How is an appeal decided?

After the appellate court has reviewed the briefs and record and, where necessary, heard oral argument, it will issue a written order and decision. This determination is based on the appellate court's decision of whether the lower court made errors, and it states how the case will be treated — that is, whether it will be affirmed, reversed, modified or some combination thereof.

This decision will dictate whether there will be additional proceedings in your case after the appeal. These further proceedings may include hearings, a complete trial or other activities in the lower court to comply with the order of the appellate court.

Are other remedies available beyond the appeal?

If you are dissatisfied with the lower appellate court's order, you may be able to seek further review in a higher appellate court. The Court of Appeals is New York State's highest court. Except in rare instances, you may appeal to the Court of Appeals only if permission of either the first appellate court that heard your case or the Court of Appeals itself is granted. This permission is granted in only a small fraction of cases.

While taking an appeal is a complex, time-consuming and expensive process, it is an effective process for correcting errors. Your attorney is in the best position to advise you about the specifics of your appeal and how to proceed with it.

This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. Produced by the New York State Bar Association in cooperation with the Committee on Courts of Appellate Jurisdiction.

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Your Rights to an Appeal in a Civil Case in the New York State Courts

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YOUR RIGHTS TO AN APPEAL IN A CIVIL CASE IN THE NEW YORK STATE COURTS

If you believe errors occurred during court proceedings in your case, you may be entitled to an "appeal" in a higher court.

What is an appeal?

If you believe that any errors were committed by the court in the proceedings in your case, you may have the right to ask a higher court to review the proceedings in question. This request is called an appeal. You, having requested the appeal, are called the *appellant*. The opposing party is known as the *respondent*.

The appellate review determines whether the lower court made any errors that would require further action — for example, a new trial, dismissal of the case or a different decision. The appeal is *not* a new trial. No witnesses are heard in the appellate court, and no new evidence or facts may be brought to the appellate court's attention. Instead, the appeal is based on the "record" made (that is, the proceedings that took place) in the lower court. Not every event in the lower court is appealable.

Bear in mind that the order or judgment of the lower court, unless "stayed" (suspended from operating during the appeal), remains in full force and effect while an appeal is being considered.

How does the appeal process begin?

The appellate process begins when a party "takes" an appeal. Taking an appeal refers to serving a notice of appeal on the opposing party, filing it and paying any required filing fee. This notice of appeal is a document that informs the other party that you wish to have an order or judgment reviewed in a particular appellate court. The notice identifies all parties involved in the case and sets forth the nature of the appeal. Without this filing, an appeal cannot be pursued.

The rules of each appellate court may require the service and filing of additional papers with the notice of appeal.

Even if you take an appeal, your case may still be resolved by settlement, and some appellate courts have procedures to encourage such resolution. If this type of procedure is available, a judicial administrative officer will determine whether settlement would be feasible after your notice of appeal has been filed, and you would then be directed to appear at a conference to discuss that option.

Are there time limits for pursuing an appeal?

If you have decided to appeal an order or judgment, generally you must serve and file your notice of appeal within 30 days after service of a copy of such judgment or order with notice of entry. (If receipt was by regular mail, you have 35 days from the day the order or judgment was mailed to file your notice of appeal and serve a copy of the notice on the opposing party.) If you fail to comply with the 30- or 35-day service and filing requirement, your appeal will be dismissed. This time period is very rigid and may not be extended.

How much will an appeal cost?

Pursuing an appeal can be costly. In addition to the filing fee mentioned earlier, you may incur other expenses, including attorney's fees and the costs of transcribing, reproducing and filing a record of the proceedings.

If you think you can't afford to take an appeal, you might be able to obtain "poor person status" (in forma pauperis), which would waive many of the costs and fees. To apply, you must sign a sworn statement showing your worth and sources of income and demonstrating that you are unable to pay the necessary expenses. You must also show that your appeal has merit.

What happens after an appeal is filed?

Each appellate court has rules setting deadlines for the next phase, which takes a minimum of several months. Once the notice of appeal is filed, the party taking the appeal will begin to assemble the necessary materials to present an effective argument on appeal. The process of getting an appeal into a form so that the facts of the case and the arguments for reversal can be presented to the appellate court is called "perfecting the appeal." This stage is very time-consuming and labor-intensive and, consequently, is usually the most expensive part of the appeal.

In preparing for the appeal, you must produce a record of the proceedings in the lower court, which must be filed with the appellant's brief within time limits prescribed by the rules of each appellate court, along with a filing fee. A brief is a document that tells the story of the case and presents the party's arguments, leading to the conclusion that the appellate court should decide in that party's favor.

The opposing party, who will also receive a copy of your brief, will almost always file a brief in response to yours, arguing that the proceedings in the lower court were correct or that any error should not change the outcome of the case and that the appellate court should uphold the lower court's ruling.

After all briefs have been filed with the court, the next step in the appellate process is either argument (an oral presentation before the appellate court) or submission of the case to the court without argument. Oral argument provides the parties with the opportunity to focus the court's attention on the strongest elements of their cases. It also allows the parties to respond to questions that may not have been answered in their briefs.