DID YOU KNOW? APPEALABILITY DEPENDS ON THE LEGISLATURE

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Your client wants to know if immediate appellate review is available to challenge an adverse trial court ruling. Where do you look to find the answer? The place to start is not with the appellate courts but with the Legislature because "the California Legislature has *complete* control over the right to appeal." (Eisenberg, Horvitz & Wiener, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2013) ¶ 2:17, p. 2-14 original emphasis; see *Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 5 ["The *right* to appeal is wholly statutory" (emphasis added)].) This means that the right to appeal can differ depending upon the statutory scheme that has been adopted.

In California, Code of Civil Procedure section 904.1, subdivision (a)(1), permits an appeal to be taken "[f]rom a judgment . . . ." This provision embodies the " 'final judgment' " rule, "the essence of which is that an appeal lies only from a final judgment [citation], i.e., a judgment which 'terminates the proceeding in the lower court by completely disposing of the matter in controversy' [citation]." (*Kinoshita v. Horio* (1986) 186 Cal.App.3d 959, 963.)[1] California favors this limitation on the right to appeal because "piecemeal disposition and multiple appeals tend to be oppressive and costly," and "[i]nterlocutory appeals burden the courts and impede the judicial process" by "clog[ging] the appellate courts with a multiplicity of appeals" "produc[ing] uncertainty and delay in the trial court" and preempting further trial court proceedings which may obviate the need for appellate review and/or provide a more complete record for the appellate court. (*Kinoshita,* at 966-967.)[2]

One flick of the legislative wrist, however, and the entire philosophy of the right to appeal can change dramatically. Take, for example, the state of New York.

Under section 5701 of New York's Civil Practice Law and Rules, there is a right of appeal to the intermediate appellate courts (known as the "appellate division") not only from a final judgment but also virtually any interlocutory order that "affects a substantial right . . . ." (N.Y.C.P.L.R. 5701(a), (a)2(v).) As the practice commentaries to section 5701 note, "[a]ppealability to the appellate division is broad. As a general rule almost anything can be appealed to the appellate division on the authority of CPLR 5701, . . ." (Practice Commentaries, McKinney's N.Y.C.P.L.R. (1999 ed.) foll. § 5701, 1997 C5701:1) "So broad is the appealability of nonfinal determinations in New York practice that one must sometimes scratch hard at the caselaw to come up with a few examples of the nonappealable ones." (Id. 1997 C5701:4; see, e.g., *Sholes v. Meagher* (2003) 100 N.Y.2d 333, 335 [794 N.E.2d 664] [appeals generally may be taken from any order deciding an interlocutory motion where the order affects a substantial right].)

So, when you want to find out if your client has a right to appeal, start with the statutory scheme governing appeals, and go from there.

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[1] Of course, there are exceptions, e.g., "when the case involves multiple parties and a judgment is entered which leaves no issue to be determined as to one party" (*Justus v. Atchison* (1977) 19 Cal.3d 564, 568, disapproved on other grounds in *Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 171), or when a judgment or order is final as to a "collateral" matter (*Marsh v. Mountain Zephry, Inc.* (1996) 43 Cal.App.4th 289, 297-298).

[2] California generally consigns interlocutory appellate review to the discretionary realm of relief by extraordinary writ. (See *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743 ["The California judicial system provides another, more efficient avenue" in the form of a petition to the appellate court for discretionary writ relief].)

Signed Bill to Solve Inconsistencies.....Continued from Page 5

Committee Bill Analysis, Assemb. B. 1659, 2013-2014 Reg. Sess. (Cal. 2014), http://goo.gl/QA1TQ8. The synopsis further notes that "[t]here is no known opposition to this bill." *Id.*

Assemb. B. 1659 amends the two statutes governing a motion for JNOV and a motion to vacate a judgment to provide that the "moving, opposing, and reply briefs and any accompanying documents shall be filed and served within the periods specified by Section 659a [governing new trial motions] and the hearing on the motion shall be set in the same manner as the hearing on a motion for new trial under Section 660." (Emphasis omitted.) Thus, for all three types of post-trial motions, the moving party will file its notice of motion on the 15th day after service of notice of entry of the judgment, and then have an additional 10 days to file the supporting memorandum of points and authorities.

Now that Governer Brown has signed the bill, it will take effect on January 1, 2015.

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