



The Los Angeles County Bar Association
Appellate Courts Section Presents

Is This Our Exit?

Traveling the Highways of Appealable Order and Judgments in Family Law

Tuesday, June 12, 2018

Program - 4:30 PM - 6:00 PM

2nd District Court of Appeal –Los Angeles

1.5 CLE Hours **(INCLUDES 1.5 HRS OF APPELLATE COURTS SPECIALIZATION CREDIT)**



Provider #36

The Los Angeles County Bar Association is a State Bar of California approved MCLE provider. The Los Angeles County Bar Association certifies that this activity has been approved for MCLE credit by the State Bar of California.

IS THIS OUR EXIT? TRAVELING THE
HIGHWAYS OF APPEALABLE ORDERS AND
JUDGMENTS IN FAMILY LAW

Tuesday, June 12

4:30 – 6:00 PM

I. Introduction

- A. Why Family Law Appeals are different from civil and criminal appeals
- B. Opportunities for appeals (and writs) throughout the family law proceeding: interlocutory, judgment and post judgment
 1. Jurisdictional issues (UCCJEA)
 2. Interlocutory support and custody (writ only),
 3. Discretionary appeals from interlocutory orders;
 4. “Partial Final Judgments” (dispo of property)
 5. Final Judgments, and
 6. Post-Judgment Modification and Enforcement Issues, e.g., relief from judgment per FC 2120

II. Sources of Authority

- A. Civil Procedure § 904.1(a)(10): orders made appealable by Family Code
- B. Family Code §2025; CRC 5.392 (Discretionary appeals)
- C. Caselaw, e.g., *Lester v. Lennane* (interlocutory custody orders)
- D. Normal rules of finality and collateral orders
(e.g., UCCJEA motion to quash summons [appealable if action dismissed per CCP §904.1(a)(3) or writ if denied (CCP 418.10(c)); Order to pay money (support or fees); injunction (move- away)

III. Statements of Decision (CR; 5 mins)

A. Working with trial counsel

B. New case re SOD no longer per se reversible. *P.F. v.*

Monier (2017) 3 Cal.5th 1099

IV. Common Appealable Pendente Lite Orders

- A. Order Granting Motion to Quash Summons per UCCJEA
(FC §3400; Civ Pro. 904.1(a)(3)); see *Schneer v. Llaurado*
(2015) 242 Cal.App.4th 1276
- B. Temporary Support (child and spousal)
- C. Pendente Lite Attorney Fees
- D. DVRO; Stay Away/Kick Out Orders (injunctive relief)
- E. “Temporary” Move Away Orders?

**VI. Discretionary Appeals of Bifurcated Issues (Family Code
§2025; CRC 5.392)**

- a. Examples
- b. Procedure
- c. Standards for granting motion
 - i. Family law court
 - ii. Court of Appeal

Judicial perspective

VII. Partial Final Judgments and the Final Judgment Rule

- A. What is a Partial Final Judgment?
 - 1. Multiple Judgments on Severable Issues
- B. Criteria and Procedures
- C. Examples:
 - 1. Validity of Pre and Post marital agreements

 - 2. Characterization of property (major asset)

VIII. Judgments

- A. Status Only Judgment
- B. True final judgments where no issues remain to be determined
- C. Appeal from portion of stipulated judgment/MSA (judgment on Reserved Issues)?

IX. Post Judgment

- A. Modification of support and custody (post judgment)
 - i. Court's continuing jurisdiction over custody
- B. "Move Away" orders (Post Judgment)
- C.. Attorney's fees as sanctions (FC §271) or interlocutory need- based (FC §2030);
- D. Orders granting or denying Relief from Judgment (FC 2120 et seq);

X. Not appealable Orders

A. Temporary Child Custody

i. How to determine if custody order is temporary or permanent?

B. Contempt (e.g., failure to pay support or fee award; violation of DVRO or ATROs: Civil §1222; Civ. Pro. §904.1(a)(1)(B)).

XI. Juvenile Appeals

Dependency Appeals (WIC §300 et seq)

See *In re K.M.* (2009) 172 Cal.App.4th 115 [Perren, J.]

XII. ICWA appeals: Indian Child Welfare Act

See *In re H.G.* (2015) 234 Cal.App.4th
906 [Perren, J.]

XIII. Other Common Issue

A. Disentitlement Doctrine:

B. Appellate Attorney's Fees (need based pre FC §2030)

i. Before or after appeal?

ii. Appellant or Respondent?

