

April 18, 2002

L*
3*
San Jose, CA 95136

Re: *DFCS v. L**, H0*

CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION

Ms. *

I am the attorney who has been appointed to represent you on appeal.

Attached to this letter is a document which explains the appellate process. If you have never been involved in an appeal before, hopefully it will answer many of your questions. Right now, the best thing you can do to assist me with your case is to write me a letter listing any other things you think made your case unfair. Please let me know what you wish to accomplish from your appeal.

I look forward to hearing from you soon. Ask me any questions you might have as well.

Sincerely,

Jonathan Grossman
Staff Attorney

Enclosure

INTRODUCTION TO THE APPELLATE PROCESS

I have recently been appointed to represent you on your appeal in the California Court of Appeal. The purpose of this letter is to explain what a dependency appeal is all about. It is my hope that this letter will answer some questions you undoubtedly would like to ask about the appellate process.

WHAT IS AN APPEAL?

An appeal is primarily an appellate court's review of the trial court proceedings to see if procedural error was committed. The review is based upon the written records of the trial court. The appellate court accepts no new evidence. Nor does the Court of Appeal decide whether a party who is appealing (referred to as the "appellant" in the appellate court) is factually correct. That is the function of a trial court. Instead, the Court of Appeal considers whether the trial court proceedings were conducted legally: did you get a fair hearing at which the correct legal rulings on law and procedure were made?

The Court of Appeal has several choices in deciding your appeal. It can affirm the judgment of the lower court, in which case the decision of the lower court remains unchanged. It can modify the judgment, so that the decision of the lower court remains but with some change in it. The appellate court can also reverse the judgment of the lower court in part or entirely. If it does reverse, the case is sent back to the trial court, usually for retrial on the reversed part, although on rare occasions a case will be reversed with directions to dismiss. Generally a reversal does not mean that the matter is closed, but rather that you are entitled to have the trial or hearing done over again correctly in the lower court.

After the Court of Appeal has made its decision, either party can petition for a hearing in the California Supreme Court. The Supreme Court has a different role from that of the Court of Appeal. Whereas the Court of Appeal reviews every appeal for error, the Supreme Court grants hearing in only a very few cases which present legal issues of statewide importance.

THE RECORD

After you filed your notice of appeal, the clerk and court reporter in the trial court began preparing the record on appeal. The record consists of the reporter's transcript, a word-for-word account of the trial and other relevant hearings, and the clerk's transcript, which consists of pleadings, minute orders, and other documents on file in the lower court.

The Court of Appeal provides only one appellant's copy of the record. During the course of the appeal, the attorney needs to retain that copy to represent the client effectively on appeal. When the appeal is over, it is customary to send the entire record to the client, unless the client expressly asks that the record be retained by the attorney or sent to a designated third party.

Although the record is supposed to be prepared in 20 days, extensions are often requested

by the court reporter and granted by the Court of Appeal, especially in longer trials, so that a far more substantial amount of time may pass before I receive the record.

Remember that the record will eventually be yours to keep. I will send it to you as soon as I have concluded my representation of you in your appeal. Until the appeal is over, however, I must retain the appellate record in order to represent you effectively on appeal.

Often the record filed in the Court of Appeal does not contain everything I need to represent you effectively on appeal. If that is the case, I will file a motion in the Court of Appeal to augment (add to) the record. It usually takes at least two weeks for the Court of Appeal to act upon a request for augmentation. If the motion is granted, there will be a further delay, usually approximately 30 to 90 days, until the additional record is prepared. Normally the opening brief will not be due until 30 days after the augmented record is filed in the Court of Appeal.

COMMUNICATIONS ABOUT YOUR CASE

I will write to you periodically to notify you of significant developments in your case and to respond to your letters. Your correspondence, and all other information I acquire in relation to your case, will be kept in strictest confidence in my office.

Ordinarily I will communicate with you by mail. If you are in custody, the attorney-client mail is confidential, and no authorities in a state institution are entitled to read it. Be sure to write "**Attorney-Client Mail**" or "**Legal Mail**" on the envelope of every letter you send to me in order to avoid review of the confidential contents by prison authorities.

If you have legal questions about your case, you should write to me directly. Do not have third parties call to ask me about your case. I cannot discuss your case with any non-attorney other than you without violating the attorney-client privilege.

The court does not approve of client visits unless advance permission is obtained and extraordinary circumstances require such a visit. The court generally deems communications by mail to be adequate on appeal by reason of the nature of an appeal, which is generally limited to a review of the trial record.

Although your communications with me are privileged and cannot be revealed to others without your permission and cannot be used against you, your communications with most other people are probably not so protected. Therefore, you should be extremely cautious about discussing the details of your case with prison guards, other inmates, or anyone else, either in person or in writing. If you divulge incriminating information to them, you may some day find these people as witnesses against you should your appeal succeed in gaining you a retrial.

Please cooperate with me in keeping our communications privileged. By working with me, your attorney, we can increase the chances of getting the judgment reversed or modified.

