

The Administrative Appeals Process

Prepared by Janet Johnson

OHS, Office of Impact Advocacy and Legal Outreach

Where Does Appellate Advocacy Start?

- At the trial level.
 - Create/Preserve your record on appeal.
 - Don't forget to identify your exhibits.
 - Raise your issues clearly.
 - Properly argue and present your facts.
 - Reiterate your requested relief.
 - Be prepared to cite legal authority.
 - And as this moves towards District Court, request a court reporter if you suspect things may go awry.

Creating/Preserving the Record

- Always ask yourself:
 - “Who is the Appellate Court?”
 - “What will the Appellate Court read?”
 - “Did I clearly identify the issues?”
 - “Did I properly introduce and identify my exhibits?”
 - “Did I make the necessary objections?”
 - “Did my closing statement summarize my case and requested relief?”
- Your record is key to success on appeal.
- Your allegations of error must be supported by the record. [*Fleck v. Fleck*, 2004 OK 39.](#)
- Do your best to preserve legal arguments. If there is an alleged error on an appeal, the party saying there is an error has the burden of presenting to the court a record that supports that assignment of error. *Bailey v. Bailey*, 1994 OK 6.

Identifying Exhibits

- <https://www.youtube.com/watch?v=5gr3jopJmVg&t=2s>
- It's important! These become a part of the record, if you admit them.
- If you don't identify and admit, it makes for a mysterious read.
- The point of the cross is that the photos were not identified and that the appellate court would have no idea about what Vinny was referring to when he talks about the photos. Really important for purposes of preserving the record.

Requested Relief

- Use a Requested Relief Table to guide you in your hearing process.
- This will ensure you stay on track and serves as a back up to making sure your issues were raised.

Issues Raised

- It's important to raise your issues on the record as it will be your fall back to the "Issues on Appeal" if you are the Appellant.
- It will also serve as an easy identifier to point out errors.
- Raise objections so as to preserve an issue for appellate review. [*Hanger v. Hanger, 2012 OK CIV APP 26.*](#)
 - If it doesn't appear on the record, it didn't happen.

Motions to Reconsider/New Trial

- This will toll the time on an appeal if filed within 10 days of the ruling.
 - [12 O.S. § 990.2.](#)
- Be sure to raise all your issues of alleged error. You want to preserve this in light of a possible appeal.
 - [12 O.S. § 991\(b\)](#) and [Rule 17](#) of the Rules for District Courts of Oklahoma.
- “Alleged errors known but not raised are waived.” [*Sien v. Sien*, 1994 OK CIV APP 159.](#)

Motions for Stay

- This doesn't toll the time on an appeal, but is a question that is asked in the Petition in Error.
- [Okla. Sup.Ct.R. 1.15](#) provides guidance on this matter.
- Depending on the type of order being appealed (Final or Interlocutory) and the nature of the Order, you will need to pay attention to the time frames.
- Good to look at 12 O.S. §§ 990.3, 990.4, 993(B) and (C), and 994(B).

Commencement of an Appeal

- Remember the purpose is to correct legally cognizable errors. It is not an opportunity to retry a case.
- Be mindful of the deadlines.
 - Don't trust your memory. Always read the rules.
 - [Okla. Sup. Ct.R. 1.3](#), [1.4](#), and [1.27](#).
 - The timely filing of a Petition in Error is the linchpin to establishing the appellate court's jurisdiction.
- Do you have a final order for purposes of Appeal.
 - [12 O.S. § § 696.3](#) and [953](#).
- Is this an Interlocutory Order?
 - Does it need to be certified?
 - [12 O.S. § 952\(b\)\(3\)](#) and [Okla. Sup.Ct.R. 1.50](#)
 - Is it appealable by right?
 - [12 O.S. §§ 952](#) or [953](#) and [Okla. Sup.Ct.R. 1.60](#).


There's a Petition in Error. Now what?

- Effective 11.1.2019, [Title 56 O.S. § 240.3](#) tells us to follow the Supreme Court Rules and Forms.
 - This change should make the Administrative Appeals Process easier for the bench and the bar.
 - It will mean following the timeframes as outlined in the Supreme Court Rules.
 - Know which grounds can be used to file a Motion to Dismiss an appeal and which cannot → [Okla. Sup. Ct.R. 1.6.](#)


Filing Petition in Error

- A Petition in Error must be filed within 30 days from the date the order is either provided in person or mailed to all parties.
- The Style of the case may be altered if needed → [Okla. Sup. Ct.R. 1.25\(b\)](#).
- There is no extension of time for the filing of an Appeal → [12 O.S. § 992](#).
 - Except a Post-Trial Motion filed within 10 days → [12 O.S. § 990.2\(A\)](#).

