

# Understanding the Appellate Process



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## **Understanding the Appellate Process**

One of the key ways that justice is ensured and protected in the United States is through the appellate process, which grants one or both parties the ability to ask for a further review of both the case and the way it was tried in a lower court. The appellate process' requirements and quirks generally vary based on the type of case being tried, with slight differences existing between civil cases and criminal cases. Paralegals who work in a litigation capacity should understand the key differences between civil and criminal litigation, and they should be aware of their responsibilities during the original case, when preparing for appeal, and when actually trying the appellate case before a panel of judges. Proper preparation and legal assistance will ensure the best possible outcome at all levels of litigation and appeal, ensuring plaintiffs and defendants are properly exposed to due process and a fair trial.

### **Who Can File an Appeal? Civil and Criminal Cases Enforce Different Guidelines**

Perhaps the most important thing to understand about the appellate process is that it isn't always the losing party that asks for a reconsideration of the case's final result. For those paralegals new to the profession, or simply new to appellate casework, here's what to know when working on civil cases and their slightly different criminal counterparts.

- Criminal cases generally only allow the losing party to file a brief for an appeal after the case's decision has been handed down by a judge or jury. Typically, this appeal must be filed within a very strict deadline. Most courts enforce deadline of between 24 hours and 7 days, though the wait time for an appellate trial may be several weeks or months long.
- Civil cases do not require a party to have lost the case in order to appeal. Instead, both the winner and loser of the case have the right to appeal the judge's decision if they feel there were problems with the original trial. Appeals in this case concern problems with information gleaned during discovery and pre-trial, allegations of a mistrial or of a case simply improperly tried on its merits or, for the party that was handed the losing decision, a reconsideration of that decision based on stricter scrutiny by an appellate panel.

No matter the nature of the case, the paralegal's role in guiding the eventual appeal toward success is instrumental. Paralegals are often the primary contact between attorneys and their clients, and between the law firm and the court where the appeal is being filed. For this reason, the appellate process for paralegals in criminal and civil litigation is one primarily concerned with obtaining documents, filing new documents with the court, arranging for proper documentation of pre-appeal events, and contacting court professionals to arrange for a timely, efficient trial on behalf of both parties. Here's what the appellate process looks like for today's paralegals.

### **The Pre-Briefing Period: Laying the Groundwork for a Successful Appeals Case**

As soon as the appeal is filed by either party, both firms move into a pre-briefing phase that allows them to shore up documentation for the trial that is about to begin. A smooth pre-briefing period, with excellent paralegal work, can sometimes pave one party's way toward victory. Though central to the case, there is good news to be had about pre-briefing procedures: Due to the longer wait times for appellate hearings, most pre-briefing periods last at least several weeks. Some last more than a month or two before the actual briefing begins and the appellate case gets underway. During this extended period of time between cases, paralegals will be concerned with roughly four primary responsibilities.

#### **1. Drafting the Necessary Appellate Documents**

Perhaps the single most important document during an appeal is the Notice of Appeal, which informs both the court and the other party that the case will be continuing on to a higher jurisdiction. This document is often the primary responsibility of litigation paralegals, and it's the first document they'll handle when preparing for the briefing. This document is often created in concert with trial attorneys, who will provide much of the bases for the draft.

When this document has been filed with the appropriate courts, paralegals will be tasked with preparing all other correspondence needed for a successful appellate briefing. This can include any correspondence with the opposing party, any technical documentation indicating why the appeal was filed and how the case might be re-tried in one party's favor, and any other information required for submission by the attorney before a briefing will be granted and scheduled.

## 2. Arrange for Delivery and Certification of Transcripts

Paralegals preparing for an appeals briefing must contact the court reporters where the case originated and coordinate the release of transcripts that document the original trial. These transcripts are then certified by the paralegal or a registered notary. Afterward, transcripts are submitted to the appellate court for verification and consultation during the appeals briefing. Certification proceeds through the Certification as to Transcripts process, a legal measure that verifies the accuracy of the court reporter's work.

## 3. Review All Transcripts as Submitted

While verifying all of the transcripts provided by the lower court's court reporting office, paralegals will use their knowledge of appellate cases and litigation to identify potential exhibits. These exhibits must prove the merits of an appeals case, in order to ensure that the case itself is not turned away by the court of higher jurisdiction. This can be an extensive process, but it's one that can make or break the case altogether.

It's worth noting that many law firms actually require a team of paralegals to work together when identifying appellate exhibits. Often, this means that one professional will identify exhibits and pass the transcripts onto a second set of eyes. The second paralegal, often a more senior member of the staff, will check for accuracy, oversights, or any other potential areas of dispute that might enhance the appeal's chance of success.

