

HOW TO APPEAL A DOMESTIC VIOLENCE RESTRAINING ORDER

Tips and Ticks

January 23, 2020

Agenda

- ▶ Introductions: Amy (CWLC) and Sarah (LACCLJ)
- ▶ Types of Appeals: Writ vs. Appeal
- ▶ Standards on Appeal
- ▶ Laying a Record
- ▶ Objections and Waivers
- ▶ Deadlines for Filing
- ▶ Getting Help: Referrals and Amicus Support

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The overall composition is clean and modern.

What to File: Appeal vs. Writ

Appeal vs. Writ

Appeal

- ▶ When you can file an appeal
 - ▶ Final Order / Judgement
 - ▶ E.g.: Divorce, DVRO, final custody order
 - ▶ Post-judgement orders
 - ▶ Some orders to pay money (child/spousal support, atty fees)
- ▶ Court of Appeal *will* hear
- ▶ Timing to file – **Notice of Appeal**
 - ▶ 60 or 180 days – to file Ntc of Appeal
 - ▶ Jurisdictional – CoA has no jxd to hear late filings
- ▶ Court prepares record
- ▶ Appeals pend between 8-24 months

Writ

- ▶ When you can file a writ
 - ▶ After *any* order
- ▶ BUT CoA has discretion to hear
 - ▶ 90% summarily denied
 - ▶ Inadequate legal remedy & irreparable harm
- ▶ Timing to file - **BRIEF**
 - ▶ “reasonable” time
 - ▶ Unwritten rule: 60 days
 - ▶ Statutory writs
- ▶ Attorney prepares record
- ▶ “Fast track”
 - ▶ Quick briefing schedule
 - ▶ OSC to trial court

What to file: Appeal vs. Writ

- ▶ If you don't have a final order (or appealable order), must file writ.
 - ▶ Statutory writs
- ▶ Balance harm of long-pending appeal vs. uncertainty of writ + quick turn around for substantive filing.
 - ▶ Decisions are not stayed while appeal is pending
 - ▶ What is the harm?
- ▶ Consider filing both
 - ▶ Resource heavy
 - ▶ But if writ is denied, your time to file an appeal might have passed

Standard on Appeal

Standards on Appeal

- ▶ De Novo: interpretation of an agreement or of a statute (question of law)
 - ▶ E.g.: whether repeated phone calls can be domestic violence
 - ▶ CoA will not give weight given to TC's ruling
- ▶ Abuse of Discretion: application of facts to the law
 - ▶ E.g. whether these repeated phone calls are domestic violence
 - ▶ CofA gives weight to TC ruling and only overturns if TC "exceeds the bounds of reason, all of the circumstances before it being considered."
 - ▶ Pretty high standard
 - ▶ If win an AOD case, you probably have to go back and re-litigate it.
- ▶ Substantial Evidence: findings of fact
 - ▶ E.g. whether this Respondent made the phone calls.
 - ▶ Evidence of one witness, if believed, is sufficient.
 - ▶ Unless that witness is inherently unbelievable
 - ▶ Often argued, rarely found

Preserving / Laying the Record

Preserving the Record

- ▶ **Create your record:** make your arguments and objections, admit your evidence
 - ▶ Move your exhibits into evidence
 - ▶ Objections not made are waived
 - ▶ Objections made, but not ruled on, are deemed overruled, but preserved for appeal
 - ▶ Arguments not made at trial level are generally waived
 - ▶ Exceptions exist for important issues of public policy or when purely issues of law
- ▶ **Illuminate the basis of the Judicial Officer's decision:**
 - ▶ **Doctrine of Implied Findings**: If there's "substantial evidence" and record is unclear or silent, CoA will presume that TC got it right
 - ▶ If court reporter: ask questions about the basis of the decision on the record
 - ▶ If TC is clear about reasons, CoA won't presume TC did something else.
 - ▶ If no court reporter or the judge won't explain: need a **statement of decision**
 - ▶ If no court reporter or can't afford transcript, request **settled statement**

Preserving the Record: Statement of Decision

▶ Doctrine of Implied Findings:

- ▶ If there is no statement of decision or the record is unclear or silent, the appellate court will apply the doctrine of implied findings and presume that the trial court made the factual findings necessary to support a judgment for which there is substantial evidence. (*In re Marriage of Condon* (1998) 62 Cal.App.4th 533, fn. 11.)
- ▶ E.g.: “denied” w/o more, CoA will presume TC got law right and uphold if there’s any basis for decision (but a settled statement might defeat implied findings)

▶ Statement of Decision

- ▶ What to ask for in SOD: for court “to address the principal controverted issues,” which “must be specified” (Rule 3.1590(d); see also Code Civ.Proc., § 632.)
- ▶ When to ask:
 - ▶ 1 day or less than 8 hours over several days: **before matter submitted for decision**
 - ▶ Longer hearings: w/10 days of court’s announcement of tentative decision
- ▶ Who drafts: court can prepare or ask one of the parties to prepare

Preserving the Record: Statement of Decision, cont.

- ▶ Strategy considerations

- ▶ Is there a court reporter? Did the judicial officer sufficiently explain on the record the basis of the decision?
- ▶ Was it a short hearing? Has the judge said anything that hints on their ruling? If silent, consider asking

Appellate Deadlines

Appellate Filing Deadlines

- ▶ **Deadline to file**
 - ▶ 60 days from
 - ▶ Notice of Entry of Judgement; or
 - ▶ File endorsed copy of the judgement showing the date it was served
 - ▶ If neither of those: 180 days
 - ▶ E.g. DVROs that were handed to parties in court
 - ▶ Strictly enforced.
 - ▶ CoA doesn't have jxd to hear if not timely filed
- ▶ **Exceptions: extending deadlines**
- ▶ **What must be filed**
 - ▶ Notice of Appeal (App-002) - not your appellate brief

Getting Help with Your Appeal

Getting Help

- ▶ **Appellate Clerk's Office**
 - ▶ Call clerk of court
- ▶ **Court of Appeal websites**
 - ▶ Resources
 - ▶ Manuals
- ▶ **Support Centers**
 - ▶ LACLJ
 - ▶ FVAP
 - ▶ CWLC
- ▶ **Amicus Support**
 - ▶ Amicus = “friend of the court”

Resources

- ▶ California Women's Law Center
 - ▶ (323) 951-1041
 - ▶ cwlc@cwlc.org
 - ▶ www.cwlc.org

- ▶ Los Angeles Center for Law and Justice
 - ▶ (323) 980-3500
 - ▶ info@laclj.org
 - ▶ www.laclj.org

- ▶ Family Violence Appellate Project
 - ▶ (510) 858-7358
 - ▶ info@fvaplav.org
 - ▶ www.fvaplav.org