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How trial and appellate counsel work together for the common good

THE BEST TRIAL OUTCOMES ARE BUILT WITH AN APPEAL ALREADY IN MIND

The best trial outcomes are built with an appeal already in mind. That is true in any litigation, but it is especially true in insurance bad-faith cases, which may involve unusually long timelines. A bad-faith claim often rides on top of an underlying case, such as a personal-injury suit, that may itself have taken years to resolve. By the time the bad-faith trial begins, the client may already be exhausted. And when the verdict comes in, the case may not be over, because an appeal can stretch it for years more.

A lawyer who plans only for the verdict is mistakenly planning only part of the case and inadvertently short-changing the client. Long before trial, a single adverse ruling – on arbitration, on the admissibility of key evidence, on summary judgment – can shape or even decide the outcome. Whether the case survives those moments often depends on choices made well before they arrive. The lawyers who account for that reality early give their clients the best chance of a successful outcome.

Accounting for that reality requires bringing appellate counsel in early, not after the verdict, when it may be too late to fix the record. Appellate strategy, particularly in a bad-faith case, is not a post-verdict activity. It is a series of decisions that begins at intake and continues until a judgment becomes final. What follows are the decision points where that collaboration matters most, in the order they arise.

Appellate work begins at intake

A common misconception is that the right time to involve an appellate lawyer is after the verdict, when the appeal actually begins. By then, however, the most important part of the appeal has already been built: the record. An appellate lawyer hired after the verdict inherits transcripts, motions, and rulings they had no role in shaping – and gaps in that record can no longer be filled.

The record matters so much because of how appeals are decided. There are no juries in appellate law. In an appeal, you will be trying to convince three appellate justices to agree with your position based on a cold record. Emotion gives way to reason in reviewing courts; an argument that plays too much on emotion will be given the pejorative label of "jury argument." The justices will never see the witnesses or hear the testimony. Everything they know about the case will come from the pages the trial team created – which is why the time to think about those pages is while they are being written.

That thinking should begin at intake. In a bad-faith case, intake begins with the policy, not the complaint. The policy shapes everything that follows: It sets forth coverage terms and exclusions, duties of insurers and insureds, fee provisions, and potential procedural pitfalls. Trial counsel who reviews the policy only for coverage misses the bigger picture. Having appellate counsel's eyes on the policy helps to ensure that nothing is missed.

The clearest example is an arbitration clause. Such a provision buried in the policy can pull the entire case into a different forum before the merits are ever reached. Spotting that clause at intake changes the posture of the case. Instead of scrambling to oppose a motion to compel arbitration after it lands, trial counsel can ask appellate counsel to analyze the clause's enforceability at the outset – its terms, and whether it was presented to the insured in the manner California law requires. Either way, the analysis strengthens the case: If the clause is unenforceable, you have your argument ready; if it is enforceable, you know it before building a strategy that depends on staying in court.

Sometimes, though, the trial court gets that early fight wrong – and orders the case into arbitration anyway. An order compelling arbitration is not immediately appealable. (*Atlas Plastering, Inc. v. Superior Court* (1977) 72 Cal.App.3d 63, 67.) And waiting to challenge it until after a final judgment would mean arbitrating the entire case first. That is where the writ petition comes in.

When immediate review matters

A writ asks the Court of Appeal to intervene immediately, rather than waiting for a final judgment. It is an "extraordinary" remedy. Writ review is discretionary, and the vast majority of petitions are summarily denied without explanation. But when a ruling threatens harm that an eventual appeal cannot undo, like forcing the parties to complete an entire arbitration when the case should remain in court, then a writ may be the only meaningful remedy. Deciding whether to seek one requires the precise judgment appellate counsel brings: a realistic assessment of the odds, the strength of the legal issue, and what is lost by waiting.

Our firm saw this play out in *Medeiros v. Superior Court* (2007) 146 Cal.App.4th 1008. There, our client, Lee Medeiros, enrolled himself and his family in a health plan through his employer. To do so, Mr. Medeiros signed a benefits-election agreement that contained an arbitration provision. Unsurprisingly, when Mr. Medeiros and his wife brought a bad-faith action against Health Net, it moved to compel arbitration, relying on the provision set forth in the benefits-election agreement that Mr. Medeiros signed.

