

Judicial Review Under the Nevada Administrative Procedure Act

Justice Lidia Stiglich

Nevada Workers' Compensation Educational Conference

Friday, August 25

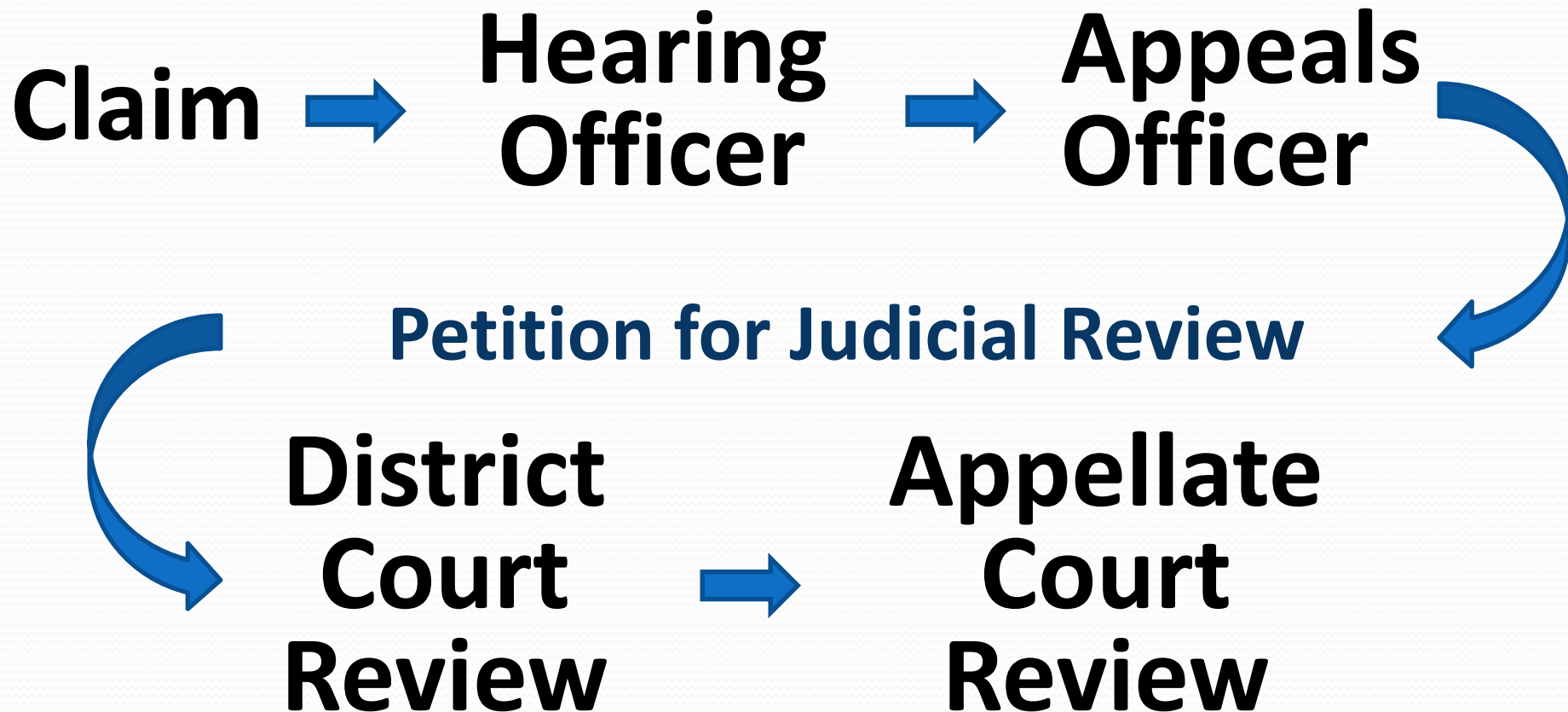
Las Vegas, Nevada



DISCLAIMER

The views and opinions expressed in the written materials and in any of the presentations at this conference are those of the presenter and do not necessarily reflect the official policy or position of the Department of Business and Industry, Division of Industrial Relations. The Division does not warranty the materials' completeness or accuracy.

The Appeals Process



The Hearing Process

- Provides notice and opportunity to be heard.
- Performs fact-finding role, collects evidence.
- Issues judgment based upon specialized experience and knowledge.

NRS 233B.130

Any party who is:

- a) Identified as a party of record by an agency in an administrative proceeding; and
- b) Aggrieved by a final decision in a contested case

is entitled to judicial review of the decision.

