

## Strategic Considerations in District Court Litigation: “Keep Your Eye on the Ball”

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## APA Claims

- 5 U.S.C. 702 *et seq.*
- APA governs review of agency action where a person has suffered a legal wrong or been adversely effected by agency action
- No alternative means for challenging agency action
- Not jurisdictional. Must be coupled with another jurisdiction granting statute 28 USC 1331
- Must be filed within six years of unlawful agency action

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## APA Claims (cont.)

- If the agency action is inconsistent with agency's own legal standards
  - *Heckler v. Chaney*, 470 U.S. 821 (1985)
- If the agency action is arbitrary or capricious or ignores or discounts substantial evidence in the administrative record without a rational basis. 5 U.S.C. 706
- When agency refuses to act or unreasonably delays action that is legally required. 5 U.S.C. 555 (b)
- When agency action violates a Constitutional right, power, privilege or immunity or when it is in excess of statutory authority, jurisdiction, limitation or right or when it violates procedures established by law. 5 U.S.C. 706(2)(A)-(D).

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## APA Claims (cont.)

- In most cases, the standard of review is "substantial evidence" test. This test applies when the agency decision was rendered after a full adjudicatory hearing designed to produce a record that forms the basis of the agency action. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971). The agency decision must be responsive to the evidence produced and based on a consideration of all the relevant factors and evidence in its entirety.
- Alternatively, the court can apply a de novo standard to certain circumstances. 1) when the agency action is adjudicatory in nature and the agency fact finding procedures are inadequate, or 2) when issues that were not before the agency are raised in a proceeding to enforce non-adjudicatory agency action. In some cases, you may be able to argue that the agency's fact finding procedures were inadequate to obtain de novo review.
- Finally, you can seek review under the arbitrary and capricious standard. Here, the court will determine if there is a rational basis for the agency decision.

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## Venue Considerations

- Prior favorable case law
- Where company headquarters are located
- Where beneficiary resides
- Where work location is located
- Where Service Center is located
- D.C.

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## Standing to Sue: Strategic Considerations in Choosing a Plaintiff

- Why a Corporate Plaintiff might not want to sue
- Beneficiaries as Plaintiffs
- Organizations or Associations as Plaintiffs

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## Standing to Sue

Article III requires that plaintiff have standing in all federal court litigation by showing plaintiff suffered:

- 1) An "injury in fact" to a legally protected interest that is "concrete and particularized" and "actual or imminent";
- 2) Fairly traceable to the challenged conduct; and
- 3) Likely to be redressed by a favorable decision

*Lujan v. Defenders of Wildlife*, 504 U.S. 555,560-61 (1992)

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## Standing to Sue

- APA imposes an additional standing requirement:  
*A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute.* 5 USC §702
- Interpreted as within the "zone of interest" the statute was intended to protect/regulate  
*Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153 (1970)
- Test is "not especially demanding" under the "generous review provisions" of the APA and the "the benefit of any doubt goes to the plaintiff"  
*Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1388 (2014)

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## Exhaustion of Administrative Remedies

- Is there a statutory requirement to exhaust?
- If not, sound judicial discretion governs
  - *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *Darby v. Cisneros*, 509 U.S. 137, 154 (1993)
- Factors: Available remedies provide adequate relief? Will irreparable injury occur absent intervention? Would administrative appeal be futile? Is a substantial Constitutional question raised?

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## Interim Relief

- Considerations in obtaining interim relief
- Standard for a TRO or Injunction

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## The Prayer for Relief

- What are you asking for?
- What is injunctive relief?
- What is declaratory relief?
- Can the court grant the relief you seek?

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## Questions? Comments?

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