

WHAT I WISH I HAD KNOWN ABOUT APPELLATE PRACTICE

By Dineen Pashoukos Wasylik

Appellate practice is a great niche for lawyers who love to write, love to tackle hard legal questions, love the minutiae of following procedural rules, and love the thrill of being grilled by a panel of judges. Because I am a self-proclaimed rules geek and board certified in appellate practice by my state bar, I expected to find it easy to run my own appellate practice after being at larger firms for more than a decade. The past year as a solo appellate practitioner has taught me a great deal, however, not only about appellate practice but also about the business of appellate practice. Here are some of the things I wish I had known a year ago.

Have a reader. No matter how good of a writer and editor you are, it is impossible to catch 100 percent of the mistakes in your own work. Even if you are a true solo with no staff, you need to have someone else read your final drafts. It doesn't have to be a lawyer—a non-attorney often can spot not only typos but impenetrable language. I rely heavily on both my spouse and my assistant to ensure my written arguments are typo-free and make sense to someone not immersed in the case.

You need systems. Appeals follow a fairly standard life span, from notice of appeal to record compilation to briefing to oral argument. But there are traps for the unwary, and the consequences of missing a deadline are devastating. Systems and checklists are key to ensuring

Dineen Pashoukos Wasylik (dineen@ip-appeals.com), the owner of DPW Legal in Tampa, is the only lawyer in Florida certified as an expert in both intellectual property law and appellate practice. Her practice focuses on intellectual property counseling and litigation and federal and state appeals.

every rule is followed every time, especially for a solo.

Invest in technology. Technology makes it easier than ever for a solo lawyer to compete with larger firms for appellate work, but to be competitive solos must invest the time and money to use technology to their advantage. You can't be an appellate lawyer today without understanding how to work with PDF files—even the U.S. Supreme Court is moving toward requiring PDF filing. And aside from the briefs, records are often electronic. Some courts are now requiring not just a printout-style PDF, but a dynamic brief with internal links and cross-references. You can't get away with using just a PDF reader. Invest in a robust PDF program, such as Adobe Acrobat Professional, that allows you to add bookmarks, set cross-references, and convert documents to be computer readable by optical character recognition (OCR). Learn how to annotate and take notes directly on PDFs. Moreover, be sure to know your word processor and its functions for styles, tables of authorities, and tables of contents. While it is certainly possible to create appellate briefs without utilizing these tools, solos save time and frustration by using technology.

It's about relationships. At the beginning of my appellate career, I was in a

larger law firm and all my appeals were generated in-house from lawyers I knew and worked with at the trial level. When I struck out on my own, I realized I had been spoiled by being in on the cases from the start. As a solo, I started getting requests to take on appeals from lawyers I did not know well, along with requests directly from potential clients. I quickly learned that the best legal theories in the world don't do any good if they aren't properly preserved. Building relationships with well-trained trial counsel will save you hours of time on client intake. When certain lawyers refer cases to me, I know the record is there, and my intake process is shortened significantly. Building these relationships by meeting and networking with other lawyers takes a lot more time out of the office than I expected.

Your job starts in the trial court. As you are building relationships with trial lawyers, you will ultimately make your own job easier if you work with trial counsel at the earlier stages of their cases. Educate other lawyers on the art of preservation and provide research and brief-writing services at the trial level on important issues that may yield an appeal. Finding ways to be helpful to other solos at the front end of their litigation work will provide you with better appeals when it is your turn to shine. ■