

Introduced by Senator Peace

January 21, 1999

An act to amend Sections 904.1 and 906 of, and to add Section 917.85 to, the Code of Civil Procedure, relating to appeals.

LEGISLATIVE COUNSEL'S DIGEST

SB 219, as introduced, Peace. Appeals.

Existing law provides that an appeal may be taken from a judgment or various types of orders, as specified, and that the reviewing court may review the verdict or decision, and other specific types of rulings, proceedings, orders, or decisions, as specified.

This bill would provide that an appeal may be taken from an order not otherwise appealable, as specified, if the court that made the order certifies that immediate appellate review of the order may materially advance the ultimate termination of the litigation, and also certifies that the order involves a controlling question of law, or resolves a significant portion of the action and immediate appellate review is necessary to prevent significant prejudice to the parties or to reduce the probability of retrial, or the order involves an unresolved point of law, as specified. The bill would provide that the perfecting of an appeal under these provisions would not stay the action, except as specified. The bill would also require the Judicial Council to adopt rules to implement these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 904.1 of the Code of Civil
2 Procedure is amended to read:
3 904.1. (a) An appeal, other than in a limited civil
4 case, is to the court of appeal. An appeal, other than in a
5 limited civil case, may be taken from any of the following:
6 (1) From a judgment, except (A) an interlocutory
7 judgment, other than as provided in paragraphs (8), (9),
8 and (11), (B) a judgment of contempt that is made final
9 and conclusive by Section 1222, or (C) a judgment
10 granting or denying a petition for issuance of a writ of
11 mandamus or prohibition directed to a municipal court
12 or the superior court in a county in which there is no
13 municipal court or the judge or judges thereof that relates
14 to a matter pending in the municipal or superior court.
15 However, an appellate court may, in its discretion, review
16 a judgment granting or denying a petition for issuance of
17 a writ of mandamus or prohibition, or a judgment or order
18 for the payment of monetary sanctions, upon petition for
19 an extraordinary writ.
20 (2) From an order made after a judgment made
21 appealable by paragraph (1).
22 (3) From an order granting a motion to quash service
23 of summons or granting a motion to stay or dismiss the
24 action on the ground of inconvenient forum.
25 (4) From an order granting a new trial or denying a
26 motion for judgment notwithstanding the verdict.
27 (5) From an order discharging or refusing to discharge
28 an attachment or granting a right to attach order.
29 (6) From an order granting or dissolving an
30 injunction, or refusing to grant or dissolve an injunction.
31 (7) From an order appointing a receiver.
32 (8) From an interlocutory judgment, order, or decree,
33 hereafter made or entered in an action to redeem real or
34 personal property from a mortgage thereof, or a lien
35 thereon, determining the right to redeem and directing
36 an accounting.



1 (9) From an interlocutory judgment in an action for
2 partition determining the rights and interests of the
3 respective parties and directing partition to be made.

4 (10) From an order made appealable by the provisions
5 of the Probate Code or the Family Code.

6 (11) From an interlocutory judgment directing
7 payment of monetary sanctions by a party or an attorney
8 for a party if the amount exceeds five thousand dollars
9 (\$5,000).

10 (12) From an order directing payment of monetary
11 sanctions by a party or an attorney for a party if the
12 amount exceeds five thousand dollars (\$5,000).

13 (13) *From an order not otherwise made appealable*
14 *pursuant to this section, in a case that is not a limited civil*
15 *action, if the court that made the order does both of the*
16 *following:*

17 (A) *The court certifies that it is of the opinion that*
18 *immediate appellate review of the order may materially*
19 *advance the ultimate termination of the litigation.*

20 (B) *The court certifies that one or more of the*
21 *following conditions have been met:*

22 (i) *The order involves a controlling question of law as*
23 *to which there is a substantial ground of difference of*
24 *opinion.*

25 (ii) *The order resolves a significant portion of the*
26 *action and immediate appellate review is necessary to*
27 *prevent significant prejudice to the parties, or to reduce*
28 *the probability of retrial of the matter.*

29 (iii) *The order involves an unresolved point of law of*
30 *great public interest.*

31 (b) Sanction orders or judgments of five thousand
32 dollars (\$5,000) or less against a party or an attorney for
33 a party may be reviewed on an appeal by that party after
34 entry of final judgment in the main action, or, at the
35 discretion of the court of appeal, may be reviewed upon
36 petition for an extraordinary writ.

37 (c) *The Judicial Council shall adopt rules, including*
38 *time requirements, to implement paragraph (13) of*
39 *subdivision (a).*

1 SEC. 2. Section 906 of the Code of Civil Procedure is
2 amended to read:

3 906. (a) Upon an appeal pursuant to Section 904.1 or
4 904.2, the reviewing court may review the verdict or
5 decision and any intermediate ruling, proceeding, order
6 or decision which involves the merits or necessarily
7 affects the judgment or order appealed from or which
8 substantially affects the rights of a party, including, on any
9 appeal from the judgment, any order on motion for a new
10 trial, and may affirm, reverse or modify any judgment or
11 order appealed from and may direct the proper
12 judgment or order to be entered, and may, if necessary
13 or proper, direct a new trial or further proceedings to be
14 had. The respondent, or party in whose favor the
15 judgment was given, may, without appealing from such
16 judgment, request the reviewing court to and it may
17 review any of the foregoing matters for the purpose of
18 determining whether or not the appellant was prejudiced
19 by the error or errors upon which he relies for reversal or
20 modification of the judgment from which the appeal is
21 taken. ~~The~~

22 (b) *The* provisions of this section do not authorize the
23 reviewing court to review any decision or order from
24 which an appeal might have been taken.

25 (c) *Subdivision (b) does not apply to an order from*
26 *which an appeal might have been taken pursuant to*
27 *paragraph (13) of subdivision (a) of Section 904.1 unless*
28 *the trial court actually made that order appealable*
29 *pursuant to paragraph (13) of subdivision (a) of Section*
30 *904.1.*

31 SEC. 3. Section 917.85 is added to the Code of Civil
32 Procedure, to read:

33 917.85. (a) The perfecting of an appeal pursuant to
34 paragraph (13) of subdivision (a) of Section 904.1 shall
35 not stay the action unless so ordered by the court that
36 made the order appealed from pursuant to paragraph
37 (13) of subdivision (a) of Section 904.1.



1 (b) The Judicial Council shall adopt rules to
2 implement this section.

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