

What happens if I WIN the appeal?

If you win the appeal, the appellate court can:

- order the trial judge to hold a new trial and fix the mistakes that were made earlier.
- order something else (e.g., it can order the trial judge to “reopen the evidence” – take more evidence – or not consider certain evidence at a new trial).
- in very rare cases, order the trial judge to return the child to the parent, place the child with someone else, or give the parent and child more visits.

What happens if I LOSE the appeal?

- It’s often hard for appellants, who lost in front of the trial judge, to then win an appeal. This does not mean the appellate lawyer did a bad job or wrote a bad brief. Sometimes the rules or the law make it hard to convince the appellate court that you should win. Your lawyer can explain how the laws work in your appeal.
- When the appellate court “affirms” the trial court judge’s decision, it means the appellate court is not ordering the trial judge to do anything. When the appellate court “affirms” the trial judge’s decision, the appellant loses and the appellee wins.
- If you lose the appeal, the trial judge’s decision—whatever it was—is the final decision on your rights.
- If either you or the appellee loses at the appellate court, there may be a way to ask your state’s highest court to review what the appellate court decided. Depending on your state, this kind of review by the state’s highest court is rarely granted. When the state’s highest court denies this review (that is, when it refuses to hear any more appeals in your case), the appeal is over.
- When the state’s highest court agrees to review the appellate court’s decision, it is generally because the case raises an important issue to address. When the state’s highest court grants review, the lawyers may be able to file new briefs and oral arguments are usually held. Like the appellate court, the state’s highest court can decide if you (appellant) or the appellee wins. It may also order a completely different result in the case. Ask your appellate attorney what can happen in a review by your state’s highest court.

If I lose, what else I can do?

- If your case is still open at the trial level, continue to work with your trial attorney and caseworkers since the trial court will still be reviewing your case.
- Everyone should follow the trial court’s order.

If I lose the appeal of an order terminating parental rights, what can I do?

- You can’t take further legal steps, but you may still be able to contact your child (or parent, if you are the child) if that person wants contact. Some state agencies will help you make contact if the parent, child, and adoptive parents or guardians agree. If you are unsure whether you can have contact with your child (or parent), ask your attorney before making contact.
- Some states have “registries” where parents can update their contact information. When a child turns 18, the child can seek the birth parent’s information and use it to contact the birth parent. Children can also use the registry to re-establish contact with siblings once they have both turned 18. To search for parents, children, and siblings: [Search & Reunion - Child Welfare Information Gateway](#)



What to Expect in an Appeal in a Child Welfare Case

This brochure is meant to assist you, the parent or child, when a case you are involved in is appealed (challenged in court). It answers common questions you may have. For specific questions about how your state handles appeals that are not answered by this brochure, please talk to your attorney. (Review the Definitions sidebar, inside, to understand key terms.)

What is an appeal?

- **An appeal is a review of the trial judge’s decision.** The appellate court decides if the trial judge made mistakes and if those mistakes affected the trial result. The trial judge may have made a mistake about: how they ran the trial, the facts of your case, or the law. Your appellate lawyer will tell the appellate court about these mistakes in writing and, in some states, orally in court. The appellate court will consider the written and oral arguments and what was before the trial court then make a decision.
- **An appeal is not a new trial.** The parties can’t give the judges new evidence or examine witnesses. An appeal is a chance for parents, children, or the agency to tell the appellate court, “The trial judge made mistakes, and those mistakes made a difference in my case. Please give me a new trial without those mistakes.”
- **Not every decision can be brought to the appellate court.** Talk to your attorney about what types of orders or judgments you can and can’t appeal. See below about “winning” and “losing” an appeal.

When can I contact my appellate attorney?

- Speak to each other right away to set up times and ways to contact each other.
- Your attorney may not be able to tell you much about your appeal until they read the transcripts and exhibits, which can take several weeks or months. In the meantime, your appellate attorney can tell you about the appellate process and set up times to contact you and give you updates.
- Meetings with your attorney may be held in person or by phone or video (FaceTime, Zoom, WhatsApp, or a different video program).

My appellate attorney

Depending on your state, your appellate attorney may be the attorney who represented you at trial, or a new attorney given to you just for the appeal. Make sure you can contact your appellate attorney. Write your attorney’s contact information here:

Name: _____ Phone #: _____

Email Address: _____

Mailing Address: _____

Your appellate attorney must be able to reach you. Give your appellate attorney all of your contact information. If you move, tell your appellate attorney right away.



Definitions

Who is involved in the appeal?

- You and your lawyer
- Most of the time, the other family members who were involved at the trial court (e.g., parents, children, guardians/other people), and their lawyers
- Agency's lawyer
- Appellate court judges and their staff, including law clerks, administrative clerks, and others at the appellate court. In some appeals, there is only one appellate judge, but in most appeals, there are three appellate judges.

What do the appellate judges get to see in your appeal?

