

UNDERSTANDING YOUR APPEAL

Information for Clients

This information letter will help explain what an appeal in a *dependency* case is all about. It answers some of the questions most often asked by parties. Your individual attorney will help you understand your own case.

“WHAT IS AN APPEAL?”

An appeal is **not** a new trial. The purpose of an appeal is to check over the proceedings in the juvenile court to see if they followed the law.

An appeal can deal only with matters shown in the *transcripts*. The transcripts include: (1) the papers in the juvenile court files; and (2) a court reporter’s word-for-word record of what happened in the courtroom. The Court of Appeal cannot consider facts outside the transcripts. It hears no witnesses and takes no new evidence.

The Court of Appeal has **no power** to decide questions of *fact*, such as whether you abused or neglected your child, or whether a certain witness was lying, or what a particular piece of evidence proves. It has no power to say what the disposition should be, among those allowed by law. Decisions like those are only for the juvenile court judge, and the Court of Appeal cannot change them.

The Court of Appeal deals with *legal* questions. It decides whether the juvenile court proceedings followed the law. For example, it might decide whether certain evidence was correctly admitted, or whether the juvenile court judge gave adequate reasons for choosing a particular disposition for your child, and other questions like that.

If the Court of Appeal finds that the proceedings were conducted correctly, the judgment is “affirmed,” and the decision of the juvenile court judge will not change.

If the Court of Appeal finds some important mistake was made in the juvenile court, your child’s case will probably be “reversed” (in part or in full) and sent back to the juvenile court for a new hearing or some other proceeding to correct the mistake. Some mistakes can be corrected by the Court of Appeal itself, without sending the case back.

“WHO WILL REPRESENT ME ON APPEAL?”

If unable to hire an attorney, a parent or minor appealing a decision of the juvenile court may ask the court to appoint an attorney at state expense to represent him or her. In

some cases, the court also will appoint counsel for a minor who is not appealing. Other parties to the case may ask for appointed counsel, depending on the situation. You should receive forms for making a request for counsel.

Appellate Defenders, Inc., runs the system of court-appointed counsel on appeal for the Court of Appeal in the Fourth Appellate District. It is a law firm of attorneys very experienced in appeals.

In every case requiring appointment of an attorney on appeal, Appellate Defenders finds an attorney with the necessary qualifications, considering length of the record and probable difficulty of the legal issues. It then recommends that attorney to the Court of Appeal, which makes the appointment and notifies the client of the attorney's name and contact information. The attorney will contact you directly.

In most cases, Appellate Defenders recommends a private attorney from its panel. In those cases, Appellate Defenders does not represent you; the private attorney is your counsel on appeal. Appellate Defenders reviews the attorney's work and sometimes may assist him or her. In some cases, an Appellate Defenders staff attorney will be appointed, rather than a private attorney, and in that situation the staff attorney will notify you.

“WHAT CAN I EXPECT TO HAPPEN DURING THE APPEAL?”

The usual steps in an appeal include:

(1) Preparation of the Transcripts. The juvenile court clerk and reporter began preparing the transcripts in your case after the notice of appeal was filed. It is hard to guess how long it will take them. Sometimes the transcripts are done in less than a month, and rarely they take more than a month, even if the juvenile court proceedings were long.

(2) The Appellant's Opening Brief. After the transcripts are filed, the attorney representing the person appealing will study them and decide what issues should be presented to the Court of Appeal. These issues will be set out in the appellant's opening brief. Under the law, it is the attorney's responsibility and authority, not the client's, to decide what issues to raise and how to argue them.

The brief will normally have several parts. First, it will describe the juvenile court procedures and evidence introduced in the juvenile court in a section usually called “Statement of the Case and Factual Background.” By law, this section must state the “facts” in a way that supports the juvenile court's decision, although it may also describe contrary evidence. It cannot discuss facts other than those shown in the record on appeal.

The next part of the brief will be the “argument.” In this part the lawyer will point out ways the juvenile court proceedings did not follow the law and argue why you should be given a new hearing or some other relief.

The opening brief is due about a month after the transcripts are filed. In some cases, however, a relatively brief extension of time may be granted by the appellate court.

