

GENERAL INFORMATION ABOUT DEPENDENCY APPEALS

INTRODUCTION

I have been appointed to represent you in your appeal to the California Court of Appeal. This information guide will explain what an appeal is and what you can expect during the appeal process. Please read this carefully as it contains important information about your rights. Not everything here will necessarily apply to you. Please contact me if you do not understand something that is written here.

WHAT IS AN APPEAL?

In an appeal, the appellate court looks at the trial court proceedings to see if there were any legal errors. The court's review is based upon the written record of the trial court proceedings, which includes the hearings and the papers filed with the trial court, and any briefs written by the attorneys in the case. There is no new trial in the appellate court, and the court usually will not hear any new evidence. This means that no witnesses will testify, and the court will not consider any new information that was not presented to the trial court. The Court of Appeal decides whether the trial court proceedings were done legally. It considers whether you got a fair trial or hearing and whether the trial court made legally proper rulings.

The Court of Appeal has several choices in deciding an appeal. It can affirm the judgment of the trial court, in which case the decision of the trial court is upheld. It can modify the judgment, or it can reverse the judgment of the trial court in part or entirely. If it does reverse, the case is sent back to the trial court usually for retrial on the reversed part. On rare occasions the judgment may be reversed with directions to dismiss the case. Although I will make every possible legal argument to get a reversal, you should be aware that most cases are affirmed on appeal.

THE RECORD

The record on appeal consists of the Reporter's Transcript (a word-for-word account of the trial and/or hearings in the trial court) and the Clerk's Transcript (the papers filed in the case, including pleadings, court orders, social workers' reports, etc.) After you filed your notice of appeal, the court clerk and the court reporters in the trial court began preparing the record on appeal. The preparation usually takes between 20 and 80 days. Only one copy of the record is provided, and that is sent to the appellate attorney. Since I am representing you, I will need this record while I work on your case. I will send it to you when the appeal has been completed.

Many times the record filed in the Court of Appeal does not contain everything I need to represent you on appeal. In those cases, I either make a request by letter to the clerk of the Juvenile Court or file a motion in the Court of Appeal to augment (add) missing items to the record. If the motion is granted, there will be a further delay until the additional record is prepared and sent. I will let you know if the record needs to be augmented by sending you a

copy of the letter or motion that I file.

BRIEFING AND ARGUMENT IN YOUR APPEAL CASE

My primary job as your attorney on appeal is to review the record in your case and to write a brief pointing out to the court why the juvenile court made the wrong decision. The brief is a written argument in which I state the legal reasons why I think the trial court's decision should be reversed or modified. The brief is based strictly on the record, and may not contain arguments based on statements, documents or events which are not included in the record. In other words, the appeal can only challenge things which the record shows actually occurred in the trial court; conversely, it cannot address things that were not part of the record.

Before I write a brief, I will read the transcript record, communicate with your trial counsel, and review the trial court files where appropriate. If you have any questions, you can call me and I will do my best to answer them.

Once I have filed the appellant's opening brief on your behalf, the other side (the respondent, which is usually the county) has 30 days in which to file a reply brief, answering the arguments which I have made. Then, I can file a brief responding to their brief, if I think it is necessary. [INSERT ALTERNATIVE PARAGRAPH FOR A RESPONDENT]

It is possible that even though we do not agree with the trial court's decision, that there might not be any legal issues that we can argue on appeal. In this case, I would file what is known as a "Phoenix H." brief, which tells the court that there are no legal issues that I can raise on your behalf. In that case, the court will give you an opportunity to tell it why *you* think that there are issues which can be raised. If I do not find any issues I can raise, I will discuss this with you in more detail and explain what your options are.

After the briefing is completed, the case is ready for decision by the court. Although it is possible for the attorneys to appear and argue the case before the court, argument is not required or held in many cases. Instead, in those cases, the court makes its decision based on the record and the filed briefs. It will not consider any outside correspondence for this.

THE COURT'S DECISION

Within 90 days after oral argument or, if there is no argument, after the briefing is completed, the Court of Appeal will decide your case. The court will write an opinion stating whether the judgment will be affirmed, reversed or modified, and stating its legal reasoning in support of that decision. The court's opinion may also include instructions to the trial court about what, if anything, should be done next.

FURTHER REVIEW AFTER THE COURT'S DECISION

As soon as I receive the Court of Appeal's opinion, I will review both the opinion and your entire case to determine whether I should take any further legal steps on your behalf. Be aware that each legal step after the first appeal is discretionary with the court, meaning that the

court will choose whether or not to consider any additional requests for review. In later proceedings, an appellant not only has to convince a court that the Court of Appeal was wrong, but also must persuade it that your case is an important one to decide.

As a practical matter, if the Court of Appeal affirms the judgment, it is unlikely that further appellate efforts will be any more successful. If the judgment is reversed, we will consider what further legal steps should be taken. In many such cases, the opinion reversing the judgment also contains instructions to the trial court about what should be done next, and no further action by me is necessary.

If I conclude that no further legal steps can be taken, I will notify you promptly and send you the record.

If I conclude that further legal steps are appropriate, there are two possibilities. A petition for rehearing can be filed in the Court of Appeal, pointing out to the court some misstatement of fact or misapplication of the law, and asking the court to reconsider its decision. Rehearings are rarely granted. If a rehearing is not sought or not granted, the court's decision becomes final thirty days after the date stamped on the first page of the opinion.

The other possibility is to file a petition for review in the California Supreme Court. The Supreme Court grants review only in a small number of cases which present a legal issue of statewide importance or where it believes the Court of Appeal's opinion is wrong. I have ten days after the Court of Appeal's decision becomes final in which to file a petition for review. The Supreme Court rarely grants petitions for review.

YOUR ON-GOING DEPENDENCY CASE IN THE TRIAL COURT

In most cases, unless your parental rights have been terminated or the case has been dismissed, the dependency case involving your child will continue in the trial court while the appeal is pending. I am not involved in that case. You should remain in touch with your trial attorney and county social worker, so that you know what is happening in that court and your rights there are protected. If there are any hearings in the trial court about your case while this appeal is still pending, it is important that you continue to file appeals from any appealable orders that do not go your way. Ask your trial attorney to assist you with filing these.

COMMUNICATION AND CONFIDENTIALITY

Please feel free to write to me, or to call, whenever you have questions about your case. If you have access to email, you can communicate with me that way as well. I will make every effort to respond to you promptly. It would be helpful also if you would let me know if there are things which happen in the trial court which may affect your appeal. (For example, if there is another hearing which changes your situation, such as where the children are returned.)

All correspondence and telephone calls, and any other information I receive in connection with your case, will be kept confidential. Your communications with me are privileged and cannot be revealed by me to others without your permission, and these

communications cannot be used against you. However, your communications with most other people are not usually protected. Therefore, you should be cautious about discussing the details of your case with others.

CONCLUSION

I will do my best to provide you with excellent representation. Although even the best representation cannot guarantee a victory on appeal, I will make sure that the issues I raise are presented to the court as effectively as possible. This, together with your cooperation in the preparation of the appeal, will mean that we have done the best we can on your behalf. Please contact me if you have any questions. My contact information is:

[insert address]

[insert phone - recommended]

[insert email address - optional]