

4 KEY TAKEAWAYS

Why Judgments Get Reversed on Appeal

After reviewing official court statistics, 178 Texas court-of-appeals decisions, and 132 Fifth Circuit decisions from 2017 to determine “Why Judgments Get Reversed,” Kilpatrick Townsend counsel **Jason Steed** offers a few key takeaways:

1

“Legal issues” (i.e., interpreting statutory & contractual provisions, defining legal standards, determining standing & jurisdiction, etc.) are the most common reason for reversal (70% of reversals in CA5; 74% of reversals in TX COA), so start crafting your legal issues and arguments early in the trial court -- this is where excellent legal writing really matters!

2

The next-most common reasons for reversal are attorney-fee issues (arising in about 25% of reversals in both CA5 and TX COA) and jury-charge error (in TX COA only), so make sure attorneys’ fees and the jury charge are not treated like an afterthought. Most TX judges recommend getting an appellate attorney to help with drafting the charge and handling the charge conference.

3

The Fifth Circuit affirmed a judgment after finding that an issue or argument had been waived about 2.5 times more often than it reversed a judgment (split pretty evenly between trial-court waiver and briefing waiver), so pay attention to waiver risks from the pleadings onward -- and brief everything thoroughly!

4

Finally, several Fifth Circuit judges have publicly stated their preference for seeing established appellate attorneys on briefs and at oral argument, and two recent studies showed a correlation between having established appellate lawyers on the briefs and winning on appeal (especially for appellees) -- so consider hiring an appellate attorney!

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