PREPARATION OF THE BRIEFS

Appellant's opening brief is due 30 days after the completed record is filed with the Court of Appeal. Often an attorney will request an extension of 30 days because more time is needed to complete the research and writing. The brief is a written argument stating the reasons why the trial court's decision should be reversed or modified. The purpose of the brief is to point out any errors that may have occurred in the court below which were serious enough that the result must be changed. It is not enough to show that some error occurred; just because your trial was not error-free does not mean you are entitled to a new trial. We must show that the errors were prejudicial, so that the judgment must be reversed or modified. The brief is based strictly on the record on appeal and may not contain arguments based on statements, documents, or events which are not included in that record. In other words, your appeal can challenge only things which the record shows actually occurred in the lower court. Everything which the appellate court has to consider in determining the issues raised on appeal must be included in the brief, whether it is favorable or unfavorable to you. Although I will emphasize your side of the issue, I am obligated to present the whole picture in the brief.

I will conscientiously review the record on appeal for error. In order to uncover any arguable issues which may be presented on your behalf, I will read the transcripts, talk with your trial attorney, ask for your suggestions, and review the trial court files where appropriate. Any issues I find will be set forth in the opening brief.

However, in the rare event that I do not find that any significant errors have occurred in the lower court proceedings, I will promptly consult with you, inform you of the results of my research and investigation, and ask you how you wish to proceed. If I find that I have no arguable issues to raise, there are basically three available options: (1) you can abandon the appeal; (2) I can file what is known as a Sade C. letter; or (3) you can request that the court relieve me as your counsel, and you can write your own brief to file in the court of appeal. In a Sade C. letter, I explain to the court that I was unable to find any grounds for changing the juvenile court's decision.

If you file an abandonment of your appeal or if I file a Sade C. letter, it is almost certain that the Court of Appeal will dismiss your appeal and affirm the judgment of the trial court, thus ending the appellate process. There will ordinarily be no further review of the judgment by any appellate court.

When an appellant's opening brief has been filed on your behalf, child protective services and the minor's attorney, who are the respondents in almost all dependency appeals, have 30 days to prepare and file a respondent's brief. Often they will request one or more extensions of 30 days in which to file that brief, and those requests are usually granted by the Court of Appeal. Their briefs, like your brief, must be based solely on the record on appeal. The minor's brief can be filed after the appellant's reply brief.

If some response is needed to counter an argument made by the respondent, I can file an

appellant's reply brief on your behalf. A reply brief is not filed in every case, but if it is it must be filed within 20 days of the day the respondent's brief was filed.

ORAL ARGUMENT

Once all the briefs have been filed, your case may be set for oral argument in the Court of Appeal. Oral argument is no longer automatically set in every case. The clerk of the Court of Appeal usually sends counsel for both sides a notice that if oral argument is not requested within 10 days, the court will not set the matter for argument and will deem the matter submitted on the briefs. I will request oral argument if there is any advantage to be gained by arguing your case. Otherwise, oral argument will be waived. Argument is usually set between one and three months after the last brief is filed.

On the day of oral argument, I and attorneys from county counsel and for the minor will appear before three justices of the Court of Appeal and argue the case. Argument is relatively brief. No live witness testimony is taken. The opinion of the court is generally written before oral argument. The court does not hear any new evidence. You will not be brought to court for the argument if you are in custody. If you are out of custody, you are welcome to attend and watch, although you are not permitted to participate.

THE COURT'S OPINION

Within 90 days after the case is ordered submitted, the Court of Appeal will file its written opinion stating whether the judgment should be affirmed, reversed, or modified. The court will send a copy of its opinion directly to you, as well as to me. Every defendant should be aware that, simply as a matter of statistics, fewer than 10 percent of all dependency judgments reviewed by the Court of Appeal are actually reversed. A somewhat larger percentage of cases do receive partial reversals or modifications of the judgment. These modifications, particularly those related to sentencing, can be very important in affecting the time you actually serve, even though they fall short of total reversal of the judgment.

FURTHER REVIEW

As soon as the opinion of the court of appeal is received, I will make a careful review of the opinion and the case to determine whether I should take any further steps on your behalf. If the answer is no, I will notify you promptly by letter and send you the record on appeal to proceed further on your own. If you do, you must comply with the time requirements discussed below.

If I conclude that further review is appropriate, there are two possibilities. A petition for rehearing can be filed in the court of appeal. The purpose of a petition for rehearing is to point out to the Court of Appeal some misstatements of fact or misapplication of law and to ask that court to reconsider its decision. The petition for rehearing must be filed within 15 days of the filing of the court's written opinion. The Court of Appeal then has another 15 days to decide whether to grant a rehearing, which it rarely does. If no rehearing is granted within 30 days of the court's opinion,

that opinion becomes final.

Once the opinion of the Court of Appeal has become final, the other possibility for further review becomes available. A petition for review can be filed in the California Supreme Court within 10 days after the opinion of the Court of Appeal becomes final, that is between the 30th and 40th day after the date stamped on the Court of Appeal's opinion. The petition must be filed within this short time period. If I deem such a petition appropriate, then I will be happy to file a petition for review on your behalf.

Once review in the California Supreme Court has been exhausted, it is possible to seek review in federal court by petition for certiorari to the United States Supreme Court filed within 90 days of the denial of petition for review by the California Supreme Court. Federal review is appropriate only where you can contend that a federal constitutional right has been violated. The likelihood of obtaining hearing and relief in the United States Supreme Court is very small. If you are interested in pursuing these channels, you must do so on your own, as my appointment does not extend to them. In such cases, you may proceed initially in propria persona and request that the court appoint counsel for you or hire a retained attorney to represent you.

CONCLUSION

I appreciate the opportunity to represent you on your appeal. For my part I will do my best to provide you with good representation. If you will cooperate with me in the preparation of your appeal, we will have together done the best we can on your behalf. I look forward to working with you.