

9.01 | INTRO - APPEALS

The plaintiff and/or the defendant may appeal a final judgment or order rendered by the United States District Court for the Western District of New York to the United States Court of Appeals for the Second Circuit. You must refer to the appeal procedures detailed in the Federal Rules of Appellate Procedure (Fed. R. App. P.) which are set forth in Title 28 of the US Code. If you plan to appeal a final judgment or order you should very carefully read the Appellate Rules, which are available on the Second Circuit's website: <<http://www.ca2.uscourts.gov/>>.

Proper grounds for an appeal often involve allegations that the judge made an error either in his/her interpretation of the law or in a procedural ruling during the course of the trial. For example, a procedural error may exist if the trial judge improperly admitted evidence. However, the fact that an error occurred at the District Court level may not by itself be sufficient to justify reversal of the court's decision. The error must have been sufficiently important so that the judge or jury reached an incorrect decision as a result of the error.

Although there are exceptions, usually only final orders or judgments from the District Court may be appealed to the U.S. Circuit Court. (28 U.S.C. §1291). The exceptions permitting certain specified "interlocutory appeals" are set forth in 28 U.S.C. §1292.

Appeals courts differ from trial courts in that there are no jurors or witnesses. Testimony is not heard, and the parties themselves may not even be present at the appeal. Usually, a panel of three judges is assigned to hear the appeal of a case. The appellate court will only consider issues the District Court considered. Generally, a party may not submit additional documents to the appellate court that were not part of the record in the District Court. In addition to the record which will be transmitted from the District Court, the appellate court will consider a party's positions or arguments as set forth in his/her appellate brief. After the appeal is submitted or argued, the panel will usually notify the parties of the decision by mail.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*

