

# **Educational Materials**

## **Appellate Process**

Appeal is the term used to describe the process by which a higher court reviews the decision of a lower (trial) court. The right to appeal an adverse legal decision is granted by the United States Constitution and the Florida Constitution. This appeals system provides a check on the power of a judge or jury. Judges who interpret the law erroneously may have their decisions overturned by a court with authority to do so. Judges know that their governance over every case may be checked by an appellate court.

Some appeals are granted only at the discretion of the appellate court. The United States Supreme Court, because it cannot review every single case decided in the federal system, hears appeals only at its discretion.

A party who had a court decision made against him or her is the party with the right to appeal. (Only under very rare circumstances can a party appeal a favorable decision on the ground that he or she disagrees with the reasoning of the decision.) The party who appeals is known as the appellant. In opposition to the appellant is the appellee, the party who agrees with the outcome of the trial and will argue during the appeal that the judge's or jury's decision should be left alone.

## **Florida's Legal & Judicial System**

It may be useful for a person who is thinking about initiating a legal action to understand the legal and judicial system that exists in Florida. One of the most confusing aspects of the judicial system is that there are two separate systems: state and federal. The majority of cases are filed in state courts.

As one may remember from civics class, there are three branches of government: legislative, executive, and judicial. The legislative branch creates the laws, the executive branch enforces the laws, and the judicial branch interprets the laws. Laws also are called statutes or codes. The executive branch can create rules or regulations to govern its administrative procedures and the judicial branch may also interpret these regulations.

When a case is brought before a court, the court applies the law to the facts of the case and a decision is made. There are many sources of law the court uses in making its decision: the United States Constitution, the Florida Constitution, statutes, regulations, and prior decisions of the court or of higher courts, which is known as case law. The way in which a higher state court answers a legal question is binding on all other lower courts within that jurisdiction when faced with the same legal question. For example, if the Florida Supreme Court decides a legal question, all state courts in Florida must follow that decision. However, state courts in Mississippi would not have to follow the Florida decision because they are in a different jurisdiction.

## **Jurisdiction**

When a person decides to file a legal action, he or she must decide in which court system to file the case. The court in which a person files a case depends on which court has jurisdiction over that type of case. Whether a particular court has the power and authority to decide a case is known as subject matter jurisdiction. If a court does not have subject matter jurisdiction, it may not decide a case. A court also must have personal jurisdiction over the defendant in a case. There are different ways in which a court may have personal jurisdiction, including if a defendant resides or has a business within the court's geographical region. For example, a Florida plaintiff may not bring an action in Florida district court against a defendant who lives and works in another state, if that defendant has no contact with the state of Florida. Jurisdiction is set in law, constitutions, or case law. In some cases, courts have overlapping jurisdiction, giving a person a choice of court in which to file the action.

There are three types of subject matter jurisdiction: exclusive, general, and limited. Exclusive jurisdiction means that only a particular court can decide a case. An example of exclusive subject matter jurisdiction is bankruptcy. Only in a federal bankruptcy court can a person file a bankruptcy action. State courts have no jurisdiction in bankruptcy cases. General jurisdiction means that a court has the ability to hear and decide a wide range of cases. Unless a law or constitutional provision denies them jurisdiction, courts of general jurisdiction have authority to handle any kind of case. The Florida district courts are general jurisdiction courts. Limited jurisdiction means that a court has restrictions on the cases it can decide. Small claims court is a court of limited jurisdiction because it only hears and decides cases that claim damages of less than \$2,500.

## **Venue**

Venue frequently is confused with jurisdiction. While jurisdiction asks whether a court system has authority to hear a case, venue asks which court within a jurisdiction should hear and decide a case. In Florida, a case is usually brought in the county in which the claim originates or where one or more defendants reside. For example, if a person is hit by a car in Melbourne, and the car was driven by a person from Miami, an action against the driver could be filed in either Brevard County (Melbourne) or in Dade County (Miami). Change of venue can be requested by either of the parties. For example, a corporate defendant in Orlando might request a change of venue to Tallahassee because adverse publicity in Orlando makes it impossible for the corporation to get a fair trial in Orlando, or because most of its files are located in Tallahassee. However, the defendant could not request that the trial be moved to Biloxi, because the Mississippi court lacks jurisdiction.

## **State and Federal Courts**

As previously mentioned, there are two separate court systems: state and federal. These materials will focus on the state level courts.

## State Courts

Florida has multiple levels to its court system, including county courts, circuit courts, district courts of appeal, and the Florida Supreme Court.