XIV. Stays and Supersedeas

- A. Appellate stay of custody orders (Civ. Pro. §917.7)

- B. Appellate stay of attorney fee and cost orders (CCP §917.75)

- C. Appellate stay of support orders [spousal; child per CCP 917.1

Family Code Section 2025: Appeals of Bifurcated Issues

Notwithstanding any other provision of law, if the court has ordered an issue or issues bifurcated for separate trial or hearing in advance of the disposition of the entire case, a court of appeal may order an issue or issues transferred to it for hearing and decision when the court that heard the issue or issues certifies that the appeal is appropriate. Certification by the court shall be in accordance with rules promulgated by the Judicial Council.

§ 904.1. Appealable judgments and orders

(a) An appeal, other than in a limited civil case, is to the court of appeal.
An appeal, other than in a limited civil case, may be taken from any of the following:

(10) From an order made appealable by the Probate Code or **the Family Code.**

§ 917.7. Appeal; stay of proceedings as to judgment or order affecting custody

The perfecting of an appeal shall not stay proceedings as to those provisions of a judgment or order which award, change, or otherwise affect the custody, including the right of visitation, of a minor child in any civil action, in an action filed under the Juvenile Court Law, or in a special proceeding, or the provisions of a judgment or order for the temporary exclusion of a party from a dwelling, as provided in the Family Code. However, the trial court may in its discretion stay execution of these provisions pending review on appeal or for any other period or periods that it may deem appropriate. Further, in the absence of a writ or order of a reviewing court providing otherwise, the provisions of the judgment or order allowing, or eliminating restrictions against, removal of the minor child from the state are stayed by operation of law for a period of seven calendar days from the entry of the judgment or order by a juvenile court in a dependency hearing, or for a period of 30 calendar days from the entry of judgment or order by any other trial court. The periods during which these provisions allowing, or eliminating restrictions against, removal of the minor child from the state are stayed, are subject to further stays as ordered by the trial court or by the juvenile court pursuant to this section. An order directing the return of a child to a sister state or country, including any order effectuating that return, made in a proceeding brought pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with [Section 3400](#)) of Division 8 of the Family Code), the Parental Kidnapping Prevention Act of 1980 ([28 U.S.C. Sec. 1738A](#)), or the Hague Convention on the Civil Aspects of International Child Abduction (implemented pursuant to the International Child Abduction Remedies Act ([42 U.S.C. Secs. 11601-11610](#))) is not a judgment or order which awards, changes, or otherwise affects the custody of a minor child within the meaning of this section, and therefore is not subject to the automatic stay provisions of this section.

Justice Steven Z. Perren Bio

Justice Perren was confirmed as an Associate Justice of the Court of Appeal in the Second Appellate District in 1999 after serving for 17 years as a Superior Court Judge for the County of Ventura. As a trial judge, he presided over hundreds of Criminal and Civil Trials as well as serving in the Family Law department. He was the Presiding Judge of the Ventura County Superior Court in 1992 and 1993. His most gratifying assignment, however, was serving for five years as the Presiding Judge of the Juvenile Court. For this service he was honored to have Ventura County's Juvenile Justice Center bear his name. In 1984 and again in 1998 he was recognized by The Ventura County Trial Lawyers as its "Trial Judge of the Year."

Born and raised in Los Angeles, Justice Perren received his undergraduate and legal education at U.C.L.A., and was president of the law school class of 1967. Following graduation he served in Vietnam as a Captain in the Army Signal Corps and served additional duty as a military prosecutor and defense attorney. Upon discharge he returned to California where he served for three years as a deputy district attorney for the County of Ventura. Thereafter he entered private practice working as a civil and criminal litigator until his appointment to the bench in 1983.

In addition to his work in the courtroom, Justice Perren has served on and chaired the Judicial Council's Criminal Law Advisory Committee, served on the Jury Instructions Task Force (Criminal) which yielded CALCRIM, the update in understandable English of the standardized criminal law jury instructions, and has been a member of the Executive Committee and vice-president of the California Judges Association and the President of the California Judge's Foundation. He currently serves on the Commission on the Future of California Courts. He has been a lecturer at the California Judicial College on sentencing practices, juvenile justice and jurisprudence. He has testified before the California Legislature and the Little Hoover Commission on sentencing issues and has participated in numerous panels and forums dealing with criminal justice. He authored, "Indeterminate Sentencing Redux: A Return to Rational Sentencing." (22 FSR 165 - February, 2010.) Justice Perren was honored in 2003 with the U.C.L.A. School of Law Alumni of the Year Award for civic activities and, in 2007, with the California Judges Association "Alba Witkin Humanitarian Award." He was awarded an Honorary "Doctor of Laws," by California Lutheran University in 2002.

