

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/Introductory Material

Handling Civil Appeals

With Judge's Perspective

Robert M. Dato

JUNE 2008

Scope of Guide

This Action Guide provides step-by-step guidelines primarily for the attorney considering appealing from a superior court or lower court judgment or order. It includes special motion and application procedures, as well as steps to take after the appellate decision. This Action Guide also describes procedures required for the party opposing the appeal.

Abbreviations

Civ App Prac

California Civil Appellate Practice (3d ed Cal CEB 1996)

Civ Writ Prac

California Civil Writ Practice (3d ed Cal CEB 1996)

CT

Clerk's Transcript

RT

Reporter's Transcript

About the Author

ROBERT M. DATO, of Buchalter Nemer, Orange County, is a certified appellate specialist and has argued numerous appeals in California as well as in New York, Pennsylvania, Idaho, and elsewhere. He received his B.A. in 1980 from San Diego State University and his J.D. in 1983 from the University of San Diego. A former research attorney to Presiding Justice David Sills, Fourth Appellate District, Division 3, and occasional writ attorney for the court, Mr. Dato was voted one of the top 50 lawyers in Orange County in the 2006, 2007, and 2008 Super Lawyers surveys.

Acknowledgments

CEB appreciates and gratefully acknowledges the valuable contributions to this Action Guide of the following consultant:

Roy G. Weatherup, of Lewis, Brisbois, Bisgaard & Smith, Los Angeles.

CEB also appreciates the contribution of the following authors to previous editions of this Action Guide:

Letitia Pepper, former research attorney for the U.S. District Court.

Hon. Margaret M. Grignon, formerly Associate Justice on the Court of Appeal, Second District, Division Five, now a partner with Reed Smith, Los Angeles.

CEB also appreciates the contribution of the following consultants to previous editions of this Action Guide:

Alan R. Bergman, Appellate Law Office of Alan R. Bergman, Oakland (formerly Walnut Creek).

Kent M. Bridwell, Law Offices of Kent M. Bridwell, Los Angeles.

Mary Eikel, Principal Attorney, California Court of Appeal, Fourth District.

Stuart B. Esner, Esner Chang & Ellis, Glendale.

José H. Garcia, Acer Group Legal Department, San Jose.

Christina Imre, Sedgwick, Detert, Moran & Arnold LLP, Los Angeles.

Hon. Robert Timlin, formerly Associate Justice, Court of Appeals, Fourth District, now Judge of the U.S. District Court, Riverside.

CEB legal staff who worked on this title were Publications Attorney Christina Lauridsen and Legal Editors Dorothy Robins and Sarah Beth Pate. Robert Waxman and Kay E. Tindel, CEB attorneys, were responsible for previous editions, and Suzanne Graber for the original edition. Leslie Tenney copyedited and handled production.

Cutoff Dates and CEB Citation

Cutoff Dates

We completed legal editing and analysis of authorities cited in this publication as of March 25, 2008, and monitored developments through May 5, 2008.

CEB Citation

Cite this publication as: Handling Civil Appeals (Cal CEB Action Guide June 2008).

This Action Guide supersedes Handling Civil Appeals (Cal CEB Action Guide November 2005).

© **The Regents of the University of California**

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Superior Court Decision/STEP 1.
DETERMINE IF JUDGMENT OR ORDER IS APPEALABLE

When Appealing From Superior Court Decision

STEP 1. DETERMINE IF JUDGMENT OR ORDER IS APPEALABLE

WHEN TO MAKE DETERMINATION

Immediately determine if a judgment or order is appealable when you receive it. This determination is necessary because there are mandatory time periods with which you must comply if your client wishes to appeal. See [step 3](#), below.

JUDGE'S PERSPECTIVE

To avoid errors, it is worth spending some time and thought at the start to determine the proper appellate review procedure.

Determine whether a direct appeal is proper, or whether, to protect your client's interests, you should seek review by petition for a writ of mandate or prohibition. Juvenile dependency proceedings in particular may call for writ petitions for an expedited review. In addition, contempt judgments are not reviewable on appeal but only on petition for extraordinary writ.

Courts are now much less willing to save procedurally improper appeals than they once were. See *Shpiller v Harry C's Redlands* (1993) 13 CA4th 1177, 16 CR2d 814.

Further Research: On writs generally, see California Civil Writ Practice (3d ed Cal CEB 1996), referred to throughout this Action Guide as Civ Writ Prac.

MAKE SURE YOU HAVE JUDGMENT OR ORDER

Determine whether the document you have *really is* a judgment or order. An appealable judgment or order has certain characteristics, *e.g.*:

In Writing

It is in writing (with rare exceptions; see, *e.g.*, *In re Markaus V.* (1989) 211 CA3d 1331, 1336, 260 CR 126).

Entered

It is entered either by:

a. The clerk entering the order in the permanent minutes ("minute order") unless the minute order requires a written order (see [Cal Rules of Ct 8.104\(d\)\(2\)](#)); or

b. The judge signing a document and the clerk filing it and either (see [Cal Rules of Ct 8.104\(d\)\(2\)-\(3\)](#)):

(1) Stamping it "filed"; or

(2) Entering it in the docket (*People v Black* (1961) 55 C2d 275, 276, 10 CR 459; see [step 3](#), below, for definition of date of entry).

Warning: On February 22, 2008, the Judicial Council of California adopted revisions to the California Rules of Court. Most of the relevant appellate changes are effective on January 1, 2009, and apply to rules in Title 8, Division 2, Chapter 1 (Rules 8.800-8.816, containing general definitional appellate rules); Title 8, Division 2, Chapter 2, Article 1 (Rules 8.820-8.825, on taking appeals in limited civil cases); Title 8, Division 2, Chapter 2, Article 2 (Rules 8.830-8.842, on the record in limited civil cases); and Title 8, Division 2, Chapter 4 (Rules 8.880-8.891, covering briefing and decision making). The revised rules that were available at the time of this writing are cited in this Guide for your reference. However, you should always be sure to check the California Rules of Court at the Judicial Council website at <http://www.courtinfo.ca.gov/rules/> for more information on these revisions and any others that may have been adopted after the time of this writing.

Complete

It does not contemplate or direct that the court will prepare another order on the same issue (*Herrscher v Herrscher* (1953) 41 C2d

300, 305, 259 P2d 901).

Direction

It contains:

a. Direction by the court that a party:

(1) Take action; or

(2) Refrain from action; or

b. A statement that certain relief is not granted. See, *e.g.*, *Bailey v County of El Dorado* (1984) 162 CA3d 94, 97, 210 CR 237.

REVIEW AND RESEARCH WHETHER APPEALABLE

Determine whether your judgment or order is one that is appealable, *e.g.*:

a. Review the contents of the judgment or order to determine if it appears to meet the statutory requirements (set out in this step, below); and

b. Research statutory and case law requirements for appeal of your type of judgment or order. See below.

NOTE

Be aware that, even if you can appeal, the appeal does *not* stay enforcement of a money judgment, and you may need to immediately seek a temporary stay in the superior court until you file an appeal. CCP §918. See step 8, below.

JUDGMENTS

WHICH JUDGMENTS ARE APPEALABLE

Judgments are appealable when specified in statute (generally CCP §904.1), *i.e.*:

FINAL JUDGMENT

A judgment that is final (see definition) is appealable, *except*:

a. A contempt judgment is reviewed only by writ petition (CCP §904.1(a)(1)(B)); see California Civil Appellate Practice §3.23 (3d ed Cal CEB 1996), referred to throughout this Action Guide as Civ App Prac);

b. Limited civil case judgments are generally not appealable beyond the superior court (CCP §§904.2, 116.710(b)); see CCP §904.1(a); Civ App Prac §10.4; Cal Rules of Ct 8.1000-8.1018 on transfer of cases from the superior court appellate division to the court of appeals); and

c. Limited civil case writs are reviewed by writ to the superior court. CCP §§904.2, 904.5; see *General Electric Capital Auto Fin. Servs., Inc. v Appellate Div.* (2001) 88 CA4th 136, 105 CR2d 552; Civ App Prac §10.100H.

STIPULATED JUDGMENT

Ordinarily, a judgment entered under a stipulation is not appealable, except when consent for stipulation was given only to facilitate an appeal from some prior ruling. *Tudor Ranches, Inc. v State Comp. Ins. Fund* (1998) 65 CA4th 1422, 77 CR2d 574. See also *City of South San Francisco v Mayer* (1998) 67 CA4th 1350, 1353 n2, 79 CR2d 704.

INTERLOCUTORY JUDGMENT

Generally, an interlocutory judgment is *not* appealable (CCP §904.1(a)(1)(A)), *except*:

Action to Redeem Property

An interlocutory judgment, order, or decree in an action to redeem real or personal property from a mortgage or lien on the property that:

- a. Determines right to redeem; and
- b. Directs an accounting (CCP §904.1(a)(8)).

Partition

In an action for partition, an interlocutory judgment that (CCP §904.1(a)(9)):

- a. Determines the respective parties' rights and interests; and
- b. Directs that partition be made.

Sanctions

An interlocutory judgment that orders payment of monetary sanctions by a party or a party's attorney *if* more than \$5000 (CCP §904.1(a)(11)). If you have an interlocutory sanction judgment *or* an order for \$5000 or less, then either (CCP §904.1(b)):

- a. Appeal when the final judgment in the underlying action is entered; or
- b. Petition for a writ.

NOTE

You probably cannot aggregate sanction awards under \$5000 against multiple parties so as to meet the \$5000 threshold. See Calboun v Vallejo City Unified Sch. Dist. (1993) 20 CA4th 39, 45, 24 CR2d 337.

DISCOVERY SANCTIONS

Under CCP §904.1(a)(11)-(12), discovery sanctions over \$5000 are directly appealable. London v Dri-Honing Corp. (2004) 117 CA4th 999, 12 CR3d 240; Rail-Transport Employees' Ass'n v Union Pac. Motor Freight (1996) 46 CA4th 469, 54 CR2d 713.

Sanctions Against Former Attorney

Sanctions order of any amount against an attorney *who has substituted out of the case* is appealable. See Barton v Abmanson Devs., Inc. (1993) 17 CA4th 1358, 1361, 22 CR2d 56 (sanctions order against former attorney falls under "final as to party" exception to one-final-judgment rule).

NOTE

If you are in doubt about whether a case can be appealed, file notice of appeal and simultaneously pursue writ relief.

"FINAL JUDGMENT" DEFINED

A judgment is final when:

Made by Court

A final determination is made by a *judge* (see CCP §577; Civ App Prac §3.12);

Complete Determination

No issues remain to be determined later (see Civ App Prac §3.15; Nimmagaḍḍa v Krishnamurthy (1992) 3 CA4th 1505, 1508, 5 CR2d 351); and

Ends the Suit

The judgment is final, complete, and ends the suit for all parties or for one particular party or group of parties. See Civ App Prac §3.14.

NOTE

This is generally known as the one-final-judgment rule. Appellate policy is that the courts will not review the case piecemeal.

Exceptions

a. If the issues are completely determined and suit is ended for one or more particular parties, the aggrieved party or parties may appeal. See, e.g., Johnson v Threats (1983) 140 CA3d 287, 289, 189 CR 447 (demurrer sustained on all causes of action against one defendant). See also Barton v Abmanson Devs., Inc. (1993) 17 CA4th 1358, 22 CR2d 56 (discovery sanction award against party and her attorney appealable by attorney after he had substituted out of case).

b. You can appeal from a judgment even if certain postjudgment issues (and orders) remain to be determined, e.g., a ruling on a motion to tax costs or for attorney fees. See Norman I. Krug Real Estate Inv., Inc. v Praszker (1990) 220 CA3d 35, 46, 269 CR 228; CCP §904.1(a)(2).

NOTE

You *cannot* appeal from a judgment or order disposing of one cause of action when other causes of action remain to be tried, even though the cause of action disposed of is substantively separate and independent from those remaining and was severed from the others before adjudication. Morehart v County of Santa Barbara (1994) 7 C4th 725, 743, 29 CR2d 804.

Further Research: See Hoveida v Scripps Health (2005) 125 CA4th 1466, 23 CR3d 667 (court lacked jurisdiction to decide appeal because judgment based on stipulation did not dispose of all causes of action between parties).

ORDERS

WHICH ORDERS ARE APPEALABLE

Orders are appealable when specified in a statute (generally CCP §904.1), i.e.:

After Appealable Judgment

a. Orders made after an appealable judgment (CCP §904.1(a)(2)), e.g.:

- (1) Ruling on a motion to tax costs (Norman I. Krug Real Estate Inv., Inc. v Praszker (1990) 220 CA3d 35, 269 CR 228);
- (2) Postjudgment order granting or denying attorney fees as sanctions under CCP §2033.420 (see Lakin v Watkins Assoc. Indus. (1993) 6 C4th 644, 656, 25 CR2d 109, citing former CCP §2033(o));
- (3) Postjudgment order denying sanctions under CCP §128.7 (see Day v Collingwood (2006) 144 CA4th 1116, 1121, 50 CR3d 903);
- (4) Order denying motion to vacate judgment (see Hughbey v City of Hayward (1994) 24 CA4th 206, 208, 30 CR2d 678);
- (5) Order denying motion to vacate renewal of judgment (see Jonathan Neil & Assocs. v Jones (2006) 138 CA4th 1481, 1487, 42 CR3d 350); but

b. Not all postjudgment orders are appealable; to be appealable, a postjudgment order must (Lakin v Watkins Assoc. Indus. (1993) 6 C4th 644, 25 CR2d 109):

- (1) Affect the judgment or relate to its enforcement because it determines the parties' rights and liabilities arising from the judgment;
- (2) Not be preliminary to later proceedings; and
- (3) Not become subject to appeal after some future judgment (see Civ App Prac §3.27 for restrictions on this rule).

NOTE

Although appellant must timely appeal from unfavorable postjudgment awards of attorney fees and costs to avoid precluding review (see Norman I. Krug Real Estate Inv., Inc. v Praszker (1990) 220 CA3d 35, 269 CR 228), if the judgment expressly awards fees and costs, but the actual amounts are determined after entry of judgment, the reviewing court may review the issue of the amounts as part of the appeal from the judgment. See Grant v List & Lathrop (1992) 2 CA4th 993, 996, 3 CR2d 654. But see DeZerega v Meggs (2000) 83 CA4th 28, 43, 99 CR2d 366 (when judgment is silent on fees, it cannot "subsume" later fee award, and fees are unavailable). See also Hill v Ghamaty (2006) 143 CA4th 1156, 1171, 50 CR3d 247 (trial court lacked jurisdiction to consider defendant's arguments for reversal or reduction of attorney fee award because defendant did not appeal postjudgment order awarding attorney fees); Shelton v Rancho Mortgage & Inv. Corp. (2002) 94 CA4th 1337, 1345, 115 CR2d 82 (denial of

postjudgment sanctions motion is appealable order); *Soldate v Fidelity Nat'l Fin., Inc.* (1998) 62 CA4th 1069, 1073, 72 CR2d 404 (fee order after judgment is separately appealable).

Quash Service

Orders granting motion to quash service of summons. CCP §904.1(a)(3).

Inconvenient Forum

Orders granting motion to stay or dismiss action on ground of inconvenient forum. CCP §904.1(a)(3).

Class Certification

Orders denying class certification in its entirety. *Shelley v City of Los Angeles* (1995) 36 CA4th 692, 695, 42 CR2d 529 (order certifying *partial* class is not appealable).

New Trial

Orders granting new trial. CCP §904.1(a)(4).

NOTE

An order denying a new trial is reviewable on appeal from the underlying judgment (*Walker v Los Angeles County Metro. Transp. Auth.* (2005) 35 CA4th 15, 18, 23 CR3d 490), but an order denying a new trial under CCP §914 (reporter's notes lost or destroyed) is independently appealable as an order after judgment. *Weinstein v E. F. Hutton & Co.* (1990) 220 CA3d 364, 367 n1, 269 CR 443.

Vacate Judgment

On an order denying a motion to vacate judgment, there is a split of authority as to whether the denial of a motion to vacate judgment is independently appealable. See discussion in *City of Los Angeles v Glair* (2007) 153 CA4th 813, 819, 63 CR3d 280.

