

Evaluating Appeals by the Numbers

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PRACTICES Appellate

Is there anything more difficult for a lawyer than predicting the outcome of a civil case? That chore seems somewhat easier when predicting the outcome of an appeal, where the momentum and standard of review are stacked against the appeal, and lawyers feel confident explaining that the odds favor the appellee. However, it is not always true that the appellant is likely to lose. For example, in appeals decided during the 2001-2002 court year: 58 percent of judgments notwithstanding the verdict were reversed; 59 percent of orders granting temporary injunctions were reversed; and 79 percent of no-answer default judgments were reversed. In restricted appeals, the reversal rate was 74 percent; in tort and DTPA cases, when the plaintiff prevailed in the trial court and the defendant appealed, the reversal rate was 51 percent; in the Waco Court of Appeals, the overall reversal rate in civil appeals was 51 percent; and in the Eastland Court of Appeals, the reversal rate in appeals following bench trials was 60 percent.

These numbers demonstrate that evaluating an appeal requires more than predicting a loss for the appellant. They also call into question the accuracy of appellate case evaluations based on personal experience, impressions gleaned from advance sheets, war stories, observations at continuing legal education programs, or lore passed down through generations of lawyers. Answering questions about why courts reverse requires data.

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