

THE TOP 10 REASONS TO USE APPELLATE COUNSEL

1. **THE RULES.** Appellate rules are different than trial court rules. Some aren't even in the rule book. Knowing the rules can make the difference between success and failure on appeal.
2. **THE JUDGES.** Appellate judges are different than trial judges. Not just because they are different people, but also because appeals are structured differently than trials. Appellate judges look for different things than trial judges.
3. **THE TASKS.** Appellate tasks are different than trial tasks. Trial counsel takes depositions, answers interrogatories, picks juries, and examines witnesses. Appellate counsel spends most of the time reviewing the appellate record, researching the law, and writing the brief.
4. **THE MINDSET.** Appellate counsel brings a fresh perspective. The appellate court will look at the case anew. So will appellate counsel. Trial counsel is often so personally invested in the case—and rightfully so—that objectivity suffers.
5. **THE ISSUES.** What was important at trial may not be on appeal. For example, trial counsel may have spent the entire case focusing on a particularly thorny question of proximate cause, which expert witness should be used, or how to get certain exhibits admitted. But on appeal, the big issue may be the jury instruction on the duty of care. Appellate counsel can help identify what the issues should be on appeal.
6. **THE TIME.** Successful trial counsel is out of the office taking depositions, doing document production, investigating the scene, in mediation, or in a three-week trial. Appellate counsel must be able to devote large blocks of time in the office, reviewing the appellate record, researching the law, and writing the brief.
7. **THE SKILLS.** Most appeals are won on the briefs. Most briefs are too long and boring. A federal appellate court once declared, “Briefs should be written in the English language!” Appellate counsel will not only write in the English language, but will bring imagination and clarity to write a compelling brief that is as brief as possible.
8. **THE KNOWLEDGE.** Trial counsel don't do appeals often. Appellate counsel do. They know the judges. They know the courtrooms. They know the practices, both written and unwritten, of the appellate courts.
9. **THE STANDARD OF REVIEW.** The standard of review establishes how an appellate court will review the case. The standard varies, depending on the type of ruling being appealed. Appellate counsel knows the applicable standard of review.
10. **THE EXPERTISE.** Law firms that don't have an appellate practice often hand appeals off to the newest associate in the office. This is because the more experienced trial attorneys are too busy (see #6). But the newest associate has even less appellate experience and expertise than the attorney who tried the case.