JNOV

Orders denying a motion for judgment notwithstanding the verdict. CCP §904.1(a)(4).

Attachment

Orders:

- a. Discharging or refusing to discharge an attachment (CCP §904.1(a)(5)); or
- b. Granting a right to attach order. CCP §904.1(a)(5).

Injunction

Orders:

- a. Granting or dissolving an injunction (CCP §904.1(a)(6)); or
- b. Refusing to grant or dissolve an injunction. CCP §904.1(a)(6).

Receiver

Orders appointing a receiver. CCP §904.1(a)(7).

Statutory Provisions

Orders appealable under (CCP §904.1(a)(10)):

- a. Probate Code (see, *e.g.*, Prob C §1300); or
- b. Family Code (see, *e.g.*, Fam C §2025; Cal Rules of Ct 5.180 (interlocutory appeals of bifurcated issues)).

Sanctions Over \$5000

Orders directing payment of sanctions by a party or an attorney for a party if the amount exceeds \$5000. CCP §904.1(a)(12).

NOTE

If order directs payment of sanctions for \$5000 or less, you may seek review on appeal after entry of final judgment in the underlying action, or, in the appellate court's discretion, on petition for an extraordinary writ. CCP §904.1(b). For discussion of whether CCP §904.1(a)(12) includes *discovery* sanctions, see this step, above.

SLAPP Suits

Orders granting or denying a special motion to strike under CCP §425.16. CCP §904.1(a)(13). In addition, an appeal from the denial of an anti-SLAPP motion automatically stays, under CCP §916, all further trial court proceedings on the merits on the causes of action affected by the motion. Varian Med. Sys., Inc. v Delfino (2005) 35 CA4th 180, 25 CR3d 298. It is unclear whether an attendant or later order awarding attorney fees under CCP §425.16 is appealable.

NOTE

Court may afford extraordinary writ relief in some circumstances, even though order is appealable, under the theory that the time required for a regular appeal would severely prejudice the appealing party's rights. See Smith v Superior Court (1994) 31 CA4th 205, 36 CR2d 897.

JUDGE'S PERSPECTIVE

Make sure an appealable order or judgment has been entered. For example, an order sustaining a demurrer is not appealable, but the order or judgment dismissing the case is. If such an order has not been entered, have it done.

IF NOT APPEALABLE

Nonappealable orders are reviewable:

a. On a subsequent appeal from the final judgment if order had some demonstrable impact on outcome (Hogya v Superior Court (1977) 75 CA3d 122, 129, 142 CR 325); or

b. In very limited circumstances, by a petition for a writ. See:

(1) Drum v Superior Court (2006) 139 CA4th 845, 849, 43 CR3d 279 (case involving uncertainty in law with respect to appealability of monetary sanctions orders presented special circumstances meriting treatment of late appeal as petition for extraordinary writ);

(2) Sears, Roebuck & Co. v National Union Fire Ins. Co. (2005) 131 CA4th 1342, 1348 32 CR3d 717 (court declined to treat notice of appeal from order rejecting preemptory challenge to discovery referee as petition for writ of mandate (see CCP §§170.3, 170.6));

(3) Concerned Citizens Coalition of Stockton v City of Stockton (2005) 128 CA4th 70, 26 CR3d 735 (court declined to deem appeal from order vacating judgment and reopening case for further proceedings under CCP §662 as petition for extraordinary writ);

(4) Hogya v Superior Court, supra. See also Handling Civil Writs in the Courts of Appeal (Cal CEB Action Guide November 2005).

JUDGE'S PERSPECTIVE

If you are handling a juvenile dependency matter, be particularly wary about when and whether to file an appeal, a writ petition, or both. Be sure to review current statutes, rules of court, case law, and specialized treatises. See, e.g., Cal Rules of Ct 8.400-8.474 (requiring extraordinary writs to review certain orders in termination of parental rights proceedings); Welf & I C §366.26(l); In re Matthew C. (1993) 6 CA4th 386, 24 CR2d 765; In re Eileen A. (2000) 84 CA4th 1248, 101 CR2d 548, disapproved on other grounds in In re Zeth S. (2003) 31 CA4th 396, 413, 2 CR2d 683; Anthony D. v Superior Court (1998) 63 CA4th 149, 73 CR2d 479.

In all cases, be aware of time limitations affecting writs, e.g., a petition for a writ concerning denial of a summary judgment motion must be filed within **20 days**, increased by (CCP §437c(m)(1)):

- **5 days** if notice mailed to California address;
- **10 days** if mailed to United States address outside of California;

- **20 days** if outside United States; or
- **2 court days** if by overnight delivery.

All are subject to court's extension of up to **10 days** on a showing of good cause before initial period expires.

Further Research: See Civ App Prac, chap 3, §§6.2, 7.3-7.4. For appealable orders involving arbitration, see CCP §§1294, 1294.2. See also Shelley v City of Los Angeles (1995) 36 CA4th 692, 42 CR2d 529 (grant of partial class certification is not appealable).

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Superior Court Decision/STEP 2.
DETERMINE WHETHER CLIENT HAS STANDING TO APPEAL

STEP 2. DETERMINE WHETHER CLIENT HAS STANDING TO APPEAL

WHO HAS STANDING

To appeal, a client normally must be an "aggrieved" party. CCP §902. See Civ App Prac §§4.18, 4.21.

"Party" Defined

Party of record at time court enters order or judgment can appeal. In re Miquel E. (2004) 120 CA4th 521, 539, 15 CR3d 530 (party of record defined); Bates v John Deere Co. (1983) 148 CA3d 40, 53, 195 CR 637 (dismissed party has no standing to appeal). See Clifford S. v Superior Court (1995) 38 CA4th 747, 45 CR2d 333 (de facto parent has no standing to challenge juvenile dependency court reunification order).

Exception

If nonparty has an immediate, pecuniary, and substantial interest in order or judgment (not a nominal or remote interest), nonparty may have standing to appeal. See Burrow v Pike (1987) 190 CA3d 384, 390, 235 CR 408; Slaughter v Edwards (1970) 11 CA3d 285, 291, 90 CR 144.

Example 1: An attorney for a party may appeal from an order imposing monetary sanctions against the attorney (Calhoun v Vallejo City Unified Sch. Dist. (1993) 20 CA4th 39, 42, 24 CR2d 337), but not from award of attorney fees to a party (see Marriage of Tushinsky (1988) 203 CA3d 136, 142, 249 CR 611).

Example 2: A nonparty who is aggrieved by a judgment might gain standing by moving to vacate the judgment and appealing from the order denying the motion. See 9 Witkin, California Procedure, *Appeal* §153 (4th ed 1997).

"Aggrieved" Defined

A party is aggrieved when (Crook v Contreras (2002) 95 CA4th 1194, 116 CR2d 319; In re Pacific Standard Life Ins. Co. (1992) 9 CA4th 1197, 1201, 12 CR2d 50):

- a. Judgment or order injures party's rights or interests; and
- b. Those rights or interests are immediate, pecuniary, and substantial, not nominal or remote. See, e.g., Solis v Vallar (1999) 76 CA4th 710, 713, 90 CR2d 677 (appellant stakeholder was aggrieved party with standing to appeal).

LOSS OF STANDING

A party may *lose* standing to appeal by, e.g. (see Civ App Prac §§4.18-4.24):

- a. Complying with or accepting benefits of judgment or order, thus waiving right to appeal (Lee v Brown (1976) 18 C3d 110, 114, 132 CR 649);
- b. Failing to pay franchise taxes, if a corporation (Rev & T C §23301); or
- c. Being in contempt of court (TMS, Inc. v Aibara (1999) 71 CA4th 377, 379, 83 CR2d 834).

NOTE

Paying a money judgment does not result in the loss of standing to appeal. Warner Bros. Co. v Freud (1901) 131 C 639, 642.

Further Research: See Civ App Prac §§4.1-4.24.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Superior Court Decision/STEP 3.
DETERMINE DEADLINE TO FILE NOTICE OF APPEAL

STEP 3. DETERMINE DEADLINE TO FILE NOTICE OF APPEAL

GENERAL DEADLINE

File notice of appeal within *earliest* of (Cal Rules of Ct 8.104(a)):

- a. **60 days** after clerk mails notice of entry or file-stamped copy of judgment showing date either was mailed;
- b. **60 days** after appealing party serves or is served by party with notice of entry or file-stamped copy of judgment with proof of service; or
- c. **180 days** after entry of judgment (or appealable order), *i.e.*, if party and clerk fail to serve written notice of entry or file-stamped copy of judgment or order, you must file notice of appeal within 180 days after entry of judgment.

NOTE

Usually the deadline in b. above applies because the party submitting the order or judgment for entry serves written notice of entry on other parties (except in designated family law matters, actions or proceedings in which the prevailing party is not represented by counsel, or on specific order of the court). CCP §664.5; Alan v American Honda Motor Co. (2007) 40 C4th 894, 900, 55 CR3d 534. When a. above applies, compliance with Cal Rules of Ct 8.104(a)(1) requires that the clerk mail a *single* document, either a "Notice of Entry," so entitled, or a file-stamped copy of the judgment or appealable order. The document must be "sufficient in itself to satisfy all of the rule's conditions, including the requirement that the document itself show the date on which it was mailed." Alan v American Honda Motor Co. 40 C4th at 905.

NO EXTENSION

No Authority to Extend Time

No court is permitted to extend the time for filing a notice of appeal except as provided in Cal Rules of Ct 8.66 (emergency extension of time in cases of public calamity). Cal Rules of Ct 8.104(b).

Service by Mail, Fax, or Overnight Delivery

The deadline specified in Cal Rules of Ct 8.104(a) is *not extended* by CCP §1013 if the notice of entry or copy of judgment or order is mailed or served by fax or overnight delivery. CCP §1013(a); Cal Rules of Ct 8.104(b).

Further Research: See Alan v American Honda Motor Co. (2007) 40 C4th 894, 55 CR3d 534 (minute order the clerk mailed to the parties entitled "Statement of decision re: Alan's motion for class certification" and "ruling on submitted matter/motion for class certification" did not constitute notice of entry sufficient to trigger 60-day time limit for appeal from order denying class certification); Hughey v City of Hayward (1994) 24 CA4th 206, 210, 30 CR2d 678 (copy of minute order that is not file-stamped does not start running of 60-day period within which to file notice of appeal); Estate of Crabtree (1992) 4 CA4th 1119, 6 CR2d 224 (written notice must show date when judgment or order was filed; date of entry not required if file-stamped copy served).

IF DEADLINE FALLS ON SUNDAY OR HOLIDAY

If the deadline to file a notice of appeal falls on a legal holiday (including Saturday or Sunday), the deadline is extended to the next day that is not a holiday. CCP §§10, 12-12a; Cal Rules of Ct 8.60(a) (Code of Civil Procedure governs computing and extending time).

SPECIAL DEADLINES IN SPECIFIC PROCEEDINGS

Warning: The following list of proceedings is not exhaustive. Check the applicable statutes in your proceeding for special appeal and review deadlines.

Public Entity Election to Pay Judgment in Installments

When a public entity elects to pay a judgment in periodic payments under Govt C §984 and Cal Rules of Ct 3.1804, you must file

a notice of appeal within the earliest of (Cal Rules of Ct 8.104(c)):

- a. **90 days** after the clerk mails notice of entry or file-stamped copy of judgment showing date either was mailed; or
- b. **90 days** after the appealing party serves or is served by party with notice of entry or file-stamped copy of judgment with proof of service.

When Attachment Levied

When you have levied an attachment and wish it to continue in force while you appeal (CCP §921):

- a. File notice of appeal within **5 days** after prevailing party gives written notice of entry of appealable order or judgment; and
- b. Execute and file an undertaking.

Elections

When appealing judgment that sets aside or annuls an election (Elec C §16702), file notice of appeal within **10 days** after "judgment," *i.e., after either*:

- a. Entry of judgment (see *Sheets v Cleveland* (1942) 51 CA2d 148, 124 P2d 200); or
- b. Court pronounces judgment, because Elec C §16603 requires:
 - (1) Judge to pronounce judgment orally; and
 - (2) Clerk to enter judgment *immediately*.

NOTE

Be aware that, because Elec C §16603 requires clerk to enter judgment immediately, you should use the court's pronouncement as your starting point when calculating time to file an appeal.

Assessment

File notice of appeal within **30 days** after *entry* of judgment (*not notice* of entry), when appealing judgment on validity of assessment. Str & H C §10400; CCP §329.5.

Special Tax

File notice of appeal within **30 days** after *entry* of judgment (*not notice* of entry) that levies a special tax or increases a special tax under Mello-Roos Community Facilities Act of 1982. Govt C §53341.

Validation Action

- a. When appealing from judgment in proceeding under CCP §§860, 863 (*e.g.*, action to determine validity of government "matter" or contract), file within **30 days** after (CCP §870(b)):
 - (1) Prevailing party serves notice of entry of judgment; or
 - (2) Clerk enters judgment if no answering party.
- b. When appealing from a judgment in a proceeding under Govt C §53359 (*e.g.*, action to determine validity of bond or special tax), file within **30 days** after *entry* of judgment (*not notice* of entry of judgment). Govt C §53359.

Further Research: See *California Commerce Casino, Inc. v Schwarzenegger* (2007) 146 CA4th 1406, 1418, 53 CR3d 626 (to determine applicability of 30-day appeal period under CCP §870(b), court first had to determine whether underlying action was proceeding governed by validation statutes); *Kaatz v City of Seaside* (2006) 143 CA4th 13, 27, 49 CR3d 95 (same).

Conservatorship

When appealing from judgment or appealable order in conservatorship for a gravely disabled person (Lanterman-Petris-Short Act (Welf & I C §5350)), file within **60 days** after (Cal Rules of Ct 8.480, 8.308):

a. Court pronounces judgment (see *In re Markaw V.* (1989) 211 CA3d 1331, 1336, 260 CR 126 (oral pronouncement in open court probably starts time to appeal)); or

b. Court makes the order.

Juvenile Dependency Proceedings

a. Determine if appealing from judgment or order in (Cal Rules of Ct 8.400(a)(1)):

(1) Juvenile court dependency or delinquency proceedings; or

(2) Proceedings to terminate parental custody and control of minor.

b. If either of these, file within **60 days** after (Cal Rules of Ct 8.400(d)):

(1) Court renders judgment (see *In re Markaw V., supra* (oral pronouncement in open court probably starts time to appeal));

(2) Court makes order;

(3) Referee's order becomes final under Cal Rules of Ct 5.540(c); or

(4) Later, if court decides that application of deadline is clearly impracticable or inappropriate.

c. Review any applicable "fast track" rules. See Cal Rules of Ct 8.408, 8.412, 8.416, 8.450, 8.452, 8.454, 8.456, 8.470, 8.472, 8.474.

JUDGE'S PERSPECTIVE

In juvenile dependency matters, be particularly wary about when and if to file an appeal or a writ. See, *e.g.*, Cal Rules of Ct 8.450(e) (file notice of intent to file writ petition and request for record within **7 days** after order setting hearing; if order made by referee not acting as temporary judge, within **10 days** after referee's order becomes final under Cal Rules of Ct 5.540(c); or if party was notified of order setting hearing only by mail, within **12 days** after date clerk mailed notification).

Sterilization

In sterilization cases, you do not need to file notice of appeal, because appeal is taken automatically from judgment authorizing conservator to consent to sterilization of developmentally disabled adult conservatee, when judgment is *rendered*. Prob C §1962(b); Cal Rules of Ct 8.482(b).

"DATE OF ENTRY" DEFINED

For purposes of appeal under Cal Rules of Ct 8.104(a), "entry" is defined as (Cal Rules of Ct 8.104(d)(1)-(4)):

Judgment

For judgment:

a. Date judgment is filed with clerk under CCP §668.5; or

b. If county maintains a judgment book, date clerk enters judgment into judgment book.

Appealable Order

For appealable order:

a. Date clerk enters appealable order into minute book unless an order is required. Cal Rules of Ct 8.104(d)(2).

