

[Court Has No Jurisdiction Over a Fee Claim Appeal When the Appellant Jumps the Gun](#)

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Appellant Files a Notice of Appeal Prior to the Relevant Court Order

In *Silver v. Pacific American Fish Co. Inc.*, 2010 DJDAR 17978 (2010), the [Second District California Court of Appeal](#) decided a unique procedural issue in the context of a fee petition.

Michael Silver (“Silver”) filed a cross-complaint against Pacific American Fish Co. Inc. after being sued by Pacific American (“Pacific”). The trial court rejected the validity of Silver’s cross-complaint and ruled in Pacific’s favor. Pacific then filed a motion for its reasonable attorney fees.

Prior to the hearing on the motion to recover fees, Silver filed a notice of appeal, which specified that he was appealing the trial court’s order granting Pacific’s motion for attorney fees. However, the trial court had not yet ruled on the motion. Despite Silver’s filing, the trial court heard and granted Pacific’s motion for attorney fees. Silver appealed the order.

The Court of Appeal affirmed the lower court’s decision in part. The Court of Appeal stated that a notice of appeal which is filed after rendition of a judgment or statement of intended ruling but before entry of the judgment may be timely. The court also noted that a postjudgment order granting a fee request is separately appealable.

The court noted, however, that at the time Silver purported to appeal the order granting fees, there had been no ruling by the trial court on the matter. The court’s ruling was not made until over a month after Silver filed the notice of appeal. The court also noted that the trial court’s ruling in favor of Pacific did not expressly award attorney fees, but rather left the issues open for further determination.

For all of these reasons, the Court of Appeal held that it had no jurisdiction over the purported appeal because the post-judgment order awarding attorney fees was separately appealable and required Silver to file a separate, timely notice of appeal.