



Appealing a Civil Domestic Violence Case in the District of Columbia Court of Appeals: A Guide for D.C. Domestic Violence Advocates¹

The goal of this guide is to provide D.C. domestic violence advocates with general information about their clients' legal options after their clients lose at trial. In particular, this guide focuses on post-trial motions and appeals. **This guide is not legal advice and is not intended to replace or to be a substitute for the District of Columbia Rules of Appellate Procedure or any of the District of Columbia Superior Court Rules.** It is important for anyone considering a post-trial motion or an appeal to seek the advice of an attorney, because each case has different facts and strategic considerations that an attorney can help with. We hope that this guide will help DV advocates determine whether or not to refer their clients' cases to DV LEAP. If you have questions or believe that a client's case could use DV LEAP's assistance, please contact Elizabeth Liu, Staff Attorney, 202-994-4306, elizabeth@dvleap.org, or Joan Meier, Executive Director, 202-994-2278, jmeier@law.gwu.edu.

I. Post-Trial Motions

- **Introduction:**

If a party is unhappy with the D.C. Superior Court's decision in her² domestic violence case, that party has some post-trial options. For example, the party may be able to ask the trial court directly to change its order or permit her to have a new trial. (For purposes of this guide, the term "trial court" refers to D.C. Superior Court, usually the Domestic Violence Unit or Domestic Relations Unit of the D.C. Superior Court.) It is best if the party can talk to an attorney about the pros and cons of filing one of the motions described below.

- **What is a Motion?**

A motion is the document a party files when she wants to ask the Court to do something. When a party files a motion, she should be specific about what she wants the Court to do and give clear reasons why the Court should grant the request. DV advocates may have heard of "motions for reconsideration." This is really an informal

¹ This guide was originally written for a non-attorney audience.

² For ease of reference, throughout this guide, a party will be referred to as "she." DV LEAP, of course, recognizes that men may also be the victims of domestic violence and may want to either appeal or otherwise address a trial court's decision in a domestic violence case.

name for the more specific motions which are enumerated by the court rules. The rules do not actually include a “motion for reconsideration.” The specific motions available to change the trial court’s orders are described below.

- **Motion to Amend Findings Made By the Trial Court (D.C. Civil Rule 52(b) and D.C. Domestic Relations Rule 52(b))**

At each trial or hearing, a trial judge normally makes “findings of fact.” These are basically the judge’s description of his/her view of the facts of the case, after s/he has heard evidence from both parties. For example, in a civil protection order case, the judge may say something like “I find that the Respondent did assault the Petitioner by pushing her on [date].” The trial court then applies the law to the findings of fact it made to reach its ultimate decision. If a party disagrees with the findings of fact the trial court made, this Motion allows this party to ask the trial court to change or “amend” its findings of fact or make additional findings of fact. This motion is often filed with a Motion to Alter or Amend the Judgment (see below).

- **When to file:** A party has to file this motion **within 10 days**³ after the judgment is entered. If the party has questions about when the judgment was entered, calling the clerk’s office (of the domestic violence unit or the domestic relations unit, depending on the type of case the party is appealing), is probably a good option. It is best to assume that judgment is entered when the judge signs the written order; in some cases, it will not be deemed “entered” until the order is “docketed” by the clerk’s office. If there is no written order, then the day of entry may be the day of trial when the judge makes his or her ruling.
- **Where to file:** A party files this motion with the Clerk of the Superior Court in the division the case took place. (For example, if the party is dealing with a civil protection order case, she would file the motion in the *Domestic Violence Clerk’s Office* on the fourth floor. If the party is dealing with a custody case, she would file in the *Domestic Relations Clerk’s Office* on the fourth floor.) If the party has any questions about where to file the motion, it is a good idea to ask one of the clerks.
- **Grounds:** It’s not entirely clear what the standard is for the trial court to amend its findings, but there is some authority indicating that courts may be required to make or amend findings when they failed to make required findings or where the evidence was insufficient to support the

³ Note D.C. Domestic Relations Rule 6 states “When the specified time period is 10 days or fewer, Saturdays, Sundays, and legal holidays within that time period shall not be included in the computation. Accordingly, for the purposes of these Rules, periods of 10 days or fewer shall be computed by business days and periods over 10 days shall be computed by consecutive calendar days.”

original finding. Coleman v. Lee Washington Hauling Co., 388 A.2d 44 (D.C. 1978).

