

How to Appeal to the Minnesota Court of Appeals

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Where to Start When it Comes to an Appeal

1. Figure out what is appealable and when
2. Figure out if the appeal is worthwhile
3. Make sure you have the steps down
4. Perfect the appeal
5. Argue the appeal
6. Win the appeal

Key Resources

- [Minnesota Rules of Civil Appellate Procedure](#)
- Minnesota CLE Summary Guide
- [Appellate Rules Annotated](#)
- [The Appellate Practice Chapter of Minnesota Methods of Practice](#)
 - View an excerpt [here](#).
- [Minnesota Court of Appeals Special Term Opinion Subject Matter Index](#)

Appealable Orders and Judgments

- The General Rule ([Rule 103.03](#))
- The Many Exceptions to the General Rule (see Appellate Rules Annotated Rule 103.03)
 - Permissive Exceptions
 - *Park and Recreation Bd. Of Minneapolis v. Carl Bolander & Sons Property*, 436 N.W.2d 481 (Minn. App. 1989)
 - may appeal from the order finding necessity or final judgment
 - *Engvall v. Soo Line Railroad Co.*, 605 N.W.2d 738 (Minn. 2001)
 - may appeal an interlocutory appealable judgment or order immediately or at end of case, in absence of 54.02 certification
 - Mandatory Exceptions
 - *Peterson v. Holiday Recreational Industries, Inc.*, 726 N.W.2d 499 (Minn. App. 2007)
 - order denying change of venue as of right requires immediate petition for writ of mandamus or issue is waived on appeal from final judgment

Appealable Orders and Judgments

- Sometimes Things Can Be Appealed Before the End of the Case, and Sometimes They *Have* to Be – Keep in Mind Which is Which
- Remember – Time is not just of the essence, it is absolute
 - [MN Clerk of Appellate Courts FAQs](#): Time to Appeal in Civil Cases
- An appeal is different from a petition for discretionary review, or a petition for extraordinary writ, which may be alternatives, or they may not be

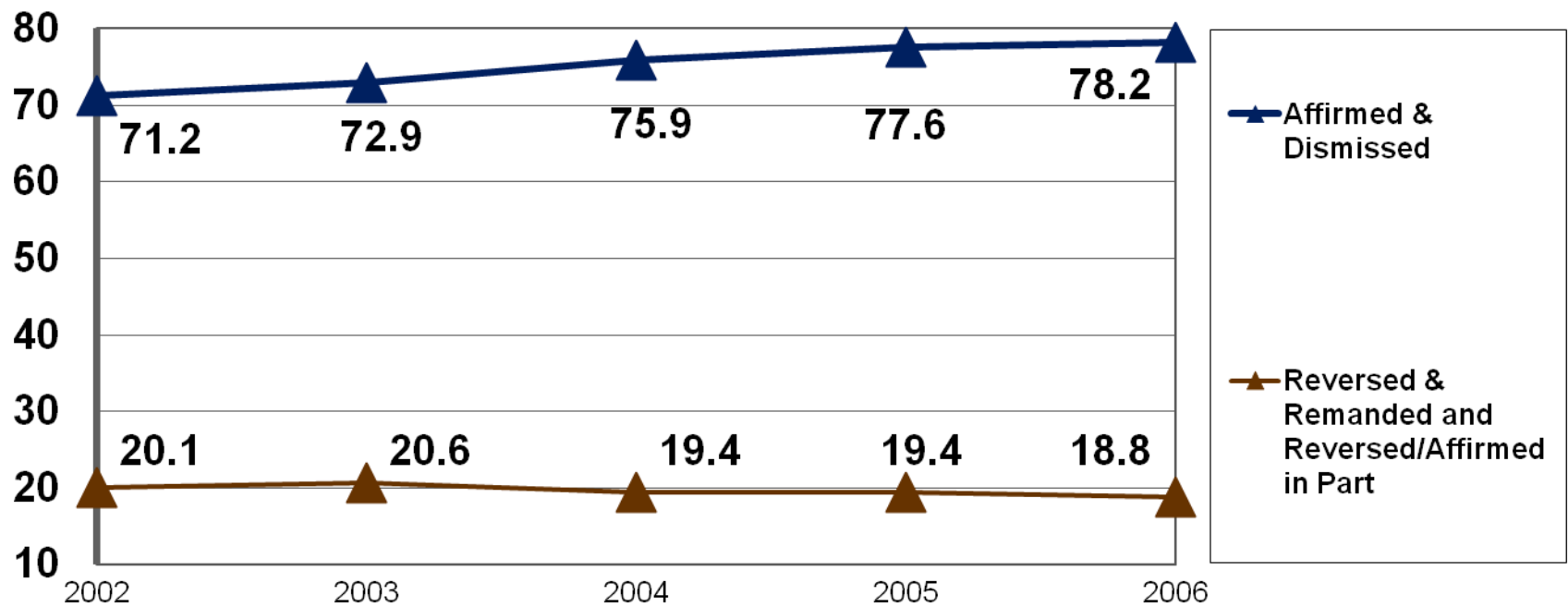
Once You Figure Out You Can Appeal, How Do You Decide If You Should Appeal?

“About half the practice of a decent lawyer consists in telling would-be clients that they are damned fools and should stop.”

– Elihu Root

Figure Out the Odds

- [Standards of Review](#)
- Sobering Appellate Statistics: MN Court of Appeals Disposition Percentages*



* Data originally compiled and presented by David Herr in his June 13, 2008 webcast about odds on appeal.

