



# **BUILDING A WINNING APPEAL STRATEGY**

A Guide for In-House Counsel

Presented by:

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# Agenda

- When and how to start preparing for an appeal, including choosing the right appellate counsel
- Preserving the record and avoiding waiver
- Appeal timelines
- Standards of review and identifying issues that offer the best chance of success

# Introduction

- A jury verdict or trial court decision is not the end of a lawsuit – there is a critical second half
- Appeals are essential tools that drive outcomes
- Early appellate strategy preserves options and leverage
- In-house counsel play a vital role in recognizing and preparing for a potential appeal

# Evaluating the Need for Appellate Expertise

- Demonstrated experience, proficiency, and knowledge in handling civil and/or criminal appeals
- Requirements for Certification from the State Bar
- Recertification required every 5 years

# Evaluating the Need for Appellate Expertise (cont.)

- Benefits include objectivity and a fresh perspective
- Avoids tunnel-vision and emotionalism
- Level of involvement can vary
  - Complete handling of a writ or appeal
  - Collaboration, particularly in specialized areas of law
  - Advisory/Local counsel

# Why Appellate and Trial Work Are Different

- Appellate work is not a recycling of trial arguments - it requires fresh, rigorous analysis
- Focus shifts from fact-finding to legal error
- Appellate courts (3 or 7 justice panels) have more time and resources to examine briefs
- Appellate practice can shape the development of the law

# Start Preparing Early

- Identify appeal-worthy issues early
- Trial court proceedings define what issues can later be raised
- Estoppel limits shifting theory of the case
- Waiver due to a failure to object (e.g., admission of evidence, jury instructions, verdict form)
- Examples

# Role of In-House Counsel

- Identify potential appellate issues
- Coordinate with trial team and appellate counsel
- Manage risk and cost/benefit analysis of pursuing an appeal
  - E.g., motion practice, writs (sometimes the only avenue for appellate review)



# California Courts of Appeal Timeline

- Notice of Appeal: 60 days from entry of judgment
  - Jurisdictional deadline – bond/security may be required
- Record designation considerations
- Briefing schedule (opening, response, reply)
- Oral argument and decision
- Federal court: Notice of Appeal 30 days from entry of judgment; district court has discretion re bond

# Bonding a Judgment

- Filing a Notice of Appeal often does not stay execution
- Bonding ties up capital - consider liquidity needs
- Cash deposits in lieu of bond = no return on capital for duration of appeal but avoids premiums (1-2% annually)
- Quick deadline to post a bond or deposit; obtaining return of deposited funds can be drawn out
- Option to pay judgment without waiving appeal rights

# Statistics

## Overall Statewide Outcomes (FY 2023-2024)

- Civil appeals were affirmed 80%, reversed 16%, and dismissed 5%.
- Only about 8% of Court of Appeal majority opinions were published statewide.
- Median processing time from notice of appeal to issuance of opinion was 515 days, with variation among districts (fastest = 437 days; slowest = 645 days)

# Standards of Review

- De Novo (e.g., summary judgment, legal rulings)
- Abuse of Discretion (e.g., evidentiary rulings)
- Substantial Evidence (e.g., jury verdicts/factual determinations)
- Standard often determines likelihood of success

# Strategic Issue Selection

- Do not overload the appeal
- Prioritize strongest, cleanest issues
- Consider broader legal impact if a published decision

# Key Takeaways

- Begin thinking about an appeal early and whether to collaborate with an appellate attorney
- Preserve the record carefully
- Know your deadlines
- Choose issues with the standard of review in mind

# Thank you!



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