
Pitfalls and Hazards When Perfecting a Civil Appeal (Part 1 of 3)

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This article is Part One of a three-part series.

A notice of appeal, in the California state courts, is a one-page Judicial Council form. You check off a few boxes, fill in a date or two, sign it, pay a few bucks, file it, and you're good to go. Right? Well, not exactly. Byzantine statutes and court rules, not to mention opposing counsel who might attempt to snooker you, turn this deceptively simple task into a trap for the unwary. In this article, we acknowledge but a few of the pitfalls and unexpected hazards that could sabotage your efforts to perfect an appeal.

Confirm that you should be filing an appeal, not a writ petition. You're convinced the superior court got it wrong and are anxious to take that adverse ruling up to the Court of Appeal. But, before filing a notice of appeal, you'd better confirm that you have an appealable judgment or order.

The primary statute to consult is Code of Civil Procedure section 904.1, subdivision (a). That statute sets forth a general list of the rulings from which an appeal can be taken in unlimited civil cases. (*American Alternative Energy Partners II v. Windridge, Inc.* (1996) 42 Cal.App.4th 551, 556; see also *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 267 (appellate jurisdiction conferred by statute).)

All attorneys will correctly intuit that a "final judgment" terminating the trial court proceedings is directly appealable. Most attorneys, based on experience and scuttlebutt, will recognize that certain post-judgment orders and anti-SLAPP rulings are also directly appealable. But, the same cannot necessarily be said for (1) orders granting motions to quash service of summons, orders to stay based on inconvenient forum, or dismissal orders based on inconvenient forum, (2) orders related to attachments, (3) orders related to injunctions, (4) orders appointing receivers, (5) interlocutory judgments/orders/decrees in actions to redeem real or personal property from a mortgage or lien thereon, or orders determining the right to redeem and directing an accounting, (6) interlocutory judgments in actions for partition, (7) orders made appealable by the Probate Code or Family Code, (8) interlocutory judgments or orders related to monetary sanctions, and (9) final orders or judgments in a bifurcated proceeding regarding child custody or visitation rights. And, "yes," each of those interlocutory judgments and orders is also appealable. (Code Civ. Proc., § 904.1, subd. (a)(3)-(14).)

There's no list of what's immediately appealable. Although Code of Civil Procedure section 904.1, subdivision (a), is the starting place to figure out whether you have an appealable judgment or order, it does not provide a complete answer to the question. Our Legislature would have made matters way too easy had it simply created an inclusive list of everything that's immediately appealable. Sorry, that didn't happen. Thus, for example, although omitted from Code of Civil Procedure section 904.1, subdivision (a), our Legislature has established that an order determining a claim of exemption of property subject to levy is directly appealable. (Code Civ. Proc., § 703.600.) Likewise, a judgment in a contested election proceeding is expressly appealable. (Elec. Code, § 16900.) Other examples abound.

Further, to make even more complicated the question of whether an appealable order exists, courts treat some interim rulings as directly appealable, such as "collateral" final judgments or orders. Thus, "[w]hen a court renders an interlocutory order collateral to the main issue, dispositive of the rights of the parties in relation to the collateral matter, and directing [the] payment of money or performance of an act, direct appeal may be taken." (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368.) On this basis, an order directing payment of attorney fees as a sanction is an appealable collateral order. (*Bauguess v. Paine* (1978) 22 Cal.3d 626, 634, superseded by statute on another ground as stated in *Olmstead v. Arthur J. Gallagher & Co.* (2004) 32 Cal.4th 804, 809.)

Similarly, our appellate courts have recognized other rulings are immediately appealable. For example, an order denying certification of a class is an appealable "final judgment" because it is legally equivalent to a dismissal of the action as to all members of the class, aside from the named plaintiff. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) An order dismissing a representative Private Attorneys General Act (PAGA) claim is immediately appealable to the extent it effectively rings the "death knell" of that claim. (*Miranda v. Anderson Enterprises, Inc.* (2015) 241 Cal.App.4th 196, 200.) And, a judgment enforcing a settlement agreement pursuant to Code of Civil Procedure section 664.6 is appealable (*Pangborn Plumbing Corp. v. Carruthers & Skiffington* (2002) 97 Cal.App.4th 1039, 1046), although an order denying such a motion is not (*Walton v. Mueller* (2009) 180 Cal.App.4th 161, 167).

Finally, our Legislature has deemed that some orders – that sure look, swim, and quack like they are appealable – can be reviewed only by writ petition. These so-called "statutory writ" petitions include:

- Writs that must be filed within 10 days after service of written notice: disqualification/challenge of a judge (Code Civ. Proc., § 170.3), and quash service of summons (Code Civ. Proc., § 418.10, subd. (c)).
- Writs that must be filed within 20 days after service of written notice: coordination of civil cases (Code Civ. Proc., § 404.6), expungement of lis pendens (Code Civ. Proc., § 405.39), good faith settlement (Code Civ. Proc., § 877.6, subd. (e)), inspection of public records (Gov. Code, § 6259, subd. (c)), reclassification of civil actions (Code Civ. Proc., § 403.080), summary adjudication/judgment denied (Code Civ. Proc., § 437c(m)(1)), venue (Code Civ. Proc., § 400).
- Writs that must be filed 30 days after issuance of a final Agricultural Labor Relations Board order (Lab. Code, § 1160.8).
- Writs that must be filed 30 days after Public Utilities Commission decision on rehearing (Pub. Util. Code, § 1756).
- Writs that must be filed 45 days after denial or disposition of reconsideration by the Workers' Compensation Appeals Board (Lab. Code, § 5950).

Indeed, a judgment of contempt is not appealable, even though the order is made final and conclusive by Code of Civil Procedure section 1222. (See Code Civ. Proc., § 904.1, subd. (a).) A contempt judgment can be challenged only through a petition for a writ of habeas corpus, certiorari, or prohibition. (*In re M.R.* (2013) 220 Cal.App.4th 49, 64.)

When in doubt ... The point here is obvious: It is fundamentally important that you take the time to discern whether the superior court has issued an appealable judgment or order. And, no, it's not always clear even to experienced appellate counsel. True, an appeal from a final judgment allows the appellant to challenge all interim, non-final orders and judgments. (Code Civ. Proc., § 906; *Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 648.) But if you fail to appeal an immediately appealable order or judgment, you will forever waive your right to challenge it in an appeal from the final judgment. (Cf. *Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 161.) Thus, if the statutes and case law do not clearly answer your appealability question, *i.e.*, some doubt exists as to whether you have an appealable

judgment or order, then file a notice of appeal to protect your client's appellate rights.

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For in-depth discussion of how to determine whether an order or judgment is appealable, see [California Civil Appellate Practice \(2d ed. Cal. CEB\) chapter 3](#).

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Judith Posner and Gerald Serlin October 30, 2020

This article is Part Two of a three-part series. Part One discussed how to determine whether a superior court order or judgment is appealable. File a timely notice of appeal. To invoke appellate jurisdiction, you must file a timely notice of appeal. (See Code Civ. Proc., § 916; Adoption of Alexander...

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