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Standards of Review in Practice: How They Help Decide the Appeal

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Appellate outcomes often turn less on *what* happened in the trial court and more on *how* an appellate court is permitted to review it. For corporate litigants, the applicable standard of review – abuse of discretion, de novo, or clear error – can have a tremendous influence on whether a judgment is affirmed or reversed. Yet this issue is frequently underappreciated until it is too late to change it.

This alert explains how appellate courts apply the major standards of review, why the standard itself is often outcome-determinative, and what corporate clients and in-house legal teams should be doing before appellate action is taken to protect their interests.

Why Standards of Review Matter

Appellate courts do not decide cases on a blank slate. Instead, they review trial court decisions through a defined lens that allocates decision-making authority between trial and appellate courts. That lens – the standard of review – reflects the appellate court's more limited role and controls how much deference it must give to what happened below.

From a business perspective, this matters because the different standards can drastically affect how the case is presented to, and decided by, the appellate court. A highly deferential standard (like clear error) may make reversal extremely unlikely, even if the appellate court might have decided the issue differently in the first instance. While a non-deferential standard (like de novo) may effectively reopen the case, allowing the appellate court to start fresh and substitute its judgment for the trial court's. Importantly, the standard of review often is fixed by how issues were framed, preserved, and decided at the trial level – long before a notice of appeal is filed.

In many appeals, courts openly acknowledge that the applicable standard of review drives the result. For corporate defendants or plaintiffs with material financial exposure, that reality makes standards of review a strategic issue, not a technical one.

The Three Standards That Most Often Decide Appeals

1. Abuse of Discretion: The Appellant's Steepest Climb

Under an abuse of discretion standard, the appellate court asks not whether it agrees with the trial court, but whether the trial court's decision fell outside the range of reasonable choices. If reasonable judges could differ, the ruling is typically affirmed. Appellate arguments under this standard are often less about the merits of an issue and more about what a trial court did or how the trial court handled a particular issue.

This standard commonly applies to:

- Discovery rulings
- Evidentiary decisions
- Case-management orders
- Sanctions

- Many equitable determinations

Why it matters for corporate clients:

Abuse of discretion review heavily favors the party that prevailed below. Even strong arguments on the merits may fail if the trial court's reasoning is defensible. For companies facing adverse discretionary rulings, the practical odds of reversal may be far lower than expected – affecting settlement leverage, reserves, and litigation strategy.

Conversely, when a corporation secures favorable discretionary rulings at trial, that deference can become a powerful shield on appeal.

2. De Novo Review: A True Second Look

De novo review is the least deferential standard. The appellate court considers the issue anew, without giving weight to the trial court's conclusions.

This standard typically applies to:

- Questions of law
- Contract interpretation (in many jurisdictions)
- Statutory interpretation
- Summary judgment rulings based solely on legal issues

Why it matters for corporate clients:

De novo review creates both risk and opportunity. For appellants, it offers a genuine chance to change the outcome, even where the trial judge was careful and thorough. For appellees, it eliminates the safety net of deference.

Importantly, whether an issue is characterized as "legal" (triggering de novo review), "factual," or "discretionary" (triggering deference) is often subject to argument. That characterization battle can be decisive – and it frequently begins in the trial court.

3. Clear Error: Deference to the Record

Under clear error review, an appellate court will not disturb factual findings unless it is left with a definite and firm conviction that a mistake has been made. Where the trial court heard live testimony and made credibility determinations, reversal is particularly rare.

Why it matters for corporate clients

Clear error review places enormous weight on the trial record. If key facts are not developed, preserved, or clearly established, the opportunity to challenge them on appeal may be functionally lost. For companies involved in bench trials, injunction proceedings, or regulatory disputes, this standard often locks in outcomes. It is vital that a complete and clear record is created in the trial court and submitted to the appellate court. Without a well-developed record that allows the reviewing court to determine what factual findings were made, obtaining a reversal under this standard becomes nearly impossible.

Framing the Standard: The Often-Overlooked Battleground

While appellate courts ultimately determine what standard of review applies to an issue, they do not do so in a vacuum. The litigants can help guide the appellate court to apply a particular standard, and parties who have laid the appropriate groundwork below are far better positioned to influence that decision.

Common framing issues include:

- Whether an issue is characterized as legal, factual, or discretionary
- Whether mixed questions are separated into reviewable legal components
- Whether objections were preserved in a way that avoids even more deferential review

For corporate clients, these framing questions can eclipse the underlying merits. A strong legal argument reviewed de novo may fail entirely if recast as a discretionary call reviewed for abuse of discretion. And a decision by a trial court can lose the deference to which it would ordinarily be entitled if a party can convince the appellate court that the trial court committed a legal error while exercising that discretion.

What Corporate Clients Should Do Before Appellate Action Is Taken

The most important appellate work often occurs before an appeal exists. Companies can materially improve their appellate posture by focusing on the following steps early.

Involve Appellate Counsel Early

Early appellate involvement, during dispositive motions, evidentiary disputes, or trial, helps ensure that issues are framed to attract favorable standards of review and that the record supports those standards. Appellate counsel can serve a valuable role in identifying potential issues that could result on appeal based on strategic decisions made in the trial court.

Build the Record with the Standard in Mind

Trial strategies should account for how a ruling will be reviewed later. That includes:

- Making clear legal arguments on the record
- Requesting explicit findings where appropriate
- Preserving objections fully and precisely

Assess Risk Realistically After Trial

Post-judgment evaluations should incorporate the applicable standards of review, not just the perceived strength of the merits. This can meaningfully affect decisions about appeals, settlements, and financial disclosures.

Align Business and Appellate Strategy

Because standards of review shape the likelihood of success, they should inform broader business decisions – ranging from whether to pursue an appeal to how aggressively to negotiate a resolution.

Key Takeaway

Standards of review are not appellate technicalities; they are often the decisive factor in whether an appeal succeeds or fails. For corporate clients, understanding and influencing those standards, well before appellate briefing begins, can preserve leverage, manage risk, and materially affect outcomes.

Companies that treat appellate strategy as an extension of trial strategy, rather than an afterthought, are best positioned to protect both their legal and business interests.

For questions about how standards of review may affect your pending matters, or about integrating appellate strategy earlier in litigation, please contact [David D. Ayliffe](#), [Thomas H. Jarvis](#), or a member of Baker Donelson's [Appellate team](#).