However, under Health and Safety Code section 1363.1, health plans in California that mandate arbitration are required to disclose that requirement in plain, prominent language that appears directly above the signature line for the insured. These provisions are strictly enforced, and Health Net had not complied with them. But Health Net argued that these requirements did not apply because Mr. Medeiros had enrolled through an employer-negotiated group plan and signed the employer's benefits election form, which precluded Health Net from supplying its own election form with language that complied with Health and Safety Code section 1363.1. The trial court agreed and ordered the parties to arbitration.

That order was not immediately appealable, and it would have forced our clients to complete an entire arbitration before receiving an opportunity to argue on appeal that they had been forced into the wrong forum. So, working with appellate counsel, our firm filed a writ petition seeking to vacate the trial court's order.

The Court of Appeal agreed with our position. It held that Health Net was required to comply with section 1363.1 and had failed to do so. It further held that if Health Net wished to include an enforceable arbitration provision in its health plan, then it was required to supply its own form with appropriate disclosures, in addition to whatever form was supplied by an employer. It accordingly ordered the trial court to vacate its order, and to enter a new order denying Health Net's motion. In doing so, the court commented: "We believe any arbitration compelled in the absence of a valid, enforceable arbitration agreement is an unduly time consuming and expensive proposition. Writ review is the appropriate way to review the challenged order and avoid having parties try a case in a forum where they do not belong, only to have to do it all over again in the appropriate forum." (*Medeiros*, 146 Cal. App.4th at p. 1014, fn. 7.)

The result in *Medeiros* was possible only because appellate counsel was already involved when the adverse ruling came. The writ succeeded because the issue that won it – Health Net's failure to comply with section 1363.1 – had been spotted in the policy documents at the very start of the case. By the time the trial court ruled, the strongest argument was already in hand.

Standards of review shape everything

As the case moves past the early fights and toward trial, every ruling along the way becomes a potential issue on appeal. But not all rulings are reviewed alike. The trial lawyer asks whether the judge got it right. The appellate lawyer asks a different question: How will the reviewing court examine this ruling? The answer turns on the standard of review, and it often determines whether a judgment is affirmed or reversed.

There are three standards an appellate court commonly applies: substantial evidence, abuse of discretion, and de novo.

Substantial evidence review applies to factual findings, which are reviewed deferentially: The appellate court will not second-guess credibility determinations, and will uphold findings if they are supported by substantial evidence, whether contradicted or uncontradicted. A party challenging findings under substantial evidence review faces "an 'enormous burden.'" (*Schmidt v. Superior Court* (2020) 44 Cal.App.5th 570, 581-582.)

The trial court's discretionary rulings, such as evidentiary decisions, discovery disputes, and other case-management rulings, are reviewed under the abuse of discretion standard. This standard is also deferential, but not to the same extent as substantial evidence review. Trial court discretion "is not unlimited" and "must be exercised within the confines of the applicable legal principles." (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.) "The scope of discretion always resides in the particular law being applied." (*Ibid*.) In other words, a discretionary ruling that rests on a legal error is an abuse of discretion – which means even this deferential standard has a de novo component at its core."

But legal questions are reviewed de novo. The appellate court decides them fresh, with no deference to the trial court at all. For an appellant, this is the category where appeals are most often won. And it is why the most important fights on appeal are often about characterization: whether an issue is legal or factual. The same ruling can be nearly bulletproof if reviewed as a factual finding, but vulnerable to reversal if reviewed de novo as a question of law. Appellate counsel involved during trial can help frame issues as legal questions where the record permits, and can build the record to support that framing.

That is especially valuable in bad-faith cases, where the dispositive questions – the meaning of policy language, the scope of an insurer's duties – are frequently legal ones buried inside emotionally charged facts. The jury may respond to the story, but the Court of Appeal will strip that away and focus on the issue. Presenting the legal question cleanly, without the drama from trial around it, is much of the appellate craft.

