

Appellate Tips for Trial Lawyers

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California civil and criminal litigation overlap in a crucial area: preserving your record for appeal. Although this series of short articles is mainly designed for civil trial lawyers, some "best practices" apply in every trial. Keep an eye on what our appellate-lawyer writers have to say about how to preserve your trial court victory or how to lay the groundwork for a successful challenge when you have lost.

Post-Trial: Protecting Superior Court Judgments from Enforcement

Part 2—Stays Pending Appeal

by Feris M. Greenberger

Part 1 looked at staying enforcement of money judgments between entry and the start of the appellate process. Part 2 examines staying enforcement during appeal.

Ask Your Opponent to Stay Enforcement without Bond

Sometimes an opponent will agree to a stay without bond if you point out that the often-expensive bond or undertaking premium will be a recoverable cost when you win the appeal. (Cal. Rules of Court, Rule 8.278(d)(1)(F).) If you can get this in writing, go for it.

Obtain a Stay Pending Appeal by Bond

If your opponent rejects the informal path, take steps to formally protect your client from enforcement pending appeal. This generally entails filing a bond or undertaking in superior court. (Code Civ. Proc. § 917.1; see *id.*, § 995.210 (a) [terms used interchangeably].) While the Court of Appeal has authority to stay enforcement without bond via writ of supersedeas (Cal. Rules of Court, Rule 8.112), that rarely happens in a money judgment case.

The Code of Civil Procedure details the particulars for staying enforcement by bond. (§§ 917.1, 995.010, et seq.) If given by an "admitted" surety—a corporate surety qualified to issue bonds in California—the bond must be for 1½ times the judgment amount. (§ 917.1 (b).) It must be filed in superior court and served on the beneficiary. (§§ 995.340 (a), 995.370.) The bond is effective when given, without court approval. (§§ 995.410 (a); 995.420 (a).) The beneficiary can file objections on limited statutory grounds (§ 995.910, et seq.), but the bond remains effective while those objections are aired and during the period the court affords to correct any deficiency. (§ 995.960 (b).)

Corporate surety bonds are an insurance/credit product, and you typically get them through a commercial surety bond broker. Any insurance brokerage firm may do this as part of its business, or at least should be able to refer you to a broker who does.

That covers the big picture, but this area is a minutiae minefield — always study the Code.

Bond Alternatives

There are alternatives to admitted surety bonding. One is to use qualified personal sureties. (§§ 995.510, 995.520.) When the surety is not an admitted surety

insurer, the bond must be for double the judgment amount. (§917.1 (b).) Another option is to deposit funds into court in lieu of bond. (§ 995.710, et seq.)

Non-money Judgments

What about judgments awarding relief other than money? Some are stayed automatically pending appeal, while others require bond or undertaking in an amount set by the trial court. (See §§ 916-936.1.) Always check the Code carefully.



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