

I have recently been appointed to represent you on your appeal in the California Court of Appeal. The purpose of this letter is to explain what a dependency appeal is all about. It is my hope that this letter will answer some questions you undoubtedly would like to ask about the appellate process.

WHAT IS AN APPEAL?

An appeal is primarily an appellate court's review of the trial court proceedings to see if procedural error was committed. The review is based upon the written records of the trial court. The appellate court accepts no new evidence. *An appeal is not a new trial and there will likely be no "court hearings" at the Court of Appeal.*

The Court of Appeal does not decide whether a party who is appealing is factually correct. That is the function of a trial court. Instead, the Court of Appeal considers whether the trial court proceedings were conducted legally: did the trial court apply the correct laws and procedures?

The Court of Appeal has several choices in deciding your appeal. It can affirm the judgment of the lower court, in which case the decision of the lower court remains unchanged. It can modify the judgment, so that the decision of the lower court remains but with some change in it. The appellate court can also reverse the judgment of the lower court in part or entirely. If it does reverse, the case is sent back to the trial court, usually for retrial on the reversed part. Generally a reversal does not mean that the matter is closed, but rather that you are entitled to go back to juvenile court to have the trial or hearing done over again correctly.

After the Court of Appeal has made its decision, either party can petition for a hearing in the California Supreme Court. The Supreme Court has a different role from that of the Court of Appeal. Whereas the Court of Appeal reviews every appeal for error, the Supreme Court grants hearing in only a very few cases which present legal issues of statewide importance.

THE RECORD

After you filed your notice of appeal, the clerk and court reporter in the trial court began preparing the record on appeal. The record consists of the reporter's transcript, a word-for-word account of the trial and other relevant hearings, and the clerk's transcript, which consists of pleadings, minute orders, and other documents on file in the lower court.

The Court of Appeal provides only one appellant's copy of the record. During the course of the appeal, the attorney needs to retain that copy to represent the client effectively on appeal. When the appeal is over, it is customary to send the entire record to the client, unless the client expressly asks that the record be retained by the attorney or sent to a designated third party.

Remember that the record will eventually be yours to keep. I will send it to you as soon as I have concluded my representation of you in your appeal. Until the appeal is over, however, I

must retain the appellate record in order to represent you effectively on appeal.

Often the record filed in the Court of Appeal does not contain everything I need to represent you effectively on appeal. If that is the case, I will file a motion in the Court of Appeal to augment (add to) the record. It usually takes at least two weeks for the Court of Appeal to act upon a request for augmentation. If the motion is granted, there will be a further delay, usually approximately 30 to 90 days, until the additional record is prepared. Normally the opening brief will not be due until 30 days after the augmented record is filed in the Court of Appeal.

COMMUNICATIONS ABOUT YOUR CASE

I will write to you periodically to notify you of significant developments in your case and to respond to your letters. Your correspondence, and all other information I acquire in relation to your case, will be kept in strictest confidence in my office.

If you have legal questions about your case, you should contact me directly. Do not have third parties call to ask me about your case. I cannot discuss your case with any non-attorney other than you without violating the attorney-client privilege.

Please cooperate with me by staying in communication with me during this process. Failure to stay in touch or be available to communicate will impair my ability to represent you and achieve the best outcome in your case.

PREPARATION OF THE BRIEFS

Appellant's opening brief is due 30 days after the completed record is filed with the Court of Appeal. The brief is a written argument stating the reasons why the trial court's decision should be reversed or modified. The purpose of the brief is to point out any errors that may have occurred in the court below which were serious enough that the result must be changed. We must show that the errors were prejudicial, so that the judgment must be reversed or modified. The brief is based strictly on the record on appeal - no new evidence is taken.

I will conscientiously review the record on appeal for error. In order to uncover any arguable issues which may be presented on your behalf, I will read the transcripts, talk with your trial attorney, ask for your suggestions, and review the trial court files where appropriate. Any issues I find will be set forth in the opening brief.

However, in the rare event that I do not find that any significant errors have occurred in the lower court proceedings, I will promptly consult with you, inform you of the results of my research and investigation, and ask you how you wish to proceed. If I find that I have no arguable issues to raise, there are basically three available options: (1) you can abandon the appeal; (2) I can file what is known as a Phoenix H. Brief; or (3) you can request that the court relieve me as your counsel, and you can write your own brief to file in the court of appeal. In a Phoenix H. Brief, I write out the facts of the case, I explain to the court that I was unable to find any grounds for changing the juvenile court's decision, and ask for permission for you to file your own brief.

When an appellant's opening brief has been filed on your behalf, child protective services and the minor's attorney, who are the respondents in almost all dependency appeals, have 30

days to prepare and file a respondent's brief. Their briefs, like your brief, must be based solely on the record on appeal.

If some response is needed to counter an argument made by the respondent, I can file an appellant's reply brief on your behalf. A reply brief is not filed in every case, but if it is, it must be filed within 20 days of the day the respondent's brief was filed.

ORAL ARGUMENT

Once all the briefs have been filed, your case may be set for oral argument in the Court of Appeal. I will request oral argument if there is any advantage to be gained by arguing your case. Argument is usually set between one and three months after the last brief is filed.

On the day of oral argument, I and attorneys from county counsel and for the minor will appear before three justices of the Court of Appeal and argue the case. Argument is relatively brief. No live witness testimony is taken. The court does not hear any new evidence. You are welcome to attend and watch, although there will be no opportunity for you to speak.

THE COURT'S OPINION

Within 90 days after the case is ordered submitted, the Court of Appeal will file its written opinion stating whether the judgment should be affirmed, reversed, or modified. The court will send a copy of its opinion directly to you, as well as to me. Every defendant should be aware that, simply as a matter of statistics, fewer than 10 percent of all dependency judgments reviewed by the Court of Appeal are actually reversed.

FURTHER REVIEW

As soon as the opinion of the court of appeal is received, I will make a careful review of the opinion and the case to determine whether I should take any further steps on your behalf. If the answer is no, I will notify you promptly by letter and send you the record on appeal to proceed further on your own. If you do, you must comply with the time requirements discussed below.

If I conclude that further review is appropriate, there are two possibilities. A petition for rehearing can be filed in the Court of Appeal. The purpose of a petition for rehearing is to point out to the Court of Appeal some misstatements of fact or misapplication of law and to ask that court to reconsider its decision. The petition for rehearing must be filed within 15 days of the filing of the court's written opinion. The Court of Appeal then has another 15 days to decide whether to grant a rehearing, which it rarely does. If no rehearing is granted within 30 days of the court's opinion, that opinion becomes final.

Once the opinion of the Court of Appeal has become final, the other possibility for further review becomes available. A petition for review can be filed in the California Supreme Court within 10 days after the opinion of the Court of Appeal becomes final, that is between the 30th

and 40th day after the date stamped on the Court of Appeal's opinion. The petition must be filed within this short time period. If I deem such a petition appropriate, then I will be happy to file a petition for review on your behalf.

CONCLUSION

I appreciate the opportunity to represent you on your appeal. For my part I will do my best to provide you with good representation. If you will cooperate with me in the preparation of your appeal, we will have together done the best we can on your behalf. I look forward to working with you.