NOTE

Be aware that, although Cal Rules of Ct 3.1312 or similar local rule directs the party prevailing on a motion to prepare a written order and submit it to the opposing party for approval as to form, it is *not* an express direction to prepare a written order for purposes of a. above. Cal Rules of Ct 8.104(d)(2). See also *Hughey v City of Hayward* (1994) 24 CA4th 206, 209, 30 CR2d 678.

b. *If minute order directs party to prepare written order*, date a signed written order is filed. Cal Rules of Ct 8.104(d)(2)-(3).

c. *If there is no minute order*, date that signed appealable order is filed. Cal Rules of Ct 8.104(d)(2)-(3).

Further Research: See *Matera v McLeod* (2006) 145 CA4th 44, 56, 51 CR3d 331 (absent consistent governing rule, date for entry of order for purpose of commencing running of time to appeal prior judgment is date signed order effectively reinstating that judgment was filed).

Decree of Distribution

For decree of distribution, date clerk enters decree of distribution in a probate proceeding into judgment book or other permanent record. Cal Rules of Ct 8.104(d)(4).

EFFECT IF APPELLANT MISSES DEADLINE

Appellate court has no jurisdiction and *must* dismiss appeal if you miss deadline. Cal Rules of Ct 8.104(b). See Cal Rules of Ct 8.60(d)-(e) (appellate court may not extend time to file notice of appeal; superior court may not extend time to allow completion of record); *Hollister Convalescent Hosp. v Rico, Inc.* (1975) 15 C3d 660, 674, 125 CR 757.

NOTE

The *only* exception is when necessary in times of public calamity. Cal Rules of Ct 8.66.

JUDGE'S PERSPECTIVE

Appellant, do not miss notice of appeal deadlines! Err on the side of filing early if you are unsure of the time limits or the appealability of a judgment or order.

EFFECT IF FILED TOO EARLY

If appellant files notice of appeal *prematurely, i.e.:*

a. After judge renders judgment but before judgment is entered, appellate court will:

- (1) Treat notice of appeal as if filed directly after date of entry (Cal Rules of Ct 8.104(e)(1)); and
- (2) Hear the appeal.

b. After judge announces intended decision, but *before* judge renders judgment, appellate court *may*, in its discretion:

- (1) Treat notice as filed on time (Cal Rules of Ct 8.104(e)(2)); or
- (2) Refuse to hear appeal. See *Modica v Merin* (1991) 234 CA3d 1072, 285 CR 673.

Further Research: See *Matera v McLeod* (2006) 145 CA4th 44, 56, 51 CR3d 331 (notice of appeal filed during time judgment was vacated was premature but was deemed filed immediately after entry of order on reconsideration that effectively reinstated judgment).

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Superior Court Decision/STEP 4. DETERMINE WHETHER TIME FOR FILING NOTICE OF APPEAL IS EXTENDED

STEP 4. DETERMINE WHETHER TIME FOR FILING NOTICE OF APPEAL IS EXTENDED

WHEN APPLICABLE

Valid Motion Filed

All parties' time to file a notice of appeal is extended:

- a. When you file a *valid* notice of intent to move for a new trial, and the resulting motion is denied (Cal Rules of Ct 8.108(b)(1)); see below);
- b. When you file a *valid* notice of motion or motion to vacate judgment (Cal Rules of Ct 8.108(c));
- c. When you file a *valid* motion for judgment notwithstanding the verdict at the same time you moved for a new trial, and that motion is denied (Cal Rules of Ct 8.108(d));
- d. When you file a *valid* motion for reconsideration of an appealable order (Cal Rules of Ct 8.108(e)); or
- e. On *service* of acceptance of additur or remittitur of damages conditional order (Cal Rules of Ct 8.108(b)).

NOTE

A *valid* motion is one that (1) is based on some recognized grounds (see Lamb v Holy Cross Hosp. (1978) 83 CA3d 1007, 1010, 148 CR 273), (2) the moving party has standing to bring (see Life v County of Los Angeles (1990) 218 CA3d 1287, 1295, 267 CR 557), and (3) is timely. See Ramirez v Moran (1988) 201 CA3d 431, 435, 247 CR 117. According to the 2002 Advisory Committee Comment to Cal Rules of Ct 8.108, "valid" means that the motion or notice is procedurally sufficient, not that the motion or notice is substantively meritorious.

Cross Appeal

Your time to file a cross appeal after another party has filed a timely notice of appeal from the same judgment or order is extended until **20 days** after the clerk mails notification of the first appeal. Cal Rules of Ct 8.108(f)(1).

NOTE

An order or notice mailed by the clerk under Cal Rules of Ct 8.108 must show the date the clerk mailed the document. An order or notice served by a party must include a proof of service to establish the date an extension begins to run. Cal Rules of Ct 8.108(g). These requirements establish the date when the extension begins to run. Palmer v GTE Cal., Inc. (2003) 30 C4th 1265, 1279 n6, 135 CR2d 654.

All Parties Entitled to Extension

These extensions apply to *all* parties, not just the party who files the valid motion. Cal Rules of Ct 8.108.

CALCULATE EXTENSIONS TO DEADLINE

You may extend time for filing a notice of appeal:

Motion for New Trial

If you file a *valid* motion for new trial that the court denies, file notice of appeal by *earliest* of (Cal Rules of Ct 8.108(b)):

- a. **30 days** after *either*:
 - (1) Clerk mails or party serves notice of entry or order denying motion; or
 - (2) Motion is denied by operation of law; or

b. In no event later than **180 days** after date of entry of judgment (see step 3, above, for definition of date of entry), even if court has not ruled on your motion.

Further Research: See, e.g., Ramirez v Moran (1988) 201 CA3d 431, 247 CR 117 (*valid* motion must be timely). See also Wenzoski v Central Banking Sys. (1987) 43 C3d 539, 237 CR 167 (time not extended by bringing second motion for new trial after first motion for new trial has been denied); Civ App Prac chap 7.

NOTE

Recognize that an order *granting* a new trial is an appealable order (CCP §904.1(a)(4)), but does not extend time to appeal from underlying judgment (compare cross-appeal, step 7, below). See Cal Rules of Ct 8.108(b), (f).

Motion for Relief From or to Vacate Judgment

If you file a *valid* motion or notice of motion to vacate judgment, file notice of appeal by *earliest* of (Cal Rules of Ct 8.108(c)):

- a. **30 days** after clerk mails, or a party serves, an order denying motion or a notice of entry of that order;
- b. **90 days** after date any party first filed a notice of intention to move to vacate; or
- c. **180 days** after date of entry of judgment (see step 3, above, for definition of date of entry);

Motion for Judgment Notwithstanding the Verdict (JNOV)

If you file a *valid* motion for judgment notwithstanding the verdict (JNOV) that the court denies, file notice of appeal by *earliest* of (Cal Rules of Ct 8.108(d)(1)):

a. **30 days** after *either*:

- (1) Clerk mails or party serves notice of entry or order denying motion; or
- (2) Motion is denied by operation of law; or

b. In no event later than **180 days** after date of entry of judgment (see step 3, above, for definition of date of entry), even if court has not ruled on your motion.

NOTE

An order denying a motion for JNOV is appealable within the deadlines specified in Cal Rules of Ct 8.104(a) or Cal Rules of Ct 8.108(f)(2). Cal Rules of Ct 8.108(d)(2).

Motion for Reconsideration

If you file a *valid* motion to reconsider any appealable order under CCP §1008(a), whether made before or after judgment, file notice of appeal from that order by *earliest* of (Cal Rules of Ct 8.108(e)):

- a. **30 days** after clerk mails, or a party serves, an order denying motion or a notice of entry of that order;
- b. **90 days** after the first motion to reconsider is filed; or
- c. **180 days** after date of entry of the appealable order.

NOTE

The 2002 Advisory Committee Comment to Cal Rules of Ct 8.108 makes clear that the Rule 8.108(e) extension applies only when a party makes a valid motion to reconsider, not when the court reconsiders an order on its own motion. In addition, the Comment notes that the rule does not suggest that a judgment is or is not subject to a motion to reconsider (see Ramon v Aerospace Corp. (1996) 50 CA4th 1233, 58 CR2d 217) or that an order denying a motion to reconsider is or is not appealable. Those are legislative matters to resolve.

Further Research: See Safeco Ins. Co. v Architectural Facades Unlimited (2005) 134 CA4th 1477, 1480, 36 CR3d 754 (motion for reconsideration of order granting summary judgment did not extend time to file notice of appeal because trial court lost jurisdiction to consider motion when it entered judgment).

Cross-Appeal

If a *timely* notice of appeal has already been filed, your deadline to file notice of cross-appeal from the same judgment or order or a protective cross-appeal is extended until **20 days** after clerk mails notification of the first appeal (Cal Rules of Ct 8.108(f); see step 7, below, for when cross-appeal is appropriate).

NOTE

The extension for filing a cross-appeal starts when the clerk mails notification of the first appeal. If the clerk fails to give notice of the first appeal, it is unclear whether a subsequent notification can revive the period for filing a cross-appeal.

Further Research: See Life v County of Los Angeles (1990) 218 CA3d 1287, 1298, 267 CR 557 (*timely* notice of appeal extended cross-appeal deadline, even though notice not valid, because appellant lacked standing).

NOTE

An extension under Cal Rules of Ct 8.108 operates only to *increase* the time to appeal. It cannot operate to shorten the normal time for appeal. If the time to appeal is longer under Cal Rules of Ct 8.104, apply that time limit. Cal Rules of Ct 8.108(a); Annette F. v Sharon S. (2005) 130 CA4th 1448, 30 CR3d 914.

Further Research: See Cal Rules of Ct 8.108; Civ App Prac §§1.15, 7.44, 7.62.

TERMINATION OF BANKRUPTCY STAY

Applicable time deadlines in nonbankruptcy proceedings, including filing an appeal, are extended for **30 days** after notice of the termination of a bankruptcy stay (11 USC §108(c)(2)). ECC Constr., Inc. v Oak Park Calabasas Homeowners Ass'n (2004) 118 CA4th 1031, 13 CR3d 580.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Superior Court Decision/STEP 5.
APPELLANT: PREPARE AND FILE NOTICE OF APPEAL

STEP 5. *APPELLANT*: PREPARE AND FILE NOTICE OF APPEAL

PREPARE NOTICE

Make sure that notice (Cal Rules of Ct 8.100(a)):

- a. States in substance that appellant appeals from a specified judgment, order, or a particular part of that judgment or order; and
- b. Is signed by you as attorney for appellant or by appellant.

NOTE

You can state in the notice that you appeal from, *e.g.*, both the judgment and an order denying motion to tax costs. The notice defines the scope of your appeal; you can limit the scope of the appeal later, but you cannot broaden it.

FORM

The Judicial Council has released an optional form that is available for use in filing a notice of appeal in unlimited civil cases (Notice of Appeal/Cross-Appeal (Unlimited Civil Case) (Judicial Council Form APP-002); see Appendix A). You may also draft your own notice of appeal.

FILE WITH SUPERIOR COURT CLERK

File with superior court clerk (Cal Rules of Ct 8.100):

- a. Notice of appeal (Cal Rules of Ct 8.100(a));
- b. The \$655 filing fee made payable to clerk of court of appeal, or an application or order for waiver of court fees and costs under Cal Rules of Ct 3.50-3.63 (Cal Rules of Ct 8.100(b)(1)) (note that the \$655 filing includes the \$485 filing fee and the \$170 fee for deposit in the Appellate Court Trust Fund—Govt C §§68926, 68926.1(b)); and
- c. A \$100 deposit (Cal Rules of Ct 8.100(b)(2)) made payable to "Clerk of Superior Court" that clerk will credit against fees for preparing clerk's transcript and other appeal processing or notification, unless fees have been waived under Rules 3.50-3.65 or you elect to prepare appendix under Cal Rules of Ct 8.124 (Govt C §68926.1(a)); see steps 9-13, below, on the form of record).

NOTE

The clerk of the superior court must accept the notice of appeal for filing even if you have not tendered the filing fee or have tendered an insufficient fee (Cal Rules of Ct 8.100(b)(3)); you have **15 days** after the mailing of the clerk's notice of insufficiency to tender the balance, or if vacated because of inaction, show good cause why the fee should be excused. Cal Rules of Ct 8.100(c)-(d); Rapp v Golden Eagle Ins. Co. (1994) 24 CA4th 1167, 1169, 30 CR2d 126.

Further Research: See Lezama-Carino v Miller (2007) 149 CA4th 55, 56 CR3d 671 (pending fee waiver was not lawful basis for clerk's refusal to file notice of appeal).

Serve Notice of Appeal

- a. Although you need not serve notice of appeal on other parties, it is better practice to do so.
- b. Superior court clerk notifies all parties, attorneys of record, and clerk of the reviewing court of the filing of appeal, including, if available, the name, address, and telephone number of all parties and attorneys (bar numbers will be included for attorneys). Cal Rules of Ct 8.100(e).

NOTIFY COURT OF ADDRESS, PHONE CHANGES

If your address or telephone number changes while appeal is pending, *i.e.*, after you file notice of appeal, serve and file in reviewing court written notice of the change, including (Cal Rules of Ct 8.32(b)):

- a. Title and case number to which change applies; and
- b. Your California State Bar membership number.

Further Research: See Cal Rules of Ct 8.100, 8.104; Civ App Prac §§7.8, 7.28.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Superior Court Decision/STEP 6.
APPELLANT: PREPARE AND FILE CIVIL CASE INFORMATION STATEMENT

STEP 6. *APPELLANT:* PREPARE AND FILE CIVIL CASE INFORMATION STATEMENT

WHAT IS REQUIRED

Appellant must serve and file a completed Civil Case Information Statement in the appellate court within **10 days** after the clerk mails a notice to the appellant advising that the statement be filed. Cal Rules of Ct 8.100(g)(2). The Judicial Council has promulgated a mandatory form to be completed and filed with the clerk of the court of appeal. For a copy of the Civil Case Information Statement (Judicial Council Form APP-004), see Appendix B.

PURPOSE OF STATEMENT

The statement is used by the appellate court to identify issues relating to timeliness of appeal and appealability of issues *before* the appellate record is prepared. It also helps the court to make appropriate assignments and assists in scheduling time for preparation of the clerk's record.

WHEN REQUIRED

Clerk Sends to Appellant

When reviewing court clerk receives notice of the filing of an appeal, that clerk must mail appellant a copy of the Civil Case Information Statement and a notice that the form must be completed and filed within **10 days**. Cal Rules of Ct 8.100(g)(1).

Appellant Files Statement

Within **10 days** after clerk mails the notice, appellant must file and serve the completed statement. Appellant must attach to the statement a copy of the judgment or appealed order that shows the date it was entered. Cal Rules of Ct 8.100(g)(2).

IF APPELLANT FAILS TO FILE

Clerk Will Notify

If appellant fails to file the statement as required, clerk will notify appellant by mail that failure to file the statement within **15 days** of the date of the notice will result in (Cal Rules of Ct 8.100(g)(3)):

- a. Imposition of monetary sanctions; or
- b. Dismissal of the appeal.

Court May Impose Sanctions

The court may impose sanctions specified in clerk's notice if appellant fails to comply. Cal Rules of Ct 8.100(g)(3).

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Superior Court Decision/STEP 7.
RESPONDENT: FILE NOTICE OF CROSS-APPEAL

STEP 7. RESPONDENT: FILE NOTICE OF CROSS-APPEAL

WHEN APPROPRIATE

File a cross-appeal (Cal Rules of Ct 8.108(f)) to seek reversal of:

- a. Some unfavorable effect of a judgment that, except for the other party's appeal, your client would have been willing to live with, *e.g.*, your client won but was granted only \$100 in attorney fees (see Cooperman v California Unemployment Ins. Appeals Bd. (1975) 49 CA3d 1, 11, 122 CR 127);
- b. Original judgment that may be reinstated when your opponent appeals from an order granting your motion for *new trial* or to *vacate the judgment*; your cross-appeal from *judgment* ensures that appellate court reviews judgment if it reverses lower court's order for new trial or vacating the judgment (see, *e.g.*, Berge v International Harvester Co. (1983) 142 CA3d 152, 158, 190 CR 815); or
- c. Unfavorable prejudgment rulings, *e.g.*, striking of some causes of action, elements of damages, defenses, or unfavorable evidentiary rulings.

