

# APPEALING ADMINISTRATIVE CHILD SUPPORT ORDERS

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# Scope of Presentation

- ❑ Appeals within and from DHS's Office of Administrative Hearings: Child Support
- ❑ Appellate Rules and Jurisdiction
- ❑ Recommended Procedure
- ❑ Standards of Review
- ❑ Practical Considerations
- ❑ NOT: Appeals of child support issues raised first in district court

# Types of Administrative Appeals

- Administrative Hearings of Administrative Review Decisions
- Administrative Orders appealed to District Court
- Appeals to Supreme Court from District Court Decisions on Administrative Appeals

# Administrative Hearings on Administrative Review Decisions

# Legal Basis and Time Limits

- Some actions using Administrative Review Process:
  - Administrative and Federal tax offsets
  - Annual notices
  - State tax offsets
  - Bank Levies
- OAC 340:25-5-200.1 (and in rules dealing with specific remedies)
- Parties may request relief from an administrative review decision by requesting hearing before OAH
- Parties have 15 days from date of mailing of administrative decision to request hearing before OAH

# Standard of Review

- ❑ Trial De Novo
- ❑ OAC 340:2-28-19 Evidentiary Purpose
  - Technical rules of evidence don't apply
  - "Rules and principles designed to assure production of the most credible evidence available"
  - ALJ may cross-examine
  - Cross-examination not limited to scope of direct examination

# Rehearing, Reopening, or Reconsidering Administrative Court Decisions

- ❑ 12 OS § 1031.1:
- ❑ Court may reopen on its own motion within thirty (30) days
- ❑ Court may reopen on the motion of a party within thirty (30) days
- ❑ Subject to 12 OS § 1038 Time Limits thereafter

# District Court Review of Administrative Court Orders

# Procedure for Administrative Appeals

# Statutory Basis and Jurisdictional Requirements

- ❑ 56 O.S. § 240.3
- ❑ Appeal of Final Orders of OAH is to district court
- ❑ Refers to Administrative Procedures Act, 75 O.S. § 318 through 323
- ❑ Petition in Error must be filed within 30 days of date administrative order is filed (mandatory, jurisdictional)
- ❑ Must be served on the agency and all parties of record (75 OS § 318(C))

# Court Rules

- ❑ No statutory time limits re: briefing, hearing, completion of record
- ❑ In practice: follow OK Supreme Court Rules and timeframes when possible

# Getting Your Record

- ❑ File a copy of PIE in OAH
- ❑ 75 OS § 320; OAC 340:2-28-24; 340:2-28-25
- ❑ Request a copy of transcript
- ❑ Deposit required, full payment due when transcript is complete
- ❑ Contact information:

Office of Administrative Hearings: Child Support

PO Box 53025

Oklahoma City, OK 73125-3025

405-522-2596

# Recommended Process (Keep it Moving!)

- ❑ Do not: file a brief with the PIE. (You don't have a record yet!)
- ❑ Do not: file anything besides a PIE (i.e., "Notice of Intent to Appeal").
- ❑ Do: Be clear about error you are alleging. Why not attach a "Summary of Case" and "Issues to be Raised on Appeal"? (Exhibits B and C on Supreme Court PIE form)
- ❑ Do: Contact OCSS counsel (appellate and local office). Why not email?

# Recommended Process (Keep it Moving!)

- ❑ After PIE, record is ordered and completed by filing with OAH
- ❑ Response filed 20 days after PIE (not jurisdictional)
- ❑ No hearing necessary at this point, unless motions are pending (e.g., M/Stay Pending Appeal, M/Dismiss Appeal)

# Recommended Process (Keep it Moving!)

- After completion of record:
  - Contact counsel for OCSS and other opposing counsel and district court judge to discuss process
  - May use Status Conference (depending on county)
- Agreed Scheduling Order:
  - Briefing Schedule
  - Hearing Date or waive oral argument
  - Date for decision

# Standards of Review in Administrative Appeals

# Limits on Scope of Appellate Review

- ❑ 75 OS § § 321, 322
- ❑ District court cannot:
  - Substitute its judgment as to weight of evidence
  - Exercise first-instance cognizance
  - Make original findings of fact
- ❑ Not a de novo review of evidence
- ❑ Great deference to agency orders
- ❑ Must affirm if order is valid and free from prejudicial error

# Administrative Decisions Appealed to District Court: Statutory Basis

- ❑ 75 O.S. § 322 -- Can reverse if:
  - Exceeded statutory authority/jurisdiction
  - Based on error of law
  - Clearly erroneous based on evidence
  - Arbitrary and Capricious

# Exceeded Statutory Authority/Jurisdiction

- ❑ Applies to challenges to agency court's jurisdiction
- ❑ Issues of jurisdiction are reviewed de novo
- ❑ Reviewing Court may make independent findings of fact concerning jurisdictional questions

# Errors of Law

- ❑ Applies to agency decisions on **questions of law**
- ❑ Interpretation of rules and statutes
- ❑ Governed by *de novo* standards
- ❑ *De novo* standard applies to agency interpretation of administrative rules
  - Administrative rules have force and effect of law
  - Some exceptions (outside the scope of this presentation)

# Clearly Erroneous

- ❑ Applies to agency decisions on **questions of fact**
- ❑ Significantly deferential
- ❑ Reviewing court cannot substitute its judgment (75 OS § 322)
- ❑ Affirmed if record contains substantial evidence in support of facts
- ❑ Reversed only if “definite and firm conviction that a mistake has been committed”

# Arbitrary and Capricious

- ❑ Analogous to abuse of discretion
- ❑ Most deferential standard
- ❑ Reviewing court may strongly disagree with decision, but cannot reverse if decision is a reasonable choice under the facts/law
- ❑ Look for:
  - No support in record
  - Disregard of prior agency interpretation of rules
  - Unreasonable disregard of facts and circumstances

# After the District Court Rules on Administrative Appeals: Supreme Court

- ❑ Supreme Court Rules on Appeals from Final Order of District Court apply (time limits, briefing, etc.)
- ❑ Same standard of review as applied by district court
- ❑ Must affirm administrative order if valid and free from prejudicial error

# Considerations

- ❑ To appeal or not: Consider the standard of review and whether you can meet your burden on appeal
- ❑ Do a road map: Agreeing on procedure at outset will ensure timely review and resolution of administrative appeal
- ❑ Is there another way to get where you're going?
  - Consider whether to file PIE, Motion to Vacate, Motion to Modify, Motion for Rehearing
  - Defaults, Changes in Circumstance vs. true error by ALJ
  - Paternity and Establishment cases: 30 day “Do-Over” in policy (OAC 340:25-5-176 and 178)

# Contact Information:

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- Keep local office advised of appeal proceedings