

# Winning at Trial - With Help from an Appellate Attorney

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Appellate lawyers have an entirely different focus from that of trial lawyers, but one that is equally important to the case. They focus on crafting and preserving the legal issues in the case. This focus usually offers the best chance of prevailing as an appellant on appeal because legal issues are reviewed *de novo* by the appellate court. It also enhances the chances of prevailing at the trial level by assuring that key legal points are advanced persuasively. In addition, involving appellate counsel before and at trial ensures consistency in the approach taken on particular legal issues. And, good appellate lawyers watch for arguments that may change the law or create new law. Appellate lawyers can assist trial counsel with pre-trial legal motions on substantive and evidentiary issues, and by preparing legal arguments to advance in motions for directed verdict. Delegating the responsibility for jury instruction and verdict form preparation to them can relieve trial counsel of these often onerous tasks, while assuring that the legal issues they involve are fully preserved. At trial, appellate counsel work seamlessly with trial counsel, who make the strategic calls as the trial progresses. Often, the appellate lawyer becomes the "voice of the law" before the trial court, something the court views favorably—especially if the other side lacks similar support. And, if the other side does involve appellate counsel, there is all the more reason to do so. Furthermore, unexpected issues always arise during trial, no matter how carefully trial counsel prepare. A fresh set of eyes with a different mindset and focus can be invaluable when the unexpected occurs. Ultimately, the first and most important role of an appellate lawyer who provides trial support is to help the trial lawyer win the case. A good marriage between a trial attorney and an appellate attorney can help create favorable results for the client. For these reasons, it is in the client's best interests that appellate lawyers be used before and during, not just after, the trial. The presence and involvement of a learned appellate lawyer during trial produces a distinct legal advantage for the client and most certainly increases the likelihood that the trial lawyers will be able to keep their eyes on the ball by permitting them to focus on building a factual case for the client before the judge and jury.

## Related Practices

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