WHEN NOT APPROPRIATE

Do not file a cross-appeal to raise issues that you should raise in respondent's brief or in your own separate appeal, *i.e.*:

To Defend Judgment or Argue No Prejudice

In the respondent's brief, raise issues:

- a. In support and defense of trial court's judgment; or
- b. On whether error or errors appellant raises as grounds for reversal or modification actually prejudiced appellant (see CCP §906).

To Raise Issues Outside Opponent's Notice of Appeal

In separate notice of appeal, raise issues that arise in connection with a separately appealable order or judgment, *i.e.*, issues that exceed the scope of, and do not relate in any manner to, the order or judgment on which your opponent has filed a notice of appeal. See Fundamental Inv. Realty Fund v Gradow (1994) 28 CA4th 966, 977, 33 CR2d 812.

DEADLINE

File cross-appeal within **20 days** after clerk mails notification that first notice of appeal is filed, or within normal time limits for appeal (see step 3, above). Cal Rules of Ct 8.108(f). Proceed with caution because:

- a. This deadline is *not* extended by CCP §1013 (see CCP §1013(a));
- b. If appellant did not file appeal on time, it is too late to file cross-appeal; the **20-day** extension within which to file cross-appeal applies only if appeal is filed on time (Life v County of Los Angeles (1990) 218 CA3d 1287, 1297, 267 CR 557);
- c. The **20-day** extension does not apply to a purported cross-appeal if it is really a separate appeal. See Fundamental Inv. Realty Fund v Gradow (1994) 28 CA4th 966, 977, 33 CR2d 812.

FILE WITH SUPERIOR COURT

File with superior court clerk (Cal Rules of Ct 8.100(f)):

- a. Notice of cross-appeal (Cal Rules of Ct 8.100(a), (f));
- b. The \$655 filing fee made payable to clerk of court of appeal (Cal Rules of Ct 8.100(b)(1)) (note that the \$655 filing includes the \$485 filing fee and the \$170 fee for deposit in the Appellate Court Trust Fund—Govt C §§68926, 68926.1(b)); and

c. A \$100 deposit made payable to clerk of superior court, credited against fees for preparing record (unless electing to prepare appendix under Cal Rules of Ct 8.124) (Govt C §68926.1(a); Cal Rules of Ct 8.100(b)(2)); see steps 9-13, below, for choosing form of record).

NOTE

Be sure to designate the record (see step 9, below) and do not rely on appellant's designation. When there is a cross-appeal, a single record is to be prepared (see Cal Rules of Ct 8.147) in accord with Cal Rules of Ct 8.122, 8.130; some courts may dismiss a cross-appeal for cross-appellant's failure to designate the record in accordance with those rules.

Further Research: See Cal Rules of Ct 8.100(f), 8.108(f); Civ App Prac §§8.2, 8.7, 8.22, 8.31, 8.37.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Superior Court Decision/STEP 8.
OBTAIN STAY OF ENFORCEMENT OF JUDGMENT PENDING APPEAL

STEP 8. OBTAIN STAY OF ENFORCEMENT OF JUDGMENT PENDING APPEAL

REQUEST IMMEDIATE TEMPORARY STAY

Ask superior court to stay enforcement of judgment or order for up to **10 days** after the last date to file notice of appeal. CCP §§918-919; Civ App Prac §§6.10, 6.17.

Deadline

Request stay immediately after court declares judgment or makes order, *e.g.*:

- a. If court makes decision or declares judgment in open court, ask for temporary stay as soon as court stops speaking; or
- b. If court takes matter under submission, ask for stay as soon as you learn of court's decision.

Purpose

Request stay to prevent prevailing party from enforcing judgment or order while you, *e.g.*, prepare post-trial motions and file notice of appeal.

DETERMINE WHETHER STAY IS APPROPRIATE

You should obtain a stay pending appeal if:

- a. Your client would be adversely affected if prevailing party enforced judgment or order while appeal was pending, *e.g.*, if prevailing party began to collect a money judgment against your client;
- b. Your client is willing and able to pay costs and expenses to obtain a stay, *e.g.*, your time and fees, cost of undertaking (for undertaking and methods to obtain stay, see this step, below); and
- c. Stay is not automatic. To determine whether stay is automatic, see below.

Further Research: See Civ App Prac §§6.10, 6.15, for more factors to evaluate whether you need a stay.

DETERMINE WHETHER STAY IS AUTOMATIC

Stay of enforcement of judgment or order is automatic, *except* as specified in CCP §§116.810, 917.1-917.9. CCP §916.

NOTE

Most judgments fall into these statutory exceptions and are *not* automatically stayed. Unless you find a statutory exception, you should assume that your judgment is *not* automatically stayed and you should file for temporary relief from the judgment.

Review Exceptions

Review CCP §§116.810, 917.1-917.9 to learn if your judgment or order is *not* stayed because it falls into one of the statutory exceptions to the automatic stay, *e.g.*:

- a. Money judgments (CCP §917.1(a)(1));
- b. Judgments for certain costs that would not otherwise have been awarded as costs under CCP §1033.5 (CCP §917.1(a)(2)-(3));
- c. Judgments concerning hazardous substances or other health and safety matters (CCP §917.15);
- d. Judgments concerning assignment or delivery of personal property, including documents (CCP §917.2);
- e. Judgments directing sale, conveyance, or delivery of real property (CCP §917.4); or

f. Right to attach orders. CCP §917.65.

Review Case Law

If your judgment or order does not appear to fall into one of the statutory exceptions, review case law to determine whether it has been held automatically stayed or whether it falls within a case-law exception (see Civ App Prac §§3.36, 6.16, 6.19), *e.g.*:

a. "Self-executing" judgments are not automatically stayed; they must be stayed by the appellate court (see Civ App Prac §§6.19, 6.68);

b. Orders granting mandatory injunction are automatically stayed (see ALRB v Tex-Cal Land Mgmt., Inc. (1987) 43 C3d 696, 706 n9, 238 CR 780) unless otherwise ordered by court granting writ or by appellate court (CCP §1110b); and

c. Judgments for costs alone are automatically stayed without bond (Vadas v Sosnowski (1989) 210 CA3d 471, 258 CR 374).

Further Research: See chart in Civ App Prac §6.20 for orders that are *not* automatically stayed.

DETERMINE PROPER METHOD TO OBTAIN STAY

Review statute and evaluate case to determine proper method to obtain stay. CCP §§116.810, 917.1-919.

Further Research: See chart in Civ App Prac §6.20 for how to obtain stay in particular circumstances.

SEEK STAY BY STIPULATION

The easiest way to obtain a stay is to contact all parties to the action and obtain their written agreement:

- a. Not to enforce judgment or order while you pursue appeal; and
- b. To waive any required bond. CCP §995.230 (beneficiary of bond may waive bond).

Recognize Economic Realities

Prevailing party may not be willing to stipulate to waive bond and postpone enforcing judgment while you pursue appeal, because:

- a. Appeal might take years; and
- b. Prevailing party has no guaranty that your client will:
 - (1) Voluntarily pay judgment if appeal is unsuccessful; or
 - (2) Be able to pay judgment several years later.

Consider Alternatives

Consider:

- a. Offering some type of security in exchange for prevailing party's postponing enforcement, *e.g.*, your client *might* be willing to sign a secured note in amount of judgment (plus interests and costs) (or something else that would be easier for prevailing party to collect than relying on ordinary means of enforcing judgment, such as a deposit into a restricted bank account) and prevailing party agrees not to enforce that security unless you lose on appeal;
- b. Reminding respondent that bond premium cost is recoverable on appeal, *i.e.*, if respondent insists on bond and appellant prevails, appellant may be entitled to recover premium from respondent. See Cal Rules of Ct 8.278(d)(1)(F).

IF REQUIRED, COMPLY WITH UNDERTAKING REQUIREMENTS

File bond or undertaking in superior court, unless applicable statute requires otherwise. See CCP §995.340.

Further Research: See CCP §§995.310-995.440 for procedure to file bond; CCP §995.140 for definition of bond; CCP §995.190 for definition of undertaking; and CCP §995.210 for determination that bond and undertaking are interchangeable.

Amount of Undertaking

Determine proper amount for bond or undertaking by:

a. Ascertaining whether amount is set in judgment or order;

b. Reviewing the statute for proper amount, *e.g.*, if:

(1) Admitted surety insurer provides bond, 1½ times amount of judgment (CCP §917.1(b); see CCP §§995.610-995.675 (admitted surety));

(2) Other surety (including personal surety) provides bond, 2 times amount of judgment (CCP §917.1(b); see CCP §§995.510-995.520 (personal surety)); or

(3) Cash deposit, 1½ times amount of judgment (CCP §§917.1(b), 995.710(b); see CCP §§995.710-995.770 (cash deposit in lieu of bond, except for deposits with Secretary of State)); or

c. Filing motion asking superior court to set amount. CCP §§917.2, 917.4-917.5; see CCP §917.9.

NOTE

Court may waive statutory bond requirement on showing of indigence (CCP §995.240), but otherwise you must comply with statutory requirements. See Markley v Superior Court (1992) 5 CA4th 738, 745, 7 CR2d 328 (deposit of trust deed, instead of undertaking, was unacceptable).

Further Research: See Civ App Prac §§6.21, 6.51.

Anticipate Objections

Respondent may file a noticed motion in superior court objecting to undertaking. CCP §§995.910-995.960.

If Court Finds Insufficient

If court finds undertaking insufficient, you have **5 days** to cure defect or court will dissolve the stay. CCP §§922, 995.960.

IF REQUIRED, FILE MOTION FOR STAY

File a noticed motion in superior court when you are seeking a stay and court has discretion to:

Amount of Undertaking Discretionary

Ascertain amount of undertaking required (see CCP §§917.1-917.2, 917.4-917.5, 917.65, 917.9); or

Stay Discretionary

Grant or deny stay. See CCP §§917.7-917.9.

Further Research: See Civ App Prac §§6.64, 6.67.

WHEN TO SEEK WRIT OF SUPERSEDEAS IN APPELLATE COURT

Provided that you have already filed a notice of appeal, file petition for writ of supersedeas in court of appeal. (CCP §923; Cal Rules of Ct 8.112, 8.116):

Superior Court Refuses to Grant Stay

File petition to challenge superior court's order denying stay or setting amount of undertaking. See cases cited in Civ App Prac §§6.69-6.71.

NOTE

If the superior court makes such a ruling before you have filed the notice of appeal, file a petition for writ of mandate in the court of appeal if you wish to challenge it.

Stay Not Available in Superior Court

- a. If record on appeal is not yet filed, comply with Cal Rules of Ct 8.112(a)(4);
- b. Petition may include request for temporary stay pending ruling on supersedeas writ petition (Cal Rules of Ct 8.112(c));
- c. If stay is requested in petition or another document, petition cover must:
 - (1) Conspicuously state "STAY REQUESTED," and identify nature and date of proceeding or act that you want stayed (Cal Rules of Ct 8.116(a)); and
 - (2) Include the trial court, department, and name and telephone number of trial judge whose order is sought to be stayed (Cal Rules of Ct 8.116(b)); and
- d. Cover of petition should be *red.* Cal Rules of Ct 8.40(b).

NOTE

Check local appellate court rules for particular requirements; see, *e.g.*, 4th App Dist R 1.

Further Research: See Civ App Prac §§6.16-6.20, 6.68, 6.79.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Obtaining Superior Court Record for Appeal/STEP 9. DESIGNATE FORM AND CONTENT OF RECORD TO SHOW ERROR ASSERTED

When Obtaining Superior Court Record for Appeal

STEP 9. DESIGNATE FORM AND CONTENT OF RECORD TO SHOW ERROR ASSERTED

DEADLINE TO FILE DESIGNATION OF RECORD

Within **10 days** after you file a notice of appeal (or at time of filing notice of appeal), serve and file with clerk of superior court:

Reporter's Transcript (RT)

Notice designating contents of reporter's transcript (RT) (Cal Rules of Ct 8.130(a); see step 10, below); and/or

Clerk's Transcript (CT)

Notice designating contents of clerk's transcript (CT) (Cal Rules of Ct 8.122(b)(2), 8.104, 8.108; see step 11, below);

Appendix

Notice that you elect to proceed by an appellant's or joint appendix instead of CT (Cal Rules of Ct 8.124(a); see step 13, below); or

Court File

Stipulation that you will use superior court file instead of CT if your appellate district local rules permit (Cal Rules of Ct 8.128(a); 1st App Dist R 8, 3d App Dist R 2, 4th App Dist R 3 (unless otherwise ordered); 5th App Dist R 5);

Agreed Statement

Agreed statement or stipulation that you will attempt to prepare an agreed statement (Cal Rules of Ct 8.134(b)(1));

Settled Statement

Motion to use a settled statement, when available, *e.g.*, when appellant lacks funds to pay for the RT (Cal Rules of Ct 8.137(a)); or

Proceed Without Reporter's Transcript

Notice that you intend to proceed without a reporter's transcript. Cal Rules of Ct 8.130(a)(4).

NOTE

Settled statement can be used in lieu of both CT and RT. Cal Rules of Ct 8.137(b)(3).

CHOOSE FORM OF RECORD FOR ORAL PROCEEDINGS

Choose form and content of record that will show error you will assert on appeal, including all facts appellate court will need to decide the issue, *e.g.*:

Reporter's Transcript

Usually designate RT (see step 10, below) if you need a transcript of oral proceedings at trial or hearing, *e.g.*, to show that you made a timely objection. Cal Rules of Ct 8.130.

Statement

If you do not have an RT of hearing or trial and if what was said at hearing is necessary for appellate court to decide the issues, you will need to prepare an agreed or settled statement (Cal Rules of Ct 8.134, 8.137).

Proceed Without Record

You may opt to proceed without a reporter's transcript, but respondent may move to augment or court may order that record be augmented to prevent a miscarriage of justice. Cal Rules of Ct 8.130(a)(4).

CHOOSE FORM OF RECORD FOR FILE DOCUMENTS AND EXHIBITS

At a minimum, you will also need to provide judgment or order appealed from with all documents leading to that judgment or order, *e.g.*, complaint, answer, moving papers, declaration in support of motion, opposing papers:

Clerk's Transcript

- a. If you need only certain portions of court file, choose CT (see step 11, below (Cal Rules of Ct 8.121(a), 8.122(a)(1)).
- b. The CT will always contain documents required by Cal Rules of Ct 8.122(b), in addition to documents that you designate (see step 11, below).
- c. The CT may be expensive, *e.g.*, some courts charge 75 cents per page (compare with actual costs of photocopying for appendix, below).

NOTE

If several parties appeal from one judgment, or if there is a cross-appeal, the clerk prepares only *one* record and all appealing parties bear the initial costs of preparing that record equally, unless otherwise agreed by the parties or ordered by the superior court. See Cal Rules of Ct 8.147(a).

Appendix

- a. Attorneys often prepare an appendix instead of CT (Cal Rules of Ct 8.124) (for discussion of appendix, see step 13, below). Preparing an appendix can save time if the superior court clerk's office has a backlog of transcripts to prepare and if there is no reporter's transcript designated.
- b. Cost of copies may be less, but attorney time in assembling documents may cost client more than CT.

Complete Court File

If you need complete superior court file, consider choosing entire file under Cal Rules of Ct 8.128, if local appellate rule permits. This option *may* be less expensive than the CT.

NOTE

Check with your district if you wish to use this procedure.

Agreed or Settled Statements

- a. You may also include copies of documents in the settled or agreed statement. Cal Rules of Ct 8.134, 8.137.
- b. You would have the same problems as if you were preparing an appendix. See above.

Further Research: See Civ App Prac §§9.2-9.3, 9.5.

NOTE

Be aware that the reviewing court, on its own or on any party's request, may have record augmented or corrected. See Cal Rules of Ct 8.155 and discussion in step 10, below. Check with court for local procedures or deadlines to augment or correct record.

Further Research: See Civ App Prac §§9.1-9.5, 9.75-9.100.

JUDGE'S PERSPECTIVE

If the parties have omitted relevant documents, the reviewing court will frequently take judicial notice of the superior court file.

