

Como funciona a apresentação de recursos a tribunais superiores nos EUA

Fonte: United States Courts

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The Appeals Process

The losing party in a decision by a trial court in the federal system normally is entitled to appeal the decision to a federal court of appeals. Similarly, a litigant who is not satisfied with a decision made by a federal administrative agency usually may file a petition for review of the agency decision by a court of appeals. Judicial review in cases involving certain federal agencies or programs — for example, disputes over Social Security benefits — may be obtained first in a district court rather than a court of appeals.

In a civil case either side may appeal the verdict. In a criminal case, the defendant may appeal a guilty verdict, but the government may not appeal if a defendant is found not guilty. Either side in a criminal case may appeal with respect to the sentence that is imposed after a guilty verdict.

In most bankruptcy courts, an appeal of a ruling by a bankruptcy judge may be taken to the district court. Several courts of appeals, however, have established a bankruptcy appellate panel consisting of three bankruptcy judges to hear appeals directly from the bankruptcy courts. In either situation, the party that loses in the initial bankruptcy appeal may then appeal to the court of appeals.

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A litigant who files an appeal, known as an "appellant," must show that the trial court or administrative agency made a legal error that affected the decision in the case. The court of appeals makes its decision based on the record of the case established by the trial court or agency. It does not receive additional evidence or hear witnesses. The court of appeals also may review the factual findings of the trial court or agency, but typically may only overturn a decision on factual grounds if the findings were "clearly erroneous."

Appeals are decided by panels of three judges working together. The appellant presents legal arguments to the panel, in writing, in a document called a "brief." In the brief, the appellant tries to persuade the judges that the trial court made an error, and that its decision should be reversed. On the other hand, the party defending against the appeal, known as the "appellee," tries in its brief to show why the trial court decision was correct, or why any error made by the trial court was not significant enough to affect the outcome of the case.

The court of appeals decision usually will be the last word in a case, unless it sends the case back to the trial court for additional proceedings, or the parties ask the U.S. Supreme Court to review the case.

Although some cases are decided on the basis of written briefs alone, many cases are selected for an "oral argument" before the court. Oral argument in the court of appeals is a structured discussion between the appellate lawyers and the panel of judges focusing on the legal principles in dispute. Each side is given a short time — usually about 15 minutes — to present arguments to the court.

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A litigant who loses in a federal court of appeals, or in the highest court of a state, may file a petition for a "writ of certiorari," which is a document asking the Supreme Court to review the case. The Supreme Court, however, does not have to grant review. The Court typically will agree to hear a case only when it involves an unusually important legal principle, or when two or more federal appellate courts have interpreted a law differently. There are also a small number of special circumstances in which the Supreme Court is required by law to hear an appeal. When the Supreme Court hears a case, the parties are required to file written briefs and the Court may hear oral argument.