

Appealable Orders and Judgments

A fundamental rule of appellate law is that an appeal only lies from an order or judgment that is appealable. An appellate court does not have jurisdiction to hear the case unless there is an appealable order or judgment. The following is an overview of appealable orders and judgments under California law. Note that judgments and orders issued in federal courts are subject to different rules.

Right to Appeal is Statutory

The right to appeal in California is wholly statutory. Thus, no appeal may be taken unless there is a statute that expressly allows the appeal. Most of the appealable orders and judgments are listed in Code of Civil Procedure § 904.1. Some orders are made appealable by other statutes as well.

The most common type of appealable order is a judgment. *See* Code Civ. Proc. § 904.1(a)(1). Judgments are generally appealable, except for most interlocutory judgments, judgments of contempt (they may be reviewed by writ), and judgments in limited civil cases (appeal is to the superior court).

One Final Judgment Rule

Under the “one final judgment” rule, an appeal from a judgment can only be from a *single, final* judgment in the action. The rule is codified in Code of Civil Procedure section 904.1(a), which authorizes an appeal “[f]rom a judgment, except ... an interlocutory judgment.” The California Supreme Court has held that this means that the appeal must be “from a judgment that is not intermediate or nonfinal but is the one final judgment.” *Morehart v. County of Santa Barbara*, 7 Cal.4th 725, 741 (1994). “Judgments that leave nothing to be decided between one or more parties and their adversaries, or that can be amended to encompass all controverted issues, have the finality required by section 904.1, subdivision (a).” *Id.* Conversely, a “judgment that disposes of fewer than all of the causes of action framed by the pleadings, however, is necessarily ‘interlocutory’ ... and not yet final, as to any parties between whom another cause of action remains pending.” *Id.*

The reason for this rule is to avoid multiple appeals in the same case, which places a huge burden on the courts and the parties. *See id.* at 741 n.9. Moreover, if the parties have to wait until a final judgment is entered, “the trial court may completely obviate an appeal by altering the rulings from which an appeal would otherwise have been taken.” *Id.* It also gives the appellate court a more comprehensive record. *Id.*

To determine if a judgment is final, courts look to the substance and effect, rather than the form or title. The judgment is considered final when it ends the litigation between the parties on the merits of the case, and nothing is left to be done other than to enforce the judgment. *See San Joaquin County Dept. of Child Services v. Winn*, 163 Cal.App.4th 296, 300 (2008). If the judgment contemplates any future judicial action—other than simple enforcement of the judgment—essential to determining the rights or responsibilities of the parties, the judgment is not final.

Once a final judgment is entered, the appellate court may generally review any order or ruling made in the proceeding leading up to that final, appealable judgment. *See* Code Civ. Proc. § 906.

Judgments Where There Are Multiple Parties

A judgment is immediately appealable if it terminates the litigation with respect to one or more parties. So, if a plaintiff sues several defendants, and the court dismisses the lawsuit against one of the defendants, the judgment is final as to that defendant, and plaintiff may appeal the judgment without waiting for the rest of the case to be resolved. *See Nguyen v. Calhoun*, 105 Cal.App.4th 428, 437 (2003). Likewise, if there are multiple plaintiffs, and judgment is entered against some of the plaintiffs but not against others, the plaintiffs against whom judgment was entered may immediately appeal. *See Panicov. Truck Ins. Exchange*, 90 Cal.App.4th 1294, 1300-1301 (2001). With respect to defendants, there is an exception where the liability of one defendant is intertwined with and dependent on the liability of other defendants and their liability has not yet been established. *See Entertainment, Inc. v. Arthur J. Gallagher & Co.*, 125 Cal.App.4th 1022 (2005) (liability of insurance agency and insurance company in duty to defend and bad faith action were intertwined, and therefore appeal of dismissal of insurance agency was premature).

Note that if you file an appeal with respect to one party, but there are claims against other parties remaining in the trial court, it might be prudent to ask the trial court to stay the action until the appeal has been decided.

Other Appealable Orders

Some other types of orders are made appealable by statute. For example, orders made after a final judgment are appealable. Code Civ. Proc. § 904.1(a)(2). Other types of appealable orders listed in Code of Civil Procedure section 904.1 include: orders granting a motion to quash service of a summons or granting a motion to stay an action on the grounds of an inconvenient forum; orders granting a new trial or denying a motion for judgment notwithstanding the verdict; orders granting, discharging or refusing to discharge an attachment; orders granting or dissolving an injunction; orders appointing a

receiver; certain orders in partition actions; certain orders issued under the Family and Probate Code; orders directing the payment of sanctions over \$5,000; an orders granting or denying a special motion to strike in anti-SLAPP cases. Certain orders related to arbitration proceedings are also made appealable under Code of Civil Procedure section 1294.

Non-Appealable Orders

Any judgment or order that is not expressly appealable by statute is non-appealable. Many orders that fall into this category. Some of the more common types include: orders overruling a demurrer; orders sustaining a demurrer (an appeal lies from the judgment dismissing the complaint with prejudice); discovery orders; orders denying a motion for a new trial; orders granting a mistrial due to a hung jury; orders directing a verdict (an appeal lies from the judgment issued); orders granting or denying a motion for summary judgment (a judgment following the order granting summary judgment is appealable); tentative decisions; and statements of decision.

Keep in mind that it is the substance and effect, not the form, that governs whether an order is appealable. For example, if a court sustains a demurrer and in the same document dismisses the complaint with prejudice, then that document likely would be considered a final judgment. But if the court sustains the demurrer without dismissing the complaint, the order sustaining the demurrer is not appealable. *See City of Morgan Hill v. Bay Area Quality Management Dist.*, 118 Cal.App.4th 861, 867 n. 3 (2004).

Finally, remember that interlocutory orders may be reviewed after a final judgment has been entered, so long as the appealing party has preserved his or her arguments on appeal by raising those arguments in the trial court.

Conclusion

Before filing an appeal, a litigant must ensure that the order or judgment he or she wishes to challenge is appealable, or risk dismissal of the appeal. Determining whether an order is appealable is also important to identify when the time to appeal will expire. Respondents should also evaluate whether the order being appealed is appealable, and if not, should immediately file a motion to dismiss the appeal. Taking these simple steps at the outset of an appeal can save a party significant time and money in the long run.

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