Filing a Petition in Error

- There is also no Three-Day Mailing Rule for Appeals → [Okla. Sup. Ct.R. 1.3.](#)
 - The Petition in Error shall be in conformance with the [Supreme Court Forms](#) prescribed in [Okla. Sup. Ct.R. 1.25.](#)
 - Don't forget your Entry of Appearance!
 - Be mindful of the page limitations!
- 


Response to Petition in Error

- Response must be filed within 20 days after the Petition in Error is filed.
 - The [Form](#) prescribed in [Okla. Sup. Ct.R. 1.25](#) shall be used.
 - Don't forget your Entry of Appearance!
 - Be mindful of the page limitations.
- 

Designation of Record

- The Designation of Record *shall* be filed concurrently with or prior to the Petition in Error → Okla. Sup. Ct.R. 1.28.
- A Counter- Designation of Record *shall* be filed concurrently with or prior to the Response to Petition in Error → Okla. Sup. Ct.R 1.28(c).
- These are filed at the trial court level (OAH) and a courtesy copy is then filed at the appellate level (district court).


Record on Appeal

- Materials that were not before the trial court cannot be used to allege error.
 - [Okla. Sup.Ct.R. 1.33\(d\)](#)
 - Know your limitations as to what can and cannot be designated.
 - [Okla. Sup.Ct.R. 1.28](#)
 - The burden is on the Appellant to see that the record is completed on time.
- 


Awaiting the Record Completion

- The Court Clerk has 6 months to complete the record on an appeal from a final order → [Okla. Sup. Ct.R. 1.34](#). If its an interlocutory order, the clerk has up to 60 days from the filing of the interlocutory order → [Okla. Sup. Ct.R. 1.64](#).
 - It is the Appellant's duty to ensure this is done.
 - When record is received, review the Designation and Counter-Designation to ensure its completeness.
 - Don't forget to docket the briefing cycle***
 - Brief-in-chief due 60 days from the date the Notice of Completion of Record is filed → [Okla. Sup. Ct.R. 1.10\(a\)](#).
 - Answer brief due 40 days after the filing of the Brief-in-chief → [Okla. Sup. Ct.R. 1.10\(a\)](#).
 - Reply brief may be filed by Appellant within 20 days after the Answer Brief → [Okla. Sup. Ct.R. 1.10\(a\)](#).
 - ***These are the Supreme Court deadlines. They're ideal to follow, but I think its okay to be flexible for the district court and agree to dates that work for all involved with a scheduling order.

The record is complete, now what?

- Since this process is unique to most of our district court judges, we might need to coach them along.
 - We don't expect the district court to adhere to such strict timelines as the Supreme Court as outlined in the previous slide.
 - Instead, we need to guide them by using a brief scheduling order.
 - This allows all involved to know what's expected, due, and when.
- 

Briefing

- Writing a brief is hard.
 - Before you start writing, review the rules, page limits, and the record.
 - Don't be afraid to ask questions!
 - Writing a good brief takes time.
 - Never start a brief the day its due.
- 

Briefing

- Where do I start as the Appellant?
 - Read the record filings.
 - Read transcript.
 - Do your legal research.
 - Ask yourself if you can win on these issues?
 - In light of your Standard of Review
 - Weed out the issues you want to raise on appeal.
 - How many propositions do you want to raise?
 - Keep your propositions short and simple.
 - You have a heavy burden to persuade the Court.
 - Remember to point out any objections you made at the lower level.

Briefing

- Where do I start as the Appellant?
 - Before writing, you must know all of your facts.
 - Must read every page of the transcript.
 - Take copious notes while reading the transcript and record filings.
 - Especially in rulings on other Motions during the pendency of the underlying action that is on appeal (clean this up).
 - Read all facts relevant to your propositions.
 - Don't miss out on important testimony!
 - Review all the exhibits that were admitted at trial.

Briefing

- Where do I start as the Appellee?
 - Read the Brief-in-chief.
 - Read the record filings.
 - Read transcript.
 - Do your legal research.
 - Ask yourself if you can win on these issues?
 - In light of your Standard of Review
 - How many propositions do you want to raise in your Answer?
 - Keep them short and simple.
 - Hug your bad facts – don't avoid them.
 - Remember to point out any objections made at the lower level.

Briefing

- Where do I start as the Appellee?
 - Before writing, you must know all of your facts.
 - Must read every page of the transcript.
 - Take copious notes while reading the transcript and record filings.
 - Especially in rulings on other Motions during the pendency of the underlying action that is on appeal (clean this up).
 - Read all the facts relevant to your propositions.
 - Don't miss out on important testimony!
 - Review all the exhibits that were admitted at trial.

