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## Appealing a Divorce or Custody Ruling

Often, a divorce trial or custody trial can be the most important legal system event in a person's life. But what happens when the ruling from the trial court is incorrect? Judges are human just like anyone else and sometimes mistakes can be made. The appeal process exists because our legal system recognizes that judges are not perfect.

### What is an appeal?

An appeal is a request to a higher court to review, and potentially change, the decision of a lower court.

### What court hears an appeal?

An appellate court reviews decisions of trial courts. In Iowa, we have the Iowa Supreme Court and the Iowa Court of Appeals. Family law appeals are typically heard by the Iowa Court of Appeals. Appellate courts never preside over trials. Appellate work differs significantly from trial work. Appellate court hearings do not involve witnesses, new evidence, or even court reporters. Rather, an appellate court reviews the written record of the trial court to determine whether any significant legal errors occurred.

### When do you file an appeal?

Not all cases that end unfavorably should be appealed. Simply because a person disagrees with how a judge ruled does not mean that they should appeal the ruling. The focus in an appeal is ensuring that the trial was fair and that the correct law was applied to the case. Appeals are not meant to be opportunities to reargue your case. Appeals are meant to correct legal errors. For example, maybe the judge misapplied the law to the facts of your case.

During an appeal, you are limited to the record that was created at trial. In plain language, this means that the filings, exhibits, and testimony presented at trial is all that the appellate court can review. A transcript of the proceedings will be prepared. A transcript is the full, written version of everything the court reporter took down during the proceedings.

An appellate attorney reviews the record that was created at trial and creates a brief to turn in to the appellate court. A brief is a written document containing the issues being appealed and why they are being appealed. The brief contains the law on each of the issues and usually a discussion of how the law was potentially misapplied.

The time deadlines for filing an appeal are very strict and exceptions are rare. The timelines for appeals vary depending on the type of case. Generally, a Notice of Appeal from a divorce case must be filed within thirty days of the ruling from the trial court.

### How long does an appeal take?

It is important to understand that an appeal is not a quick process. It can take many weeks to simply prepare the transcript needed for the appeal. The appellate attorney does not start on the brief until the transcript is done. Once the transcript is done, the appellate attorney has roughly 50 days to file their first draft of their brief. Then the other side generally has approximately 21 days to file their draft briefs. This time frame doesn't even account for filing of the final versions of the briefs or the amount of time you must wait for the appellate court to issue a ruling. That adds several more months to the clock.

### What happens after an appeal?

If you are successful on appeal and the record is sufficient, the appellate court will issue a new ruling correcting the issues brought to their attention. Either party can ask the Iowa Supreme Court to further review this decision.

### Final thoughts:

Appellate attorneys must have a broad knowledge of the law that applies to their cases, so they can determine if the trial court has correctly applied the law. They also need to be skilled writers and legal researchers to ensure that the best possible written brief is prepared. It is important that you find an attorney with these qualities if you are considering an appeal. \*



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