Figure Out the Cost, and the Benefit

- Cost includes:
 - Fees
 - Costs – yours and perhaps the other side's
 - Delay – maybe, maybe not (and if you want it, don't count on it)
 - Precedent – the kind that can be easily cited

Figure Out the Cost, and the Benefit

- Benefits include:
 1. Reversal of a decision that you can't live with - but not all appellate wins are clean
 - Clients need to have realistic expectations for what an appeal can achieve
 - Can your client live with less than a whole loaf?
 2. Relief from an adverse ruling is not always real relief
 - A retrial can come out even worse for your client
 - The retrial can cost as much as the first trial
 - The appellate court may come up with a remedy that you did not ask for or want

Mechanics of the Appeal

“You can almost never screw up
by following the rules.”

– Eric J. Magnuson

Procedural Steps are Precise; Timing is Specific

- Jurisdictional acts
- Non-jurisdictional acts
- Don't put yourself in a spot where you have to beg for mercy under either

Read the Rules; Read the Rules; Read the Rules

- [Minnesota Rules of Civil Appellate Procedure](#)

Use the Forms

- [Form Appendix to Rules](#)
- [Notice of Appeal Form](#)
- [Statement of the Case Form](#)
- Numerous other forms are also available at the Form Appendix, in PDF and Word

SAMPLE FORMS ARE INTENDED TO BE OF ASSISTANCE. THEY ARE NOT INTENDED TO BE COMPLETE OR APPLICABLE TO EVERY SITUATION THAT MAY ARISE. COUNSEL SHOULD RELY ON THEIR OWN READING OF THE RULES AND APPLICABLE CASE AND STATUTORY LAW.

File Early – Seriously, File Early; Did I Say File Early?

- You can fix most mistakes if you give yourself enough time
 - You used the wrong address for opposing counsel
 - You served the wrong way
 - You didn't include everyone in the service
 - You may find that you are missing something at the last minute
 - Some mistakes cannot be fixed, and you may have to start over – notices of appeal cannot be amended

Step By Step Through the Notice of Appeal, Statement of Case, Service and Filing

- [Notice of Appeal Annotated](#)
- [Statement of Case Annotated](#)
- [Filing and Service Letter Annotated](#)
- [Example Notice of Appeal Packet](#) (Rotary Systems)

DOCUMENTS AND COMMENTS ARE INTENDED TO BE OF ASSISTANCE IN PREPARING THE DOCUMENTS AND IDENTIFYING THE RULES THAT AFFECT THE NOTED PORTIONS OF THESE DOCUMENTS. THEY ARE NOT INTENDED TO BE COMPLETE OR APPLICABLE TO EVERY SITUATION THAT MAY ARISE. COUNSEL SHOULD RELY ON THEIR OWN READING OF THE RULES AND APPLICABLE CASE AND STATUTORY LAW.

Effective Brief Writing, Briefly

- Brief Writing Philosophy: Do's and Don't's For Brief Writing
 1. Select your issues carefully and focus the argument to gain a strategic advantage
 2. Use legal authority effectively
 3. Develop a persuasive tone
 4. Write a powerful conclusion and clearly request relief

Effective Brief Writing, Briefly

- Technical Requirements: Brief Writing and Appendices
 - Introduction
 - Types of Appeal Briefs
 1. Formal ([Rule 128.02](#))
 2. Informal and Letter ([Rule 128.01](#))
 - Form Requirements for Appeal Briefs ([Rule 132.01](#))
 - Contents of Appeal Briefs ([Rule 128.02, subd. 1 & 2](#))
 - Writing the Brief
 - The Addendum ([Rule 130.02](#)) (Per 2014 Amendments, the Appendix is no more!)

Effective Brief Writing, Briefly

- [Picking a Font for Your Legal Brief](#)
- Example Appellant's Brief: [Webb Golden Valley](#)

Effective Brief Writing, Briefly

- Table of Authorities Software:
 - [Best Authority](#)
 - [West CiteAdvisor](#)

Effective Brief Writing, Briefly

- American Academy of Appellate Lawyers:

[Bibliography of Appellate Practice Books, Manuals, and Articles](#)

Resist Temptation

“In 1596, an English chancellor ordered a hole cut through the center of a 120-page brief. The chancellor decreed that the author’s head be stuffed through the hole and that the fellow be exhibited in the state to all those attending the court at Westminster Hall.”

– *Mylard v. Weiden* (Ch. 1596), discussed in R. Wydick, *Plain English for Lawyers* 3 (2d ed. 1985)

Oral Advocacy

1. Allowance of Oral Argument ([Rule 134.01](#))
2. Time Allowed for Argument ([Rule 134.03](#))
3. Order and Content of Argument ([Rule 134.04](#))
4. Writings on Oral Advocacy
 - [Art of Advocacy: Appeals](#)
Chapter 42: Do's and Don't's of Oral Argument
– View an excerpt [here](#)
 - [The Power of the Spoken Word: In Defense of Oral Argument](#)

Decision and Post-Decision

1. You Win!

- Tax Costs ([Rule 139](#); [Form 139](#))
- Release Bond(s) (or funds in lieu)

2. You Don't Win...

- Petition for Review by the Minnesota Supreme Court?
 1. See Earlier Discussion (Should You Appeal? Cost vs. Benefit...)
 2. [Even More Sobering Statistics](#)
- Settle Up; Satisfaction(s) of Judgment(s); Release Bond(s)

Other Resources

- [MN Trial Court Public Access \(District Court Dockets\)](#)
- [MACS/C-Track \(Appellate Dockets\)](#)

Other Resources

- Helpful Contacts
 - [Clerk of Appellate Courts](#) – Ms. AnnMarie O'Neill
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155
(651) 296-2581
 - [Patrick J. Thomas Agency](#) – Mr. Ric Davies (Bonds)
625 2nd Ave. South, Suite #410
Minneapolis, MN 55402
(612) 339-5522
 - [Bachman Legal Printing](#) – Mr. Steve West (Printing)
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(612) 339-9518