



July 25, 2018

APPELLATE BRIEFS AND MOTIONS PRACTICE

You may not plan on appealing your client's case, but the opposing party may have other ideas. Your client thinks the judge got it wrong. Or you win the case, but the other side wants to take your client's victory away from you... just when you thought it was over.

You and your partners should focus on the types of cases which are most familiar, that you regularly handle, for efficiency, profitability, and effectiveness.

I write appellate briefs to assist law firms and amicus curiae briefs for interested organizations as legal services. I focus on assisting law firms that do not have their own in-house appellate practice, such as small law firms and solo attorneys, or public interest organizations filing Amicus Curiae briefs. I have handled many appellate cases for the founder of Judicial Watch, Larry Klayman and clients in my own practice as lead attorney for them. I can provide many examples of my appellate work and references.

I work on cases nationwide where a local attorney on the case can sign and file the briefs. For cases in Virginia, where I am licensed, I can directly file briefs, even take the lead on the appeal, and argue the case before the Virginia Court of Appeals, Supreme Court of Appeals, Fourth Circuit Court of Appeals, or soon the Third Circuit shortly.

The need to appeal can arise unexpectedly, at an inconvenient time in your firm's work schedule. Cases that balloon in your schedule, taking more time than you thought, can really disrupt your planning and time management. Suddenly you are over-stretched.

Keep in mind: Other appellate attorneys may have a conflict of interest. Or they may already be maxed out in their work schedule. You may imagine you have a solution. But do you have a "Plan B" if they are not available?

You may need an appellate attorney who is available on short notice who can give you beyond full-time effort without conflicting work load. Appellate deadlines are unforgiving and brutal. Some actions must be taken in the first 30, 60, and 90 days. My work has often focused on intensive work and shorter-than-usual turn-around times.

People often forget that the Appendix or Excerpt of the Record of selected, relevant

documents is typically due simultaneously with the opening brief. If you are on the Appellee side, you must quickly determine if your opponent has left out important documents that you need to include in the Appendix or Excerpt of the Record. Because of the need to cite to the Appendix, you must do all of this work simultaneously.

Appeals courts are much stricter with formatting, legal argument, citations, support from the record, and other rules. Sanctions for improperly drafted or submitted briefs, appendices, or motions are more common in appellate courts. An attorney familiar with appeals is better than mixing the occasional appeal with normal litigation trial practice.

My appellate services can be customized to fit your needs, to either leave certain tasks to you or to fulfill those tasks for you, as you decide is best. (You may want to start with a preliminary review to evaluate the likelihood of successfully pursuing an appeal.)

Full services would normally include analyzing the trial court's final order(s) and other orders appealed from, reviewing the trial record, identifying the strongest issues for appeal, developing, strategizing, and framing the questions presented, legal research determining the viability and strength of each question presented identified, legal research for precedents in support of arguments, legal and appellate strategy, creating and drafting argument in support of each question presented, review of formatting rules for the relevant jurisdiction, and drafting briefs for your final review.

My work can include assembling the Appendix (Excerpt of the Record) both in terms of the substance of determining relevant documents, review of the deadlines, and in formatting and assembly as required by the rules of the jurisdiction. That includes creating the digital version according to each court's requirements. I do much of printing and booklet binding in-house, which is lower cost, but more importantly under my control for meeting deadlines and not risking availability of outside vendors. You don't need those variables. You don't want to miss a deadline because the printer is too busy.

In contrast to extremely expensive legal printing firms, I have typeset briefs including in U.S. Supreme Court booklet format, and arranged printing with correct covers, page size, binding and formats at low cost. I am experienced in arranging the printing of appeal briefs as booklets with the proper color-coded covers, including for the U.S. Supreme Court, and preparing the appendix of the record including as assembled and booklets and digital versions on CD-ROM's according to the technical requirements of the appellate courts. (Costs of printing are of course extra, payable separately.)

You decide if you want to identify the issues to be decided on appeal, arguments, and appeal strategy or you want a fresh set of eyes to review the trial record and develop appeal issues and arguments. Options include:

- Identifying the errors made in the trial or pre-trial motions and issues on appeal. You may already have decided issues you want to appeal

during the case. Or you may want the transcripts and records to be scoured to identify the biggest errors or additional errors.

