



Feb 04, 2025

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# To Appeal or Not to Appeal? A Guide to Post-Trial Decision Making

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To appeal or not to appeal? That is the question, and one that is often not carefully considered. An unfavorable verdict can be devastating, and the immediate impulse might be to appeal. But the decision to appeal requires careful evaluation by experienced appellate counsel.

## Understanding Appeals

An appeal is not a new trial or a chance to present new evidence. Instead, it's a review of the trial court's proceedings to determine if legal errors occurred that substantially affected the outcome. Success on appeal typically requires showing both that an error occurred and that it was significant enough to warrant reversal.

Many trial court decisions receive considerable deference on appeal. This means that even if the appellate court might have ruled differently initially, it won't reverse the decision unless specific criteria are met. Understanding these limitations is crucial to evaluating whether an appeal makes sense for your case.

***Continue reading the article below or watch this short video for key points and takeaways.***

## The Role of Appellate Counsel in Evaluating an Appeal

The evaluation of whether to appeal should be conducted by experienced appellate counsel. Appellate attorneys understand:

### *Whether a particular ruling is even appealable*

Not every error by a trial court is immediately appealable. The rules vary by jurisdiction, but the answer will involve whether the ruling fully and finally resolves the case or involves certain types of issues that can be appealed on an interlocutory basis before a final decision.

### *Which errors are likely to result in reversal based on current precedent*

Even if an error occurred, appellate courts generally won't reverse unless the error was harmful enough to affect the outcome. Your counsel will evaluate whether the error was significant enough in the context of the entire case to justify reversal.

### *How to identify issues that were properly preserved for appeal*

Not every error that occurred at trial can be raised on appeal. Issues cannot be raised for the first time on appeal and must generally have been properly preserved in the trial court record through timely objections and rulings. Appellate counsel can evaluate the trial record to identify which potential issues are available for appeal.

### *The applicable standards of review and their impact on success*

Different types of errors are reviewed under different standards on appeal. Some decisions receive almost no deference, so the appellate court may reverse if it simply disagree with the trial judge.

Other types of errors will only be reversed in extreme circumstances. Understanding which standard applies is crucial to evaluating the likelihood of success.

### *The likelihood of success based on the specific appellate court's tendencies*

An evaluation of your chances on appeal necessarily involves an evaluation of the court that will hear the appeal—the procedures *and* the personnel—and a consideration of how the trial judge may be viewed by the appellate judges. Experienced appellate counsel will know the rules and the judges.

### *The costs and benefits of pursuing an appeal*

Important considerations include whether the judgment will be stayed during the appeal (and the cost of any supersedeas bond or other security), the impact of delays associated with the appellate process, and the impact of an adverse judgment as future precedent. Counsel should understand what the case means for their clients as part of the appellate evaluation process. An appeal may also offer an opportunity for settlement discussions.

### *How to frame issues effectively for appellate review*

Appellate advocacy is different from trial court advocacy. Appellate courts will often focus on the broader context of issues. Appellate lawyers need to find creative solutions to difficult legal issues, especially when trying to overturn a bad result or when faced with bad facts. Yet appeals offer far more limited opportunities for advocacy—one or two briefs and perhaps an oral argument. The ability to distill complex arguments and stories into direct, persuasive prose is essential.

## Selecting Appellate Counsel

Choosing the right appellate attorney may be crucial to your appeal's success. The best results will likely come from counsel with

specific experience in appellate practice and with the subject matter of your case.

Strong research and writing skills, coupled with strategic thinking, are the hallmarks of appellate lawyers. And familiarity with the relevant appellate court—the procedures and the people—is important. Appellate counsel should have a clear communication style and offer a realistic assessment of your appeal. You should expect understanding of both legal and practical considerations surrounding the case.

By understanding both the opportunities and limitations of the appellate process, and by selecting counsel with the right experience and subject-matter knowledge, you can make an informed decision about whether an appeal serves your interests and offers a realistic path to achieving your legal and business objectives.

*Frost Brown Todd's appellate advocates have a proven track record of success in appeals involving questions of first impression, bet-the-company judgments, and decisions that shape the rules under which our clients will operate well into the future. For more information, please contact the author, [Griffin Terry Sumner](#), or any attorney with the firm's [Appellate Practice Group](#).*

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