- **Motion to Alter/Amend the Judgment or for a New Trial (D.C. Civil Rule 59 and D.C. Domestic Relations Rule 59)**

Another option is to file a motion to alter or amend the judgment or for a new trial in D.C. Superior Court. A party can file this motion along with a motion to amend the findings (described above).

- **Grounds:** According to D.C. Domestic Relations Rule 59 (and its Comment), this motion can be granted by the trial court “where the interests of justice require...” Grounds for a new trial under this Rule include a “manifest error of law or fact, and newly discovered evidence which is material to a significant issue.” If the trial court grants the party’s motion, it can do a number of different things, including hear new testimony and change its decision.
- **When/Where to File:** Again, it is really important for a party to file the Motion to Alter or Amend the Judgment/Motion For a New Trial **within 10** days of the entry of judgment. Otherwise it is very unlikely that the court will hear the party’s motion. A party files this motion with the clerk of the Superior Court in whichever division her case took place.
- **Whether to File:** Motions to Alter or Amend the Judgment or For a New Trial are sometimes filed when the party believes the court made a mistake which the court may recognize if it is clearly pointed out. They are also sometimes filed if the party cannot pursue an appeal for some reason, but wants to try to change the outcome of the trial in a more quickly. A court’s decision on a Motion to Alter or Amend the Judgment/ Motion For a New Trial can significantly impact the chances of an appeal (for better *or worse*), because it gives the trial court a chance to better explain and document its opinion, so it is important for a client to obtain legal advice from an attorney before filing such a motion, if the client is interested in preserving her chances on appeal.

- **Motion for Relief From Judgment (D.C. Civil Rule 60 and D.C. Domestic Relations Rule 60)**

If a party finds out about new evidence after the time has passed for the party to file for a Motion for a New Trial, the party can consider filing for a Motion for Relief From Judgment or Order.

- **Grounds:** The court is allowed to change its order if the court finds that there was a “mistake, inadvertence, surprise, or excusable neglect.” The Court can also relieve a party from judgment if there is “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” (This means that the party couldn’t reasonably have found out about the new evidence in the 10 days after the entry of judgment). The Court can also relieve the party from judgment if there was “fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party” or “any other reason justifying relief from the operation of the judgment.”
- **When/Where to File:** A party files this motion with the clerk of the Superior Court in whichever division the case took place. A party has to file this motion within **a year** after the judgment was entered.
- **Showing a “Substantial Right” was violated (D.C. Civil Rule 61 and D.C. Domestic Relations Rule 61):**

As a party considers whether to file a post-trial motion in D.C. Superior Court, it is important to keep in mind that the party will have to prove that the trial court made an error that affected a “substantial right” of the party. Rule 61 of the D.C. Superior Court Domestic Relations Rules and Rules of Civil Procedure essentially say that the trial court should not grant a new trial or change a judgment or order unless refusing to do so would appear to the trial court “inconsistent with substantial justice.” These rules also say that the trial courts should not pay attention to errors or defects in the proceedings that do not “affect the substantial rights of the parties.”

This doesn’t necessarily mean that a party shouldn’t file a post-trial motion; it just means that the party should be prepared to show that the mistake the party believes the trial court made was an important one, not a minor one. In conjunction with thinking about whether or not to file any of the post-trial motions listed above, a party may also want to think about whether or not to appeal the trial court’s decision. She can do both. Again, consulting an attorney is a good idea because each case has different facts and strategic considerations.

