

BowTieLawyer

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How Appealing!

Appeals are a necessary evil in Family Law. The following is a brief description of appealing Chancery matters, that is, family law cases.



An *appeal* is a request that a higher Court review the decision of the lower Court. A lot of family law cases are appealed, though very few are successful or result in a significant change.

A decision is appealable if it is a *Final Order*. A *Final Order* is one which decides all of the then pending issues and leaves nothing more for the Court to decide. A [Temporary Order \(clickable\)](#), for example, is not a *Final Order*, though it could be subject to modification in certain exigent circumstances.

A *Final Order*, rather, is your *Final Judgment of Divorce* or other similar document. It decides on a permanent basis the outcome of your case.

How do you appeal it? In Chancery there are several options available. The first is filing what is called a *Motion for New Trial**. This is filed in the same Court and must be filed within 10 days of the entry of the *Final Judgment* back in front of the same judge and is not merely a chance for a “second bite at the apple,” but rather a request to set aside the judgment based on significant errors of fact and/or law upon which the Judge relied, which resulted in the wrong decision. They are routinely denied. They are denied for several reasons and primarily because the Judge just decides that the error was not significant enough to warrant a new trial because it requires the Court to “admit” to making a mistake. Usually the case is fresh on the Judge’s mind and the Judge felt that he or she did not make a mistake. I have seen these most commonly granted when there is a mathematical error; the child support was calculated wrong or the asset division contained a significant computation error. If the “error” is not something obvious these have a very low probability of success. (There has been some debate over whether a *Motion for New Trial* is required to perfect an appeal. The most recent case law suggests that it is not required in family law matters, however it is a good idea to file one out of an abundance of caution. Please rely upon your attorney for making this decision.)

After the *Motion for New Trial* is denied you may file a *Notice of Appeal*. This is filed, again, with the same Court and must be filed within 30 days of either the *Final Judgment*, or within 30 days of the ruling on the *Motion for New Trial*, whichever is later.

All appeals are sent to the Mississippi Supreme Court (MSSC). From there the MSSC gets to decide whether to hear the case or assign it to the Court of Appeals (COA). The majority of the Family Law cases are assigned to the COA.

The Appeal process is deadline heavy. There are deadlines to file the appeal, to pay an estimate of the cost of the transcript, to designate the record. After which, a briefing schedule is issued. The one appealing,

40 days to file their brief and can get multiple extensions of 30, 20, and 10 days. The Appellee, then to the appeal, then has 30 days to reply and can get extensions of 30, 20, and 10 days. The Appell reply brief within 14 days, with up to one extension of 30 days. After all the briefs are submitted to allow Oral Argument, if it is a case of first impression or complex, and the Court may not. Once they submitted the Court has 270 days to rule. They rule in a written *Opinion* that is handed down on Thursdays after 1:00 pm.

Even if you “win” you may not. Usually appeals are denied. When they are granted it usually results in being remanded to the lower Court with instructions for the Judge to redo a certain part or reconsider the law. It does not guarantee a change in the outcome and you may end up back in front of the same judge against you.

Appeals are long, costly, and even if you “win,” you may not “win.” Consult with an attorney experienced in handling appeals if you think there were significant errors made in your case.

Matthew Thompson is a family law attorney that has been involved in about 20 appeals. Trust the BowTie!

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You may also contact Matthew with your family law case, question or concern at (601) 850-8000 or Matthew@wmtlawfirm.com.



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