

APPELLATE PRACTICE

Ten Tips for Preparing Writ Relief

BY BENJAMIN G. SHATZ

The day will likely come when you lose an important motion; you may even realize during its hearing that you are going to lose. Assuming that a motion for reconsideration will not change the trial judge's mind and that the order is not appealable, you may have to seek appellate relief through a writ petition. Here are ten tips to help you prepare.

1. WEIGH THE ODDS

Writ petitions are expensive and time-consuming to prepare. And the prospects for interlocutory writ relief are

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very low: California courts of appeal summarily deny more than 90 percent of the petitions filed. So carefully consider whether the issue is important enough to be worth the time and effort.

2. BE PREPARED FOR THE WORST

Before attending a hearing that might give rise to a writ petition, be prepared to receive an adverse tentative ruling. If that happens, try to enlist the judge's help in seeking writ review by asking for a statement in the order that the ruling is on a controlling question of law with substantial grounds for a difference of opinion—and that a resolution by the court of appeal may materially advance the litigation's conclusion.

(Cal. Code Civ. Proc. § 166.1.) Such a statement may increase the odds that the appellate court will consider the merits of the petition. If not raised at the hearing, request a section 166.1 statement in writing either by letter or ex parte motion.

3. ASK FOR MORE TIME

Statutory writ deadlines are often very short. For example, a petition after denial of a motion to quash is due within 10 days. (Cal. Code Civ. Proc. § 418.10(c).) Many statutory deadlines, however, include discretionary extensions—for example, section 418.10(c) also allows the judge to grant an additional 20 days. Thus, at the hearing on a motion governed by a statutory writ

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provision, be ready to ask for any applicable statutory extension to file.

4. SEEK A STAY

If the trial court's order will have adverse consequences before you will be able to seek or obtain writ relief from the court of appeal, be ready to ask for a stay—first from the trial court, and failing that, from the appellate court.

5. GET THE ORDER

Failure to provide an adequate record is reason alone to deny a petition. (Cal. R. Ct. 56(c)(5).) The order at issue is a required component of the record, so take pains to obtain a signed copy of the relevant order as quickly as possible.

6. GET THE TRANSCRIPT

Another required record exhibit is the transcript of any oral proceedings. Order the court reporter's transcript immediately, and be prepared to pay a

premium to obtain an expedited transcript. Although it is possible to file a petition without a transcript (Cal. R. Ct. 56(c)(2)), the better practice is to get one quickly.

7. MAINTAIN YOUR FILE

The record also must include the relevant moving papers—including the motion, opposition, reply, and exhibits. Compiling that record is easier when your file is complete, clean, and current. You don't want to be fishing for a missing declaration or unmarked copy of an opposition when your focus should be on preparing and filing the petition.

8. FILE PROMPTLY

If the issue is important enough to gamble on writ relief, act quickly. Although nonstatutory writs have no formal deadline, laches applies. The general rule is that if a petition is not filed within 60 days—the usual

time to appeal a judgment—it probably wasn't important enough to consider anyway.

9. CHECK LOCAL RULES

In addition to reviewing California Rule of Court 56—and possibly Rule 49.5 for stays—check local rules and practices. The Fifth District, for example, requires a completed Writ Petition Information Sheet. Local requirements also may govern serving the petition.

10. GET HELP

Don't expect that slapping a red cover on a trial court brief will transform a losing argument into a successful writ petition. Keep the purposes of writ relief in mind and remember that you have to wage two battles: first, to interest the appellate court in hearing your petition; and second, to persuade the court to rule in your favor. It may be helpful to enlist the support of an appellate specialist. ■



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