

# Trial Litigation from the Appellate Perspective



Judge Stephen J. Windhorst

Judge John J. Molaison, Jr.

Walter R. Woodruff, Esquire

# Learning Objectives

- Learn about the workload and statistics of the court
- Become familiar basic appellate practice
- Recognize some pitfalls in appellate practice

# 2021 Filings

## ➤ Appeals

- 139 Lodged (Criminal & Civil)
- 104 Full Opinions

## ➤ Statistics

- 44% reversed, vacated, or modified
- 50% affirmed
- 6% dismissed

# 2021 Filings

- Writs – 581 filed
  - 146 Civil Writs
  - 435 Criminal Writs
- Statistics
  - 83% denied
  - 1% not considered/dismissed
  - 16% modified

# Applying for Supervisory Writs

- La. C.C.P. art. 2201
- Before/during trial & before final judgment
- Conform with Uniform Rules  
Courts of Appeal 4-1
- Trial court maintains jurisdiction
- Is a stay needed?

# Applying for Supervisory Writs

- Irreparable Injury?
- Herlitz factors
  - Reversal will terminate litigation
  - No dispute of facts
  - Judicial efficiency
  - Fundamental fairness
- No response timeline

# Appealing Final Judgments

- Determines merits of the case
- Signed Judgment
- Interlocutory -- court may exercise discretion & convert the appeal to a writ

# Interlocutory Judgment Appealable

- Trial court designates it as final and makes “an express determination that there is no just reason for delay” – article 1915(B)



**6 Partial Judgments  
Automatically Appealable**

# Preserving Issues for Appeal

- Timely objection
- Specific grounds
- Brought to the attention of the judge

# Building an Adequate Record

- Appellate courts only consider matters in the record
- Pretrial preparation is critical
  - Planning objections
  - Supervisory writs
- Off record conferences

# Governing Standard of Review

- Manifest error or clearly wrong
- De Novo review

# Exceptions

- Subject matter jurisdiction may be raised on appeal
- Appeal Court may raise:
  - Nonjoinder, peremption, res judicata, discharge in bankruptcy,
  - Failure to obtain order of appeal

# Exceptions

- Prescription may be raised first on appeal
- Must be pleaded

# Experts – C.C.P. Art. 1425

- Written report prepared & signed
  - Upon motion of a party or the court
  - Statement of all opinions to be expressed
  - Basis & reasons for the opinion
  - Date or other information considered
  - Exhibits, list of qualifications & publications last 10 years, compensation paid, other cases with testimony the last 4 years (agreed by parties or court order)

# Experts – C.C.P. Art. 1425

- Disclosures made as ordered
  - Timing
  - Sequence
  - 90 days prior to trial (minimum)
  - 30 days after disclosure of expert by other party for rebuttal
- Party seeking discovery generally pays the cost – unless manifest injustice would result



# Experts – C.C.P. Art. 1425

## ➤ Daubert hearing

- Any party may move to determine whether
  - Witness qualifies as an expert; or
  - Methodologies employed are reliable under C.E. articles 702 through 705
- Filed not later than 60 days prior to trial
- Sets forth sufficient allegations showing the necessity for a ruling

# Daubert Hearing

- Court must hold a contradictory hearing
- Not later than 30 days prior to trial
- Shall consider qualifications & methodologies of the proposed expert
- May allow live testimony for good cause shown

# Daubert Hearing

- Court ruling either orally or written must include:
  - Findings of fact
  - Conclusions of law, &
  - Reasons for judgment
- Elements required for the expert, the evidence in satisfaction, whether deemed an expert or not with facts
- Reviewable on appeal

# Daubert Hearing

- Clear abuse of discretion
- Clearly erroneous

# Mistakes Affecting Appeals

- Insufficient Decretal Language
- Must contain:
  - Parties in favor of & against whom the ruling is ordered
  - Specify the relief or award which is granted or denied
  - Claim(s) or cause(s) it adjudicates
- Judgment must be discernible & certain on its face

# Proffer

- Evidence held inadmissible – record or statement of the nature thereof
- Court may allow any excluded evidence to be offered subject to cross-examination
- Court must state reasons for ruling

# Proffer

- On the record or by deposition
- During recess or other time designated by the court
- Within 30 days subsequent to exclusion

# Designating the Record on Appeal

- All or portions of the record
- 3 days, excluding holidays, after taking the appeal
- If only portions of the record – must designate a concise statement of points relying upon



# Answering the Appeal

- No need to answer unless seeking to modify or reverse judgment or damages for frivolous appeal
- Appellee's answer is equivalent to a cross-appeal
  - Not applicable to those not appellants

# Requesting Oral Argument

- Lodging of record triggers deadline to request
- Must be made within 30 days after lodging of record
- Untimely brief forfeits right to oral argument
  - Motion to Reinstate Oral Argument
- In-person or Video Conference

# Mistakes Affecting Appeals

- Insufficient Decretal Language
- Must contain:
  - Parties in favor of & against whom the ruling is ordered
  - Specify the relief or award which is granted or denied
  - Claim(s) or cause(s) it adjudicates
- Judgment must be discernible & certain on its face

# Top 4 Filing Issues

- No attached judgment from the district court on appellate brief
- No signed copy of the Notice of Intent or judgment on writ application
- Pages not consecutively numbered
- Combining appellant & appellee briefs

**Questions?**



**Thank you**