

## Appellate Tips

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### Special Actions – To File Or Not To File?

By: Lori L. Voepel

One question we are often asked is whether a particular state court order should be challenged through a petition for special action in the Arizona Court of Appeals. The appellate court has discretion whether to accept jurisdiction and consider a special action on the merits, so it is important to make sure that your particular case is appropriate for seeking special action review.

Whether and when to file a petition for special action depends on a number of factors, including the procedural posture of the case, the type of motion ruled upon by the trial court, and the subject matter of the ruling at issue.

According to Rule 1 of the Rules of Procedure for Special Actions, special action relief is not available where there is an equally plain, speedy and adequate remedy by appeal. What this means is that special action jurisdiction exists only if the relief being sought is not reasonably available through a direct appeal following final judgment in a case.

Pursuant to Special Action Rule 3, the only questions that can be raised in a special action are: (a) whether the court (or other official) has failed to exercise discretion which he has a duty to exercise, or to perform a duty required by law as to which he has no discretion; (b) whether the court (or official) has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or (c) whether a determination was arbitrary and capricious or an abuse of discretion.

Here are some **general** guidelines for determining when the court of appeals is or is not likely to accept special action jurisdiction, though keep in mind that each case is unique:

#### **More Likely to Accept Jurisdiction:**

Immunity issues

Privilege issues

Notice of Claim/Statute of Limitations issues

Denial of protective orders or other injunctive relief (where potential for irreparable harm is imminent)

Interpretation/application of a new statute

Purely legal questions (especially involving important issues of first impression)

#### **Less Likely (or Unlikely) to Accept Jurisdiction:**

Denial of Summary Judgment (unless involves legal issue of first impression or other issue listed above)

Discovery disputes

Evidentiary issues

These are not hard and fast “rules,” and the list is not exhaustive. These are merely **general** guidelines to give you some sense of whether your particular issue or dispute may (or may not) be appropriate for a special action.

There are also many other considerations, such as whether the client will be better or worse off by taking the special action, the cost, and the risk of creating bad law. Our JSH appellate team can help you assess whether it would be in a client’s best interest to proceed with seeking special action relief in a particular case. If filing a petition for special action is appropriate, we have experience handling special action proceedings for you.

The Jones, Skelton & Hochuli appellate group is available to advise you or to help you file a special action. If you receive a petition for special action from an opposing party, contact our appellate department as soon as possible, because special actions are expedited.



#### **About the Author**

**Lori L. Voepel** is a Partner and Chair of the Appellate Department at Jones, Skelton & Hochuli. She has handled nearly 300 appeals at every level of state and federal court. Lori is a member of the State Bar Appellate Practice Section and on the Steering Committee of Arizona Women Lawyers Association. She clerked for Justice Zlaket on the Arizona Supreme Court and Judge Patterson on the Arizona Court of Appeals. [lvoepel@jshfirm.com](mailto:lvoepel@jshfirm.com) | **602.263.7312**