NOTE

There are clear differences among the alternative forms of the record, *e.g.*, in terms of cost, time, and size. The decision in selecting a form of the record should be guided primarily by which alternative will provide an adequate record to demonstrate error in the proceedings below. An inadequate record may result in losing the appeal. See, *e.g.*, *Vo v Virgenes Mun. Water Dist.* (2000) 79 CA4th 440, 447, 94 CR2d 143 (record lacking pleadings and transcript was inadequate to overturn attorney fee award); *Haywood v Superior Court* (2000) 77 CA4th 949, 955, 92 CR2d 182 (when record was silent, court refused to find error and inferred that substantial evidence was before the lower court).

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Obtaining Superior Court Record for Appeal/STEP 10. OBTAIN REPORTER'S TRANSCRIPT (RT)

STEP 10. OBTAIN REPORTER'S TRANSCRIPT (RT)

FILE AND SERVE NOTICE DESIGNATING RT

To obtain reporter's transcript (RT) ([Cal Rules of Ct 8.121\(b\)-\(c\)](#), [8.130\(a\)](#)):

- a. File notice designating RT with superior court and appellate court; and
- b. Serve a copy on:
 - (1) Respondent; and
 - (2) Each court reporter whose identity you know.

NOTE

Your notice to prepare RT should identify which proceedings to include by specifying the dates on which those proceedings took place. You may also specify portions of proceedings that are not to be included. [Cal Rules of Ct 8.130\(a\)\(1\)](#). The reporter must note in the transcript the place and nature of any omitted proceedings. [Cal Rules of Ct 8.130\(e\)\(1\)](#).

It is good practice to contact your court reporter(s) personally early in this process. The reporter's cooperation is often crucial to moving the appeal forward. Close coordination with the reporter will avoid having the court direct the reporter to complete the transcript, especially if you later discover that the reporter has omitted a portion of the transcript.

If More Than One Reporter

If more than one reporter recorded the proceedings:

- a. You may have to deal with more than one reporter.
- b. One reporter may be designated the "lead" (check local rules).
- c. A list of all reporters can be obtained from the clerk. See [Cal Rules of Ct 2.950](#).

Deadline

File notice designating an RT or a notice of intent to proceed without an RT and serve copy in superior court within **10 days** after filing notice of appeal. [Cal Rules of Ct 8.121](#), [8.130\(a\)](#).

Form

The Judicial Council has created an optional form for use in designating the record on appeal. See Appellant's Notice Designating Record on Appeal (Unlimited Civil Case) (Judicial Council Form APP-003), in [Appendix C](#). You may also continue to draft your own notice.

NOTE

You may designate both RT (for oral proceedings) and CT (for written documents). See [Cal Rules of Ct 8.120\(a\)\(1\)](#) (use one source for written documents); [Cal Rules of Ct 8.120\(b\)\(1\)](#) (may use reporter's transcript for oral proceedings); [Cal Rules of Ct 8.130\(e\)\(3\)](#) (no duplication in transcripts). See also Appellant's Notice Designating Record on Appeal (Unlimited Civil Case) (Judicial Council Form APP-003) in [Appendix C](#).

Designating Less Than All Testimony

If your notice designates less than all of the testimony for the RT, you must state the points to be raised on appeal in your designation notice and limit the appeal to those points. [Cal Rules of Ct 8.130\(a\)\(2\)](#).

Designating Portion of Witness's Testimony

If you specify that only a portion of a witness's testimony be transcribed, the reporter will transcribe the entire testimony unless the parties stipulate otherwise. Cal Rules of Ct 8.130(e)(2).

RESPONDENT'S DESIGNATION

Within **10 days** after appellant serves its RT designation, respondent may file and serve a notice designating additional proceedings to include in RT. Cal Rules of Ct 8.130(a)(3).

ELECTION TO PROCEED WITHOUT RT

Respondent cannot require RT if appellant elects to proceed without one; however, reviewing court may order record augmented to prevent miscarriage of justice on own motion or respondent's motion. Cal Rules of Ct 8.130(a)(4).

IF LOW-INCOME LITIGANTS

Deadline

For payment or reimbursement of costs of RT, nonprofit organizations providing free civil legal services to low-income litigants in "non-fee-generating" cases, and private attorneys to whom the organizations have referred low-income litigants for similar free services, must (Bus & P C §§8030.2-8031; Cal Rules of Ct 8.130(c)):

- a. Apply to Court Reporters Board for payment or reimbursement (Bus & P C §§8030.6, 8030.8 (inoperative as of July 1, 2009); and
- b. File copy of application to Court Reporters Board with notice to court explaining that costs will be paid by the Transcript Reimbursement Fund. Bus & P C §8030.6(d).

Application Approved

If application for payment or reimbursement is approved by Board, reporter's time to prepare the transcript begins when reporter receives notice of approval. Cal Rules of Ct 8.130(c)(2).

Application Denied

If board denies application for payment or reimbursement, deposit reporter's fee or procure another form of record under Cal Rules of Ct 8.134, 8.137, within **30 days** after board mails notice of denial. Cal Rules of Ct 8.130(c)(3).

NOTE

Business and Professions Code §§8030.6 and 8030.8, allowing reimbursement for RT costs by the Transcript Reimbursement Fund, becomes inoperative on July 1, 2009, and repealed January 1, 2010, by its own terms, unless amended.

Further Research: For whether and how to petition for a writ if court denies motion, see generally Civ Writ Prac.

PAY DEPOSIT

At time of filing notice designating transcript, deposit approximate cost of transcribing the proceedings. Cal Rules of Ct 8.130(b)(1).

Deadline

Pay deposit within **10 days** after filing notice of appeal (or pay when you file notice of appeal). Cal Rules of Ct 8.121, 8.130(a)-(b).

Pay Estimated Cost

Deposit with clerk approximate cost of RT, either (Cal Rules of Ct 8.130(b)(1)):

- a. Under a written estimate from reporter; or
- b. Computed at:

(1) \$325 per fraction of a day's proceedings not exceeding 3 hours; or

(2) \$650 per day or fraction of day's proceedings greater than 3 hours.

NOTE

If several parties appeal from one judgment, or if there is a cross-appeal, the reporter prepares only *one* record, and all appealing parties bear equally the initial expense of preparing the record, unless otherwise agreed by the parties or ordered by the superior court. See Cal Rules of Ct 8.147(a). If your cross-appeal concerns only a small part of the entire record, consider asking the superior court for an order reapportioning the costs.

Inadequate Estimate

If reporter believes estimate is inadequate, reporter may file with clerk and mail to designating party estimate of total cost and additional deposit required within **15 days** after clerk mailed notice of designation. Cal Rules of Ct 8.130(b)(2).

Payment of Additional Estimate

Party must deposit additional amount no later than **10 days** after reporter mails estimate. Cal Rules of Ct 8.130(b)(2).

DEPOSIT SUBSTITUTES

In lieu of paying deposit to clerk, you may substitute (Cal Rules of Ct 8.130(b)):

Waiver

A waiver, if reporter agrees to waive deposit; file with superior court written waiver of deposit from reporter when you file notice to designate transcript.

NOTE

You may want to make your own arrangements with reporter to pay reporter directly rather than through the clerk's office; sometimes you can negotiate a better price. If you work out a direct arrangement, file not only a written waiver of deposit signed by the reporter, but also a notice that you will pay the reporter directly.

Certified Transcript

Certified transcript of part of designated proceedings for submission to court.

Application for Payment or Reimbursement

Copy of application for payment or reimbursement of costs of RT.

FAILURE TO PAY DEPOSIT

If you file a designation notice without the requisite deposit or substitute, the clerk will file your notice, but also issue a notice of default under Cal Rules of Ct 8.140, Cal Rules of Ct 8.130(d)(3). Failure to pay within **15 days** after notice of default is mailed will result in dismissal of appeal (if you are the appellant), or other sanctions. Cal Rules of Ct 8.140.

CLERK NOTIFIES REPORTER

Immediately after you file notice to designate transcript, clerk notifies reporter of (Cal Rules of Ct 8.130(d)(2)):

- a. Terms of designation notice; and
- b. Amount you have deposited for transcript.

NOTE

Clerk's notice to reporter must show date of mailing. Cal Rules of Ct 8.130(d)(2).

OTHER NOTIFICATIONS

Reporter

Before transcript is filed, clerk must also notify reporter immediately if (Cal Rules of Ct 8.130(d)(4)):

- a. Check for deposit is dishonored; or
- b. Appeal is abandoned or dismissed.

Reviewing Court

Clerk must promptly send reviewing court copy of any notice filed under Cal Rules of Ct 8.130(a)(1). Cal Rules of Ct 8.130(d)(1). This notification assists reviewing court to monitor time for preparing record and determine time for filing appellant's opening brief. 2002 Advisory Committee Comment to Cal Rules of Ct 8.130(d).

REPORTER FILES RT

a. Reporter should file with superior court clerk original and one copy of RT (and any copies requested by respondent) within **30 days** after (Cal Rules of Ct 8.130(f)(1)):

- (1) Reporter receives notice of approval for reimbursement under Cal Rules of Ct 8.130(c)(2); or
- (2) Clerk mails notice of designation to reporter under Cal Rules of Ct 8.130(d)(2).

b. Superior court clerk usually mails copy of RT to you, but if you have made private arrangements to pay reporter directly, reporter will send you transcript.

NOTE

Be aware that reporters often do not file the transcript within 30 days.

REPORTER BILLS YOU

When RT is complete, reporter will (Cal Rules of Ct 8.130(f)(2)):

- a. Bill you at the statutory rate; and
- b. Send a copy of bill to clerk.

CLERK PAYS DEPOSIT

Clerk will pay each reporter from funds you deposited, and will promptly (Cal Rules of Ct 8.130(f)(2)):

- a. Refund any excess deposit to you; or
- b. Give notice that you must deposit additional funds.

APPELLATE COURT CLERK NOTIFIES PARTIES

Appellate court clerk will notify parties when superior court files record with appellate court. Cal Rules of Ct 8.150(b). This notice triggers the due date for the opening brief on appeal.

NOTE

On request, reporter must provide any party with a computer-readable copy of RT, unless court orders otherwise. Cal Rules of Ct 8.130(f)(4).

IF PROCEEDINGS CANNOT BE TRANSCRIBED

If, through no fault of counsel or client, reporter cannot transcribe all or part of transcript (Cal Rules of Ct 8.130(g)):

Clerk Notifies

Clerk of superior court will mail you notice that reporter failed or refused to complete transcript, indicating date notice was mailed.

May Choose Agreed Statement

Within **10 days** after clerk's mailing of notice, appellant may file in superior court an agreed statement or stipulation that parties

are trying to reach agreement on statement (for agreed statement, see Cal Rules of Ct 8.134).

NOTE

Appellant must file agreed statement, move to use a settled statement, or proceed without a statement no later than **30 days** after filing stipulation. Cal Rules of Ct 8.130(g).

May Choose Settled Statement

Within **10 days** after clerk's mailing of notice, appellant may move superior court for leave to prepare settled statement of that part (for settled statement, see Cal Rules of Ct 8.137).

May Seek Order

Appellant may ask reviewing court to order reporter to prepare the transcript (see Cal Rules of Ct 8.121, 8.130).

May File Stipulation

Parties may file a stipulation in court of appeal on content of agreed or settled statement for portion of oral proceedings for which RT is missing. See Cal Rules of Ct 8.130(g), 8.134(b), 8.137.

NOTE

Check local rules to determine if your court has a special procedure for requesting that an order to show cause issue to a delinquent court reporter.

IF REPORTER OMITTS MATERIALS

Ask Reporter to Correct

If reporter omits material you have designated as part of RT or that should be automatically included in RT (Cal Rules of Ct 8.155(b)):

- a. Prepare notice to reporter specifically identifying missing material and stating that, *e.g.*, unless he or she prepares and certifies that material and transmits it to reviewing court within **10 days** after receipt of notice, you will move reviewing court for an order to augment record;
- b. Serve notice on reporter; and
- c. File notice and proof of service in superior court with a copy to reviewing court.

Request Court Order

If reporter does not comply with notice (Cal Rules of Ct 8.155(b)(2)):

- a. File a motion to augment under Cal Rules of Ct 8.155(a) with reviewing court, including copy of notice to reporter; and
- b. Serve request on reporter and all parties.

IF RT INCORRECT

If a material part of RT is incorrect or improperly certified:

- a. Ask reporter to make correction just as you would if reporter omitted material, as described above; and
- b. If reporter does not comply, ask court to direct reporter to correct RT or to make proper certification. Cal Rules of Ct 8.155(c)(1).

IF NOT FILED WITHIN 30 DAYS

If reporter does not file the transcript on time:

Obtain Extension

- a. Reporter may ask *appellate court* for extension to prepare RT by showing good cause (Cal Rules of Ct 8.130(f)(1), 8.60(b));
- b. You may ask *appellate court* for extension, *e.g.*, until reporter has prepared transcript. See Cal Rules of Ct 8.60(b).

NOTE

Some courts have an automatic extension for reporters to file the RT. See 1st App Dist, Misc Order 94-1, in Appendix D.

Settled Statement

You may move for leave from *superior court* to prepare a settled statement. Cal Rules of Ct 8.137; see above.

Motion for Court Order

File motion with superior court, with a copy to reviewing court to order reporter to prepare transcript. See Cal Rules of Ct 8.155(a)-(b).

JUDGE'S PERSPECTIVE

If you experience difficulty obtaining a timely RT, contact the court of appeal; many appellate districts have procedures that facilitate preparation of the RT.

NOTE

Check local rules to learn whether your court has special procedures for requesting that an order to show cause issue to a delinquent reporter.

If Court Notifies

Clerk of superior court will send a notice to appellant informing you that the appellate court will dismiss appeal unless, within **15 days** after mailing of notice, you perform whatever specified acts are necessary to procure the record. Cal Rules of Ct 8.140(a)(1), (b)(1).

WHEN COURT WILL DISMISS

Appellate court will dismiss appeal *if* (Cal Rules of Ct 8.140(a)-(c)):

- a. You caused reporter's failure to file record, *e.g.*, by failing to file required costs for preparing RT; and
- b. You fail, within **15 days** after clerk mails notice of default to you, to perform acts necessary to procure the record. See above.

Further Research: See Cal Rules of Ct 8.121, 8.130, 8.134, 8.137, 8.140, 8.150, 8.155; Civ App Prac §§9.16-9.37.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Obtaining Superior Court Record for Appeal/STEP 11. OBTAIN CLERK'S TRANSCRIPT (CT)

STEP 11. OBTAIN CLERK'S TRANSCRIPT (CT)

DESIGNATION FORMAT

Designated Documents

Notice designating clerk's transcript (CT) *must* identify each document by (Cal Rules of Ct 8.122(a)(1)):

- a. Its title; and
- b. Date filed, or if not available, date signed.

Portions of Documents Not to Be Included

Notice *may* specify portions of designated documents that are not to be included in the transcript, *e.g.*, duplicates or documents irrelevant to issues on appeal. Cal Rules of Ct 8.122(a)(1).

Minute Orders and Written Instructions

Minute orders and written instructions may be collectively designated, *e.g.*, "all minute orders entered between specific dates"; or "all written instructions given, refused or withdrawn." Cal Rules of Ct 8.122(a)(1).

Exhibits

If you want an exhibit copied in CT you must specify exhibit by number or letter in designation notice; party in possession of exhibit must promptly deliver it to clerk for inclusion in CT. Cal Rules of Ct 8.122(a)(3).

NOTE

Obtain a copy of the trial court docket sheet early in the process of ascertaining what kind of record is appropriate. You will also be able to use the docket sheet as a chronological reference and aid in preparing an appendix, if you choose to prepare one.

FILE AND SERVE NOTICE TO PREPARE CT

Prepare notice designating documents in court file that you want included in CT (Cal Rules of Ct 8.122(a)):

- a. File notice with superior court; and
- b. Serve notice on respondent.

Form

The Judicial Council has created an optional form for use in designating the record on appeal. See Appellant's Notice Designating Record on Appeal (Unlimited Civil Case) (Judicial Council Form APP-003) in Appendix C. You also may draft your own notice.

NOTE

You may designate both RT (for oral proceedings) and CT (for written documents). See Cal Rules of Ct 8.120(a)(1) (use one source for written documents); Cal Rules of Ct 8.120(b)(1) (may use reporter's transcript for oral proceedings); Cal Rules of Ct 8.130(e)(3) (no duplication in transcripts). See also Appellant's Notice Designating Record on Appeal (Unlimited Civil Case) (Judicial Council Form APP-003) in Appendix C.

