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Probate appeals: litigants beware!

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Although appeals from probate court are handled much as appeals of other civil matters, there are substantial differences, some of which present a trap for the unwary. For example, although civil appeals normally can be only from a final judgment that completely resolves the entire case, a variety of interim orders are appealable under the Probate Code. Because a failure to timely appeal an appealable order divests the Court of Appeal of jurisdiction, it is crucial to know what probate court orders are appealable. And during the appeal, unlike most civil cases, the probate court is empowered to appoint a temporary fiduciary in certain circumstances whose actions will stand regardless of the result of the appeal. Probate appeals also have a statutory right to preference, but only if properly requested. This article addresses some of these matters unique to probate appeals.

WHAT PROBATE COURT ORDERS ARE APPEALABLE?

Under Rule 8.104(a) of the California Rules of Court, the time to file a notice of appeal begins either upon entry of an appealable judgment or order or from service of a notice of entry of such judgment or order. Rule 8.104(b) generally provides that "no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal." Thus, identifying what judgments or orders in probate court are appealable and then timely noticing their appeal is critical to preserving the right to appellate review.



In civil cases, "The one final judgment rule provides that an appeal may be taken only from a final judgment, and a judgment that disposes of fewer than all of the causes of action of the pleadings is not yet final for purposes of appeal." *Sargon Enterprises, Inc. v. University of Southern California*, 215 Cal.App.4th 1495, 1507 (2013). But Probate Code Sections 1300-04 provide that a number of probate court orders are appealable, regardless whether they fully dispose of all matters before the court. For example, under Probate Code Section 1300, and among others, appeals may be taken from an order, or a refusal to make an order: (1) Directing or approving many real estate transactions; (2) settling a fiduciary's account;

(3) directing or approving a fiduciary's actions; (4) directing or allowing payment of a claim; (5) allowing or directing payment of an attorney's or fiduciary's compensation or expenses; and (6) surcharging or removing a fiduciary. The remainder of Sections 1301-04 provide for appeals from particular orders in specific kinds of cases, including orders issued in: (1) Guardianships, conservatorships, or other protective proceedings (Section 1301); (2) cases under the Conservatorship Jurisdiction Act (Section 1301.5); (3) cases governed by the Power of Attorney Law (Section 1302); (4) advanced health care directive matters (Section 1302.5); (5) decedent's estates cases (Section 1303); and (6) trust cases (Section 1304).

In decedent's estates cases, some of the more common appealable orders under Probate Code Section 1303 include the granting or refusal to grant orders: (1) Granting or revoking a personal representative's letters (except letters of special administration); (2) admitting a will to probate; (3) determining to whom a distribution should be made; and (4) deciding whether an action constitutes a "contest" under Probate Code Sections 21320, et seq. In trust cases, common appealable orders under Probate Code Section 1304 include the granting or denial of: (1) Any final order under Probate Code Section 17200 (governing many trust proceedings), except an order compelling an accounting or accepting a fiduciary's resignation; (2) a final order determining claims against a deceased settlor; (3) a final order prorating taxes; and (4) deciding whether an action constitutes a "contest."



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The above are only some of the many orders that are immediately appealable in probate court. A best practice is to consult Probate Code Sections 1300-04 whenever an order or judgment is issued because "The orders listed as appealable in the Probate Code must be challenged timely or they become final and binding." Estate of Gilkison, 65 Cal.App.4th 1443, 1450 (1998).

**PROBATE COURT'S
AUTHORITY TO GRANT
CONCLUSIVE POWERS
NOTWITHSTANDING APPEAL**

Generally, Code of Civil Procedure Section 916 divests the superior court of jurisdiction during an appeal over any mat-

ters embraced or affected by the appealed judgment or order. Although Probate Code Section 1310(a) has a similar stay provision, Section 1310(b) has an important exception. Notwithstanding the usual stay, Section 1310(b) provides, "for the purpose of preventing injury or loss to a person or property, the trial court may direct the exercise of the powers of the fiduciary, or may appoint a temporary guardian or conservator of the person or estate, or both, or a special administrator or temporary trustee, to exercise the powers, from time to time, as if no appeal were pending." If such an appointment is made, Section 1310(b) states, "All acts of the fiduciary pursuant to the directions of the court made

under this subdivision are valid, irrespective of the result of the appeal." (Emphasis added.) Further, although an aggrieved party could appeal a Section 1310(b) order, that statute further provides, "An appeal of the directions made by the court under this subdivision shall not stay these directions." Similarly, even if an appeal from an order appointing a fiduciary succeeds, Section 1311 provides that all acts of the fiduciary before the reversal are valid.

PREFERENCE ON APPEAL

Code of Civil Procedure Section 44 gives appeals in probate cases preference over many other cases. However, this priority is not self-executing. Rule

8.240 of the California Rules of Court provides, "A party seeking calendar preference [on appeal] must promptly serve and file a motion for preference in the reviewing court." Under that same rule, preference "may include expedited briefing and preference in setting the date of oral argument." Either the appellant or the respondent can request such priority.

CONCLUSION

Probate appeals present unique challenges, including the potential for certain orders to remain effective regardless of the appellate outcome. Understanding these nuances is vital for a probate appellate attorney.