

You've worked your hardest drafting a killer set of motion papers or trying a tough case. Unfortunately, despite your best efforts, you're faced with an adverse decision by a judge or jury. You think the decision is wrong but have little, if any, appellate experience. The following tips can help guide and protect you throughout the appellate process.

First, in deciding whether to take an appeal, try to remove yourself from the investment of time, money, and emotion you and your client have already put into the case. Reevaluate the factual and legal merit of the case in light of the development that arose along the way. If the appeal is from a judge's order, read the order and underlying decision carefully and passionately. Similarly, if the appeal follows a trial, honestly assess how the trial went. A thoughtful evaluation of the case will help ensure that your client's expectations of reversal are reasonable.

Timeliness Is a Virtue

If there is even a remote possibility that your client will wish to pursue an appeal, you must timely file a notice of appeal (if the appeal can be taken "as of right"; if you must first seek permission to appeal, additional steps are required). Deadlines for filing a notice of appeal vary by jurisdiction but generally are relatively short—30 days from a triggering event (in New York, for example, service of an order with notice of entry) is common. When in doubt, figure the deadline from the earliest possible date. Be aware that in some jurisdictions a separate form containing basic information about the case (names of the parties and attorneys, type of case, grounds for appeal, etc.) must accompany the notice. Don't forget to include the required filing fee, if any. Also keep in mind that filing a notice of appeal does not necessarily stay other matters, such as a trial or enforcement of a judge's

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TAKING AN APPEAL

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ment; you may need to file separate proceedings in the appellate court to maintain the status quo until the appeal actually is decided.

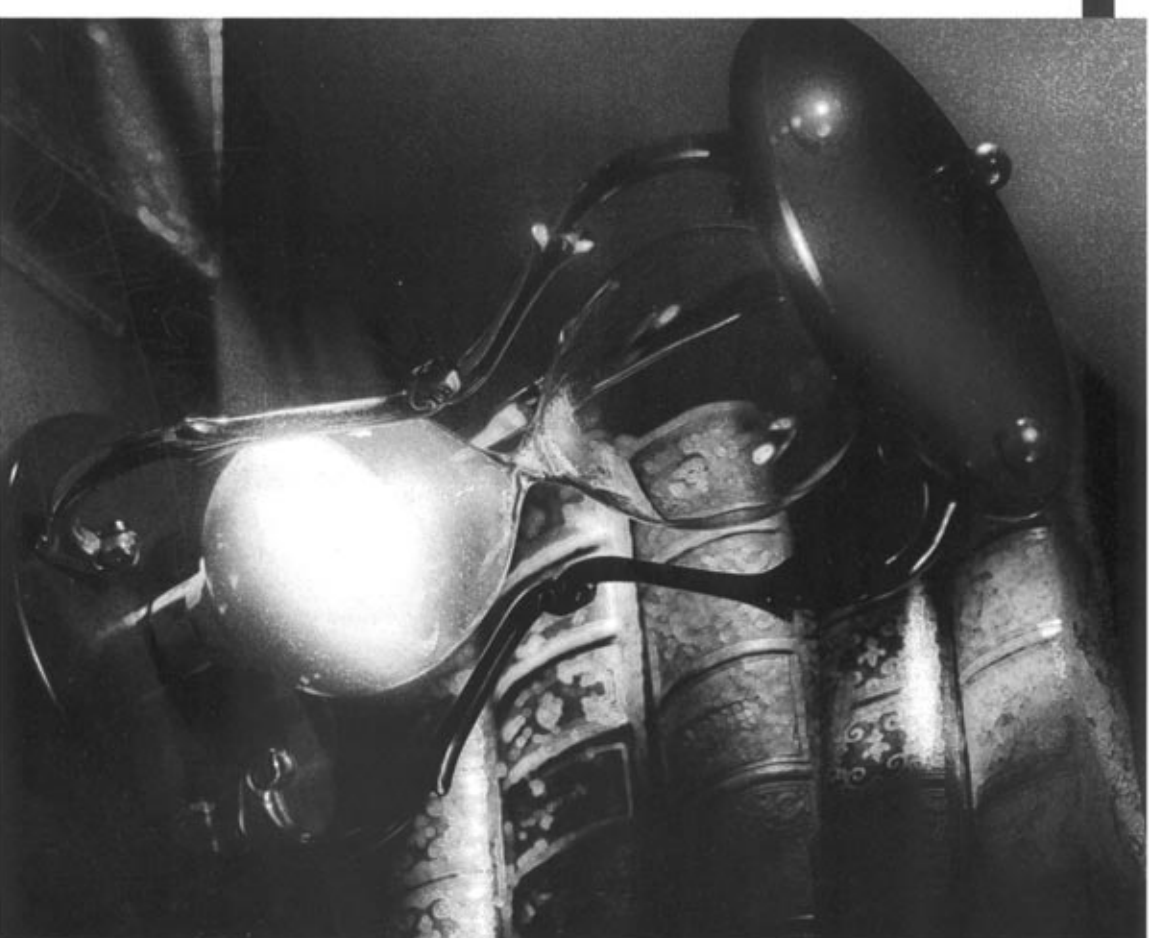
Timely filing of a notice of appeal leaves all options open for both the client and the attorney. The client ultimately may decide not to pursue an appeal after all. Or the client may wish to go forward, but you may decide that you cannot pursue the appeal on your client's behalf. Once the notice of appeal has been filed, the client does have time to retain another attorney.