- Considering with the trial attorney and/or client the ultimate objectives that the client most wants to accomplish and under what circumstances.
- If I am involved early enough before the transcript filing deadlines, review of the case to advise on all of the transcripts that need to be filed to be available in support of the appeal.
- Legal research to determine, based on prior court decisions, the legal strength of each issue you would like to appeal.
- Legal research to present statutes, precedents, rules, treatises, etc., in support of the arguments your client needs to make.
- Careful review of the appellate court's local rules and procedures and formatting requirements.
- Meticulous analysis of the court transcripts and record to provide the mandatory citations to prove that errors on appeal were preserved in the trial court and to document any factual assertion from the record. These citations are mandatory and their absence can result in sanctions. You can be doing your own work on other revenue-generating cases while this is done for you.
- Generating the procedural history and facts aimed and presented for maximum persuasion of the result desired on appeal. (These must be tailored to the issues being decided or questions presented).
- Writing a persuasive legal argument in support of each of the errors identified for review on appeal.
- Rewriting the brief to fit within page and/or word count limits.
- Identifying the standard of review for each type of error on appeal (required in most courts).
- Generating a Table of Authorities and Table of Contents.
- Printing the brief and Appendix and binding into booklets as required by the particular court's rules. I will handle much of the printing and binding tasks in-house to ensure that meeting deadlines is not held hostage by the workload of third party vendors.
- Checking filing requirements to ensure that the brief and Appendix is properly filed.
- Filing associated notices and pleadings such as corporate financial disclosures or information sheets
- Handling objections or requests from the court to fix any problems.
- Handling any motions or replies to motions in the appeals court, including perhaps requests for extensions, etc.
- Writing a reply if warranted

Most law firms which do appeals typically demand at least \$20,000 as a retainer and project as much as \$50,000 total cost. I can do the typical appeal usually for around

\$11,000, including the costs of printing and binding briefs and document booklets.

Surprisingly affordable, even after 20 years of practice following work in the Federal government and a Finance undergraduate degree. I charge \$130 per billable hour "wholesale" to law firms. For the paralegal work of assembling documents, filing, mailing, printing and binding briefs and the Appendix, organizing documents into the Appendix, etc. a \$40 per hour paralegal fee is charged.

You can earn net positive billings by subcontracting this work or generate additional billable hours from your work reviewing, guiding, and approving the drafts of briefs. However, this is intensive work and your client should budget about \$11,000, with more than 75 billable hours likely. This does not include the costs of transcripts.

An advance deposit (retainer) of \$7,500 is needed to begin, especially due to the short time-line of the work and need for collecting payment.

Or you may want only a preliminary review to give a formal, legal assessment of the chances for success on appeal and the work involved. This will require only a \$1500 advance deposit, and most of that work will be re-useable if a full appeal is ordered.

Let's discuss your plans as early as possible and see if I can help you.

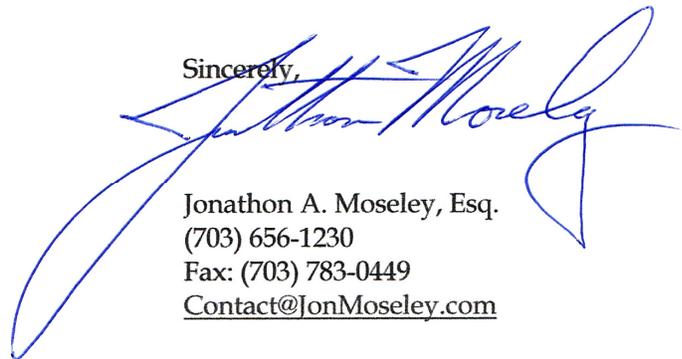
I can provide examples of my work and a list of appeals I have worked on and references. I have a wide variety of litigation experience in Virginia and federal courts.

Of course, the time period from final order to filing the appellate brief is the most *dangerous* period where many *unrecoverable* mistakes can be made. A smooth hand-over is very important. The transition and hand-off from the end of the case in the trial court, the filing of the Notice of Appeal, and filing of a court reporter's transcript are very important and all these steps have to be handled very carefully.

If I am called in early, immediately after the final judgment, I can assist in making sure that all of the technical requirements are handled properly in the trial court.

This is ADVERTISING MATERIAL and ADVERTISEMENT FOR LEGAL SERVICES.

Sincerely,



Jonathon A. Moseley, Esq.
(703) 656-1230
Fax: (703) 783-0449
Contact@JonMoseley.com