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Entrepreneur's Guide to Litigation - Blog Series: Appeal Process

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An appeal allows a party to have its case reviewed by a higher court, but it is not a chance for the party to fully re-try its case. In fact, a common litigation maxim is: **if you want to win on appeal, win at trial.**

While in certain situations a party may appeal a ruling by the trial court while a case is pending, generally a party files an appeal after a final judgment has been entered in the case. As outlined in previous sections of this series, a final judgment is entered after a party wins at the motion to dismiss stage, summary judgment or after trial. After a final judgment is entered, **the party seeking to appeal faces strict time limits within which the party must file a notice of appeal.** The rules governing the appeal procedure vary depending on whether the case is a state or federal court action. In state court, an appeal is filed with an intermediate appellate court with jurisdiction over the state trial court. In federal court the appeal is filed in the Circuit Court of Appeals with jurisdiction over the federal district (trial) court.

Once the appeal process has begun, the non-prevailing party under the final judgment files the initial appeal brief and is known as the appellant. The other party, referred to as the appellee, then files a response brief. Depending on the procedure of the particular appellate court, the appellant may then have the opportunity to file a reply brief. In its appeal brief, an appellant sets out the legal issues or errors that it believes were made by the trial court.

The role of appellate courts is to review legal issues, meaning the application of legal rules to a set of facts. Except in rare situations, **appeals courts will not address issues of fact.** A common example that illustrates the distinction: an appeals court will review whether the judge, under the rules of evidence, properly allowed certain testimony during the trial, but it will not review whether the witness's testimony was credible. The finder-of-fact at trial, meaning either the trial judge or jury, actually sees the live testimony and presentation of other evidence and is therefore best suited to assess the credibility of witnesses. Appellate courts give considerable deference to the factual determinations made by the judge or jury below and instead focus on the questions of law presented in the case. When a case is appealed from a decision granting summary judgment, the trial court below has determined that there are no genuine factual issues in dispute. In these instances, the appellate court frequently does not give deference to the trial court's decision.

An appeal may be decided solely on the written briefs submitted by the parties. Some appellate courts, especially supreme courts, also permit oral arguments by counsel. During oral arguments each party presents legal arguments and responds to questions from the panel of appellate judges deciding the case. Although the legal issues are often extensively argued in the written briefs, appellate judges place great emphasis on oral argument because it gives the judges the opportunity to challenge those arguments and get clarification on key points. After the briefing and oral argument stage, the appellate court will issue a written decision which outlines the court's legal reasoning and, if necessary, directs any further action to be taken in the case.

Generally speaking, **parties in state or federal court have the right to an appeal before an intermediate appellate court. An appeal to a state supreme court or the U.S. Supreme Court, however, is only granted if that high court chooses to hear the case.** Of all the potential appeals



Article By
[Michael Best & Friedrich](#)
[Michael Best & Friedrich LLP](#)

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submitted to state supreme courts or the U.S. Supreme Court, only a very select few are granted. The appeals chosen by those high courts typically involve significant legal issues that implicate broader public concerns. Thus, while an appeal affords a party another opportunity for relief, the scope and likelihood of that relief is limited by the purpose and function of appellate courts.

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