In addition to his professional duties Justice Perren has served on various charitable boards including United Way of Ventura County, Casa Pacifica Children's Home, Ventura Boys and Girls Club as well as its National Advisory Board on Youth and Gang Violence, the U.C.L.A. Law Alumni Assoc. (President - 2006) and the Board of Directors of Temple Beth Torah where he also served as assistant cantoral soloist. He currently serves on the Board of Directors of the Ventura Music Festival. He has performed regularly in community and regional Opera and Musical Theater and as a choir member and soloist with the Los Angeles Lawyers Philharmonic and "Legal Voices."

Justice Perren is married to Diane. Their daughter is an associate professor in the Department of Communications at The University of Texas (Austin).

Herb Fox – Bio

Herb Fox is a certified appellate law specialist with over 30 years of experience. Herb cut his appellate teeth serving for three years as a Research Attorney for the Hon. Justice Arthur Gilbert of the California Court of Appeal.

Since leaving the Court for private practice in 1990, Herb has been attorney-of-record in more than 250 appeals and writs throughout the State and in the 9th Circuit – including two cases at the California Supreme Court – and he has consulted on appellate issues in hundreds of other matters. His clients have included judges, attorneys, and elected officials who sought his counsel on their personal legal/appellate matters.

Herb handles a broad range of appeals and writs, but a significant portion of Herb's appellate practice has long involved family law writs and appeal. His work in family law has resulted in several published opinions in the field, including *In re Marriage of Bryant* (2001) 91 Cal.App.4th 789; *In re Marriage of Rosenfeld and Gross* (2014) 225 Cal.App.4th 278; and *Schneer v. Lluarado* (2015) 242 Cal.App.4th 1276.

More information about Herb is at www.FoxAppeals.Com. He can be reached at HFox@FoxAppeals.com.

Claudia Ribet is certified as both a family law and an appellate specialist. Claudia has practiced law since 1978 in three jurisdictions (the District of Columbia, Massachusetts, and California), first at Wilmer, Cutler and Pickering holding other people's briefcases, and now at her own small firm rolling hers on two wheels.

Claudia's first appellate project was filing an *amicus* brief in 1976 in SCOTUS in the *Bakke* case on behalf of The Antioch Law School, a clinical law school run by Sargent Shriver accolades Jean and Edgar Kahn. (*Regents of Univ. of California v. Bakke*, 438 U.S. 265, 98 S. Ct. 2733, 57 L. Ed. 2d 750 (1978).) The law has changed a lot since then.

Claudia moved to California in 1991 where, after studiously avoiding matrimonial law to that point, came to realize that she loved this area of the law. Claudia was "of counsel" to Edward J. Horowitz from 1993 to 2000, and their first oral argument together was before Division Six, a good place to start.

Claudia tries complex family law cases, writes pre- and post-marital agreements and, when lucky enough, writes and argues appeals. Her published decisions include *In re Marriage of Rossi* (the lottery case) (2001) 90 Cal.App.4th 34 [wife intentionally concealed

lottery proceeds entitling former husband to award of entire amount]; *In re Marriage of Rose and Richardson* (2002) 102 Cal.App.4th 941 [trial court is required to conduct *de novo* review of custody and visitation issues to determine child's best interests where Judgment is not final]; *Amy G. v. M.W.* (2006) 142 Cal.App.4th 1 [wife of a man who conceived a child out of wedlock cannot come into court claiming the gender-neutral application of the parentage laws to her to oust the biological mother], *In re Marriage of Sabine and Toshio M.* (2007) 153 Cal.App.4th 1203 [husband and wife could not lawfully release child support and spousal support arrearages accrued by husband before the parties entered into post- dissolution settlement agreement], *Lappe v. Superior Court* (2014) 232 Cal.App.4th 774 [family law declarations of disclosure are not protected from disclosure by the mediation confidentiality doctrine; pet. for rev. denied], and *Anna M. and Jeffrey E.* (2017) 7 Cal.App.4th 439 [financial support from a third person should not be counted as income of the payee of child support].

Claudia often assists family law firms at Statement of Decision or pre-appellate stage of their cases.