The decade-long case

Some bad-faith cases test endurance as much as advocacy. In the third-party context, damages for a bad-faith claim do not even exist until they are established in an underlying case. An insurer's refusal to accept a $1 million settlement offer is not a bad-faith case until the insured is hit with a $20 million verdict. The bad-faith trial may still then be years away, because the underlying verdict is rarely the end: post-trial motions, an appeal, and petitions for review to the Supreme Court can stretch the matter further still. Behind that timeline is a client dealing with financial damage, medical stress, or business disruption the entire time.

Our firm's experience in *Simone v. State Farm Mutual Automobile Ins. Co.* (Dec. 17, 2025, No. B326990) ___Cal. App.5th___ [2025 Cal. App. Unpub. LEXIS 8124] shows what that arc can look like. Our client, Elijah Simone, was struck by a vehicle while riding his bicycle in April 2015, suffering catastrophic spinal cord injuries. The underlying personal-injury case was tried in 2018, producing a judgment of nearly $10.9 million. The adverse driver passed away during the litigation, and his widow refused to provide an assignment of rights, forcing Elijah to appear in the Arkansas Probate Court, where he was appointed special administrator of the adverse driver's estate specifically for the purpose of pursing a bad-faith claim against State Farm.

The bad-faith case did not reach trial until 2022. State Farm tried repeatedly to derail it, through summary judgment motions, a writ petition, and even a petition to the California Supreme Court. A major insurance carrier has the funds, resources, and staff to keep its defense in motion indefinitely. When the bad-faith judgment came, State Farm appealed, drawing amicus support from the U.S. Chamber of Commerce, the National Association of Mutual Insurance Companies, and the Civil Justice Association of California.

The issue in the case concerned State Farm's failure to accept Elijah's settlement offer. Elijah had offered to settle for the adverse driver's policy limits, but requested certain information as a condition of settlement. He wanted a copy of the relevant policy, he wanted to know if the adverse driver had other insurance, and he wanted to know if the adverse driver was in the course and scope of his employment at the time of the accident. He also requested that all communications be in writing. In response, State Farm tried to reach Elijah by telephone. It then sent him a letter purporting to confirm a policy-limits settlement, but never provided Elijah with a copy of the relevant policy or any of the other information he requested. The trial court concluded that State Farm's conduct was unreasonable. State Farm's challenge to that conclusion was the basis for its appeal.

Resolving that issue turned on a fight regarding the standard of review. State Farm argued the bad-faith findings should be reviewed de novo, contending the material facts were undisputed and the trial court had made a legal error. We argued the findings were factual because they concerned whether conduct was reasonable, and were therefore entitled to substantial-evidence review. The Court of Appeal agreed with us and affirmed the bad-faith judgment in December 2025. By then, post-judgment interest had grown the recovery to $19.2 million, nearly double the initial verdict. The snail's pace of appellate litigation worked in the client's financial favor.

But consider what Elijah endured to get there: 10 years between his injury and an appellate resolution. His health, employment, family life, and mental well-being all changed over that decade. Unfortunately, that sequence is not unusual, but is typical of bad-faith litigation.

That is why managing the client's expectations, and staying in contact with them as the case progresses, is so vital. Clients should be told at the outset that the process will be slow. And transparency is critical. They should be updated after filings, arguments, and rulings, and reminded that each is an important step in the case. Once on appeal, the client should be reassured that it is not a pause in the case, but its next stage. The appeal may be technical, but the client experience is deeply personal, and a client who understands the road can endure it.

Making law: How this work serves the common good

The best trial-appellate partnerships do more than improve one case. A well-developed record, a focused set of issues, and a precisely argued brief give the appellate court the tools to write better opinions, and better opinions clarify the law for everyone who comes after.

For example, *Medeiros* did more than rescue one family from an arbitral forum it never agreed to; it confirmed that health plans cannot use employer-created enrollment forms to evade the disclosure obligations imposed by the Legislature. Every Californian who enrolls in a group health plan benefits from that holding.

That is the common good this work serves. When trial and appellate counsel collaborate with discipline and foresight, beginning with the policy review at intake, they are not only serving their client, they are contributing to a body of law that holds insurers accountable and gives policyholders the protections they were promised. What begins as service to one client can shape the law for many.

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