Petition for judicial review must be filed within 30 days after service of the final decision.

Judicial Review

Court conducts a review of the record leading to the final administrative decision.

No trials *de novo* (anew).

- Expedites passage of case through the judicial system.
- Minimizes intrusion of courts into administrative functions.
- Relieves courts of the burden and expense of trying the case as an original matter.

Judicial Review

- Burden of proof lies with the party seeking to reverse the administrative decision.
- Review **must be limited to the record** before the administrative body.
- District court may send the case back to the administrative body to take further evidence.

NRS 233B.135

Court may set aside decision in whole or in part if the decision was:

- a) In violation of constitutional or statutory provisions;
- b) In excess of the statutory authority of the agency;
- c) Made upon unlawful procedure;
- d) Affected by other error of law;
- e) Clearly erroneous in view of the record; or
- f) Arbitrary or capricious or characterized by abuse of discretion.

NRS 233B.135 – Questions of Law

Court may set aside decision in whole or in part if the decision was:

- a) **In violation of constitutional or statutory provisions;**
- b) **In excess of the statutory authority of the agency;**
- c) **Made upon unlawful procedure;**
- d) **Affected by other error of law;**
- e) Clearly erroneous in view of the record; or
- f) Arbitrary or capricious or characterized by abuse of discretion.

Judicial Review – Questions of Law

Court is free to decide purely legal questions.

- For ex.: Administrative construction of a statute, procedural questions.

NRS 233B.135 – Questions of Fact

Court may set aside decision in whole or in part if the decision was:

- a) In violation of constitutional or statutory provisions;
- b) In excess of the statutory authority of the agency;
- c) Made upon unlawful procedure;
- d) Affected by other error of law;
- e) **Clearly erroneous in view of the record; or**
- f) **Arbitrary or capricious or characterized by abuse of discretion.**

Judicial Review – Questions of Fact

- Court does not consider credibility of witnesses or weigh evidence.
- Need to give finality to judgments made with the “specialized experience or knowledge” of the administrative body.

Judicial Review – Questions of Fact

Court will determine if there was an **arbitrary and capricious** exercise of discretion by the administrative body.

- “To be arbitrary and capricious, the decision of an administrative agency must be in disregard of the facts and circumstances involved.”

Judicial Review – Questions of Fact

Court may not substitute its judgment for that of the administrative body if there is **substantial evidence** supporting the decision.

- “That which a reasonable mind might accept as adequate to support a conclusion.”

Results

The district court may take several actions:

- Affirm the decision;
- Remand the case to the agency for further proceedings; or
- Set aside the decision in whole or in part.

Appellate Courts

A party may appeal the district court's decision.

Appellate courts review the record in the same way as district courts and apply the same standards of review.

The Court of Appeals

Nevada Court Structure with Court of Appeals

SUPREME COURT OF NEVADA

Comprised of **7 Justices**, this is the State's ultimate judicial authority. All cases appealed from the District Courts will be filed with the Supreme Court. Some matters will be assigned to the Court of Appeals, based on Supreme Court Rule, and the remaining matters will be heard and resolved by the Nevada Supreme Court. Cases resolved by opinion at the Nevada Supreme Court are precedent-setting and become law.

Discretionary Appeals/Assignment



COURT OF APPEALS

Comprised of **3 Judges**, the Court of Appeals will hear categories of cases assigned to it by Supreme Court Rule. Most cases routed to the Court of Appeals will be decided and end there, as Supreme Court review of Court of Appeals decisions will be discretionary.

Non-Discretionary Appeals/Remands



DISTRICT COURTS

These are courts of general jurisdiction where major civil, criminal, family, and juvenile cases are decided. Appeals of District Court cases go to the Supreme Court.

Remands



The Court of Appeals

- Nevada voters created the Court of Appeals by passing a constitutional amendment in 2014.
- The Supreme Court assigns cases to the Court of Appeals' three-judge panel.
- Administrative agency appeals (except those involving tax, water, or public utilities) are presumptively assigned to the Court of Appeals.

The Supreme Court

A party aggrieved by a decision of the Court of Appeals may file a petition for review with the Supreme Court.

When deciding whether to grant review, the Supreme Court considers:

- 1) Whether the question presented is one of first impression of general statewide significance;
- 2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the US Supreme Court; or
- 3) Whether the case involves fundamental issues of statewide public importance.



Questions?