

# Appeals (Process and Pitfalls)

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ANN TODD  
D. STAFFORD & ASSOCIATES

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**Agenda**

- Regulations Review
- Appeal Realities
- Appeal Scenarios

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REGULATIONS REVIEW

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**Two Appeal Opportunities**



Determination regarding responsibility



Dismissal of a formal complainant or any allegations

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**Required Bases for Appeal**



<p>Procedural irregularity that affected the outcome of the matter</p>	<p>New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter</p>	<p>Conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter</p>
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**“As to all appeals, the recipient must...”**



		
<p>Notify other party in writing</p>	<p>Appeal decision-maker has no other role</p>	<p>No conflict of interest of bias</p>

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**“As to all appeals, the recipient must...”**



		
<p>Both parties have an opportunity to submit a written statement</p>	<p>Issue a written decision describing result and rationale</p>	<p>Issue simultaneously</p>

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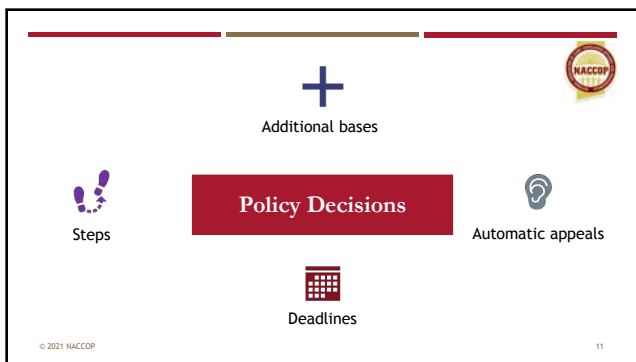
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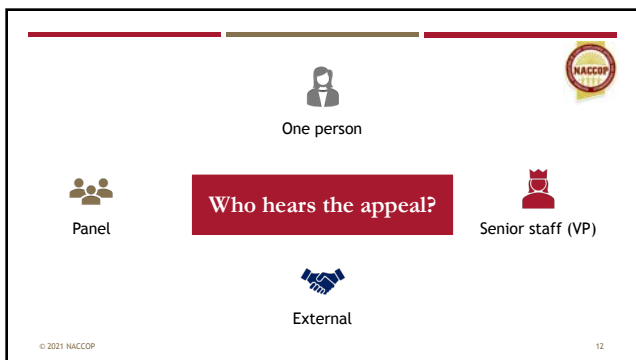
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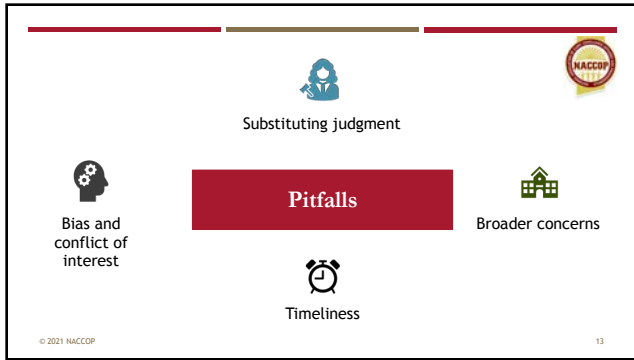
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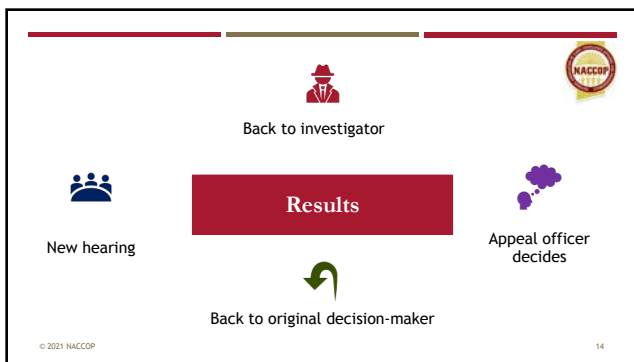
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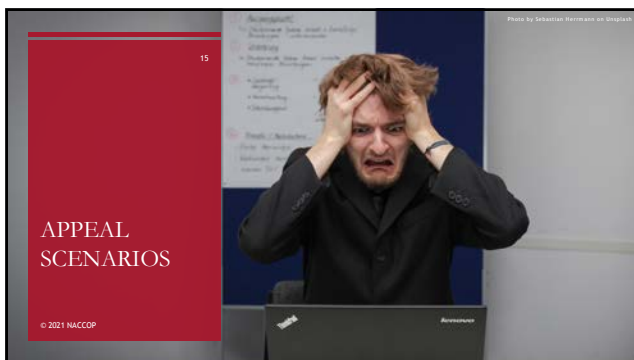
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**Case Study: The Order**

The respondent has filed an appeal claiming a procedural irregularity. On the hearing agenda, it indicated that the respondent should have been cross-examined first; however, the complainant went first.

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**Case Study: The Missing Pages**

The respondent has filed an appeal claiming a procedural irregularity and new evidence. They received the final report without the complainant's written response to the report. It seems that those pages were omitted. The respondent claims that they were unaware of the missing pages because there were no page numbers. The respondent stated that they were not able to prepare accurately for the hearing.

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**Case Study: The Witness**

The complainant has filed an appeal claiming new evidence. The complainant stated that they just learned of a witness to the incident (alleged sexual assault at a fraternity party). A fraternity brother of the respondent walked into the room as the respondent was penetrating the complainant. The witness had not come forward earlier for fear of retaliation.

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**Case Study: The Fan**

A recent student sexual harassment case resulted in a finding of “not responsible.” The complainant has submitted an appeal claiming investigator bias. The appeal states that the investigator was biased against her because the investigator favored the respondent, a football player. The complainant referenced being interviewed in the investigator’s office which had school football paraphernalia displayed, including a signed football with the respondent’s signature.

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For more information:  
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**Upcoming D. Stafford Virtual Classes**

- **Title IX Coordinator** (11:00 AM - 5:00 PM Eastern)
  - October 4 - 8, 2021
- **Combined Sexual Misconduct and Domestic/Dating Violence and Stalking Investigation** (11:00 AM - 5:00 PM Eastern)
  - August 23 - 27, 2021
- **Advanced Investigations** (9:00 AM - 5:00 PM (Eastern Time))
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Upcoming D. Stafford Virtual Classes

- Behavioral Intervention Team/Threat Assessment Team Training (10:00 AM - 5:30 PM Eastern)
  - June 22 - 24, 2021
  - December 1 - 3, 2021

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8<sup>TH</sup> ANNUAL NACCOP CONFERENCE:  
A Live, Virtual Event

Conference - July 21-23, 2021  
Pre-Conferences - July 20, 2021

- Pre-Con #1 for CCOs - Addressing VAWA Policy Statements for Non-Title IX Procedures in the Annual Security Report
- Pre-Con #2 for CCOs - Developing Internal Memorandums of Understanding (MOUs) with Key Departments to Facilitate a Higher Level of Institutional Cooperation with Clery Act Compliance
- 2021 ADVANCED TRACK OPTION - Case Reviews: These sessions include a Case Review where attendees will participate in reviewing a sample incident report narrative to determine the correct classification and count for each report and to practice adding entries to the Daily Crime Log. This session will provide practitioners with an opportunity to apply their knowledge to real-world scenarios.
- The finalized agenda will be released in the late Spring of 2021.

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