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

Judith Posner and Gerald Serlin

📅 November 06, 2020



This article is Part Three of a three-part series. [Part One](#) discusses how to determine whether an order or judgment is appealable. [Part Two](#) discusses when you must file the notice of appeal, including after a judgment has been amended.

Time to file extended by denial of post-trial motion. You must assess whether the time to file your notice of appeal has been extended by the denial of a specified post-trial motion. The deadline for filing your notice of appeal is extended by the superior court's denial of a new trial motion, a motion to vacate, and a motion for judgment notwithstanding the verdict. (Cal. Rules of Court, rule 8.108; but see Cal. Rules of Court, rule 8.702(c)(1)-(3) [CEQA].)

New-trial motion. The superior court's denial of a timely served and filed new trial motion will extend by **30 days** the time to appeal the judgment. (Cal. Rules of Court, rule 8.108(b).) If the superior court expressly denies the motion, the 30-day extension runs from the date the clerk or a party serves the order or notice of entry of that order. (Cal. Rules of Court, rule 8.108(b)(1)(A).) If the motion is denied by operation of law (see Code Civ. Proc., § 660), the 30-day extension runs from the date the order is deemed denied. (Cal. Rules of Court, rule 8.108(b)(1)(B).) If no notice of entry of the order denying the motion is served, the time to appeal is 180 days after entry of judgment. (Cal. Rules of Court, rule 8.108(b)(1)(C); *Anderson v. Chikovani* (2010) 181 Cal.App.4th 1397, 1398.)

Be careful, though. The 30-day extension is not triggered by a motion that failed to comply with the procedural requirements of Code of Civil Procedure section 659. (*Ramirez v. Moran* (1988) 201 Cal.App.3d 431, 435-437.) In other words, to receive the additional 30 days, there must exist a valid and timely notice of intention to move for a new trial. Section 659's time periods are jurisdictional. (*Marriage of Patscheck* (1986) 180 Cal.App.3d 800, 802.)

Motion to vacate. Likewise, an appeal-period extension is available when the superior court denies a motion to vacate. If any party serves and files a valid notice of intention or motion to vacate the judgment, the appeal period is extended for all parties until the earliest of: "(1) **30 days** after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order; (2) **90 days** after the first notice of intention to move – or motion – is filed; or (3) **180 days** after entry of judgment." (Cal. Rules of Court, rule 8.108(c)(1)-(3).)

The appeal period commences if the motion to vacate is deemed denied. (Code Civ. Proc., § 663a(b).) No extension adheres if the motion was not based on recognized grounds or if the motion was untimely. (*Starpoint Properties, LLC v. Namvar* (2011) 201 Cal.App.4th 1101, 1107; *Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 108.)

Motion for judgment notwithstanding the verdict. Finally, if any party files a valid motion for judgment notwithstanding the verdict, the time to appeal from the judgment is extended for all parties following denial of the motion. (Cal. Rules of Court, rule 8.108(d)(1)(A)-(B).) The appeal period is extended to the earliest of (1) **30 days** after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order; (2) **30 days** after denial of the motion by operation of law; or (3) **180 days** after entry of judgment. (Cal. Rules of Court, rule 8.108(d)(1)(A)-(C).)

Again, to extend the appeal period, the motion must have been filed timely. (Cal. Rules of Court, rule 8.108(d)(1); *Sanchez v. Brooke* (2012) 204 Cal.App.4th 126, 136.)

Filing a cross-appeal and/or a protective cross-appeal. If any party has filed a timely initial appeal, the appeal period for all other parties to file a subsequent notice of appeal from the same judgment or appealable order is extended until **20 days** after the superior court clerk serves notification of the first appeal. (Cal. Rules of Court, rule 8.108(g)(1).) Of course, this 20-day extension does not apply when the appeal period has been shortened. (See, e.g., Cal. Rules of Court, rules 8.702(c)(4) [CEQA], 8.712(c)(2) [Elder Abuse and Dependent Adult Civil Protection Act].)

The cross-appeal 20-day extension applies so long as the first appeal is timely. Notably, however, the first appeal does not need to have been valid to trigger the extension. (*Life v. County of Los Angeles* (1990) 218 Cal.App.3d 1287, 1295 [extension applied because the first appeal was timely, even though it was invalid for want of appellate standing].)

