

Beyond the Verdict: What Every Litigant Should Know About the Appellate Process

The trial is over. The jury has spoken – or the judge has ruled – and the outcome wasn't what you hoped. Now what?

At that moment, many litigants turn to the idea of an appeal as a second chance, a do-over. It's important to understand what an appellate court can and cannot do after a jury or judge decides against you. Appeals are not do-overs. They're not a second chance to re-argue your case or introduce new evidence. They are legal proceedings that follow strict rules and standards, designed to correct legal errors that may have changed the original trial's outcome.

A thorough understanding of how the appellate system works, what it can and cannot do, and what parties should consider before filing an appeal is critical for success.

The Role of Appellate Courts

Trial courts are where facts are developed and applied to the law. Witnesses testify, documents are admitted, and arguments are made. Appellate courts operate differently. They do not re-hear testimony, re-evaluate facts, or hear new testimony or facts. Their primary role is to review the trial court's proceedings for errors of law or legal procedure that may have affected the outcome.

They ask: Did the trial court correctly apply the law? Were any mistakes made that materially affected the outcome?

What an Appeal Can and Cannot Do

An appeal is not an opportunity to retry a case. It is a legal tool for reviewing trial court decisions based on specific types of alleged errors. These reviews may lead the appellate court to affirm the trial court's decision, reverse the decision and order a new trial, or remand the case back to the trial court to apply the facts to the law in a different way or under a different standard.

Common grounds for appeal include:

Incorrect interpretation or application of the law: If a judge misunderstood a statute, misapplied a legal principle, or gave the jury an incorrect legal instruction, that may form the basis of a strong appeal.

Improper admission or exclusion of evidence: If evidence was admitted (or excluded) in a way that prejudiced one party unfairly, an appellate court may find error.

Procedural irregularities: If there were errors in the conduct of the trial itself, such as improper jury selection, denial of a fair opportunity to present a defense, or a failure to follow required procedures, this could lead to a reversal of the trial court's decision or verdict.

Abuse of discretion: If a trial judge made a decision that was outside the bounds of reasonable judgment, arbitrary, or not supported by the evidence, the appellate court could reverse.

Insufficient evidence to support the verdict: If, after a review of the fact-finding, there is not legally sufficient evidence to support the verdict, the appellate court can vacate the verdict.

An appeal must be rooted and focused on questions of law, not hindsight. It does not re-evaluate the credibility of witnesses, introduce new evidence or facts not raised at trial, reopen issues that were not properly preserved with objections or motions during the trial, or even guarantee a new trial. Thus, it is of critical importance that, during the trial and pre-trial proceedings, a complete record is made of evidentiary rulings (including the exclusion of evidence at trial, pre-trial discovery orders precluding certain witnesses or questions or documents, pre-trial document spoliation disputes, expert witnesses)[\[1\]](#) and objections are made to preserve arguments for appeal.

Is This Case Right for Appeal?

Not every unfavorable outcome warrants an appeal. Many clients understandably feel that something went wrong, but that feeling must be translated into a legally actionable argument for it to succeed.

This is where **standards of review** become essential. They determine how closely the appellate court will examine the trial court's decision.

A fresh review, known as de novo. Used when the appellate court needs to interpret the law or determine how it should be applied to the facts of a case. This review is without deference to the lower court's decision: the appellate court makes an independent determination of the law and applies the facts to the law.

Abuse of discretion: Used for trial-level decisions, like evidentiary rulings or discovery disputes. Significant deference is given to the trial judge. This applies to many trial management issues, including evidentiary rulings and

discovery decisions. The appellate court will only reverse if the judge's decision was unreasonable.

Clear error. Used based on the proposition that the trial judge was clearly erroneous. The appellate court will only overturn if it believes a mistake was obvious and materially affected the result.

Understanding which standard applies is key. A legal misinterpretation under the de novo review has a better chance of reversal than a discretionary call reviewed deferentially. The applicable standard of review can significantly affect the likelihood of success on appeal.

Timing and Strategic Considerations

Appellate deadlines are strict. In most jurisdictions, a notice of appeal must be filed within 30 days of the judgment or final order. Missing the deadline usually means losing the right to appeal.

But timing is only part of the strategy. A client and their legal team should ask:

- Was the error properly preserved at trial through objections or motions?
- Is the error clearly reflected in the trial record?
- Will the potential benefit of a successful appeal outweigh the costs, time, and risk of further litigation?

Sometimes, an appeal may lead to a reversal or a new trial. Other times, it may reinforce the original outcome but clarify legal issues or preserve rights for future litigation.

How Long Does An Appeal Take?

While deadlines to file an appeal are short, the process can stretch over many months or even years. Here is a general timeline, but it is important to check each court's rules to confirm the timing:

- **Notice of Appeal:** Typically due within 30 days of final judgment. This preserves the right to appeal but is only the beginning.
- **Record Preparation:** The trial transcript and other relevant documents must be assembled and certified. This can take 30-90 days. Generally done by an appellate printer. Sometimes prepared jointly with the respondent (the other side).
- **Briefing Schedule:** Once the record is complete, the appellant files an opening brief. The respondent then has time to reply, followed by an optional reply brief. This full briefing process often takes 3-6 months. The timing for the briefing is set by the court's rules, so be sure to check them.

- **Oral Argument:** After briefing is complete, the court schedules oral argument—if granted. In many courts, this may not occur for several months after briefs are filed.
- **Decision:** Appellate courts do not issue decisions from the bench. Instead, a written opinion is drafted and filed. This can take weeks to several months after argument (or after submission, if no argument is held).

A typical appeal in state court might take 9 to 18 months from start to finish. In federal court, the timeline may stretch longer depending on complexity and circuit backlog. Expedited appeals, such as election-related cases, may move faster, but they are the exception.

Knowing the long horizon helps set client expectations and may inform strategy, particularly if a remand to trial court is a desired outcome.

The appellate process is not a second chance – it’s a focused inquiry into whether the law was applied fairly and correctly. It requires legal precision, strong writing, and a clear understanding of what appellate courts can do.

A well-timed, well-argued appeal can correct meaningful legal errors, but success depends on knowing the rules, understanding the record, and acting quickly and strategically. For litigants emerging from a trial with an unfavorable result, clarity about what comes next – and how long it may take – is essential.

The decision to appeal should be made based on a realistic assessment of the grounds, the record, and the applicable legal standards. When done strategically, an appeal can correct meaningful legal errors and shape the direction of a case—or even the law itself.

[\[1\]](#) Federal appellate practice, and most state-level appellate practice, requires a final order before anything can be appealed. New York state practice is different, and permits interlocutory appeals to be taken during the litigation from most decisions and orders, including most discovery orders. This means that there can be several appeals in a single litigation in a New York state action, while there is normally only a single appeal in a federal action.