- **Motion for a Stay (Rule 13 of the D.C. Superior Court Domestic Violence Unit Rules, Rule 62 of the D.C. Superior Court Domestic Relations Rules, Rule 62**

of the Civil Rules of the D.C. Superior Court, Rule 8 of the Rules of the D.C. Court of Appeals.)

Even if a party files a motion to change the trial court's decision or files an appeal, the party still has to follow the trial court's order unless and until it is changed. If complying with that order while waiting for the next motion/ appeal to be decided would create substantial harm for the party or the party's family, the party can ask for permission to not follow the court order by filing a Motion for a Stay. (If the party has filed a post-trial motion in the trial court, then the motion is a "Motion to Stay;" if the party has filed an appeal, then it is a "Motion For a Stay Pending Appeal.") Any Motion to Stay must be filed in the trial court first. If the trial judge denies this motion, then the party can file it again in the D.C. Court of Appeals.

II. Appeals

- Introduction

Appealing a trial court decision is complicated and involves many legal considerations. Anyone considering an appeal should seek the advice of an attorney as soon as possible. Even if a party doesn't have an attorney yet, there are some important things a party can do to make sure to preserve the option of appealing the party's case.

- What is an Appeal?

An appeal asks the higher court (in this case, the District of Columbia Court of Appeals) to determine if the trial court followed the correct procedure and law in making its decision. With some rare exceptions, the party can only appeal a final order, not a temporary one (*See* D.C. Code § 11-721). An appeal does not mean that the party will get a new trial and the party cannot provide new evidence to the D.C. Court of Appeals. In an appeal, the lawyers make legal arguments to the D.C. Court of Appeals in writing. In some cases, there is also "oral argument" in front of a panel of judges. However, there is no opportunity to re-try the case or present new evidence.

A party should always seek attorney representation for an appeal.

- What Is a Final Order? With rare exceptions, a party can only appeal a "final" court order. In general, an order is "final" if the trial court has fully decided the issue being appealed. If the trial court sets another hearing date about the issue the party wants to appeal, then it's probably not a final order. For example, a final order in the domestic violence court could be an order by the trial court granting or denying a petition for a year-long civil protection order, an order granting or denying a motion to modify or vacate a civil protection order, or an order granting or denying a motion for civil or criminal

contempt. In domestic relations court, a divorce decree or a final custody determination is normally also a final order.

- Terminology: The person who wants to appeal the case is the Appellant. The person who is defending the trial court's decision is the Appellee. There may be situations in which the parties may be appealing different parts of a trial court decision. For example, in a domestic relations case, one party may disagree with the trial court's visitation arrangement, while the opposing party may disagree with the trial court's decision to grant sole legal custody. When both parties appeal the same decision, the parties are called cross-appellants and cross-appellees.
- Clerk's Office: The Clerk's Office for the D.C. Court of Appeals is 500 Indiana Avenue, NW, Washington, DC 20001, Room 6000. The main phone number of the Clerk's Office is 202-879-2700.

- What is the process for an appeal?

(A) Notice of Appeal (Rule 13 of the Domestic Violence Unit Rules, Rules 3 & 4 of the D.C. Court of Appeals): An appeal is initiated by filing a Notice of Appeal and either paying a \$100 filing fee or filing a motion to waive the fee. The Notice of Appeal MUST be filed **within 30 days** of the final court order from D.C. Superior Court. *This step MUST be completed or the party loses the right to appeal. If a party thinks she MIGHT want to appeal her case, she should be sure to file this notice before the 30 days are over, even if she doesn't have an attorney and may not pursue the appeal. It is easy to withdraw an appeal, but very difficult to overcome a late filed Notice of Appeal.*

- What should the Notice of Appeal look like? The form is available in the trial court clerk's office. It includes the names of the parties and indicates the date of the judgment or order that the party is appealing.
- Where Do I File the Notice of Appeal? The Appellant files the Notice of Appeal in the clerk's office of the trial court that issued the original order (in most cases, probably the Domestic Violence Unit Clerk's Office or the Domestic Relations Clerk's Office, on the fourth floor of the courthouse).
- Filing Fee? If the Appellant cannot afford the \$100 filing fee, she can file a Motion for "in forma pauperis" status and a Financial Information Statement to ask the court to waive the filing fee and the costs associated with ordering transcripts. (See below). These forms

can be found online and in the clerk's office. Rule 24 of the D.C. Court of Appeals Rules provides more information on this.