(3) The Respondent’s Brief. Approximately 30 days after the appellant’s opening brief is filed, the attorney for the County Counsel (or any other party in the case defending the decision of the juvenile court) will file an answer, called the “respondent’s brief.” In it, the attorney will usually argue something like: no mistakes were made in the juvenile court; or any mistakes were unimportant and did not affect the decision; or a particular issue cannot be raised on appeal; or something else in answer to the arguments in the appellant’s opening brief. This is just the respondent’s argument and is *not* the Court of Appeal’s decision.

(4) The Appellant’s Reply Brief. In this brief, the lawyer for the person appealing will have a chance to answer the arguments made in the respondent’s brief. It is due 20 days after the county’s brief is filed.

(5) The Minor’s Brief. If the minor is not appealing but has been given counsel on appeal, the attorney will file a short brief that states the child’s position in the case. It will be filed about 10 days after the respondent’s brief is filed.

(6) Oral Argument. Usually at the time the respondent’s brief is filed, the Court of Appeal will give both sides a chance to ask for oral argument. In oral argument, the lawyers for all parties go to court and argue in person. It usually takes only a few minutes. You do not need to be there but may attend as a member of the public.

Oral argument is not held in every case. Your lawyer will ask for it only if he or she believes something needs to be said that was not already said in the briefs.

(7) The Opinion. After the briefs are filed and any oral argument is held, three judges of the Court of Appeal will decide your case. It takes at least two judges voting the same way to reach a decision.

The Court of Appeal will give its decision in a written “opinion.” The opinion explains why the court decided each issue as it did. One of three judges who decided the case writes the opinion. One or both of the other judges may write separate opinions if they disagree with something the first judge said.

The opinion will generally be filed soon after oral argument is held or waived. It may be only a few days later, or as much as a month or two later.

Three judges of the Court of Appeal will decide your case. They will read the briefs, look at the transcripts, and hear oral argument (if it has been requested). Then they will vote. It takes at least two judges voting the same way to reach a decision. One of the judges writes the opinion. One or both of the other judges may write separate opinions if they disagree with something the first judge said.

(7) Petition for Rehearing. If the decision is against you in some way, your lawyer may decide to file a petition for rehearing asking the Court of Appeal to reconsider. County Counsel may also file a petition for rehearing if the decision is against the county. The petitions are due 15 days after the opinion is filed. Very few are granted.

(8) Petition for Review in the California Supreme Court. Another possible step to take, if you lose in the Court of Appeal, is to file a petition for review. In it, your lawyer would ask the California Supreme Court to reach its own decision on one or more of the issues raised in the Court of Appeal. Your lawyer will file the petition if he or she believes there is a reasonable chance of having it granted.

The lawyer for the other side may also petition for review if that the decision is against that side in the Court of Appeal.

The petition must be filed no earlier than 30 days, and no later than 40 days, after the Court of Appeal's opinion is filed. If the petition is denied, the decision of the Court of Appeal is left standing and becomes "final." Very few petitions are actually granted.

(9) Other Matters

Many other motions and papers can be filed in an appeal. Your lawyer will file them in your case if they are necessary. You will get copies of all the briefs, the opinion, any petitions filed, and all other important papers.

In a few cases, if the decision in the juvenile court was in your favor and the County, child, or another party is appealing, that party will be the "appellant" and file the appellant's opening and reply briefs. You will be the "respondent" and will file the respondent's brief.

As you might be able to tell, most appeals take several months from the time the notice of appeal is filed until the time the decision of the Court of Appeal becomes final.

“HOW CAN I FIND OUT MORE ABOUT MY APPEAL?”

This letter is intended only to give you a general idea what to expect in your appeal if it is like the “usual” one. Your own case may be different from the “usual” case in some way or another. Your attorney will explain what is happening in your case and will try to answer any questions you may have.

While your attorney should regularly keep you informed of what is going on, please keep in mind there are restrictions on the attorney’s time. The attorney needs to spend most of his or her time preparing briefs and otherwise representing you. The Court of Appeal has adopted guidelines for the time to be allowed for client communication. Your attorney will get most of the information pertaining to your case from the transcripts. Please be patient and let your attorney put the time spent on your case to the best use on your behalf.

APPELLATE DEFENDERS, INC.

D6 CIV (Jan. 2010)