

## Resolution 13-09-2009

### Motions for Reconsideration: Defining When They Are Appealable

RESOLVED that the Conference of the Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1008 to read as follows:

1 §1008

2 (a) When an application for an order has been made to a judge, or to a court, and  
3 refused in whole or in part, or granted, or granted conditionally, or on terms, any party  
4 affected by the order may, within 10 days after service upon the party of written notice of  
5 entry of the order and based upon new or different facts, circumstances, or law, make  
6 application to the same judge or court that made the order, to reconsider the matter and  
7 modify, amend, or revoke the prior order. The party making the application shall state by  
8 affidavit what application was made before, when and to what judge, what order or decisions  
9 were made, and what new or different facts, circumstances, or law are claimed to be shown.

10 (b) A party who originally made an application for an order which was refused in  
11 whole or part, or granted conditionally or on terms, may make a subsequent application for  
12 the same order upon new or different facts, circumstances, or law, in which case it shall be  
13 shown by affidavit what application was made before, when and to what judge, what order or  
14 decisions were made, and what new or different facts, circumstances, or law are claimed to  
15 be shown. For a failure to comply with this subdivision, any order made on a subsequent  
16 application may be revoked or set aside on ex parte motion.

17 (c) If a court at any time determines that there has been a change of law that warrants  
18 it to reconsider a prior order it entered, it may do so on its own motion and enter a different  
19 order.

20 (d) A violation of this section may be punished as a contempt and with sanctions as  
21 allowed by Section 128.7. In addition, an order made contrary to this section may be revoked  
22 by the judge or commissioner who made it, or vacated by a judge of the court in which the  
23 action or proceeding is pending.

24 (e) This section specifies the court's jurisdiction with regard to applications for  
25 reconsideration of its orders and renewals of previous motions, and applies to all applications  
26 to reconsider any order of a judge or court, or for the renewal of a previous motion, whether  
27 the order deciding the previous matter or motion is interim or final. No application to  
28 reconsider any order or for the renewal of a previous motion may be considered by any judge  
29 or court unless made according to this section.

30 (f) For the purposes of this section, an alleged new or different law shall not include a  
31 later enacted statute without a retroactive application.

32 (g) This section applies to all applications for interim orders.

33 (h) An order denying a motion made under subdivision (a) of this section is not  
34 appealable. However, a determination made under subdivision (a) of this section is  
35 reviewable on appeal from an appealable order which was the subject of a motion made  
36 under this section.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS:**

Existing Law: “There is a split of authority as to whether an order denying a motion for reconsideration is separately appealable.” (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 968-969 (*Morton*), citing *In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 80–81.) As recognized by the *Morton* Court, “[t]he relatively recent enactment of rule 8.108(d) did not resolve this split of authority. The Advisory Committee comment to rule 8.108(d) of the California Rules of Court states that the revised rule takes no position on ‘whether an order denying a motion to reconsider is itself appealable (compare *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 710–711 [order appealable if motion based on new facts] with *Rojes v. Riverside General Hospital* (1988) 203 Cal.App.3d [1151,] 1160–1161[order not appealable under any circumstances]).’ The Advisory Committee comment states that whether such an order is separately appealable is a ‘legislative matter[.]’ (Advisory Com. com., Cal. Rules of Court, rule 8.108(d).) The Legislature has yet to take a position on whether an order from a motion to reconsider is separately appealable.” (*Morton, supra*, 156 Cal.App.4th at p. 968.)

This Resolution: This Resolution clarifies that an order on a motion for reconsideration is not an appealable order, but may be reviewed on appeal from a final judgment or from an underlying order that is appealable.

The Problem: Courts concluding orders on reconsideration are not appealable reason that “Section 904.1 of the Code of Civil Procedure does not authorize appeals from such orders, and to hold otherwise would permit, in effect, two appeals for every appealable decision and promote the manipulation of the time allowed for an appeal.” (See *Morton, supra*, 156 Cal.App.4th at p. 969 and cases cited therein.)

**IMPACT STATEMENT:**

This resolution does not affect any other law, statute or rule.

**AUTHOR AND/OR PERMANENT CONTACT:** Darin L. Wessel, Esq., Manning & Marder, Kass, Ellrod, Ramirez, LLP, 801 S. Figueroa Street, 15<sup>th</sup> Floor, Los Angeles, CA 90017; Telephone (213) 624-6900 x2427; e-mail [dlw@mmker.com](mailto:dlw@mmker.com).

**RESPONSIBLE FLOOR DELEGATE:**