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Appeals: The Basics

How is an Appeal Different from a District Court Matter?

At a high level of generality, the district court makes decisions in the first instance, and the appellate court reviews those decisions and decides whether to reverse them. But an appeal is no second bite of an apple. For example, if the district court's decision was a factual one--e.g., weighing evidence, finding one witness's testimony credible or not credible--the appellate court is not free to simply view the evidence differently. Rather, it must generally accept the facts found by the district court unless the district court was "clearly erroneous." That is a demanding standard. It can be satisfied. But doing so is very hard.

Appeals are generally a time to argue legal errors, like statutory interpretation. If a district court read a statute one way, and the appellate court thinks that way is wrong, it generally need not defer to that reading because it presents a legal decision, not a factual one.

But even when arguing legal errors, appeals are generally not a time to raise arguments for the first time. Generally, an appellate court will not reach an issue not raised by a party below. Exceptions exist. However, this general rule is frequently cited on appeal without further analysis for why an appellate court will not reach a newly raised issue.

As another difference, appeals are often much more focused proceedings. Prudence, persuasion, and often deferential standards of review counsel in favor of appellants raising a select few arguments on appeal. An appellant should not simply re-argue every lost battle. They should consider whether an argument would implicate a standard of review that requires deference to the district court's decision and assess the argument's strength in light of (1) the standard of review and (2) the arguments and, as relevant, evidence that is in the record.

If the argument or needed evidence is not *in the record*, it is beyond the scope of what the appellate court will generally consider on appeal.

How Can an Appellate Lawyer Help?

Those differences relate to why getting the outside perspective of an experienced appellate lawyer is so helpful when deciding whether to appeal and, if so, what arguments to raise on appeal. Even the best lawyers may struggle to decide whether a loss is worth appealing when the lawyer was the one that lived it. An appellate lawyer can assess your case similar to how an appellate court may, looking only to what the record reflects, the demands of the standard of review, and the law.

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If you would like to consider getting that perspective from an experienced Arthur Chapman appellate attorney, appeals@ArthurChapman.com to schedule a free consultation. Note, we are always happy to partner with trial counsel on appeal. We are happy to discuss that option.

How Long Does an Appeal Take?

In most jurisdictions, a meaningful answer is hard to come by. That is because most appellate courts have no deadline for issuing opinions. Roughly a year or two between the appeal starting and the court's opinion is about as specific as you could get for an estimate.

But, in Minnesota, 9-12 months from the filing and service of the notice of appeal is often the answer. That answer is possible in large part because of the Minnesota Court of Appeals' general 90-day (3-month) deadline for issuing opinions, running from the date of oral argument or final submission of the parties' briefs or memoranda, whichever is later. Minn. Stat. § 480A.08, subd. 3(a). Most appellate courts in other jurisdictions do not have such deadlines.

What accounts for the remainder of the roughly 6-9 months of the appellate process?

- Briefing generally lasts 2.5-3 months, as the appellant generally gets roughly 30 days (1 month) to file and serve an opening brief, the respondent generally gets roughly 30 days (1 month) to file and serve a response brief, and the appellant then generally gets 14 days (.5 of a month) to file and serve a reply.
- Before briefing occurs, there's often roughly 2.5 months, comprised of the 14 days the appellant gets to order needed transcripts (.5 of a month) and the 60 days (2 months) the court reporter gets to prepare and transcript the transcripts .
- After briefing, the court often holds oral argument, which it often does not hold until roughly 1-3 months after filing and service of the appellant's reply brief. Even when the court does not hold oral argument, it will still generally hold a non-oral conference internally to confer on how to decide the appeal, and often not until roughly 1-3 months after the reply. The court treats the non-oral conference as the date on which the case was submitted for the purpose of triggering the 90-day opinion deadline.

Circumstances that can *shorten* the appeal's timeline include:

1. When no transcript is required and no transcript is ordered, which reduces the timeline by up to roughly 2 months, and
2. When the court dismisses the appeal, such as when it is premature or untimely.

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Circumstances that can *lengthen* the appeal's timeline include:

1. If the court grants any extension to the court reporter or any of the parties;
2. If motion practice occurs on appeal (though this may have no impact);
3. If the respondent filed and served a cross appeal; and
4. In family-law appeals, if mediation occurs, which stays the appeal.

Losing parties have a right to file a petition for review ("PFR") with the Minnesota Supreme Court. But that court has a 60-day deadline for deciding PFRs, running from the date on which the petitioner files the PFR. Minn. Stat. § 480A.10, subd. 1. And it generally denies PFRs.

How Much Does an Appeal Cost?

This is a tough question because the answer depends on five main factors:

1. The number of issues raised on appeal;
2. Their complexity;
3. The length and complexity of the prior proceedings;
4. The complexity of the appellate process (e.g., is there motion practice? are amici curiae involved?); and
5. The hourly rate charged. Because there are no average appeals, there are no average appeal costs. Also, while most appeals begin and end with intermediary appellate courts (e.g., the Minnesota Court of Appeals and the Eighth Circuit Court of Appeals), some are accepted for further review by courts of last resort (e.g., the Minnesota Supreme Court and the U.S. Supreme Court).

But with those significant caveats, \$15,000-\$40,000 is a reasonable, rough, in-abstraction, ballpark estimate of appellate costs. These include what you will need to pay your lawyer. But they also include what you may need to pay to file the appeal if you are the appellant (\$550 in Minnesota) and for transcripts of prior proceedings (which can range from just a few hundred dollars for a short hearing to exceeding \$5,000 for transcribing multiple days of trial).

Appeals, like all litigation, are expensive. But, Arthur Chapman's experienced appellate attorneys are always happy to provide you a free appellate consultation—including their best estimate on what your appeal may cost. Drop us a line appeals@ArthurChapman.com. We are eager to help.