



FRANKEL-Y APPEALING

By Tracy L. Frankel, Esq.

Are you evaluating whether to recommend an appeal? Regardless of the complexity of issues at hand, it is critical that your process include, what I refer to as, PRAD: Preserve, Review, Assess, Deadline Identification.

- **PRESERVE** your right to appeal. The filing of the Notice of Appeal is a jurisdictional requirement. If you are late, you will lose your right to appeal. The initial appellate filings are not one-size-fits-all. Having Appellate Counsel prepare the Notice of Appeal and Initial Information Statement, where required, will help to ensure that the appropriate strategic choices are being made from the outset; and that the language chosen for the Notice of Appeal and Initial Information Statement aligns with the appellate strategy planned for the brief.
- **REVIEW** the Order, any accompanying Decision, the Judgment and/or the trial transcript and note the Court's reasoning behind its rulings and/or orders, if provided. Review all moving papers reviewed by the Court before it made its decision.
- **ASSESS** the law and facts relied upon by the Court for mistakes and distinctions. Is the Order bare? Assess the requirements for issuing Orders. While there are many considerations to evaluate before making a recommendation, you will want to assess: the chances of success; whether this is a novel issue; the impact of a loss or win for the industry involved in the appeal; the financial impact of an appeal; and the client's priorities for the specific litigation.
- **DEADLINE IDENTIFICATION** should clearly be expressed in your evaluation. Appellate counsel should make clear when they need their client to decide whether to move forward with an appeal and when the appeal needs to be perfected.



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