Deadline

File and serve notice within **10 days** after filing notice of appeal (or when you file notice of appeal). Cal Rules of Ct 8.121(a), 8.122(a).

DOCUMENTS INCLUDED IN CT AUTOMATICALLY

Clerk shall include in transcript, even without your request (Cal Rules of Ct 8.122(b)(1)):

- a. Notice of appeal;
- b. Judgment appealed from and any notice of its entry;
- c. Order appealed from and any notice of its entry;
- d. Motions and any orders on the motion and any notice of entry:
 - (1) For new trial;
 - (2) To vacate judgment;
 - (3) For judgment notwithstanding the verdict; and
 - (4) For reconsideration of an appealed order;
- e. Notices or stipulations to prepare:
 - (1) The CT and RT, if any; and
 - (2) Settled statement or agreed statement, if any; and
- f. Register of actions, if any.

NOTE

Mandatory documents included in the CT under Cal Rules of Ct 8.122(b)(1)(A)-(D) (items a-d, above) must show date necessary to determine timeliness of appeal. Cal Rules of Ct 8.122(b)(2).

DOCUMENTS INCLUDED IN CT IF DESIGNATED

You may designate:

Document in Clerk's File

Any other papers, records, or affidavits filed or lodged with clerk (Cal Rules of Ct 8.122(b)(3)(A)):

Exhibits

Exhibits admitted in evidence, refused, or lodged. Cal Rules of Ct 8.122(b)(3)(B).

JUDGE'S PERSPECTIVE

Practitioners often forget to designate copies of the relevant exhibits for the CT, thus requiring them to notice delivery of the original exhibits (see step 12, below) or deprive the reviewing court of any chance to consider the exhibits at all. If you must notice delivery of the original exhibits, request that they be transmitted to the court of appeal before oral argument and no later than the time within which to file the reply brief. In most districts, the appellate court prepares the draft opinion before oral argument.

Jury Instructions

Any written jury instructions given or refused. Cal Rules of Ct 8.122(b)(3)(C).

NOTE

If copies of the exhibits are included in the CT, they are immediately available for consideration when the justices read your briefs and prepare for oral argument.

DOCUMENTS NOT INCLUDED IN CT

Original Deposition

Clerk will *not* include any original deposition in CT absent court order or stipulation. Cal Rules of Ct 8.122(b)(4).

RESPONDENT MAY DESIGNATE ADDITIONAL PAPERS

Within **10 days** after appellant serves its CT designation, respondent may file and serve notice designating additional documents to include in CT. Cal Rules of Ct 8.122(a)(2).

NOTICE OF ESTIMATED COST

Clerk will notify appellant and each other party of estimated cost to prepare CT within **30 days** after (Cal Rules of Ct 8.122(c)(1)):

- a. Respondent designates additional documents; or
- b. Respondent's deadline to designate expires.

NOTE

Appellant pays cost of original and one copy of CT, and other parties pay for copy for own use. Cal Rules of Ct 8.122(c)(1).

DEADLINE TO DEPOSIT ESTIMATED COST

Any party who wants a copy of CT must deposit estimated cost with clerk within **10 days** after receiving notice from clerk of estimated cost of CT, absent application for waiver of costs or as otherwise provided by law. Cal Rules of Ct 8.122(c)(3). With multiple appeals, see below for sharing costs.

CLERK PREPARES CT

Within **30 days** after clerk receives fee deposit or order waiving cost, clerk must (Cal Rules of Ct 8.122(d)):

- a. Prepare original and one copy of CT, and certify original; and
- b. Prepare additional copies of CT for parties who made deposits.

IF APPEAL ABANDONED

If appeal is dismissed or abandoned before clerk has completed CT, clerk must refund portion of deposit that exceeds preparation cost actually incurred. Cal Rules of Ct 8.122(d)(2).

IF MULTIPLE APPEALS

If several parties appeal from same judgment, or if a party files a cross-appeal (Cal Rules of Ct 8.147):

- a. Clerk prepares single record and files it within time for filing record of latest appeal; and
- b. Unless superior court directs otherwise or by agreement of the parties, all separately represented appellants equally share initial expense of preparing record and have a right to a copy of the transcript. Cal Rules of Ct 8.147(a).

IF NOT PREPARED WITHIN 30 DAYS

Appellate court may extend time to prepare CT. See Cal Rules of Ct 8.60(b). See also Cal Rules of Ct 8.63 for factors court considers in granting extensions.

IF CLERK OMITTS MATERIALS

If clerk omits material you have designated as part of CT or that should be automatically included in it (see Cal Rules of Ct 8.155(b)):

Ask Clerk to Correct

- a. Prepare notice specifically identifying missing material and stating that, *e.g.*, unless clerk prepares and certifies missing material within **10 days** after receipt of notice, you will move reviewing court for an order to augment the record;

- b. Serve notice on superior court clerk; and
- c. File notice and proof of service in superior court with a copy to reviewing court. Cal Rules of Ct 8.155(b)(1)-(2).

File Motion to Augment

If clerk does not comply with notice:

- a. File request for augmentation with reviewing court, including:
 - (1) Copy of notice to superior clerk ; and
 - (2) Copies of any available papers (consecutively numbered) that you want to add to the CT (Cal Rules of Ct 8.155(a)(2)); and
- b. Serve request on clerk and all parties. Cal Rules of Ct 8.155(b)(2).

IF CT INCORRECT

If a material part of CT is incorrect or improperly certified:

- a. Ask clerk to make correction, as you would if clerk had omitted material (see above); and
- b. If clerk does not comply, ask court to direct clerk to correct CT or to make proper certification. Cal Rules of Ct 8.155(c).

Further Research: See Cal Rules of Ct 8.60, 8.120-8.122, 8.147, 8.155; Civ App Prac §§9.39, 9.48. See also specific local rules or policies that may apply to record.

WHEN COURT WILL DISMISS

Appellate court may dismiss appeal *if* (Cal Rules of Ct 8.140):

- a. You caused clerk's failure to file record, *e.g.*, by failing to deposit required costs for preparing clerk's transcript; or
- b. You fail, within **15 days** after clerk mails notice of default to you, to perform whatever specified acts are necessary to procure record. See above.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Obtaining Superior Court Record for Appeal/STEP 12. DESIGNATE ORIGINAL EXHIBITS YOU WANT SUPERIOR COURT TO TRANSMIT TO APPELLATE COURT

STEP 12. DESIGNATE ORIGINAL EXHIBITS YOU WANT SUPERIOR COURT TO TRANSMIT TO APPELLATE COURT

FILE NOTICE OF ORIGINAL EXHIBITS

Serve and File Notice

Within **10 days** after last respondent's brief is or could be filed under [Cal Rules of Ct 8.220](#), serve and file notice in superior court designating any original exhibits that were not included in the clerk's transcript or in the appendix that you want superior court to transmit to appellate court. [Cal Rules of Ct 8.224\(a\)\(1\)](#). On the need to have exhibits transmitted before oral argument, see Judge's Perspective in [step 11](#), above.

Additional Designation

Within **10 days** after notice designating original exhibits, any other party may file and serve additional designations of exhibits. [Cal Rules of Ct 8.224\(a\)\(2\)](#).

Serve Reviewing Court

Any notices filed under [Cal Rules of Ct 8.224\(a\)](#) must be served on the reviewing court as well as the superior court. [Cal Rules of Ct 8.224\(a\)\(3\)](#).

TRANSMITTAL OF EXHIBITS

Exhibits in Clerk's Possession

The clerk must organize any designated exhibits it has into numerical or alphabetical order and send them to reviewing court with two copies of list of exhibits sent. The reviewing clerk will sign and return one copy of the list if clerk finds that the list is correct. [Cal Rules of Ct 8.224\(b\)\(1\)](#).

Exhibits in Party's Possession

Any party who has designated exhibits must organize them into numerical or alphabetical order and send them to reviewing court with two copies of list of exhibits sent. The reviewing clerk will sign and return one copy of the list if clerk finds that the list is correct. [Cal Rules of Ct 8.224\(b\)\(2\)](#).

APPLICATION FOR LATE TRANSMITTAL

Any party may apply to reviewing court for permission to send exhibit to court after the deadlines in [Cal Rules of Ct 8.224\(a\)](#) have expired. [Cal Rules of Ct 8.224\(c\)](#).

REQUEST AND RETURN BY REVIEWING COURT

Reviewing court may request transmittal of exhibit from superior court or party at any time. On request, reviewing court may return exhibit to party or lower court; however, when remittitur issues, reviewing court *must* return all exhibits to lower court or party. [Cal Rules of Ct 8.224\(d\)](#).

Further Research: See [Civ App Prac §§9.55-9.57](#).

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Obtaining Superior Court Record for Appeal/STEP 13. IF YOU PREFER, ELECT TO USE ATTORNEY-PREPARED APPENDIX INSTEAD OF CLERK'S TRANSCRIPT

STEP 13. IF YOU PREFER, ELECT TO USE ATTORNEY-PREPARED APPENDIX INSTEAD OF CLERK'S TRANSCRIPT

FILE AND SERVE NOTICE OF ELECTION

Party Electing to Proceed by Appendix

Within **10 days** after notice of appeal is filed, party electing to proceed by appendix must:

- a. Prepare notice of election (indicating date notice of appeal was filed) to use attorney-prepared appendixes or joint appendix instead of CT (Cal Rules of Ct 8.124(a)); and
- b. File it with superior court.

Form

The Judicial Council has created an optional form for use as notice in electing to proceed by appendix. See Appellant's Notice Designating Record on Appeal (Unlimited Civil Case) (Judicial Council Form APP-003) in Appendix C. You also may draft your own notice.

Combined Notices

Party may combine notice of election with notice designating RT, and may combine both with notice of appeal. Cal Rules of Ct 8.124(a)(2).

COURT CLERK DUTIES

When a party files a notice of election to proceed by appendix, clerk *must* send copy of register of actions, if any, to each attorney and unrepresented party. Cal Rules of Ct 8.124(a)(2).

JOINT APPENDIX ENCOURAGED

Although parties may prepare separate appendixes, Cal Rules of Ct 8.124(a)(3) encourages them to stipulate to joint appendix. Counsel should attempt to agree on contents of a joint appendix (Cal Rules of Ct 8.124(a)(3)), *e.g.*:

- a. Contact opposing counsel about proposed contents of the appendix;
- b. Provide a list or copies of all documents you propose to include in appendix;
- c. Try to resolve any other objections from opposing counsel, *e.g.*, if counsel prefers copy of contract submitted in evidence over one attached to summary judgment motion; and
- d. Incorporate any documents proposed by opposing counsel.

RESPONDENT MAY OBJECT

Respondent may file a motion in *superior* court opposing election within **10 days** after you serve notice of election. Cal Rules of Ct 8.124(a).

CONTENTS OF APPELLANT'S APPENDIX OR JOINT APPENDIX

Appellant's appendix or joint appendix *must* contain copies of (Cal Rules of Ct 8.124(b)(1)):

Same Documents as CT

Same documents as required for CT under Cal Rules of Ct 8.122(b)(1) (see step 11, above).

Documents Necessary to Consideration of Issues

Documents that are necessary to proper consideration of issues, including such documents as appellant should reasonably assume will be relied on by respondent. Cal Rules of Ct 8.124(b)(1)(B).

Example: If appeal involves a motion made by respondent, be sure to designate both motion and respondent's reply, if any, to appellant's opposition to motion.

Notice of Election

Notice of election to proceed under Cal Rules of Ct 8.124(b)(1)(C).

Stipulation

If using a joint appendix, the parties' stipulation to its contents. Cal Rules of Ct 8.124(b)(1)(D).

Warning: The appendix must contain only materials that are in the court's files. Carefully check the items to be included in the appendix against the court's docket sheet. Ideally, the contents of the appendix should be copies from the court's files, rather than the practitioner's. The reviewing court may impose monetary or other sanctions for filing appendix that contains inaccurate copies or otherwise violates court rules. Cal Rules of Ct 8.124(g).

ITEMS NOT PERMITTED IN APPENDIX

Appendix must not contain (Cal Rules of Ct 8.124(b)(2)):

- a. Documents or portions of documents that are unnecessary for proper consideration of issues;
- b. Transcripts of oral proceedings that may be designated for RT;
- c. Record of administrative proceeding (which must be added by the procedure outlined in Cal Rules of Ct 8.123); and
- d. Document incorporated by reference, except:
 - (1) Record on appeal in pending case before reviewing court; or
 - (2) In prior appeal in same case.

EXHIBITS

Deemed Part of Appendix

All exhibits admitted into evidence or refused are deemed part of appendix, no matter whether copies are actually contained in appellant's appendix or joint appendix. Cal Rules of Ct 8.124(b)(3).

Obtaining Copy of Exhibit Possessed by Another Party

If you want appendix to contain a copy of exhibit in possession of another party (Cal Rules of Ct 8.124(c)):

- a. Ask party to provide copy or lend for copying (parties must reasonably cooperate with such requests);
- b. If request is unsuccessful, serve and file in reviewing court notice specifying exhibit's trial court designation and asking possessing party to deliver exhibit to requesting party or reviewing court;
- c. Possessing party must comply within **10 days** after notice was served by:
 - (1) Sending it to requesting party, who must copy and return exhibit within **10 days** after receiving it; or
 - (2) Sending it to reviewing court, accompanied by copy of notice served by requesting party and immediately notifying requesting party;
- d. Reviewing court will return exhibit to party that sent it on request or when remittitur issues.

CONTENTS OF RESPONDENT'S APPENDIX

Respondent's appendix may contain any document that could have been included in appellant's appendix or joint appendix. Cal Rules of Ct 8.124(b)(4).

CONTENTS OF APPELLANT'S REPLY APPENDIX

Appellant's reply appendix may contain any document that could have been included in respondent's appendix. Cal Rules of Ct 8.124(b)(5).

FORMAT OF APPENDIX

Comply With CT Requirements

Appendix must comply with requirements for CT, *e.g.* (Cal Rules of Ct 8.124(d), 8.144(a)-(c), 10.503):

- a. Must be printed on 8½ by 11" recycled white or unbleached paper, minimum 20 pound weight;
- b. Text must be legibly reproduced as printed matter;
- c. Contents must be arranged chronologically;
- d. All pages must be consecutively numbered, unless case involves multiple reporters, discussed below;
- e. Margin must be at least 1¼ inches on bound side;
- f. Must be printed on only one side of paper;
- g. Must contain alphabetical and chronological indexes listing each document by volume and page number; and
- h. Must be bound on left margin in volumes of 300 pages or less, with cover that:
 - (1) Is of recycled stock;
 - (2) Includes title, trial court case number, court of appeal case number, names of trial court and trial judge, names and addresses and bar numbers of appellate counsel, name of client, volume number, and pages included in that volume; and
 - (3) Prominently displays title:
 - (a) "Joint Appendix";
 - (b) "Appellant's Appendix";
 - (c) "Respondent's Appendix"; or
 - (d) "Appellant's Reply Appendix".

Multiple Reporter Case

In a case that includes multiple reporters, each reporter must estimate number of pages in each segment and primary reporter must assign beginning and ending page numbers (Cal Rules of Ct 8.144(e)):

- a. Segments that exceed their page estimate must have additional pages numbered with a hyphen and a new additional sequential number;
- b. Segments that fall short of their page estimate must add hyphen to last page number followed by segment's assigned ending page number with parenthetical notation "(next page number is ____)."

Do Not Bind With Brief

The appendix must not be bound with a brief. Cal Rules of Ct 8.124(d)(3).

SERVICE AND FILING REQUIREMENTS

- a. Serve a copy of appendix to each party unless otherwise agreed to by parties or ordered by court; file appendix in reviewing court. Cal Rules of Ct 8.124(e)(1)(A)-(B). Unlike briefs, appendices do not have to be served on the superior court or the supreme court.
- b. Serve and file joint appendix or appellant's appendix with appellant's opening brief; file reply appendix, if any, with reply

brief. Cal Rules of Ct 8.124(e)(2), (4); see steps 19, 23, below for those deadlines.

c. Serve and file respondent's appendix, if any, with respondent's brief. Cal Rules of Ct 8.124(e)(3); see step 21, below for that deadline.

