

The Appellate Process in South Carolina

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The Basics of the Appellate System in South Carolina

- There are two primary court systems in South Carolina – the state court system, and the federal court system. The appeals process depends on which court system you are in.
- In the state court system, there are two levels of appeal after the jury verdict. The first level is to the South Carolina Court of Appeals, and the second level is to the South Carolina Supreme Court. Both of these Courts are located in Columbia. (Some decisions by the state Supreme Court can be reviewed by the U.S. Supreme Court, but the chances of obtaining such review are minimal.)
- The federal court system is similar, in that it also offers two levels of appeal, but unlike the state system, both levels take place outside of South Carolina. The first level is to the U.S. Court of Appeals for the Fourth Circuit, which sits in Richmond, Virginia. The second level is to the U.S. Supreme Court, which is in Washington, DC.

Two Common Misconceptions About Appeals

- “I’m going to take this case all the way to the Supreme Court.”

Many parties proclaim this, often in the heat of an intense negotiation, or after a particularly disastrous jury verdict. But the fact is, very few parties have an absolute right to appeal a case all the way to the Supreme Court. Rather, as a general matter, most parties have a right to one level of appeal. After that, review is discretionary.

For example, if a jury in South Carolina state court renders a verdict against me, I have a right to appeal that verdict to the South Carolina Court of Appeals – one level of appeal. But, if I lose in the South Carolina Court of Appeals, I do not generally have a right to appeal that decision to the South Carolina Supreme Court. Rather, I only have the right to

ask the South Carolina Supreme Court if it wants to hear the case, and the Supreme Court then has discretion to choose whether it wants to or not.

- “The jury got the facts wrong – I’m going to appeal.”

This is another common misconception. If the jury got the facts wrong, why wouldn’t an appeal be successful?

As a general matter, appellate courts are not designed to review errors of fact. Rather, they are designed to review only errors of law. So, for example, if a witness takes the stand and tells a story that you know not to be truthful, but the jury believes the witness anyway, it will be difficult to appeal the jury’s decision. That’s because the case turned on a credibility issue – a so-called “error of fact.” In contrast, if a judge makes an error of law – for example, refuses to allow you to introduce a piece of evidence that you have the legal right to introduce – then an appeal is more likely to be successful. That is because courts of appeals review errors of law, not errors of fact.

How long does an appeal usually last?

- Appeals are a long-term proposition. The total length varies from case-to-case, of course, but a good rule of thumb is that each level of appeal takes about 18 months.

How can businesses benefit from an experienced appellate lawyer?

- There are many benefits to hiring an experienced appellate lawyer. As noted above, appellate courts focus on different issues than trial courts. Appellate courts are primarily concerned with issues of law, not issues of fact. An experienced appellate lawyer understands this distinction, and caters his or her argument accordingly.
- An experienced appellate lawyer can also help parties weigh the costs and benefits of appeals. Although it is impossible to predict whether an appeal will be successful, some cases lend themselves toward a successful appeal, and some cases don’t. Appellate lawyers can recognize these cases, and make recommendations accordingly.
- An appellate lawyer can also review the trial record and offer a fresh view of the case, unencumbered by the inevitable biases that come from sitting through a trial. It is useful to evaluate the “cold” record when preparing for an appeal, because an appellate judge will base his or her decision on that same record.

If you are interested in learning more about the appellate process, do not hesitate to contact any member of Wyche's litigation team.

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