

GETTING A FOOT IN THE DOOR AT THE COURT OF APPEAL

The first question in any appeal is whether the order or judgment in question is appealable. Under California law, the right to appeal in civil actions is entirely a creature of statute. An appeal can be taken only from a statutorily declared appealable judgment or order. (California Code of Civil Procedure Section 904 ; *Jordan v. Malone* (1992) 5 Cal.App.4th 18; See also, *Conlan v. Shewry* (2005) 131 Cal.App.4th 1354.) This means, among other things, that parties to litigation cannot agree to present a matter to the court of appeal which is not otherwise appealable. It means that the legislature controls the right to appeal and a court cannot create a right to appeal that is not created by the statute. It also means that the court cannot limit a right to appeal that has been conferred by the legislature.

California follows the one final judgment rule. (*Griset v. Fair Political Practices Commission* (2001) 25 Cal.4th 688.) A final judgment is one that resolves all the issues and ends the proceedings. It leaves no issue undecided by the trial court. It resolves the dispute between the parties and leaves nothing else to be done. The rule is based on the premise that piecemeal appeals are costly and oppressive and that the public policy preference is to wait until the end of all litigation to review intermediate rulings. “The rule was designed to prevent piecemeal disposition and costly multiple appeals which burden the court and impede the judicial process.” (*Westamerica Bank v. MBG Industries, Inc.* (2007)

158 Cal.App.4th 109.) Several policy reasons underlie the one judgment rule. Interlocutory appeals can clog the appellate courts with multiple appeals in the same case. Early appeals can produce uncertainty and delay. The trial court may correct or obviate the issue during the case. A more complete record is available when the case is complete. A complete record helps the appellate court craft a decision that is more helpful on remand. The one judgment rule is strictly construed unless the order or judgment falls clearly into an exception.

Code of Civil Procedure Section 904.1 (1) codifies the one final judgment rule and is the *sine qua non* of civil appeals. It sets forth the orders and judgments from which an appeal may be taken in general civil actions. An appeal may be taken from a judgment; from an order after an appealable judgment; from motions to quash service of summons, granting a motion to stay an action on the grounds of inconvenient forum; from an order granting a motion for a new trial or denying judgment NOV; from an order discharging (or refusing to discharge) an attachment order; from an order granting or dissolving an injunction or refusing to do so; from an order appointing a receiver; from an interlocutory order in an action to redeem property from a mortgage or lien; from an interlocutory order in a partition action; from orders made appealable by the Probate Code or Family Code; from an interlocutory judgment or order directing payment of monetary sanctions if the amount exceeds \$5,000.00; from an order granting or denying a special motion to strike under Section 425.16 (SLAPP).

Probate Code sections 1300 through 1303 set out the grounds for appeal for all proceedings governed by the Probate Code. Many orders are appealable in probate which might be thought of as preliminary in the case as a whole, but which finally resolve an important issue or end a step in the process. For example, a partial list includes orders confirming the sale of property; allowing payment of attorney fees or of a debt; surcharging a fiduciary; granting letters of conservatorships or guardianship; admitting a will to probate; determining heirship; final orders under Probate Code section 17200 (proceedings concerning trusts).

The Family Code provides that where the trial court has bifurcated issues and certifies that an appeal is appropriate, an appeal may be taken at the end of that portion of the case, even though there is no final judgment. (Family Code Section 2025.) The appellate court lacks jurisdiction under Family Code Section 2025 unless the appellant has obtained the certification of probable cause from the trial court. (*In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429.)

The question of whether an order or judgment is appealable is resolved by determining whether it is final, whether it is interlocutory but made appealable by statute, or whether it is an exception to the one final judgment rule and, thus, considered final for appeal purposes. Therefore, the first step is always to check the relevant statutes and related case law to determine whether an appeal may be taken. You may be surprised by what you find there. Matters that are not

reviewed by an appeal may present an opportunity for review by way of a writ, but that is another kettle of fish.