COST OF APPENDIX

Each party must pay for its own appendix; joint appendix must be (Cal Rules of Ct 8.124(f)):

- a. Paid by appellant;
- b. If multiple appellants, shared by them equally; or
- c. Paid as the parties agree.

EFFECT OF FILING APPENDIX

By filing appendix, you certify that copies are true and correct copies of endorsed (file-stamped) document in superior court file. Cal Rules of Ct 8.124(g). The appellate court can impose monetary or other sanctions for inaccurate copies or other rule violations, such as:

- a. Dismissing appeal (see, *e.g.*, *Goebring v Chapman Univ.* (2004) 121 CA4th 353, 363 n7, 17 CR3d 39 (court noted that it could have dismissed appeal based on appellant's failure to submit appendix as elected)); or
- b. Striking appendix (see, *e.g.*, *Canal Ins. Co. v Tackett* (2004) 117 CA4th 239, 242, 11 CR3d 626 (court noted that motion to strike appendix for failure to include chronological index might have been granted)).

Further Research: See Cal Rules of Ct 8.124, 8.144; Civ App Prac §§9.58-9.74.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Obtaining Superior Court Record for Appeal/STEP 14. CONSIDER PROCEEDING BY AGREED OR SETTLED STATEMENT

STEP 14. CONSIDER PROCEEDING BY AGREED OR SETTLED STATEMENT

ALTERNATIVES TO CT AND RT

Appellant may consider proceeding by agreed or settled statement under Cal Rules of Ct 8.134 and 8.137.

NOTE

These procedures are rarely used in appeals from superior court.

AGREED STATEMENT

An agreed statement may make up part or all of the record on appeal. It is prepared by agreement between the parties. Cal Rules of Ct 8.134(a)(1).

Contents

Agreed statement (Cal Rules of Ct 8.134(a)):

a. Should explain:

- (1) Nature of the action;
- (2) Basis of appellate jurisdiction; and
- (3) How trial court decided points to be raised on appeal, reciting only those facts necessary to decide appeal;

b. Should be signed by the parties;

c. If replacing CT, should be accompanied by copies of mandatory documents in CT (see step 11, above, for discussion of documents required in CT), displaying dates necessary to determine timeliness of appeal; and

d. May include optional CT documents.

Deadline to File

Within **10 days** after filing notice of appeal, appellant must (Cal Rules of Ct 8.121, 8.134(b)):

- a. File an agreed statement or stipulation that parties are attempting to agree on statement;
- b. If appellant files stipulation and parties can agree on statement, file statement within **40 days** after filing notice of appeal;
- c. If appellant files stipulation and parties cannot agree, file notices under Cal Rules of Ct 8.120 and 8.121:
 - (1) Designating CT or RT, or both;
 - (2) Electing to proceed by appendix; or
 - (3) Using an original superior court file if locally allowed, within **50 days** after filing notice of appeal.

When Proceedings Cannot Be Transcribed

If agreed statement is used because some portion of designated proceedings cannot be transcribed, clerk must notify designating party by mail, indicating date notice was mailed (Cal Rules of Ct 8.130(g), 8.134):

- a. Within **10 days** after clerk's notice is mailed party *may* file agreed statement or stipulation that parties are trying to agree; and
- b. Within **30 days** of filing stipulation party *must*:

- (1) File agreed statement;
 - (2) Move to use settled statement; or
 - (3) Proceed without statement; or
- c. Within **10 days** after clerk's notice is mailed, party *may* move in superior court to use settled statement.

SETTLED STATEMENT

Contents

A settled statement consists of appellant's proposed statement and respondent's amendments to that statement as "settled" by court. Cal Rules of Ct 8.137. When authorized to be used, it may replace RT or both RT and CT.

When Available

A party may proceed by way of settled statement by serving and filing motion in superior court to use settled statement that is supported by showing that (Cal Rules of Ct 8.137(a)(2)):

- a. Substantial cost savings will result;
- b. Statement can be settled without significant burden to other parties or court;
- c. Designated oral proceedings were not reported or cannot be transcribed; or
- d. Appellant is unable to pay for RT and funds are not available from Transcript Reimbursement Fund.

If Motion Denied

If court denies motion to proceed by way of settled statement, within **10 days** after clerk mails or party serves order of denial, appellant must file notices (Cal Rules of Ct 8.120, 8.137(a)(3)):

- a. Designating CT or RT, or both;
- b. Electing to proceed by appendix; or
- c. Using original superior court if locally allowed.

If Appellant's Motion Is Granted

If the motion is granted (Cal Rules of Ct 8.137(b)):

- a. Within **30 days** after clerk mails or party serves order granting motion to use settled statement, appellant must serve and file condensed narrative of oral proceedings, with some evidence presented in question-and-answer format subject to court's approval;
- b. If narrative relates less than all testimony, appellant must state points to be raised on appeal, thus limiting appeal to those points unless otherwise permitted on motion;
- c. If statement is to replace both RT and CT, include copies of all mandatory items in CT with narrative and the dates necessary. See Cal Rules of Ct 8.122(b)(1)-(2).

Respondent's Amendments

Within **20 days** after appellant serves condensed narrative, respondent may serve and file proposed amendments, which may be accompanied by copies of optional CT documents. Cal Rules of Ct 8.137(b)(4).

Settlement and Certification

a. Clerk must set date for settlement hearing, giving parties at least **5 days'** notice, within **10 days** after earliest of (Cal Rules of Ct 8.137(c)(1)):

- (1) Time respondent files proposed amendments; or

(2) Time to file amendments expires.

b. At hearing, court must settle statement and fix times within which appellant must prepare, serve, and file statement. Cal Rules of Ct 8.137(c)(2).

c. If respondent does not object within **5 days** after prepared statement is filed, clerk must present statement to judge for certification. Cal Rules of Ct 8.137(c)(3).

Stipulation Equivalent to Certification

Stipulation between parties that statement is correct is treated as equivalent to court's certification of statement. Cal Rules of Ct 8.137(c)(4).

CROSS APPEALS

If respondent also appeals from some aspect of the judgment or from another appealable order, parties jointly (or separately if they cannot agree) must submit proposed briefing sequence to the court of appeal. Reviewing court then orders briefing sequence and prescribes briefing periods consistent with Cal Rules of Ct 8.212(a). Cal Rules of Ct 8.216(a).

NOTE

Parties have the responsibility to give their views on the most efficient briefing sequence to the court. The court will decide the briefing sequence and periods, and then notify the parties of its decision.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Obtaining Superior Court Record for Appeal/STEP 15. PREPARE FOR AND ATTEND PREHEARING AND SETTLEMENT CONFERENCE

STEP 15. PREPARE FOR AND ATTEND PREHEARING AND SETTLEMENT CONFERENCE

WHEN APPLICABLE

If local rules or policies under Cal Rules of Ct 8.248 provide for conference, you must prepare for and attend it. See, *e.g.*, 1st App Dist R 3(b)(1) (voluntary).

Consult Local Rules

Consult rules and policies of applicable appellate district and/or division to determine:

- a. If a conference is mandatory or if you may request one; or
- b. If court has a voluntary settlement program. See, *e.g.*, 4th App Dist, Div 2, R 4 (presiding judge "may" order settlement conference).

NOTE

Appellate courts are not required to establish settlement conference procedures, but all districts have authorized some type of settlement or mediation conferences by local rule.

EFFECT OF CONFERENCE

- a. If conference is requested or ordered, time for filing briefs is usually suspended (see 4th App Dist, Div 2, R 4(c)(3); but see 1st App Dist R 3(b)(3) (pendency of settlement conference does not automatically suspend briefing).

NOTE

Do not assume that your appeal is stayed merely because you have filled out a Settlement Conference Information Form. See, *e.g.*, 4th App Dist, Div 3, IOPP §IV(H).

- b. If ordered under Cal Rules of Ct 8.248 before a brief is due, time for filing brief is tolled from the date the court of appeal mails notice of the conference until the date notice is mailed that the conference is concluded. Cal Rules of Ct 8.248(d).

FILE STATEMENT

Most local rules and policies require parties to file some type of short statement on nature of case and on issues on appeal before conference, *e.g.*:

- a. **15 days** before settlement conference (4th App Dist, Div 2, R 4(d)(2)); or
- b. **10 days** before date of conference. 5th App Dist R 2(d).

PREPARE FOR CONFERENCE

- a. Confer with client about settling case;
- b. Review case and be prepared to:
 - (1) Present your contentions on appeal in detail;
 - (2) Show how issues may be simplified;
 - (3) Discuss settlement possibilities; and
 - (4) Address any other matters conference judge may consider appropriate.

Further Research: See Cal Rules of Ct 8.248; 1st App Dist R 3(c)(2); 4th App Dist, Div 2, R 4(f); 5th App Dist R 2(g).

NOTE

Unless the parties stipulate in writing, matters relating to the conference may not be mentioned in later proceedings, except for another conference. Cal Rules of Ct 8.248(c)(1). See, *e.g.*, 1st App Dist R 3(3). The presiding officer and any court personnel present at the conference may not participate in any subsequent action on the merits of the appeal. Cal Rules of Ct 8.248(c)(2). See, *e.g.*, 1st App Dist R 3(c)(1); 5th App Dist R 2(h).

ATTEND CONFERENCE

- a. It is mandatory in most districts (see, *e.g.*, 1st App Dist R 3) that:
 - (1) Counsel for every appealing party attend the conference;
 - (2) Insurance representative for applicable policy attend; and
 - (3) Your client attend the conference.
- b. Any attendance exceptions must be approved in writing by the Settlement Justice.

NOTE

If the client cannot attend, make sure that the court approves and that he or she is available by phone or that you have complete settlement authority. You should check local rules to determine what options are available. California Rules of Ct 3.670(d)(3) specifically requires personal attendance at settlement conferences. The court, however, has the discretion to allow telephonic appearances under Cal Rules of Ct 3.670(e)(3). See also CCP §367.5.

Further Research: See 1st App Dist R 3(c)(2); 4th App Dist, Div 2, R 4(f)(3), (6); 5th App Dist R 2(g). See also Cal Rules of Ct 8.248, 3.670; Civ App Prac, chap 15.

JUDGE'S PERSPECTIVE

The parties may settle the case at any time, and the appeal may be abandoned or dismissed. Cal Rules of Ct 8.244. The appellate court may refuse to dismiss the appeal, however, if the issues are important and of continuing interest. See *Burch v George* (1994) 7 C4th 246, 253 n4, 27 CR2d 165; *Lundquist v Reusser* (1994) 7 C4th 1193, 1202 n8, 31 CR2d 776. On stipulated reversal, see step 16, below.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal/STEP 16. MAKE MOTIONS DURING APPEAL

During Appeal

STEP 16. MAKE MOTIONS DURING APPEAL

WHEN APPROPRIATE

Motions during appeal are appropriate when party needs appellate court's adjudication of a matter that is not one of the substantive issues on appeal, *e.g.*:

Motion to Dismiss

Respondent may move to dismiss, *e.g.*, for an appellant's failure to pursue the appeal, or an appellant's failure to meet any prerequisites for appeal (Civ App Prac §§11.9, 11.40-11.59):

- a. If the motion is filed before record is filed, respondent must file clerk's certificate or declaration as required by Cal Rules of Ct 8.57(a); and
- b. Appellant must oppose motion; otherwise, the appeal may be deemed abandoned, allowing dismissal. Cal Rules of Ct 8.54(c).

JUDGE'S PERSPECTIVE

If appeal is untimely or is not being appealed from an appealable order or judgment, respondent should move to dismiss, rather than waiting to include objection in respondent's brief.

Stipulated Reversal

California Code of Civil Procedure §128(a)(8) prohibits an appellate court from reversing or vacating trial court's judgment on an agreement or stipulation of both parties, unless court finds *both* of the following:

- a. There is no reasonable possibility that the public or nonparties would be negatively affected by the reversal; and
- b. On balance, the reasons of parties for requesting reversal override any erosion of public trust that may result from nullification of a judgment and the risk that such a stipulated reversal would reduce motivation for pretrial settlement.

NOTE

Stipulated reversals are very difficult to obtain in most courts of appeal. Factor this into any settlement that is "contingent" on a stipulated reversal.

Further Research: See CCP §128(8)(A)-(B); Stats 1999, ch 508, §1. For preamendment decisions, see *Neary v Regents of Univ. of Cal.* (1992) 3 C4th 273, 10 CR2d 859. See also *Norman I. Krug Real Estate Inv., Inc. v Praszker* (1994) 22 CA4th 1814, 28 CR2d 498 (court will not grant request for stipulated reversal of judgment when reversal would adversely affect public interest); *Lucich v City of Oakland* (1993) 19 CA4th 494, 501, 23 CR2d 450 (court refused to grant parties' request for stipulated dismissal of appeal after matter had been submitted for decision).

Relief From Default

Appellant may also move for relief from any default (except failure to file a timely notice of appeal). Cal Rules of Ct 8.140(b)(1), 8.122; see Civ App Prac §§11.61-11.62.

Calendar Preference

You may serve and file a motion for calendar preference for oral argument (Cal Rules of Ct 8.240):

- a. Serve and file motion as soon as ground for preference arises. Cal Rules of Ct 8.240.
- b. Include a memorandum, with declarations and other supporting evidence. Cal Rules of Ct 8.54(a)(2).

c. Serve motion on opposing party.

Further Research: For information on what matters are entitled to preference, see Civ App Prac §§11.96-11.97.

NOTE

In many appellate districts and divisions, there is no appreciable "backlog" of fully briefed cases awaiting argument. In such courts, a motion for calendar preference is unnecessary because the matter will be calendared as soon as possible in the ordinary course of events. Call the clerk's office and ask whether a motion for calendar preference will actually result in an argument date sooner than what would otherwise occur.

Sanctions

Respondent (or a cross-respondent) may file a motion for sanctions for a frivolous appeal. See step 18, below.

Motion to Consolidate

Either party may move to consolidate related appeals or to hear related appeals concurrently. Parties can also stipulate to consolidation, although the court of appeal is not bound by the stipulation.

ROUTINE MOTIONS

You may present routine matters to chief justice or presiding justice by means of an application that must be served and filed unless there is a showing of good cause to excuse advance service. Cal Rules of Ct 8.50. For how to proceed by application, see step 17, below.

CHECK LOCAL RULES

Check your local appellate district's rules for motion and routine matter requirements. See, *e.g.*, 1st App Dist R 11(a) on requirements for extension of time for filing brief. See also 2d App Dist R 2 on timing for motion to augment record.

PREPARE, FILE, AND SERVE MOTION

Prepare

Prepare (Cal Rules of Ct 8.54(a)):

- a. Written motion stating:
 - (1) Grounds for motion;
 - (2) Relief requested; and
 - (3) Any documents on which motion is based;
- b. Supporting memorandum; and
- c. Supporting declarations or other evidence.

NOTE

Remember to include state bar membership number(s) on cover or front page of all documents filed in court of appeal. Cal Rules of Ct 8.204(b)(10)(D), 8.40.

Serve

Serve each party with one copy.

File

File:

- a. Original and three copies of motion in court of appeal, with proof of service (Cal Rules of Ct 8.44(b)(4)); or

b. If making motion in supreme court, original and four copies, and proof of delivery of four copies to the supreme court, with proof of service. Cal Rules of Ct 8.44(b)(1).

ANTICIPATE OPPOSITION

Opposing party must:

a. Serve one copy;

b. File original and three copies of opposition to motion (or original and four copies and proof of delivery of four copies to supreme court, if in supreme court) within **15 days** after motion is filed. Cal Rules of Ct 8.54(a)(3), 8.44(b)(1), (4).

COURT DECIDES MOTION

a. Court decides motion after opposition has been filed or time to file opposition has passed. Cal Rules of Ct 8.54(b)(1).

b. Although you may request a hearing, court ordinarily decides motion without one; court can set hearing on its own motion. Cal Rules of Ct 8.54(b)(2). See Civ App Prac §11.13.