Again, be careful. The cross-appeal must be from the same judgment or appealable order. (Cal. Rules of Court, rule 8.108(g)(1).) Thus, the time for filing a cross-appeal from a judgment is not extended by an earlier appeal from a post-judgment attorney fee or cost award. (*Fundamental Investment Growth Shelter Realty Fund I-1973 v. Gradow* (1994) 28 Cal.App.4th 966, 976; *CC-California Plaza Assocs. v. Paller &*

Goldstein (1996) 51 Cal.App.4th 1042, 1047.) Similarly, a post-judgment order enforcing an appeal is not cross-appealable on the basis that there's been an earlier appeal from the judgment. (*Aheroni v. Maxwell* (1988) 205 Cal.App.3d 284, 295.)

Also, be alert to the possible necessity of filing a "protective" cross-appeal from the judgment, a circumstance that arises typically when the superior court has granted either a motion (1) to vacate the judgment, (2) for new trial, or (3) for judgment notwithstanding the verdict. If the party who prevailed under the original judgment reverses the post-judgment order, the original judgment is automatically reinstated. The original judgment is not subject to appellate review unless a separate cross-appeal is taken. The cross-appeal is "protective" in that it ensures the right to obtain appellate review of the original judgment if the post-trial order is reversed. (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 910; see also *Grobesson v. City of Los Angeles* (2010) 190 Cal.App.4th 778, 798.) If the post-trial order is affirmed, the Court of Appeal simply dismisses the cross-appeal as moot. (*Sandco American, Inc. v. Notrica* (1990) 216 Cal.App.3d 1495, 1498.)

Conclusion. Although filing a notice of appeal to protect your client's appellate rights is a seemingly simple task, determining whether and, if so, when to appeal often can be a daunting task. The road to answering the whether and when questions surrounding a notice of appeal can be filled with pitfalls and unexpected hazards. As a result, keep your eye on the road by consulting the governing statutes, court rules, and case authority. And, when in doubt, file that notice of appeal, and do it early. You never want to take a chance with appellate jurisdiction.

Judith Posner is a senior attorney with [Benedon & Serlin, LLP](#) in Los Angeles and is recognized by *Best Lawyers in America, Appellate Law 2019-2021*. Before joining [Benedon & Serlin](#), Posner served for more than a decade as a judicial attorney with the Second District Court of Appeal.

Gerald Serlin is a founding attorney of [Benedon & Serlin, LLP](#) in Los Angeles, which specializes in federal and state appellate litigation and substantive trial motions. He is a State Bar-certified appellate specialist and recognized by *Best Lawyers in America, Appellate Law 2016-2021*.

This article was originally published in its entirety in [Advocate Magazine](#) in December 2019.

For a helpful chart showing the extended times to file a notice of appeal, see [California Civil Appellate Practice \(3d ed. Cal. CEB\) § 7.55](#).

© The Regents of the University of California, 2020. Unauthorized use and/or duplication of this material without express and written permission from this blog's author and/or owner is strictly prohibited

Related

What to Include in a Notice of Appeal

Don't Be Afraid to File a Pretrial Civil Writ Petition

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

🕒 Recent Posts

The Latest Election Results for California's Statewide Ballot Propositions

CEB November 06, 2020

The latest elections results for the state's 12 propositions on the November ballot. Proposition 16: NO California voters declined to repeal a constitutional ban on affirmative action in government decision-making policies, allowing state government entities to consider race, sex, color, ethnicity,...

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

Judith Posner and Gerald Serlin November 06, 2020

This article is Part Three of a three-part series. Part One discusses how to determine whether an order or judgment is appealable. Part Two discusses when you must file the notice of appeal, including after a judgment has been amended. Time to file extended by denial of post-trial motion. You must...

Will California's Zero Net Energy Solar Goals Lead to an Increase in Neighbor Disputes?

Kay Rubin November 05, 2020

During the last presidential debate, the candidates sparred over whether the United States should continue to subsidize the oil and gas industry or whether it should move those subsidies to

alternative clean energy production, like wind and solar power. California has long been a leader in the alternative...