

STANDARD OF REVIEW:

A. Why is this important at all?

Few aspects more crucial to a successful case and especially to an appeal than the standard of review:

This dictates how rigorously a court will review the issue before it.

So what does this mean to you?

You ought to know these standards.

1. What issues you appeal?
2. How will you brief the issues?
3. How will you argue the issues in argument?

de novo - same arguments as in district court

discretion - different arguments

4. What are important issues at trial?

B. General Principles relating to district court decisions

Presumption of correctness

Appellant has the burden of overcoming presumption.

Record and briefing are totally important - otherwise, dismissal

Affirm on any ground

Must have support in the record

District court need not have considered, but must have a correct decision on some theory of the case.

Discretionary with the appellate court

C. What are the Standards?

1. Plain error.

Issue was not properly preserved for appeal, unless

(a) error; (b) that is plain; (c) affects substantial rights; (d) seriously affects the fairness, integrity, or public reputation of judicial proceedings

or error of law, when

(a) there are exceptional circumstances why the issue was not raised in the trial court

(b) new issue arises while the appeal is pending, based on a change of law

(c) error affects D's substantial rights

2. De novo review.

The appellate court independently makes its own decision as to the issue (as if no decision had been made in the underlying court).

Generally applied to purely or predominantly questions of law

Examples:

motions to dismiss

motions for summary judgment

motions for a directed verdict

district court interpretations of federal statutes

criminal motions to exclude evidence

3. Clear error.

Appellate court must accept the district court decision **unless it has a definite and firm conviction that a mistake has been made.**

Why?

We give deference to the trial court –

They were there to judge the witness's credibility.

Even when they are wrong in our view, they had sufficient evidence to do what they did.

They are not reading a record; they were there; they are the experts.

a. Findings of fact

Findings of fact, whether based on oral evidence or on written evidence, must not be set aside unless clearly erroneous.

b. Bench trials

4. Abuse of discretion.

It must be illogical, implausible, an unreasonable inference from the record cannot be just because we would have reached a different result.

must have applied an incorrect legal standard, misapplied the correct standard

a. Evidentiary rulings

Rulings to amend a complaint

Rulings on discovery

Rulings on class certification

Ruling on 54(b) certificates (ability to appeal an issue before the case is over)

Rulings on sanctions

Rulings on attorney fees

Dismissals for forum non conveniens
Voluntary dismissal
Rulings on equitable remedies
Rulings on sentencing (after meeting the procedural requisites)
Rulings on intervention
Rulings on a motion for a new trial
Rulings on 60(b) motions

b. Generally applicable to district court decisions involving case management or equitable powers
Discovery
Injunctions
Disqualification of judge

5. Harmless error.

Even if the district court got it wrong, it wouldn't change the result.
Will reverse only if error was prejudicial to the suit
Prejudice is presumed

Applies after considering the whole record

Errors in jury instructions
jury verdicts
request for jury trials

6. Substantial evidence.

More than a mere scintilla

Jury verdict, including punitive damages

Motion for judgment as a matter of law

Agency decisions

1. in violation of the constitution
2. in excess of statutory jurisdiction
3. without observance of proper procedure
4. unsupported by substantial evidence
5. improper interpretation of statutes
Chevron deference.
Is it clear what Congress said about the issue? Unambiguous?
Ambiguity - then give deference to agency as to interpretation
6. Arbitrary and capricious