



The Ins & Outs of the  
Appellate Process

# Speakers

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# The Appellate Process

# Initiation of the Appeal

- Party files a Notice of Appeal with the trial court clerk
  - Must occur within 30 days following the entry of final judgment into the chronological case summary
- However, if any party files a timely motion to correct error, a Notice of Appeal must be filed:
  - Within 30 days of court's ruling, or
  - Within 30 days of the motion being deemed denied under Trial Rule 53.3

# Permissive Interlocutory Appeals

- Trial court, upon motion by a party, may allow an immediate appeal through interlocutory order
- Motion for Interlocutory Appeal should include:
  - Identification of the interlocutory order sought to be certified
  - Concise statement of the issues that Appellant will present in the appeal
  - Reasons why an interlocutory appeal should be granted
- The Court of Appeals may decide to accept the appeal or may not
  - If accepted, the Appellant must file a Notice of Appeal within 15 days and request the transcript if needed

# Administrative Appeals

- Judicial review proceeding taken directly to the Court of Appeals from an order, ruling, or decision of an administrative agency
  - Commenced by filing a Notice of Appeal with the administrative agency within 30 days of the order, ruling, or decision
- Notice of Appeal should include the same requirements as in an appeal from a final judgment in a civil case
  - Appeal is to be received and prepared in the same manner

# Joint Appeals

- If 2 or more parties are entitled to appeal from a single judgment or order
  - May file a joint Notice of Appeal
- Thereafter, may proceed on appeal as a single Appellant

# Cross Appeals

- If other party files a Notice of Appeal, the Appellee need not file his or her own Notice of Appeal to raise other issues
  - Appellee may raise cross appeal issues in his or her appellate brief
- A party must file a Notice of Appeal to preserve his or her right to appeal if other party does not file a notice- and to preserve independent right to appeal
- If multiple parties file Notice of Appeal-the plaintiff in the trial court is designated as the Appellant on appeal unless otherwise determined by court on review

# Criminal Appeals

- Review of Sentence
  - The convicted may challenge his or her sentence even if entered into guilty plea—some exceptions exist
    - State is allowed to file cross appeals, but may not initiate an appeal
  - If the sentence is inappropriate in light of the nature of the offense and the character of the offender, then the court of appeal may revise the sentence
- Certain criminal appeals are instantly directed to the Supreme Court
  - Life without parole
  - Death Penalty

# Filing Fee

- Appellant shall pay the Clerk the filing fee of \$250
  - Shall be paid when Notice of Appeal is served on Clerk
  - Clerk shall not file any motion or other documents in the proceeding of that case until the fee has been paid
- Does not apply to appeals prosecuted in *forma pauperis* or on behalf of a governmental unit

# Notice of Appeal

- Should contain:
  - Designation of the appealed judgment order
    - Whether final judgment or interlocutory
  - Indication of the court to which the appeal is taken
  - Direction to the trial court clerk to assemble the court's record
  - Request for transcript, Court Reporter's preparation
    - All portions necessary to present fairly and decide the issues on appeal

# Request for Transcript

- Notice of Appeal must explicitly state the transcript required
  - It may be a portion of the proceeding or the entire proceeding
- Criminal appeals
  - Must request a transcript of the entire proceeding
    - Unless the appeal is limited to an issue that requires no transcript
- Supplemental request of transcript
  - Any party to the appeal may file with the trial court clerk a request for additional portions of the transcript

# Acquisition of Jurisdiction

- Court on review acquires jurisdiction on the date the notice of completion of clerk's record is noted in the chronological case summary
- At acquisition of jurisdiction by the court on review, usually trial court loses jurisdiction to make any additional rulings on matters related to the pending appeal—some exceptions for emergencies and ongoing proceedings such as child custody and support

# Duties of the Court Reporter

# First & Foremost

- The responsibility of a court reporter is to preserve what is said or occurs in a court proceeding when an official record is made
- Court Reporters and their efforts often seem under appreciated and may take considerable time after normal work hours to complete transcription responsibilities

# Notice to Court Reporter

- Notice of Appeal will be filed with the trial court clerk
- Once the clerk receives the notice, then it is the responsibility of the clerk to immediately notify the court reporter
- If possible, preparation of the transcript is to begin immediately

