

How and When To File An Appeal

By Trish Weaver

So, you thought the trial went well, but somehow the judge didn't see things your way. Your trial counsel is stressing, and you're wondering what happened and whether you have any recourse. Sounds like the scenario for a potential appeal.

If you want to position yourself to pursue that possibility in the state of Maryland, you must file a Notice of Appeal within 30 days of the entry of a final judgment. That sounds simple enough; just count off 30 days and file. Yet determining when a "final judgment" is entered can be trickier than it sounds. I have succeeded in having a number of opponent's appeals dismissed by the Maryland appellate courts because the other side filed its notice of appeal either too early or too late. If you do not correctly determine whether you have a "final judgment" and end up filing before or after the designated time period, you have created what is called a "jurisdictional defect" and the appellate court cannot save your appeal no matter how compelling your case. Bottom line: Consult counsel to ensure that you have a final judgment and that you have secured your right to appeal.

To determine and evaluate the issues to be raised on appeal, you must understand and accommodate the various standards of review. If you are most aggrieved by the factual findings of the trial court or jury, your chances of success on appeal are between slim and none. The "clearly erroneous" standard applies and affords extraordinary deference to factual findings. If the issue of asserted error involves an area where the trial court has discretion, then an "abuse of discretion" standard applies and your chances of changing the judgment on appeal are still not great.

In my opinion, the single most significant task in handling an appeal in the state of Maryland is finding and framing errors of law. Generally, this means finding an operative legal principle that was misapplied or ignored by the trial court. Errors of law are reviewed de novo and no deference is afforded to the trial court. Recognizing the different standards of review and framing your issues well is a prerequisite to a successful appeal. And, of course, you can only raise issues that have been properly preserved for review.

Assuming that you have found and framed good issues for appeal, the brief can make or break your case. Obviously, cogent arguments well supported by the record – and the law – are key. The brief must be specific and state clearly the particular result that you are seeking. If the outcome you seek depends on facts that are not among those determined by the fact finder at trial, then you will need a remand to the trial court because the appellate court will not make new factual findings. If the error was one of law and no additional factual findings are required, reversal and entry of the judgment in your favor is the best outcome.

After the briefs are filed, the appellate court hears oral argument on the legal issues. A good appellate advocate should recognize her role, not only as advocate, but as a resource providing information to clarify the thinking of the appellate judges (so the judges conclude that you win). At oral argument, a good advocate should emphasize how your interpretation or application of Maryland law serves an important public policy or purpose. It takes a lot of practice – and preparation – and a good appellate advocate must also be flexible, confident, and capable of thinking on her feet.

So, don't despair if things do not always go your way in the trial court. In the aftermath of a disappointing trial result, explore the possibility of appeal. Develop and assess the issues. And take heart in the fact that the trial court does not always get it right.