

FBT Appellate Team

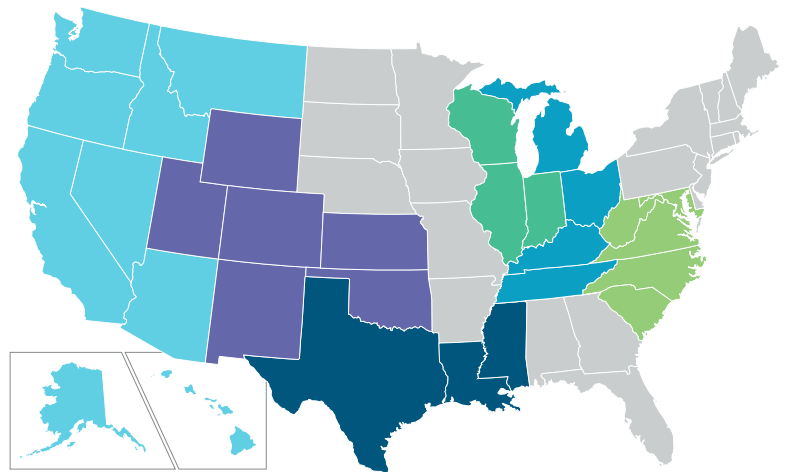
Expertise. Excellence. Experience.

Appellate advocacy is just different from trial court advocacy. Appellate lawyers often need to find creative solutions to difficult legal issues, especially when trying to overturn a bad result or when faced with bad facts. Yet appeals offer far more limited opportunities for advocacy—one or two briefs and perhaps an oral argument. The ability to distill complex arguments and stories into direct, persuasive prose is essential. The winnowing and tailoring of arguments are critical. Standards of review influence everything. The procedural rules and jurisdictional pitfalls are different. And what moves an appellate judge can be vastly different from what moves a trial court judge or a jury. So appeals call for lawyers skilled in this very different art of advocacy.

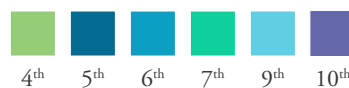
Know-How in our Footprint

While plenty of big law firms have appellate teams, we have a particular wheelhouse that we think benefits our clients. Frost Brown Todd's appellate team is stacked with lawyers with deep experience in particular jurisdictions. Can we handle appeals outside of this core footprint? Yes—we do it all the time and we do it well. But our familiarity with and understanding of the courts in our core footprint allows us to bring something extra to the table.

Our primary appellate footprint matches our firm's footprint. At the federal level, we have vast experience in the Fourth, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits. At the state level, we are well known in the supreme courts and intermediate appellate courts of Kentucky, Indiana, Ohio, West Virginia, Texas, Colorado and California. Our team includes many former appellate law clerks, and we literally wrote the books on appellate practice in Kentucky and the Sixth Circuit. (Well, maybe not the only such books—but prominent ones.) This depth of experience in these jurisdictions means we understand the judges of these courts, know how these courts operate, and understand both the written and unwritten rules of these courts.



FEDERAL EXPERIENCE



STATE EXPERIENCE

IN, CA, CO, WV, OH, KY and TX

Fresh Perspective

Appellate counsel bring a new outlook to your case. Simply repeating the same arguments in the same way may or may not get the job done on appeal. With a fresh perspective, we identify the issues most likely to interest and persuade appellate judges. And we take time to learn what each case means for our clients so we can craft persuasive arguments that best serve those interests.

Strategic from the Start

More and more, clients understand that the best preparation for an appeal starts long before the appeal itself. When we're able to intervene before and during trial, we draw on our extensive experience collaborating with trial counsel to identify and preserve issues and arguments, while helping to shape the record for eventual appellate review. From consulting on preservation of error to drafting pretrial motions to arguing jury instructions, we help clients and their trial lawyers position a case for future appellate—and final—success.

A Boost from Technology

FBT's Appellate Team uses the latest AI-based technology both to refine our work product and create efficiencies for our clients. We're not talking about generative AI—we instead use technology to improve our work product or assist with our analysis. We use software tools that combine impeccable proofreading functions with stylistic suggestions to make our writing even more direct and persuasive. We use supplemental research tools based on legal concepts, rather than the traditional Boolean keyword-search method, to help us ensure we're absolutely on top of the relevant precedent. We use other apps to streamline and focus our review of the trial court record. And before we use any technology tool, it must first pass our firm's rigorous security protocols.

