

THE X FACTOR

Judicial Point of View is Key in Deciding Appellate Outcome

You've gone to trial, and the decision was not in your favor. What's next? Before launching an appeal, take a look at the larger picture says former Michigan Supreme Court Justice Clifford Taylor. We asked Justice Taylor to share his insight for this issue of Hot Points. Here's what he had to say.

If you're thinking about whether to appeal after an adverse outcome in trial court, it's a good idea to consider more than just the actual constitutional provision, statute, or case law that formed the basis for the lower court's ruling. An appellate judge's view of the proper role of the court in interpreting a document can mean all the difference between winning and losing.

Of course, the most important factors in any appeal are always your facts—and the laws related to your case. But it's the wise litigant who considers whether recent cases reveal a jurist's inclination toward a broad, equity-producing interpretation, or a narrower, intention-of-the-drafters' approach.

In today's American courts, there are two schools of thought on how judges should approach written documents—whether the federal constitution, state constitutions, statutes, or contracts—before the court.

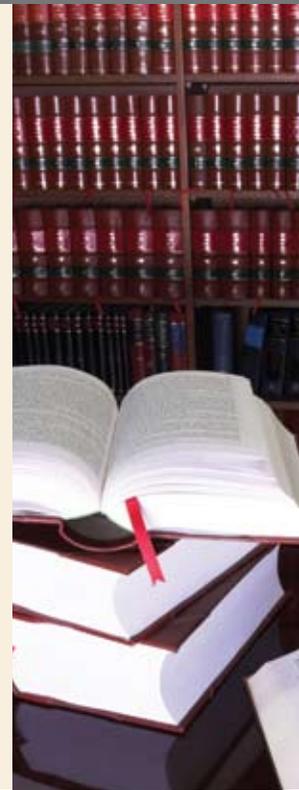
Traditionalist judges hew closely to the "original understanding" of all legal instruments. They spurn novel or expansive interpretations that deviate from the trajectory of the language itself, arguing that it is beyond their power to re-write these documents. Such traditionalists (in the model of Justice Antonin Scalia of the U.S. Supreme Court) assert that adhering to this discipline produces stability and predictability in the law.

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On the other side are judges who approach written instruments more aggressively in the quest to produce what they argue are more fair and satisfying outcomes. To arrive at equitable decisions, they approach the law more expansively and look beyond the words used to get at the perceived purpose. As an adherent of this approach, President Obama has described it as yielding a more empathetic result.

This split accounts for the "x factor" in an appeal. In difficult cases, judges of each school will honorably differ from each other, simply because of the place in which they begin their interpretive effort. Traditionalists may look at a document and give it a natural reading, without much regard for the result it produces. Empathetic jurists have an eye on the desired outcome, and thus chose an interpretive approach that will effectuate that objective.

Both are simply doing their best. But as a potential appellant, be aware that this split exists and might well determine how your case is decided. In short, the judicial point of view can make all the difference.



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Our firm gained an experienced and highly respected jurist in February. Clifford W. Taylor now serves Of Counsel in the appellate section of our Litigation and Trial Group in the Lansing, Michigan, and Naples, Florida, offices.

Justice Taylor was appointed to the Michigan Court of Appeals in 1992 and elected the following year. He remained in that position until 1997, when he was appointed to the Michigan Supreme Court. Taylor served 11 years on the State's high court, twice being re-elected by the citizens of Michigan. He was elected Chief Justice by his colleagues, a position he held from 2005 to 2009.

At Miller Canfield, Justice Taylor will focus on appeals involving federal and state constitutional, statutory, and public policy matters, helping to form appeal strategy and oral arguments on appeal. He will also serve as an arbitrator and mediator.