

COVER STORY

LEGAL ADVICE

# HERE ARE THE OPTIONS YOU HAVE WHEN A TRIAL SUDDENLY GOES BAD



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Guest contributor

The majority of lawsuits settle before the case goes to trial. There's a reason for that. It can be years before a lawsuit is scheduled for trial, the outcome is unpredictable, and the process can be expensive. That makes the prospects of an out-of-court settlement quite attractive. But often the parties are unable to reach a settlement because they view the law, the facts, and the chances of obtaining a successful verdict – however that may be defined – very differently. When the gap between the parties' respective positions is too large to close, proceeding to trial may become more palatable and, indeed, preferable. But what if you come out on the losing end? Can anything be done? The answer is, yes.

Texas' civil justice system provides 14 intermediate appellate courts, two of which are in Houston, and a supreme court. Appeals to the intermediate appellate courts are a matter of right, meaning those courts must address the merits of a properly-filed and timely appeal. The Texas Supreme Court, on the other hand, has discretion – like the U.S. Supreme Court – to pick and choose which cases it will accept. The appellate courts' primary function is to carefully review and correct errors committed during a trial that are brought to their attention.

Deciding whether to appeal should involve consultation with an experienced appellate attorney, who can identify errors committed during the trial and provide advice on the likelihood that the judgment may be reversed. If an appeal is pursued, the appellate attorney will take critical post-trial steps to ensure that an error is preserved for appellate review,



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timely advance the case from the trial court to the court of appeals, and prepare a detailed, well-written, and compelling legal brief that fully and clearly explains why the errors that



were committed in the trial court justify reversing the bad result. In this regard, the appellate process is generally less burdensome and less expensive than the litigation

that preceded it. After the briefing is complete, the court of appeals can decide the case based on the briefing, or it can request the appellate attorneys to appear for an oral argument. From there, the court of appeals has several options. For



example, if the appeal is successful, the court may reverse and render judgment for the appellant, which means the appellant wins the case without the need for a second trial or it can reverse the judgment and remand the case for a second trial, depending upon the nature of the error.

For an appeal to be successful, it is critical that the appellate attorney reviews the record in detail and identifies the types of errors that commonly result in reversal. Was the verdict supported by legally and factually sufficient evidence? Did the trial court apply the law correctly? Is there disagreement



among courts as to what the law actually is? Was the jury charge written properly? Do the pleadings support the outcome? Are the jury's findings in conflict? Was there any misconduct by opposing counsel or members of the jury? These and other irregularities can, and often do, turn fortunes around; but spotting the error and crafting a persuasive brief is critical.

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