faculty employees?
- Did the Petitioner engage in protected activity?
- Did Respondent take adverse action against the Petitioner?
- Was there a causal connection between protected activity and adverse action?

- Does the Whistleblower act apply to EPA non-faculty employees?
- “Questions of statutory interpretation are ultimately question of law for the courts and are reviewed de novo.”
- Court, in exercising the de novo standard of review, considers the matter anew without deference to agency decision.

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- Did the Petitioner engage in protected activity?
  - Did Respondent take adverse action against the Petitioner?
  - Was there a causal connection between protected activity and adverse action?
  - These are “fact-intensive” issues.
  - Resolution of these issues requires determination of facts that are potentially in dispute.
  - Court’s appellate jurisdiction only permits court to determine whether agency’s decision is based upon evidence that reasonable minds would find to be adequate.

- In this case, agency did not support its conclusion with any findings of fact.
- Nonetheless, reviewing court cannot substitute its judgment for that of the agency in determining issues of fact.
- Court must remand to agency.



# Drafting the Order

- In drafting an order following an appeal of agency decision:
- The superior court should state the standard of review applied by the court to each assignment of error.
- The superior court should not include findings of fact unless the court is reviewing the matter under its original jurisdiction.