

# Administrative Review in Illinois: A Trap for the Unwary?



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Administrative agencies are part of the federal and state government with the power to implement legislation. Illinois administrative agencies oversee a variety of interests, including public health and assistance, transportation, education, agriculture, natural resources, law enforcement, revenue, and commerce. Well-known examples of state agencies include the Department of Agriculture, the Commerce Commission, and the Board of Education.

An administrative agency is created by an enabling statute, which provides the agency with rule-making authority and the power to make decisions. There are three avenues to review an agency's decision in an Illinois circuit court. The first is by the agency's enabling act itself; the Workers' Compensation Act is a perfect example. Second, the Illinois Administrative Review Law (ARL), 735 ILCS 5/3-101, governs the judicial review of an agency's decision if the agency's enabling act expressly adopts the ARL. Finally, if the act is silent, an administrative order can be appealed by filing a writ of *certiorari* in the circuit court.

This article describes the judicial review process under the ARL and what agencies, commissions, or boards must do when their decisions are scrutinized.

## Administrative Decisions

According to the ARL, an “administrative decision” is any determination or order “which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency.” 735 ILCS 5/3-101. Administrative decisions affect the rights and interests of the public.

A “decision” does not include rules or standards issued by an agency to implement the legislation it enforces, nor does it encompass regulations related to an agency’s internal management. *Id.*

## **Decisions May be Subject to Judicial Review**

Illinois circuit courts are empowered to review administrative agencies’ final decisions by the ARL, 735 ILCS 5/3-101 *et seq.* The General Assembly designed the ARL to provide a straightforward way to review administrative decisions.

The first step of the administrative review process is to determine under which review provisions the appeal will proceed. A review of the agency’s enabling statute will reveal if the ARL applies and vests circuit courts with jurisdiction to review administrative decisions. For example, the judicial review section of the Liquor Control Act, 235 ILCS 5/1-1 *et seq.*, which established the Illinois Liquor Control Commission, adopts the ARL.

Judicial review. All final administrative decisions of the State Commission under this Act shall be subject to judicial review pursuant to the provisions of the Administrative Review Law and the rules adopted pursuant thereto. Judicial review may be requested by any party in interest, including but not limited to the local liquor control commissioner. 235 ILCS 5/7-11.

Consequently, the Commission’s administrative decisions are subject to judicial review in Illinois circuit courts.

## **Exhaustion of Administrative Remedies**

Illinois circuit courts have jurisdiction to review an agency’s final decision only if all administrative remedies are exhausted first. Depending upon the specific agency’s requirements, exhaustion of administrative remedies could include an investigation, attempted settlement, a hearing before the Commission, and a motion for rehearing. Exhaustion of administrative remedies can be a long and arduous process, but it has its benefits.

“Requiring the exhaustion of remedies allows the administrative agency to fully develop and consider the facts of the cause before it; it allows the agency to utilize its expertise; and it allows the aggrieved party to ultimately succeed before the agency, making judicial review unnecessary.” *Castaneda v. Illinois Human Rights Comm’n*, 132 Ill. 2d 304, 308 (1989). Requiring parties to first pursue administrative remedies, such as a petition for rehearing, permits the agency to correct its own errors and conserves judicial resources. *Castaneda*, 132 Ill. 2d at 308.

The agency’s enabling statute should be carefully reviewed to determine what steps are required to exhaust administrative remedies. The Illinois Human Rights Act, for instance, outlines specific procedures for redressing alleged employment

discrimination charges. After following the procedures set forth in the Act, a party can then appeal the Commission's decision to the appropriate circuit court.

## **Exceptions to the Exhaustion of Remedies Doctrine**

As it seems with any legal rule, there are exceptions to the exhaustion doctrine. An aggrieved party may seek judicial review of an administrative decision without exhausting administrative remedies for several reasons, including if:

- A statute, rule, or ordinance is attacked as unconstitutional on its face;
- Multiple remedies exist and at least one was completed;
- Irreparable harm would result from continued pursuit of administrative remedies; or
- Agency expertise is not involved.

*Arvia v. Madigan*, 209 Ill. 2d 520, 532-33 (2004).

## **Initiating an Administrative Appeal**

The ARL requires that all judicial reviews must begin by filing a complaint and serving summons within 35 days from the date that a copy of the final decision was served. 735 ILCS 5/3-103. A decision is considered "served" when a copy is personally delivered or deposited in the U.S. mail. *Id.*

The requirements for initiating an appeal can seem stringent. For instance, rules abound on where to file, who to serve, and whom to name as defendants. Litigation often arises for failure to comply properly with initiation procedures.

## **Filing an Answer to the Complaint**

Upon being served with the complaint, the administrative agency is required to file an answer "consisting of a record of the proceedings had before it, or a written motion in the cause or a written appearance." *Id.* at 3-106. The agency, as a defendant, does not need to respond specifically to each allegation, as is common practice in general civil litigation. *Kaminski v. Illinois Liquor Control Comm'n*, 20 Ill. App. 3d 416, 421-22 (1st Dist. 1974). A wide array of defensive motions are available to defendants, including motions to dismiss. *Davis v. Chicago Police Bd.*, 268 Ill. App. 3d 851, 855 (1st Dist. 1994).

## **Agency Decisions are Entitled to Deference**

There is a presumption that an administrative agency's actions and factual determinations are proper. *Watra, Inc. v. License Appeal Comm'n*, 71 Ill. App. 3d 596, 602 (1st Dist. 1979). However, an agency's interpretation of the law is entitled to no deference and may be determined by the reviewing court *de novo*. *Envirite Corp. v. Illinois EPA*, 158 Ill. 2d 210, 214 (1994). When there is evidence that supports the administrative agency's decision, a reviewing court will uphold the decision. The

plaintiff filing the administrative review has the burden to prove that the agency's decision was incorrect. *Rasky v. Dep't of Registration & Educ.*, 87 Ill. App. 3d 580, 588 (1st Dist. 1980).

## **Appellate Court Review**

A circuit court's order is appealable in the Illinois appellate courts under the ARL. 735 ILCS 5/3-112. A party must file its notice of appeal within 30 days of the circuit court's order on review. From that point forward, the appeal proceeds in the same manner as any other civil appeal and is governed by the Rules of Appellate Procedure.

## **Conclusion**

The administrative review process, although full of intricacies, was not meant to be a trap for the unwary. By carefully reviewing the ARL and the controlling administrative statute or regulations well in advance of your appeal, many of these issues can be eliminated and the risk of having your review dismissed for a jurisdictional problem can be substantially reduced. If you have any questions regarding administrative appeals, please do not hesitate to contact us for assistance.

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