## 4. Arrange for Proper Payment or Bonding of Court Costs

The appeals process is an expensive one, and it's the paralegal's job to arrange for cost bonds that "front" the money to the court while the case proceeds. This must be taken care of before the briefing will be scheduled. Arrangement of bonds will depend on the party deemed responsible for appellate costs, which may in turn be handed down to the attorney's client depending on the outcome of the case. Be sure to understand the details of all court costs, and payment arrangements, before securing bonds for these expenses.

## **The Briefing: Procedural Considerations for Paralegals**

The appellate process will move to the briefing phase once all of the pre-briefing work has concluded and the appellate court has issued a date to receive and review the briefing as filed by both parties to the case. Paralegal professionals remain instrumental during this process, with a focus on detail and documentation that can once again make or break the appellate case in its new setting. The key parts of the process will warrant the majority of a paralegal's attention prior to the opening of oral arguments in the case. Virtually all of these involve review of the brief and edits that build a stronger case overall.

### **1. Add Factual Citations to the Brief Where Warranted**

Paralegals will first review the brief from start to finish, looking for any areas where the brief might be helped by the addition of factual citations. These citations will reference the official court reporting transcript that was secured during the pre-briefing phase in most cases. In other cases, the factual citations added to an appellate brief will reference the exhibits identified by a team of paralegals during pre-briefing. Still other adjustments to the case will cite specific legal pleadings as filed either with the lower court or the appellate court at some point in the legal process.

These factual citations are absolutely essential and they must be included whenever warranted. The panel hearing the case will want to know exactly which justifications are being used to appeal each aspect of the case, and the lack of factual citations may quickly inform them that one party or the other lacks sufficient evidence that their case needs to be heard a second time.



## 2. Prepare the Brief's Appendix

Appellate judges are some of the busiest professionals in the legal industry, and they'll want to see a robust appendix paired with any appellate briefing. Creation of this appendix is the primary responsibility of paralegals during the briefing phase, and they'll need to make sure that this part of the document includes all court transcripts, pleadings, correspondence, and more. Professionals in this industry should use their extensive legal training to determine which documents are considered the most important to the appeal and, when needed, they should consult with more senior-level paralegals or with attorneys who are actually trying the case.

As with the factual citations discussed earlier, the documents included in the appendix often can be a deciding factor when a case proceeds to oral arguments. Include the documents that most strongly support the reason for the appeal itself and, when in doubt, always include more documentation of these points rather than less. The margin for error in this area is extremely slim.

## 3. Proofread and Verify the Final Draft of the Brief

Finally, paralegals will need to go through each page of the appellate briefing and make sure that it is free of all typographical and legal errors. They'll also need to check all factual citations and ensure that they use the proper format. In addition to checking the brief's spelling, grammar, and citation style, those in the paralegal profession will have to verify that the brief is fully compliant with a wide set of rules:

- The brief format should be the one accepted and enforced by the appellate court. Many courts have slightly different requirements for length and formatting than others, and these requirements get a bit more stringent as the case proceeds through higher jurisdictions. Remember that any brief that does not follow these requirements could be rejected or could be cause for a case's eventual dismissal.
- The brief should be thorough, but not excessively long. In fact, many appellate courts have restrictions on just how long the briefing can be. Prior to filing, paralegals should verify that the document meets maximum length requirements. If not, the brief should be reviewed further and nonessential information should be removed until the document is in full compliance with court requirements.

- The brief will often need to be filed by a specified deadline, and it's up to the paralegal in charge of the appellate process to make sure that the document is prepared, proofread, and ready for submission by that time. If the brief is not filed on time, with the proper court authorities, it may not be accepted at all. This can lead to a dismissal of the case or a significant extension in its duration. Failing to file on time often pushes back oral arguments by a significant period of time.
- The brief may need to be served to the opposing party, and it's up to paralegals to arrange proper service of the document in accordance with court rules and deadlines. If proper service is not issued when required, the case could be delayed or the opposing party could file motions that derail the appeal altogether.

### **The Oral Argument: How Paralegals Help During This Key Phase of Litigation**

Pre-briefing and preparation of the appellate brief all lead to oral arguments, where both sides have a chance to appeal to the panel of judges hearing the case. Though paralegals don't do as much work during this phase as they do during the lead-up to oral arguments, they're still required to engage in research and preparation of documents throughout this high-stakes portion of the appeal. Responsibilities handled by paralegals during oral argument of the case include the following:

#### **1. Gathering All Briefs and Appendices**

Remember that both sides of the case will be preparing their own briefs, appendices, exhibits, and other documents that they feel best prove their side of the argument. Paralegals are in charge of gathering these documents, as well as any documents prepared by their own side, and providing these to attorneys during the course of legal arguments. This often puts paralegals in the "runner" position during some cases, especially when they're asked to remain in the court during the oral portion of the trial.