- *The other party must be served with the Notice of Appeal.*
- Forms and the schedule of fees for an appeal are available at http://www.dcappeals.gov/dccourts/docs/dcca_rulesfee.pdf

(B) Record: The Appellant must also order the compilation of the record of the case within 10 days of filing the Notice of Appeal. The "record" consists of all documents that were filed in this case in the trial court. The Appellant goes to the Appeals Coordinator's Office, Third Floor, Room 3148, (202) 879-1731 to do this. After the party files the Notice of Appeal and order the record of the case, most of the record will be sent automatically to the Court of Appeals. *See Rules 10-12* of the Rules of the District of Columbia Court of Appeals for more information about the record.

(C) Transcripts: Transcripts are a copy of everything that was said in open court at a trial or hearing. The Appellant also has to order transcripts within 10 days after she file the Notice of Appeal. If the Appellant can afford to pay for the transcripts, the appellant orders transcripts from the Court Reporter Division, Room 5500. In some cases, an Appellant who has been granted *in forma pauperis* status may not have to pay for the transcripts. In that case, the Appellant should file a Motion for a Transcript in the Appeals Coordinator's Office, Room 3148. If the motion is granted, the transcript will be prepared at no cost to the Appellant. In rare cases, the Appellant may choose not to order the transcript because it is not needed for her case. *See Rules 10-12* of the Rules of the District of Columbia Court of Appeals for more information about transcripts.

(D) Briefing schedule: Once the D.C. Court of Appeals has received the record and transcripts from the D.C. Superior Court, the Clerk of the D.C. Court of Appeals notifies the parties that the record is filed and usually issues a briefing schedule. The Appellant then has 40 days to file her Opening Brief. (This deadline is usually set forth in the briefing scheduled issued by the D.C. Court of Appeals Clerk's Office). Appellees get 30 days to respond to Appellants' opening brief; Appellants then get 21 days to file a Reply to the Appellee's brief.

➤ What is a Brief?

A brief is a legal document where a party or lawyer writes their argument to the D.C. Court of Appeals explaining why they think the trial court's decision was wrong. The purpose of the brief is to convince the D.C. Court of Appeals that the trial court made a *legal error*. The D.C. Court of Appeals has specific rules about the format and contents of briefs. It is critical to find an attorney who can

represent the party because brief-writing and appellate strategy require legal expertise.

(E) Decision: After the Court of Appeals reads the briefs, reviews the record, and hears any oral arguments (arguments in-person), it will issue an opinion or order that decides whether the Appellant wins or loses.

III. THE ROLE OF DV LEAP

The Domestic Violence Legal Empowerment and Appeals Project, (DV LEAP), has a project called DC LEAP – through which it prioritizes appellate domestic violence cases in the District of Columbia, as well as law reform and trainings on related issues. *Please see www.dvleap.org for a complete listing and description of DV LEAP's litigation and other activities, including DC LEAP.* Most of DV LEAP's appeals are co-counseled by DV LEAP and affiliated *pro bono* lawyers in law firms. DV LEAP is committed to handling viable appeals in D.C. involving domestic violence which require *pro bono* assistance. In significant cases, we can also assist by organizing and producing friend-of-the-court briefs to support the party's position, where the party already has competent representation. This is necessary to ensure that the voice of the domestic violence community in D.C. is represented to the courts.

We look forward to working with you to protect the rights of victims of domestic violence in D.C.