Statement of the Case

- Explain how the case got to the Appellate Court.
 - Point out the procedures and how the case got there.
 - Break things down in chronological order.
 - Give the dates and tell a story.
 - Make it interesting, but not insulting.
 - If its boring, the Court won't want to read it.
 - Keep it simple.
 - Show the exact words used – sometimes this gives more insight on mental state, etc. [Okla. Sup.Ct.R. 1.11](#)

Statement of the Case

- Don't just agree to the other sides statement of facts.
 - Write your own.
 - Don't list facts favorable to the other side here.
 - Don't put irrelevant facts here; only list the essential facts.

Standard of Review

- The lens the Court looks through to determine the level of deference to give the lower court.
 - *De novo* → Generally applies to issues of law and the reviewing court conducts an independent review. This means the lower court's ruling is reviewed, but without any deference. "The appellate court has the plenary, independent, and nondeferential authority to reexamine a trial court's legal rulings."
 - [Matter of Estate of Kendall, 1998 OK CIV APP 171](#)
 - *Abuse of Discretion* → Applies to issues of fact and the reviewing court must find that the lower court "made a clearly erroneous conclusion and judgment, against reason and evidence."
 - [Abel v. Tisdale, 1980 OK 161](#)

Standard of Review

- *Clearly Erroneous* → An administrative court's decision must be affirmed unless it is "clearly erroneous in view of the reliable, material, probative and substantial competent evidence." Generally, the reviewing court will not reverse an administrative decision on a question of fact unless, after examining the complete record, the reviewing court is left with a "definite and firm conviction that a mistake has been committed."
 - [75 O.S. § 322\(1\)\(e\).***](#)
 - [*Oklahoma Employment Security Comm'n v. Oklahoma Merit Protection Comm'n*, 1995 OK CIV APP 76, ¶ 3, 900 P.2d 470, 472](#) (quoting *Independent School District 4 v. Orange*, 1992 OK CIV APP 145, 841 P.2d 1177, 1180).
 - See 75 O.S. 250.4 – illustrates DHS isn't bound by APA.

Standard of Review

- Arbitrary or Capricious → Matters of discretion for the trial court are addressed under the “arbitrary and capricious” standard, and the administrative court’s order must be affirmed unless the reviewing court finds “there is no support for it in the record and it is therefore a “willful and unreasoning action, in disregard of facts and circumstances.” Under the arbitrary and capricious standard, the administrative order can only be reversed if it was “not founded on reason.” An agency’s decision is arbitrary and capricious if it is “willful and unreasonable without consideration or in disregard of facts or without determining principle, or unreasonable ... in disregard of facts and circumstances.”
 - [*Patrick v. State ex rel. State Bd. of Educ.*, 1992 OK CIV APP 153 at ¶ 14, 842 P.2d 767](#) (citation omitted).
 - [*Metcalf v. Oklahoma Bd. of Medical Licensure*, 1992 OK CIV APP 174 at ¶ 6, 848 P.2d 48.](#)

Standard of Review

- State the Standard of Review for your legal issue with confidence.
 - Apply your facts to the law.
 - Court's love case law.
 - Point out whether the opposing party set out proper legal standard.


Ready to Write?

- Consider this:
 - Have I or someone else researched this issue before?
 - Check the other side's citations – are they good, bad, irrelevant?
 - Find controlling case law on the issue(s).
 - If you find settled law not in your favor, don't ignore it. Explain why your case is different.
 - Make sure the cited case supports your proposition.
 - Don't mislead the Court re: a holding of the case; you'll lose their trust.

Ready to Write?

- Always see if a party waived an issue.
 - If they have, be sure to raise that. Especially when it is not in the record. [*Sien v. Sien*, 1994 OK CIV APP 159.](#)
- State the legal issue the Court must decide.
 - Did the trial court err when...
 - Whether the trial court erred when...
 - Might even use a positive assertion of the law if applicable to your facts.
 - The Trial Court correctly applied the law of (insert statute or case law) in its ruling.
 - The Trial Court's order is lawful under (insert statute or case law)

Ready to Write?

- Remember your ABCs
 - Accuracy
 - Proofread your work 2–3 times. Typos can be difficult to find. A typo can ruin your argument and make you look foolish. Use spellcheck and proofread.
 - Brevity
 - Avoid repetitive arguments. Shorter is better. Be concise. It isn't necessary to fulfill the page limits. Avoid overstatements i.e., clearly, without, etc.
 - Clarity
 - Look for ways to edit your brief to make it better.
- 

What can I do during a pending appeal?

- There are still actions that can be done under [Sup. Ct.R. 1.37](#).
- When in doubt, just ask!