## 2. Collect All Cases Cited as Precedent by Briefings

The key to any appeal is citing prior appellate cases that were decided on similar, or at least relevant, grounds. This task is the primary responsibility of paralegals, who often listen in on oral arguments and immediately begin researching each case cited by attorneys throughout the case. Using either library documentation or the online services of sites like Westlaw and Lexis-Nexis, paralegals will find these cases, research the specific claims being made by attorneys, and provide citation of each precedent to attorneys as needed. They may also be asked to supply these cases and citations to court reporters or others, who must document the citations as part of their respective professions.

In some trial scenarios, paralegals will actually receive help with this task from an on-site team of law library professionals. Often, courts employ their own researchers to perform this task. Again, this would put paralegals in the "runner" position, where they'd be responsible for handing off case citations to attorneys as needed throughout oral arguments.

## 3. Prepare Exhibits for Use During the Argument

Finally, paralegals will need to prepare any and all illustrative exhibits that attorneys plan to use during the course of oral arguments. This is a rather broad task, and varies greatly depending on the nature of the case, its status as either civil or criminal, and the nature of the appellate court where the case is being tried. Illustrative exhibits range from expert testimony to recorded audio and video, records of any kind, and even illustrations presented on video and poster board.

Having these exhibits ready will speed up the oral argument phase and ensure minimal waiting between the major points of the case. Efficient paralegals will make sure that every exhibit is prepared in a logical order, ready to go in advance so that attorneys can use their materials and call expert witnesses without damaging their case or slowing down oral arguments. When it comes to winning favor with the panel of judges, few things are as persuasive as a strong case argued with this kind of ideal efficiency.

## **Paralegals Conclude Their Work After the Decision is Handed Down by the Court**

Oral arguments are the "last stand" of an appellate case, and they're designed to build on both the pre-briefing information culled by paralegals and the official appellate brief filed with the court prior to the start of the argument. After oral arguments, the court will often reserve a period of time to review all printed materials and consider the value of oral testimony from both sides and their witnesses. Within a few days, or within a few weeks, a decision in the case will be handed down. Often, both sides will be present to hear this decision and make arrangements for the proper procedures that follow the close of the appeals case. Paralegals will make arrangements to quickly wrap up litigation or pursue a further appeal, if necessary, by performing the following post-decision tasks:

### **1. Determine All Taxable Costs of the Appeals Case**

Paralegals must review the case and its costs, and then prepare a list of taxable costs associated with the litigation procedure. They must then prepare taxation of costs in line with court rules, state or federal regulations, and the law firm's own internal procedure. These costs are typically paid for by the law firm or trial attorney, though they're typically passed on to the party in the case.

### **2. Coordinate the Release of All Bonds Secured During Pre-Briefing**

Bonds used to cover the cost of appellate trial work can now be released, and it's the paralegal's job to make sure this happens. The costs of the appeals process are now the responsibility of the losing party in most cases, though some courts split the costs equitably between both sides. Be sure to review state regulations before assigning any costs formerly associated with the bonds to attorneys or their clients.

### **3. Prepare the Necessary Documents for Concluding the Case**

In most cases, a single appeal is all that's required to settle the case and make sure that both sides are happy with both the outcome and how the case was actually heard and decided. If the case is not going to be appealed further, now is the time to prepare Satisfaction of Judgment documents if necessary. Other documents prepared at the close of litigation include any stipulations or causes for dismissal.

#### 4. If Sought, Prepare Documents for Further Litigation

If another appeal is in order, paralegals must begin repairing new appendices, citing new exhibits, and creating a new petition for the appeal of the case. In essence, they restart this procedure and begin the "pre-briefing" phase all over again. Slight variations may be required, of course, since each court of higher jurisdiction has its own procedures, formats, and quirks, each of which must be accommodated in order to secure a further successful outcome in the case.

#### **Logical Procedures Make Appeals Relatively Standard Work for Paralegals**

Though appeals are extensive and involve a significant amount of paperwork, formats and other considerations, proceeding through these cases is a relatively logical procedure for today's paralegal professionals. By adhering to specific court guidelines and reviewing the unique requirements for each level of appeal, today's paralegals will find that the appellate process itself is easy to follow and even easier to guide toward a successful outcome. From pre-briefing work to real-time assistance with oral arguments and final case documents, this key part of the profession is certainly an exciting one.

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