Pointers for Handling Appellate Extraordinary Writs

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Appellate extraordinary writs are expedited attempts to overturn or get a different result from a lower court's decision on a ruling which either would expose a litigant to irreparable harm or is the sole remedy for certain pre-judgment decisions on issues such as change of venue, striking a trial judge, or lis pendens expungement. Writs are extraordinary vehicles because they ask an appellate court to leapfrog your writ matter before other pending appellate matters on the docket.

Although the pointers below especially apply to California, the rules relating to appellate extraordinary writs are generally the same, yet jurisdictional nuances need to be factored into any analysis for prosecuting or defending against them. Writ relief is rare, so here are some pointers to consider:

- ***Determine if writ relief is the sole remedy available to your client.*** In California, for example, some statutes specify that writ relief is the sole remedy available, such as for rulings on lis pendens expungement motions, change of venue motions, personal jurisdiction/inconvenient motions, judge disqualification applications, coordination action motions, and good faith settlement motions. Although summary judgment/adjudication rulings in California can be reviewed through appellate writs, the grant of writs is discretionary and rare on these motion rulings unless granting the writ prevents a trial altogether. A fertile area for writ relief is where a discovery or other ruling would require production of work product information or information protected by attorney-client privilege.
- ***The client must show there is no adequate remedy at law.*** Your client must show that there is an inadequate remedy at law, which means that an appeal from a judgment later will not protect the client's rights. Issues which are of widespread importance, issues which should be immediately resolved, and issues resolving conflicting trial court interpretations of the

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law are examples that can meet this standard.

- ***The client usually must demonstrate irreparable harm.*** Importantly, your client must show irreparable harm from not obtaining writ relief. The statutorily mandated writ situations have this "baked" into the process, but other examples of irreparable harm are exposing a client to an unnecessary trial or two trials, requiring a client to post an onerous appellate undertaking during an appeal when the matter is legally stayed on appeal, and failing to allow a settling defendant out of the case when the only exposure is equitable indemnity against another codefendant.
- ***Follow the deadlines, ask for a stay if there are upcoming activities, and get a reporter's transcript.*** In California and many other jurisdictions, there are strict deadlines to file an appellate writ petition, frequently way earlier than deadlines to file an appeal—observe them! If there is an upcoming trial or other important event looming, request the appellate court to issue a temporary stay while it is considering the writ petition. Finally, it is advisable to obtain a reporter's transcript of the hearing or proceeding which is being challenged (with California requiring an explanation about why one was not or cannot be obtained).

Frost Brown Todd's appellate advocates have a proven record of success in appeals involving questions of first impression, bet-the-company judgments, and decisions that shape the rules under which our clients will operate well into the future. For information, contact the author or any attorney with the firm's Appellate Practice Group.

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