# Notice of Appeal 2

- It is the responsibility of the Appellant to request an adequate Record on Appeal
  - The Appellant must decide what portion if not the entirety of the proceeding is to be transcribed
- Record= result obtained after the process of “making the record” is completed
  - The definition will shift dependent upon which form of recording is used (audio, shorthand, stenomask...)
- Record on Appeal
  - The clerk’s record and then all of the proceedings before the court (transcriptions)

# Record on Appeal

- 4 major sections
  - Transcript of evidence
  - Exhibits
  - Table of Contents
  - Clerk's Record (retained by trial court clerk)
- These sections when completed will form the entirety of the Record on Appeal and will be the final product sent on to the Court of Appeals

# Volumes

- Court reporter responsibilities
  - Transcript of the Evidence
  - Exhibits
  - Table of Contents
- So at a minimum there should be 3 separate volumes
- No single volume should exceed 250 pages (not that each volume requires 250 pages)
  - Format the transcript keeping in mind that the person reading the record will have no prior knowledge of the case
  - Make it simple keeping in mind redacted materials & TR 5(G)

# Preparation of Transcript

- Court reporter prepares, certifies, and files transcript designated in the Notice of Appeal with the trial court clerk
  - Preparation of the separately bound volume of exhibits is included within the term transcript and is to be completed at the same time
- Court reporter provides notice to all parties that the transcript is complete

# Preparation of Transcript

- Court reporter has 90 days after Appellant files Notice of Appeal to file the transcript with the trial court clerk
- Extensions of Time – See Checklist
  - Shall state the factual basis for inability to comply with deadline *despite* exercise of due diligence
  - Shall file original and copy with the Clerk
    - Serve a copy of the motion on all parties
  - In the following instances the extension will be granted only for extraordinary reasons:
    - Interlocutory appeals, worker's compensation, child custody, support, visitation, paternity, adoption, child in need of services, and termination of parental rights

# Transcript of the Evidence

- Lines of each page should be numbered with each page being numbered at the bottom
  - Each page should have 25 lines (unless it is the final page of a hearing, then just begin the next hearing on the following page)
- Header or footer notations should describe where a witness's examination begins, including direct, cross, & redirect, in bold capital letters
  - No other notation is required
- Each volume should have a title page
  - Conforming to form App. R. 28-1, the cover should be clear plastic

# Table of Contents

- Table of contents should include a listing of each individual court proceeding, a listing of each witness, and a listing of the introduction of each exhibit
  - Included with the witness should be indications of direct, redirect, and cross
  - Included with each exhibit should be an indication of where within the transcript it is introduced
- Each entry within the table of contents should include the volume as well as the page number

# Table of Contents

- The table of contents is its own portion of the Record on Appeal
- Therefore, it should exist as its own *separate volume*

# Exhibits

- Collection of the exhibits exists as its own volume as a major section of the Record on Appeal
- An index of the exhibits should be included in this separately bound volume
  - This index should appear at the beginning of the volume or volumes containing exhibit material

# Exhibits

- Documentary exhibits
  - Testimony in written form filed with an administrative agency
  - Photographs
  - Any other evidence in document form
- Non-Documentary and oversized exhibits
  - Should not be sent to the court on review but should remain with the trial court—unless requested by parties or court on review
  - Should still be mentioned in the transcript when they are introduced
  - Photographs of non-documentary evidence should be included with the documentary evidence if available and appropriate

# Exhibits

- Include all evidence, even that which was offered as evidence but was denied by the judge
  - Make note of it in the transcript
  - To be retained by the Court Reporter
- Common practice to include originals within the Record on Appeal
  - But copies or photographs are acceptable
- A recording played during a trial on a tape or a disc may be included within the exhibits section to be sent to the court on review
- Do not send contraband (Marijuana...) to the appellate court

# Nonpayment

- If payment has not yet been received when the transcript is due, then file a timely extension request citing nonpayment as the reason for extension
  - This usually triggers a show cause order from the court on review to the Appellant
  - Typically Appellant will respond either with payment or plan of payment
  - Typically additional time will be given for the court reporter to finish the transcript, but not an additional 90 days

# Failure to Complete

- If the transcript is not completed by the 90 day deadline and no extension beyond that deadline has been granted, then Appellant shall seek an order from the court on appeal compelling the court reporter to finish the transcript
- Failure of the Appellant to request such an order within 15 days of the lapsed deadline will subject the appeal to dismissal