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Understanding the Appeals Process

A few months ago, in this author's first post for the Hoosier Litigation Blog – *Think Before You Wave*, we discussed the Indiana Court of Appeals decision in *Key v. Hamilton*. That decision was issued on February 28, 2012, however, it may surprise you that the case was not finally decided until June 20, 2012 when the Indiana Supreme Court denied transfer. In order to understand what exactly this means, it is important to have a functional understanding of how the appellate process works.

An important note to be heeded before diving into any discussion of the appellate process is to first establish the jurisdiction that is being discussed. The process varies by state and by federal jurisdiction. Indeed, when one adds in things such as administrative hearings prior to judicial review, the entire process can be extremely complex. Thus, for simplicity's sake, this post will focus on the appeals process of a civil claim through the Indiana court system and also take a look at how the process works for the same case through the federal court system.

For illustrative purposes let us use the following hypothetical case for our discussion. John suffers damages as a result of wire fraud conducted by Junk Mail Co. and Fraud R US, Inc. – two hypothetical defendants. For the purpose of this hypothetical, let us assume that John sues both defendants for (1) violation of the

Federal Racketeer Influenced and Corrupt Organizations Act— better known as RICO – and (2) violation of the Indiana RICO statute— often called Baby RICO. At the moment of filing his case, Because John has sought a claim for violation of federal law, he has the option of filing in either state or federal court.

First, let us look at the process if John decides to file in an Indiana state court and has been assigned to Marion County Superior Court 10 and the Honorable David Dreyer. Assume that John's case has gone to trial and that he has received a jury verdict against both Fraud R US, Inc. and Junk Mail Co. However, earlier in the case the court denied a motion by both defendants and the defendants believe it was error to do so. At this point, with the trial complete, the defendants file an appeal. At this stage that appeal goes to the Court of Appeals of Indiana. Now, at this stage the Court of Appeals has two basic options. It can affirm the trial court or it can reverse the trial court. Of course, the court can also reverse in part and affirm in part. Depending on the grounds for the reversal, the court can also remand the case to the trial court for further proceedings which can include a new trial.

Continuing with our hypothetical, let us assume that the Court of Appeals has found that Judge Dreyer has made absolutely no error and affirms the trial court. At this stage, Junk Mail Co. decides to end the battle and pay the judgment to John. Fraud R US on the other hand, opts to continue fighting the case and wants to take the case to the next level. This next level is the Indiana Supreme Court. However, unlike the appeal to the Court of Appeals, Fraud R US does not have an absolute right to an appeal. Thus, in order for the case to be heard by the state's highest court, Fraud R US must file a petition for transfer. At this juncture, the Indiana Supreme Court can either grant the petition or deny it. Even if the court initially grants transfer, it can still later rescind that grant.

In our hypothetical, let us assume that the Indiana Supreme Court grants transfer and decides the case again in favor of John. The moment the case was granted transfer, the Court of Appeals decision was vacated. Now, here is a very important note. The decision was only vacated as to the parties to the appeal. So, what does that mean? Well what that means is that because Junk Mail Co. did not seek transfer, regardless of what happens at the Supreme Court, it is still bound by the Court of Appeals decision.

So, the Indiana Supreme Court has weighed in on the case and affirmed the Court of Appeals, thereby finding for John, is that it? Not quite. If the only issues in the case were governed by Indiana law, then the case would be complete. However, one of the claims was a violation of the federal RICO act. Because there is still a lingering federal issue, there is one last potential appeal for Fraud R US. Fraud R

US can seek a writ of certiorari to gain review by the Supreme Court of the United States. As long as the Court does not remand the case, then it will be final. However, the Court can still remand the case if it finds an error and can result in the case being retried if necessary. That would mean that after years of appeals and after 1 trial court judge, 3 appeals court judges, 5 Indiana Justices, and 9 Supreme Court Justices have weighed in on the case, it could go all the way back to room on the 14th floor of the City-County building for a new trial.

Now if the case had been brought in federal court, then the appeals process is slightly different. Firstly, instead of being reviewed by the Indiana Court of Appeals, the case would be heard by the meticulous Seventh Circuit Court of Appeals. Then, the only appeal that can be taken after that is to the Supreme Court of the United States. There is no intermediary level provided by the state court. However, the process can never be too simple. So, there is still a mechanism to have the matter heard, in part, by the Indiana Supreme Court. Recall that in addition to the federal RICO claim there was also a state RICO claim. Therefore, if at any stage of the proceedings the federal court is unsure of how the Indiana Supreme Court would decide an issue of Indiana law, that court can certify a question to the Indiana Supreme Court to weigh in on how it would decide an issue.

With this overview in mind, let us return to *Key v. Hamilton*. After the Court of Appeals reached its split 2-1 decision on February 28, 2012, on March 28, 2012 Key filed his petition for transfer to the Indiana Supreme Court. This meant that even though the Court of Appeals had reached a decision, the case was not over. Remember, if the Indiana Supreme Court grants transfer the Court of Appeals decision is automatically vacated. However, in this case, with all briefs having been filed, a unanimous Indiana Supreme Court denied the petition for transfer and the case was finally decided.

As always the case, the appeals process is a treacherous path to travel without the support of seasoned lawyers with experience in such matters. This is why it is always important to find an attorney who is experienced, knows the intricacies of Indiana law, and can zealously advocate for your rights.

Join us again next week.

Sources

- *Key v. Hamilton*, 963 N.E.2d 573 (Ind. Ct. App. 2012), *trans. denied*.

- Federal RICO Act – 18 U.S.C. chapter 96.
- Indiana RICO Statute – Ind. Code 35-45-6.
- Recent Indiana Appellate decisions – <http://www.in.gov/judiciary/2730.htm>.
- Recent Seventh Circuit Appellate decisions – <http://www.ca7.uscourts.gov/fdocs/docs.fwx?dname=opinion>.
- Recent Supreme Court of the United States decisions – <http://www.supremecourt.gov/opinions/opinions.aspx>.

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