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How to Maximize Your Chances of Showing an Abuse of Discretion on Appeal

An important consideration in any appeal is the applicable standard of review. The standard of review is the lens through which the court will view the lower court's rulings, and in many cases, it can control the outcome. As one law professor put it: "There are wide variations in the degree of 'wrongness' which will be tolerated" in the appellate courts. Maurice Rosenberg, *Appellate Review of Trial Court Discretion*, 79 F.R.D. 173, 176 (1978).

In California state appellate courts, there are three main standards of review: de novo or independent review, which does not grant any deference to the trial court's decision; substantial evidence, which applies to findings of fact; and the deferential abuse of discretion standard. This article provides tips for those who are appealing judgments subject to the abuse of discretion standard, which is considered to be the most deferential standard of review.

Defining Abuse of Discretion

Perhaps no other standard has been discussed as much as the abuse of discretion standard. The concept can be found in American jurisprudence as far back as the late 18th century. See *Eldridge v. Lippincott*, 1 N.J.L. 397 (N.J. 1795) ("The law gives the court a complete and unlimited discretion, subject to control only when it appears to have abused its powers to arbitrary or fraudulent purposes"). Courts have offered varying definitions of the standard, making it still very difficult to define.

The California Supreme Court has sometimes described the standard as "whether the trial court exceeded the bounds of reason." See *Shamblin v. Brittain*, 44 Cal.3d 474, 478 (1988). Other courts have offered similar definitions—as one court put it, an abuse of discretion occurs only when "it can fairly be said that no judge would reasonably make the same order under the same circumstances." *In re Marriage of Lopez*, 38 Cal.App.3d 93, 114 (1974).

The varying definitions have led to heavy criticism, however. One appellate court complained that the abuse of discretion standard is "so amorphous as to mean everything and nothing at the same time and be virtually useless as an analytic tool." *Hurtado v. Statewide Home Loan Company*, 167 Cal.App.3d 1019, 1022 (1985). Another court noted that such "pejorative boilerplate is misleading since it implies that in every case in which a trial court is reversed for abuse of discretion its action was utterly irrational." *City of Sacramento v. Drew*, 207 Cal.App.3d 1287, 1297 (1989).

More recent cases have followed *Drew* and similar decisions, which have noted that the trial court's discretion is "subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the

action is shown.” *Id.* So, the amount of discretion the trial court has depends on the statute or common law governing the issue. If reasonable minds may differ on the outcome, and the trial court acts within the range of options available, then the appellate court may not substitute its judgment for the trial court, and the trial court’s decision will be upheld.

Decisions Subject to Abuse of Discretion Standard

There are many different matters that are subject to the abuse of discretion standard. Often the standard is applied to decisions regarding procedural matters, but it can apply to substantive issues as well. Some of the more common matters subject to abuse of discretion include: discovery rulings; evidentiary rulings; whether to grant leave to amend a pleading; the amount of an award for attorney’s fees; rulings on motions to disqualify counsel; injunctions; sanctions; and child custody or visitation determinations. This is by no means an exhaustive list.

Best Ways to Show an Abuse of Discretion

If you are appealing a judgment subject to the abuse of discretion standard, there are strategies you can employ. First, consider each particular issue in your appeal and whether some issues might be subject to a less deferential standard. For example, if you are appealing an award of attorney’s fees, the question of whether a party is entitled to fees under a particular statute or contract is a question of law, reviewed independently. The decision regarding the amount of the award is reviewed for abuse of discretion. If the issue can properly be characterized as a legal one, you will increase your chance of success on appeal.

Second, consider whether the trial court’s decision is within the range of options contemplated by the particular law at issue. Using the attorney’s fee example above, a fee award may be reversed as excessive where the court applied the relevant factors more than once in determining the amount of the fee. *See Ramos v. Countrywide Home Loans, Inc.*, 82 Cal.App.4th 615, 625-626 (2000) (the trial court considered the same factors twice, using the same factor to calculate the hourly rate and then to enhance it; that was impermissible and beyond the range of options available).

Third, consider whether you might argue that the trial court failed to properly exercise its discretion. “The failure to exercise discretion is an abuse of discretion.” *Dickson, Carlson & Campillo v. Pole*, 83 Cal.App.4th 436, 449 (2000). The court can fail to exercise discretion if it fails to consider relevant factors required to be considered under the applicable law. In the case cited above, the trial court abused its discretion because it applied an equitable doctrine without weighing the relevant equities of the parties. A court may also fail to properly exercise discretion if it is mistaken about the law. For example, in *Richards, Watson & Gershon v. King*, 39 Cal.App.4th 1176, 1180 (1995), the court abused its discretion in dismissing an action by an attorney to collect fees because it erroneously interpreted a statute as barring the action. The trial court did

not believe it had any discretion in the matter; therefore, it failed to consider the relevant factors and failed to exercise discretion.

Finally, in any appeal involving an abuse of discretion standard, the key to winning is to show a harsh, unjust result. The appellate courts usually will not reverse discretionary decisions based on mere technicalities. You have a much better chance if you can show that the lower court's decision results in clear injustice, such as depriving a party of his or her day in court, or denying all relief to a party.

In sum, while winning an appeal subject to an abuse of discretion standard of review is difficult, it is not an impossible task. Appellate courts in California have been willing to reverse discretionary decisions more often than you might think. The keys to success are defining and applying the standard clearly and persuasively for the court in light of the relevant legal principles and the facts of your case; and showing that a manifest injustice will result if the decision is not reversed.

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