

# Sword Swallowing

## Administrative Challenges And Appeals

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## Administrative Challenges & Appeals

1. Finality
2. The 5 Ws of a Challenge
3. Sidestepping Sovereign Immunity
4. Standards of Review
5. Agency Deference
6. The Administrative Record
7. Appealing your Appeal



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# Coulrophobia?

## *Fear of Clowns*

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## Finality

*It ain't over till...*

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## Sorry. *\*May\** I appeal?

- In general, there is ***no inherent right*** to appeal agency decisions
- Need **waiver of sovereign immunity** and **cause of action**
- Texas rights to appeal AO:
  1. Statutory route
    - Final orders in contested cases under the APA; or
    - Agency's organic statute
  2. Order adversely affect a vested property right or violates a constitutional right

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## If not a person, stop here

- **Federal APA (5 USC § 702):** “A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”
  - *Exception: Statute precludes review or committed to agency discretion by law*
- **Texas APA (Tex. Gov't Code § 2001.171):** “A person who has exhausted all administrative remedies available within a state agency and who is aggrieved by a final decision in a contested case is entitled to judicial review.”

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