- Record on appeal
- Transcripts
- Docket (trial court clerk's formal notes about the family members involved in your case, key court dates, and what happened during those court dates)
- Legal briefs
- Oral argument (if there is one)
- Sometimes letters or motions filed by the appellate attorney before or after oral argument

Will the judges hold a hearing?

- It depends on your state.
- Sometimes the appellate court will read the briefs, record, and transcripts and then decide your appeal without an oral argument.
- Sometimes the appellate court will read the briefs, record, and transcripts, and then hold an oral argument.

How long will the appeal take?

An appeal may take a few months or more than a year. Talk to your lawyer about timing and deadlines. Court rules tell lawyers how quickly to file briefs and the lawyers work hard to meet those deadlines, but delays can occur. It may take extra time for the appellate lawyers to receive the documents they need to write their briefs, for court reporters to complete the transcripts, and for the appellate court to decide your case after reading the briefs and other documents.

Appellant

A parent, child, or agency that disagrees with the trial judge's decision can file a notice of appeal. The person or agency that files the notice of appeal is called an "appellant." In some situations, someone else—such as a guardian, foster parent, or guardian ad litem (GAL)—may be able to file a notice of appeal and be an appellant.

Appellate Court

The "appellate court" (which has a different name in every state) is a higher, or senior court that reviews the decisions made by the trial judge.

Appellate Lawyer

The "appellate lawyer" is the lawyer or attorney representing the parent, child, or agency during the appeal process. In some states, your appellate lawyer may be the same as your trial lawyer. You will be appointed a new lawyer in other states just for the appeal.

Appellee

A parent, child, or agency that agrees with the trial judge's decision – that is, anyone who "won" at trial – is an "appellee." An appellee does not have to file a notice of appeal to participate in the appeal.

Brief

A "brief" is a document written by the appellate lawyer that includes the history of the case, history of your involvement with the case, and key laws and rules that control what happened in your case.

- *Appellant's brief* tells the appellate court what the appellate lawyer thinks the trial judge did wrong.
- *Appellee's brief* tells the appellate court why the trial judge was not wrong (or, if the trial judge was wrong, why that did not change the result).
- *Reply brief* is written by the appellant in response to the appellee's brief that explains how

the appellee's brief contained mistakes in the facts or the law.

A "brief" is not very brief! It can be more than 50 pages. There are many rules for briefs about what information they must include, length, and what documents must be attached to them at the end.

Oral Argument

An "oral argument" is a chance for the appellate lawyers to tell the appellate court judges why they should win. These arguments are usually timed and short, and the lawyers take turns. You may be allowed to attend the oral argument. Unlike trial court hearings, you will not be allowed to speak. Only the lawyers can speak. In some states, every appeal has an oral argument. In some states, only some appeals have oral argument. This is up to the appellate court judges.

Record on Appeal

The "record on appeal" (or just "the record") is the exhibits (the written evidence in your case), the pleadings (the "motions" and other writings that the lawyers gave the judge), and other things the trial judge read and saw. The appellant is usually responsible for putting the record together for the appellate court.

Transcript

Almost all trial court hearings are recorded. If someone files a notice of appeal, the trial court clerk's office asks someone (court reporter or transcriber) to type everything they hear on the recording. This typed record of the trial court hearings is called the "transcript." The appellate court judges read the transcript to understand what happened at trial and decide if the trial judge made a mistake. It can take weeks, even months, for a transcript to be made. The appellate attorneys read the transcript to help them understand how best to present your case to the appellate court.

Do I get copies of everything?

- Your appellate lawyer should send you the brief after it is filed. In some cases, your lawyer may send you a draft of the brief before it is filed to get your feedback.
- You may be able to get copies of the other documents, too. Ask your lawyer what you can and can't have copies of.

What can I do during this process?

- ✓ **Be patient.** Your appellate lawyer may be waiting to get documents to write the brief. It takes time for your lawyer to read the documents and write the brief. The other parties to the appeal also must write their briefs, which can take time.
- ✓ **Keep in touch with your appellate attorney.** Tell your attorney if you move or change your phone number.
- ✓ **Be available to answer any questions** your appellate attorney may ask you.
- ✓ **DO NOT attempt to contact the judges** on appeal.
 - Often, court staff can answer questions about due dates, or how to contact your attorney, but they cannot answer legal questions. Leave those to your attorney.
 - If your attorney is not answering your calls, emails, or letters, find out if there is a supervisor or supervising agency you can contact.
- ✓ **Keep in touch with your trial lawyer.** Your lawyer can:
 - tell you if you can still participate in any trial court proceedings;
 - advise you about visits and services; and
 - help you contact your appellate lawyer if you lose touch.

During the appeal, the case may also be going through review hearings at the trial level. Talk to your trial lawyer to learn if you can be involved in those hearings. During the appeal, you may be able to continue visiting your child. Ask your trial lawyer about this.