### Supreme Court

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| <ul style="list-style-type: none"><li>• Located in Tallahassee</li><li>• Each justice serves a 6-year term, but can remain in office if retained in a general election</li><li>• 7 justices who are appointed by the governor</li></ul> | <ul style="list-style-type: none"><li>• Decisions of the Florida Supreme Court can be appealed to the U.S. Supreme Court if the validity of a federal law is in question</li></ul> |
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### District Courts of Appeal

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| <ul style="list-style-type: none"><li>• 5 districts:<ul style="list-style-type: none"><li>1st District - Tallahassee - 15 judges</li><li>2nd District - Lakeland - 14 judges</li><li>3rd District - Miami - 11 judges</li><li>4th District - W. Palm Beach - 12 judges</li><li>5th District - Daytona Beach - 14 judges</li></ul></li></ul> | <ul style="list-style-type: none"><li>• Each judge serves a six year term, but can remain in office if retained in a general election</li><li>• Cases are reviewed by a 3-judge panel</li><li>• Judges are appointed by governor</li><li>• District courts of appeal hear appeals from circuit and county courts</li></ul> |
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### Circuit Courts

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| <ul style="list-style-type: none"><li>• 20 judicial circuits</li><li>• Over 500 judges, each judge serves a 6-year term</li><li>• Different number of judges in each circuit</li></ul> | <ul style="list-style-type: none"><li>• Judges are elected into office</li><li>• Judges sit individually</li><li>• Circuit courts are trial-level courts</li></ul> |
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### County Courts

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| <ul style="list-style-type: none"><li>• At least 1 judge in each of Florida's 67 counties, 293 in total</li><li>• Judges sit individually</li></ul> | <ul style="list-style-type: none"><li>• Judges serve 4-year terms and are elected into office</li><li>• County courts are trial-level courts</li></ul> |
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### Circuit Court

Florida has divided its counties into 20 judicial circuits. Each judicial circuit is composed of one or more counties. Each circuit court hears cases in each county within its circuit at some time. The circuit court has general subject matter jurisdiction and handles a wide variety of cases, both civil and criminal. The circuit courts are courts of original jurisdiction, that is, cases start there. That is where trials are held, witnesses testify,

evidence is presented, and judgments are rendered. Small claims court is a division of circuit court and appeals from conciliation court are heard in the circuit court. A person who loses a case in circuit court may appeal it. Appeals from circuit court are typically brought to a Florida district court of appeal.

### **Florida District Court of Appeal**

There are five districts of the Florida appellate court, each with 9 to 15 judges. The Florida districts are located in Tallahassee, Lakeland, Miami, West Palm Beach, and Daytona Beach. Unlike the circuit courts, which hear trials with witnesses, jurors, and evidence, the district court of appeal's primary function is to determine whether there has been an error at the circuit court level and, if so, to remedy it. At the district court level, the appeal is heard by a three-judge panel. The district court of appeal reviews the transcript from the circuit court and may also consider written and oral arguments. The district court of appeal can reverse or affirm a circuit court ruling or send it back to the circuit court for additional action. The district court of appeal hears most appeals from the circuit courts unless the law specifically states that a particular appeal goes directly to the Florida Supreme Court. Appeals from the district court of appeal go to the Florida Supreme Court.

### **Florida Supreme Court**

The Florida Supreme Court is the highest court in the state. Located in Tallahassee, it has seven justices. Like the district court of appeal, it does not hold trials, but it reviews transcripts, takes written and oral arguments, and determines whether there has been an error in the lower court. It may also reverse, affirm, or remand a case. The Supreme Court is the rule-making body for the state courts and has administrative responsibility for the operation of the state court system. A Florida Supreme Court decision is a final decision in Florida and may be appealed to the United States Supreme Court only if there is a federal issue involved.

## **The Brief**

An appellate brief is a document submitted to an appellate court by an attorney outlining the legal arguments why a lower court erred in interpreting the law. The attorney conducts large amounts of research prior to writing the brief in order to gain a complete understanding. The attorney then writes the brief consistent with the research that best supports the issues that the attorney wishes to argue.

## **Oral Argument**

Oral argument is not really an "argument." Rather it is more like a high-powered conversation between the justices and the attorneys. The attorneys have an opportunity to add to the arguments contained in their briefs (written arguments submitted to the court before oral argument). Oral argument also lets the attorneys clear up misconceptions or questions raised by their briefs.

Because the petitioner or appellant is the party bringing the action to the appellate court, he or she argues first. The petitioner can also reserve some time for rebuttal of the respondent's argument. The respondent or appellee argues second and has no opportunity for rebuttal. In effective rebuttal, the petitioner answers points raised by the respondent's argument and addresses any points that seemed to concern the justices during the respondent's argument. Thus, an effective oral argument also involves effective listening. The attorney will be interrupted by questions by the justices. This is normal procedure in appeals courts throughout the nation. In an effective oral argument, the attorney will listen carefully to the questions and answer them as completely as possible. A justice will rarely raise an issue unless it is important to him or her. Thus, an attorney should not evade a question. In addition, the attorney has an ethical duty to be honest and forthright with the court. He or she cannot misrepresent facts or law to the court.

If the justices ask lots of questions, it is referred to as a "hot panel." The attorney should listen carefully to the questions to decide whether the court is leaning in his or her favor. Sometimes a justice will ask a "friendly" question that will permit the attorney to make a key point. In contrast, a justice may ask a pointed or "hostile" question that may indicate support for the other side's argument. However, it may be difficult to determine a justice's viewpoint from the questions asked. Sometimes questions are asked to test the validity of a party's position.

## **Resources**

The Florida Supreme Court's Home Page address on the World Wide Web is <http://www.justice.courts.state.fl.us>.

Additionally, you can view archives of past oral arguments as well as last year's high school competition at <http://www.wfsu.org/gavel2gavel/archives/05-05.html#MAY6>.