Demonstrated Success

Clients choose FBT's Appellate Team to correct trial court errors and excessive jury verdicts, to preserve favorable judgments, to join and advise trial teams, and to persuade higher courts to accept discretionary review of unfavorable intermediate appellate court decisions. We're proud of our record of success, including many appeals involving questions of first impression, and bet-the-company judgments.

WHAT FBT BRINGS TO YOUR APPEAL

- We know the ins and outs of the appellate rules—written and unwritten—and the pitfalls to avoid
- We collaborate with trial counsel to benefit from their substantive expertise and knowledge of the case
- We believe in direct, powerful writing, not turgid legalese
- We're familiar with the appellate judges in our footprint
- We use the latest technology to improve our work product and create efficiencies



Scan to learn more about
FBT's appellate team

REPRESENTATIVE EXPERIENCE

Starlink Logistics, Inc. v. ACC, LLC, ___ F.4d ___ (6th Cir. 2024)

FBT's appellate team, led by Matt Blickensderfer, scored a partial reversal of the dismissal of our client's environmental citizen suit. The district court had dismissed some claims based on claim preclusion and others based on failure to meet the statutory prerequisites for environmental citizen suits. The Sixth Circuit reversed the claim preclusion ruling and remanded those claims, while leaving the door open to refiling of the other claims dismissed based on the statutory prerequisites.

Primal Vantage Company, Inc. v. O'Bryan, 677 S.W.3d 228 (Ky. 2023)(vacating \$18.2 million jury verdict)

FBT's appellate team, led by Griffin Terry Sumner, represented a manufacturer in the successful appeal of \$18.2 million jury verdict. The case involved a plaintiff's catastrophic injuries sustained in a fall from a hunting tree stand. Reversing and remanding for new trial, the Kentucky Supreme Court not only vacated a multi-million-dollar verdict, but also clarified several products liability issues that will guide manufacturers through the litigation process to defend their products. First, the Supreme Court emphasized a trial judge's role as "evidentiary gatekeeper" to ensure that only admissible evidence is presented to a jury and rejected the trial court's admission of 78 other tree stand incidents. Second, the opinion confirmed that a design defect claim requires proof of "an alternative, safer design that is practical under the relevant circumstances." In so doing, the Supreme Court rejected various purportedly alternative designs proposed by the plaintiffs, finding that those options were either not safer or not feasible when this tree stand was manufactured.

Hawaii Dept. of Human Services, Div. of Vocational Rehab. v. U.S. Dept. of Education, Rehab. Services Administration, 46 F.4th 1148 (9th Cir. 2022) (reversing in part and affirming in part Department of Education arbitration award of priority for blind vendors in bids for cafeteria service contracts)

FBT's appellate team, led by Ryan Goellner, represented the Hawaii Department of Human Services in a dispute with the United States Army over the priority to be applied to the Department's state-licensed blind vendors for the award of a multimillion-dollar cafeteria service contract at a Hawaii Army base. From an adverse arbitration decision against the Department, FBT prosecuted a partially successful appeal to the district court, and then obtained complete success in the Ninth Circuit. The court's precedential decision resulted in immediate priority for blind vendors in the Army's cafeteria contracts in Hawaii, and binds the Army and federal agencies to apply the priority for blind persons in awarding these types of contracts across the western U.S.

Doe v. Flores, 661 S.W.3d 1 (Ky. App. 2022) (affirming dismissal of defamation claims based on social media posts for lack of personal jurisdiction)

FBT's appellate team, led by Jason Renzelmann, successfully represented nationally prominent journalists in an appeal that affirmed dismissal of claims related to allegedly defamatory social media posts based on lack of personal jurisdiction. Deciding an issue of first impression in Kentucky, the court held that merely posting a comment on social media about a resident of the state did not, without more, suffice to show that the defendant purposefully availed themselves of a Kentucky forum or otherwise had sufficient contacts with the state to confer personal jurisdiction.