

Not Every Appeal Goes to the Top: Understanding the Pathways in State and Federal Court

Sometimes a judge or jury finds against you, and you must decide whether and how to appeal. But not every court ruling can be appealed. And not every appeal can make it all the way to a state's highest court or to the U.S. Supreme Court. The appellate process is selective and structured. Different kinds of rulings can be appealed at the state and federal levels.

Appeals—except in very rare situations—do not automatically land in the highest courts. Whether your case is in state or federal court, understanding the scope of appellate review, court hierarchy, and the route an appeal must follow is essential to making an informed decision about what to do during litigation and after trial.

Not Every Ruling Can Be Appealed

As a general rule, only **final judgments** can be appealed—that is, when the trial court has resolved all claims for all parties. These final decisions signal the end of the trial phase and open the door to an appellate review.

What is a final judgment? This might seem like an easy question. The document entitled “judgment” is the final judgment. But not every case ends with entry of a “judgment” and sometimes courts have authority to entertain and decide post-judgment matters. Identification of the final judgment is an important question because it is entry of the final judgment that ordinarily triggers the time to file a notice of appeal.

But what about orders that come before the end of a case? These **interlocutory**, or non-final orders, often address important issues that can impact the case in various ways, such as discovery rulings, evidentiary decisions, or denials of summary judgment. In federal courts, interlocutory, non-final orders usually cannot be appealed immediately. Some states, such as New York, permit appeals of certain interlocutory orders. Other states do not. In general, there are limited situations where the appellate rules allow certain interlocutory appeals (such as injunction orders or class certification rulings), but these are the exception.

If a party disagrees with how the trial court ruled on an issue, but it doesn't fall within the narrow band of appealable interlocutory orders, then it is very

important to preserve the issue for review and wait for a final judgment to be issued, at the end of a trial or otherwise.

The State and Federal Systems Are Not the Same

Although both state and federal courts have multi-tiered appellate systems, the paths they follow—and the terminology they use—can differ in important ways. And whether a case belongs in state or federal court depends on the nature of the case and the parties involved.

Each state has its own court system, and cases are filed in the trial court with jurisdiction over the matter, which can depend on what kind of dispute, how much is at stake, where the events occurred, and where the parties are located. A case may be filed in federal court only if it meets specific criteria, such as involving a federal law, a constitutional issue, a treaty, or otherwise meets the criteria for federal diversity jurisdiction, where the parties are from different states or countries and the amount of the controversy exceeds \$75,000. A case may be removed from state to federal court only if it qualifies under one of the federal categories—this is a procedural move, not an appeal.

Even though federal jurisdiction is ordinarily addressed at the trial court level, it is important to look at the issue of jurisdiction afresh when considering an appeal. In many cases, lack of subject matter jurisdiction is a defense that cannot be waived and can be raised at any time.

If a case begins in state court and proceeds through trial, that case would be appealed to and proceed through the state appellate system. The same is true in the federal system: a federal trial leads to a federal judgment and federal appeal. In rare instances, a case may shift from the state appellate system to the federal appellate system if a federal constitutional issue is involved and the U.S. Supreme Court grants review (cert).

For **State Court**, each state has its own court structure. Most follow a similar pattern:

- It is the **Trial Court** where the case is initially heard. Most cases, especially personal injury, contract disputes, or real estate, begin in a state trial court, where state law governs the dispute.
- Many states have **Intermediate Appellate Courts** like the Appellate Division (in New York) or the Court of Appeals (in California and many others) that hear appeals as a matter of right from trial courts.
- A state's highest court is the **State Supreme Court**, such as the New York Court of Appeals or the California Supreme Court. These courts generally have discretionary review and take only selected cases — usually those involving unsettled legal questions or issues of public importance. An exception is Texas, which has two highest courts: the

Texas Court of Criminal Appeals, for criminal matters, and Texas Supreme Court, for civil matters.

Naming conventions from state to state can be confusing. For instance, in New York, the “Supreme Court” is actually the trial court, and the “Court of Appeals” is the highest court.

In the **Federal System**:

- It is the **District Court**, at the trial level, where cases begin.
- The first level of appeal is the **U.S. Court of Appeals**, within the federal circuit court that covers the geographic region (such as the Second Circuit for New York, Connecticut, or Vermont). This is an “appeal as of right,” meaning the court must review properly filed appeals from final judgments.
- The nation’s highest court, the **U.S. Supreme Court**, exercises almost complete discretion over what cases it hears. A party must petition for a writ of **certiorari**, and the Court grants review in only a small fraction of cases — typically those presenting important legal questions, conflicts between circuits, or matters of national significance.

State and Federal Systems Differ

Although both state and federal courts have multi-tiered appellate systems, the rules for what can be appealed — and how easily — vary by jurisdiction. One important example is New York State, which offers one of the most accessible appellate structures in the country.

In New York, most interlocutory trial-level decisions can be appealed to the Appellate Division as of right. That means parties do not need to seek permission from the court to file an appeal, so long as they file a notice of appeal within the strict time limits in the procedural rules. New York permits appeals from most non-final orders — including those that affect a substantial right — which are not always reviewable in other jurisdictions.

This relatively broad right to appeal is valued in commercial litigation. It ensures that legal errors made at the trial level can be reviewed on the merits by an intermediate appellate court. As a result, New York law is often selected in commercial contracts — not only for its well-developed body of business law, but because of this clarity and access to the appellate process. When disputes arise, parties can feel confident that meaningful appellate review is available without procedural roadblocks or long delays.

For businesses, this means New York is not just a hub of commerce — it’s a jurisdiction where appellate oversight is built into the process. That can be a strategic advantage when deciding where and under what law to resolve potential disputes.

Appeal as of Right vs. Discretionary Review

A critical distinction in the appellate process is between an appeal as of right (which a higher court is obligated to hear) versus a discretionary appeal (which the court may choose to hear). This concept often comes up in popular press with en banc reviews in at the federal Court of Appeal level: the Courts of Appeal will hear an appeal as of right by a three-judge panel. If a litigant is dissatisfied with the result, it can request that the entire Court hear the appeal en banc. That review is discretionary and rarely granted. Certiorari to the United States Supreme Court is also generally discretionary and rarely granted.

Climbing the Ladder Is Rare

Very few cases make it all the way to the highest court level: a state supreme court or the U.S. Supreme Court. Most appeals are resolved at the intermediate level. In state court, the intermediate appellate court's decision usually stands unless the state's highest court agrees to take up the case. In federal court, that means the Court of Appeals decision often becomes the final word.

The reality is that appellate courts are focused not on correcting every perceived mistake, but on developing consistent legal standards. They do not retry facts but rather clarify the law and make sure that the trial courts have clear guidance on interpreting and applying the law.

What Clients Should Know

Understanding these boundaries can help set realistic expectations and shape the legal strategy from the beginning of a case. A strong litigation record, trial record, clear legal arguments, and timely objections are all foundational to any successful appeal, particularly if the goal is to take the case beyond the first level of review.

An appeal isn't just about fighting an adverse decision — it's about asking the right court the right legal question at the right time. And sometimes, knowing when not to appeal is just as strategic as deciding when to move forward