If you and your client decide to pursue the appeal, you must collect the documents that are part of the record (which will vary depending on whether the appeal is "on papers" or after a trial or hearing). If you need to order a transcript, do it right away.

Employ the Pros

Strongly consider using an appellate printer. Although this adds to the cost of the appeal (especially for the appellant, who initially bears the cost of reproducing the record), it is ultimately very cost effective. For example, the printer paginates the record and creates a table of contents—two ministerial tasks that can take all too much of an attorney's valuable time. The brief and record must be copied and bound anyway—why not have an appellate printer oversee the production end of things, rather than spend your time running to a copy shop or clearing jams in your office copier?

Appellate printers frequently include other valuable support services in their fee. For example, they usually handle service and filing of the brief(s) and record and already know how many copies of each document must be filed with the court. Some appellate printers also monitor court calendars and advise you when your case is scheduled for oral argument. Most appellate printers also send you a free guide to appeals in your particular jurisdiction; this typically contains copies of relevant statutes and/or court rules, checklists for appeals, and even sample documents. Although there is no substitute for familiarizing yourself with the appellate rules directly, these



guides come in handy for quick reference. Once you receive an advance copy of the record from your appellate printer, review it with a fine-toothed comb to make sure it is accurate. Don't let the appeal languish. Just as there is a deadline for filing the notice of appeal, there is a deadline for "perfecting" the appeal (i.e., filing the brief and record). Although some courts may extend the time to perfect for good cause, why incur the extra cost of moving for an extension and take the chance that the motion to extend will be denied?

Do Your Part

Make sure the cases cited in your brief are good law. Update your research—relevant decisions may have come online since you first researched your issue for the court below.

Appellate courts appreciate brevity as much as, if not more than, trial-level

courts. Your brief should be short, to the point, and definitely within the maximum page limits set by the court. Follow all rules concerning the appearance of the brief (e.g., margins, font size)—you don't want your brief to be rejected for technical reasons. Remember that an appeal is premised on a closed universe of facts—don't include facts that are outside the record. Every factual statement must be supported by a citation to the record.

Be ready for oral argument. Know the record and the cases intimately. Prepare your oral presentation for a "cold" bench, but be prepared for a hot bench that may grill you for your entire allotted time.

Following these tips will not ensure that your client will prevail on appeal—that depends on the substantive merits of the case. But in appellate practice, avoiding procedural pitfalls can bring you closer to success. **ESK**