Further Research: See Cal Rules of Ct 8.54, 8.44(b); Civ App Prac §§9.105-9.106, 11.10, 11.62, 11.96-11.97.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal/STEP 17. FILE APPLICATIONS ON ROUTINE MATTERS

STEP 17. FILE APPLICATIONS ON ROUTINE MATTERS

WHEN APPROPRIATE

Serve and file application when you need court ruling on routine matters (Cal Rules of Ct 8.50), *e.g.*:

- a. Extending time for filing records and brief;
- b. Shortening time; or
- c. Other routine matters.

Further Research: See Cal Rules of Ct 8.60 and 8.63 for requirements, policies, and factors concerning applications to shorten or extend time.

CHECK LOCAL RULES

Check your local appellate district's rules for motion and routine matter requirements.

NOTE

Call the clerk's office to learn whether the court has any format requirements for applications, *e.g.*, covers or extension forms, and remember to include your state bar membership number(s) on cover or front page. Cal Rules of Ct 8.40, 8.204(b).

PREPARE, SERVE, AND FILE STIPULATION OR APPLICATION TO EXTEND DEADLINE FOR BRIEF

BY STIPULATION

- a. Before filing deadline has expired, parties can stipulate to extension of time to file brief for up to 60 days; additional time must be approved by court (Cal Rules of Ct 8.212(b));
- b. File stipulation signed by all parties (with original signatures) with court; and
- c. File proof that you delivered copy of stipulation to your client. Cal Rules of Ct 8.60(f).

BY APPLICATION

If you are seeking an extension of time from the court, you must show that either:

- a. You were unable to obtain an extension by stipulation (Cal Rules of Ct 8.212(b)(3)(A)); or
- b. The parties stipulated to the 60-day maximum but the applicant seeks a further extension. Cal Rules of Ct 8.212(b)(3)(B).

HOW TO FILE AND SERVE

Serve and file original, one copy for court, and enough copies for one for *each* party, of application to extend filing deadline for brief that (Cal Rules of Ct 8.50, 8.44(b)(7), 8.60):

- a. Sets forth facts showing good cause (see Cal Rules of Ct 8.63 for standards and definitions of good cause to extend time);
- b. Describes any prior application by any party;
- c. Has attached to it proof that you mailed to your client a copy of the application for extension, or certifies in the declaration that you have done so (Cal Rules of Ct 8.60(f)); and
- d. Provides clerk with addressed, sufficient postage-prepaid envelopes for mailing to all parties the order granting or denying the application. Cal Rules of Ct 8.50(c).

NOTE

Be aware that you need not include your client's address on the proof of service, and in some cases, *e.g.*, where there has been domestic violence, you *should not* make address part of the public record.

Further Research: See Cal Rules of Ct 8.50, 8.60, 8.63; Civ App Prac §§9.10, 11.5, 11.25, 12.63.

FORM

The Judicial Council has released an optional form that is available for use in applying for extension of time to file brief in unlimited civil cases (Application for Extension of Time to File Brief (Civil Case) Judicial Council Form APP-006; see Appendix E). You may also draft your own application.

JUDGE'S PERSPECTIVE

In light of the reviewing court's interest in appellate delay reduction, the court will not routinely grant extensions in addition to the 60-day stipulated extension. See Cal Rules of Ct 8.63.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal/STEP 18. RESPONDENT: IF APPROPRIATE, REQUEST SANCTIONS

STEP 18. *RESPONDENT*: IF APPROPRIATE, REQUEST SANCTIONS

WHEN SANCTIONS ARE APPROPRIATE

You may request sanctions when appeal is (CCP §907; Cal Rules of Ct 8.276(a)(1)-(2)):

- a. Frivolous (see definition below);
- b. Taken solely for the purpose of delay or another improper purpose and causes damage to respondent; or
- c. Based on a record that contains irrelevant materials.

NOTE

You may be able to get sanctions when the other party is guilty of an unreasonable infraction of the appellate rules (Cal Rules of Ct 8.276(a)(4)); appellant as well as respondent can request sanctions when appropriate.

Further Research: See Evans v CenterStone Dev. Co. (2005) 134 CA4th 151, 168, 35 CR3d 745 (sanctions imposed for unreasonable violations of appellate rules and for frivolous appeal).

"Frivolous" Defined

An appeal is frivolous if *any* reasonable attorney would agree that the appeal is totally and completely without merit (Dodge, Warren & Peters Ins. Servs., Inc. v Riley (2003) 105 CA4th 1414, 1422, 130 CR2d 385):

- a. To prevail, you must show more than that appeal lacked merit;
- b. If even one of the appellate justices does not agree that this standard has been met, sanctions will probably not be awarded. See San Bernardino Community Hosp. v Meeks (1986) 187 CA3d 457, 470, 231 CR 673.

NOTE

An appeal may be substantially frivolous even if it raises one valid appealable issue. See People ex rel Dep't of Transp. v Outdoor Media Group (1993) 13 CA4th 1067, 1081, 17 CR2d 19.

WHEN NOT TO REQUEST

Do not request sanctions if your opponent can make at least a colorable legal or factual argument in support of his or her position.

Further Research: See Baize v Eastridge Cos. (2006) 142 CA4th 293, 304, 47 CR3d 763 (court declined to impose sanctions for frivolous appeal because issue did not indisputably lack merit). See also Safeco Ins. Co. v Architectural Facades Unlimited (2005) 134 CA4th 1477, 1482, 36 CR3d 754 (sanctions inappropriate in case involving untimely appeal in which court entered judgment while motion to reconsider was pending).

WHAT YOU MUST SHOW

To obtain sanctions, you must be able to establish that:

Totally Frivolous

Your opponent cannot make at least a colorable legal or factual argument in support of his or her position (see, e.g., National Secretarial Serv., Inc. v Froelich (1989) 210 CA3d 510, 525, 258 CR 506 (total lack of merit is evidence that appeal was intended only for delay));

Frivolous and for Delay

Your opponent has, e.g. (Marriage of Flaberty (1982) 31 C3d 637, 649, 183 CR 508):

- a. Questionable legal or factual support for appeal; and
- b. Made statements indicating that appeal is being pursued to, *e.g.*:
 - (1) Delay payment of money; or
 - (2) Further some other improper purpose, such as delaying your client from pursuing a project, and perhaps causing your client to abandon the project because delay has made the project less feasible.

PREPARE, SERVE, AND FILE MOTION

Serve and file a separate motion for sanctions (Cal Rules of Ct 8.276(a)) (for motion procedure, see step 16, above) setting forth:

- a. Facts supported by *declarations* and other evidence supporting your request for fees and costs; and
- b. Legal authority and analysis of why you are entitled to sanctions.

WHAT TO REQUEST

Court may add as costs on appeal such damages as may be just (CCP §907; Cal Rules of Ct 8.278(a)(5)), *e.g.*:

- a. Your client's costs and fees in opposing the appeal (see *Finnie v Town of Tiburon* (1988) 199 CA3d 1, 17, 244 CR 581 (a basic measure of sanctions));
- b. Amount designed to prevent appellant from reaping economic benefits of delaying enforcement of judgment (see, *e.g.*, *McConnell v Merrill Lynch, Pierce, Fenner & Smith* (1985) 176 CA3d 480, 490, 222 CR 228);
- c. Amount calculated to "sting" appellant (see, *e.g.*, *Marriage of Stich* (1985) 169 CA3d 64, 78, 214 CR 919), based on:
 - (1) Appellant's financial worth; and
 - (2) Oppressive nature of appellant's improper use of appellate process to wear down opposing party; or
- d. Court's cost of processing the frivolous appeal—awarded to *court*. See *Coben v General Motors Corp.* (1992) 2 CA4th 893, 3 CR2d 619 (cost estimated at \$5900 in 1992).

NOTE

Be aware that courts may also award these costs as sanctions to the *court* even if you do not specifically request them. See *Computer Prepared Accounts, Inc. v Katz* (1991) 235 CA3d 428, 439, 286 CR 556; *Finnie v Town of Tiburon* (1988) 199 CA3d 1, 244 CR 581.

WHEN TO REQUEST

- a. File motion for sanctions (Cal Rules of Ct 8.276(b)(1)-(2)) before any order dismissing appeal but no later than **10 days** after appellant's reply brief is due; or
- b. If a motion to dismiss appeal is denied, file a new motion for sanctions within **10 days** after appellant's reply brief is due.

NOTE

The court may impose sanctions even after remittitur is issued (see *San Bernardino Community Hosp. v Meeks* (1986) 187 CA3d 457, 462, 231 CR 673), but it is better not to wait.

AFTER YOUR REQUEST

If court is considering awarding sanctions, either based on a party's motion or on its own motion, court must notify party or attorney (Cal Rules of Ct 8.276(c)):

- a. If notice issues, opposing party has **10 days** after notice in which to serve and file written opposition. Cal Rules of Ct 8.276(d).
- b. No opposition may be filed in absence of court's written notice.

NOTE

Be aware that, if the court awards sanctions in an amount exceeding \$1000, it must also notify the State Bar of the award and the name of the attorney sanctioned. Bus & P C §6086.7(a)(3).

Further Research: See Civ App Prac §§20.19, 20.32.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal/STEP 19. APPELLANT: PREPARE, SERVE, AND FILE APPELLANT'S OPENING BRIEF

STEP 19. *APPELLANT*: PREPARE, SERVE, AND FILE APPELLANT'S OPENING BRIEF

DEADLINE TO FILE APPELLANT'S OPENING BRIEF

File and serve opening brief (see below) within (Cal Rules of Ct 8.212(a)):

- a. **30 days** after superior court clerk files record in appellate court (see Cal Rules of Ct 8.150);
- b. **30 days** after RT is filed *if* appellant has elected an appendix instead of a CT under Cal Rules of Ct 8.124 (see discussion in step 13, above); or
- c. **70 days** after appellant elects to prepare an appendix instead of RT *and* CT under Cal Rules of Ct 8.124. Cal Rules of Ct 8.212(a)(1)(B).

NOTE

Applicable time deadlines in nonbankruptcy proceedings are extended for **30 days** after notice of the termination of a bankruptcy stay (11 USC §108(c)(2)); thus, an appeal filed within 30 days after notice of a ruling on a new trial motion given within 30 days after a bankruptcy stay has been terminated is timely. *ECC Constr., Inc. v Oak Park Calabasas Homeowners Ass'n* (2004) 118 CA4th 1031, 1040, 13 CR3d 580.

"DATE OF FILING BRIEFS" DEFINED

A brief is considered "filed" on date you deliver it to clerk's office during normal business hours, *i.e.*, the date clerk's office receives it. Cal Rules of Ct 8.25(b)(1).

Other Methods of Filing

A brief is considered "timely" if time for its filing has not expired on the date that you (Cal Rules of Ct 8.25(b)(3)):

- a. Mail it by express or priority mail, as shown on a postal receipt or postmark; or
- b. Deliver it to a common carrier promising overnight delivery as shown on the carrier's receipt.

NOTE

If you elect to use the mail (preferably certified or express) or an overnight delivery service, obtain and retain in the file an appropriate receipt to protect against the unlikely event that the court does not receive the brief. See Cal Rules of Ct 8.25(b)(3) (use of postal or carrier receipt to show filing is timely).

STIPULATE TO EXTEND TIME

On stipulation to extend time to file brief, see step 17, above.

PREPARE BRIEF

When preparing brief:

Cover

The cover of an appellant's opening brief must be *green* (Cal Rules of Ct 8.40(b), 8.240(b)(10)); see discussion of format under Format of Brief, in this step, below) and cover must include (Cal Rules of Ct 8.204(b)(10)):

- a. Title, trial court case number, and court of appeal case number;
- b. Names of trial court and each participating trial court judge;
- c. Title, *e.g.*, Appellant's Opening Brief;

d. Name, address, phone number, and state bar membership number of each attorney filing or joining in brief, and name of client that each represents (Cal Rules of Ct 8.204(b)(10)(D)-(E), 8.40(a)).

Table of Contents

Include topical table of contents. Cal Rules of Ct 8.204(a)(1)(A).

NOTE

The topical table of contents should consist of the brief's headings and subheadings (see below), as well as references to the table of authorities. If the subheadings are properly crafted, the table of contents should itself be a persuasive part of the brief. See below.

Table of Authorities

Separately list cases, statutes, court rules, constitutional provisions, and other authorities that you cite in brief. Cal Rules of Ct 8.204(a)(1)(A).

Headings

Each point in brief must appear separately under a heading describing subject matter (*i.e.*, Statement of Case, Statement of Facts, Issues Presented, Discussion, Conclusion) and be supported by argument and, if possible, citation of authority. Cal Rules of Ct 8.204(a)(1)(B). See Live Oak Publishing Co. v Cobagan (1991) 234 C3d 1277, 1291, 286 CR 198 (argument disregarded because not specified under separate heading).

NOTE

Do not simply title the discussion portion of your brief "Discussion" and leave it at that; instead, use subheadings to succinctly state the issues worded as you would like the court to rule, *e.g.*, "There Is No Evidence That Wife's Separate Property Was Transmuted to Community Property."

Statement of Case

Set forth concisely but fully with appropriate references to the record (Cal Rules of Ct 8.204(a)(2)):

- a. Nature of action or proceeding;
- b. Relief sought in action or proceeding;
- c. Summary of significant facts limited to matters in the record;
- d. Superior court's judgment or order that is being appealed from; and
- e. Fact that judgment is final or order is appealable.

Citations to Record

Support all factual statements in brief by references to record with title of record, and page and line(s) where each matter appears, *e.g.*, CT 10:5-7, RT 111:3-112:20, Jt App 4. Cal Rules of Ct 8.204(a)(1)(C).

Recycled Paper

Use recycled paper (Cal Rules of Ct 8.204(b)(1), 1.22, 8.706(g) (Cal Rules of Ct 8.883(c)(1), effective January 1, 2009)) for all copies of brief or other papers, whether you file them with court or serve them on other parties.

JUDGE'S PERSPECTIVE

Remember that you cannot attach exhibits or declarations to your brief to support your arguments on appeal (but see Cal Rules of Ct 8.204(d) (party may attach up to 10 pages of exhibits or other materials in the appellate record to brief)).

Generally, your appeal must be based on only the legal and factual matters that:

- Were considered by the trial court; and

- Are found in the record.

If you want the appellate court to take judicial notice of certain matters, support your request with appropriate citations to authority, and analysis of why it would be appropriate in your case. See Evid C §§450-455, 459, on judicial notice.

Amicus curiae on appeal are restricted to arguments raised in the trial court. See California Ass'n for Safety Educ. v Brown (1994) 30 CA4th 1264, 1275, 36 CR2d 404; but see E.L. White, Inc. v City of Huntington Beach (1978) 21 C3d 497, 510, 146 CR 614 (supreme court recognized the general rule but nonetheless considered an issue raised for the first time by amicus curiae).

Further Research: For discussion of amicus curiae, see Civ App Prac, chap 14.

Statement of Appealability

Include statement either (Cal Rules of Ct 8.204(a)(2)(B)):

- a. That appeal is from judgment that finally disposes of all issues between parties; or
- b. Why order or nonfinal judgment is appealable.

NOTE

It is also a good idea to show that the appeal was timely filed, *e.g.*, show date notice of entry was served and that you filed notice of appeal within applicable deadline. See step 3, above, for deadline.

All Issues You Want Considered

Raise in *opening* brief all issues you want considered by court of appeal *and* supreme court. Cal Rules of Ct 8.516(b); Conservatorship of Susan T. (1994) 8 C4th 1005, 1013, 36 CR2d 40 (court need not consider issues raised for first time in petition for rehearing); Insurance Co. of the West v Haralambos Beverage Co. (1987) 195 CA3d 1308, 1321, 241 CR 427, disapproved on other grounds in Bass v Superior Court (1997) 16 C4th 35, 50 n12, 65 CR2d 366 (cannot raise additional issues in reply brief).

Support for Every Contention

Support every contention with (see Mansell v Board of Admin. (1994) 30 CA4th 539, 545, 35 CR2d 574; Ellenberger v Espinosa (1994) 30 CA4th 943, 948, 36 CR2d 360; Interinsurance Exch. v Collins (1994) 30 CA4th 1445, 1448, 37 CR2d 126):

- a. Intelligible legal argument;
- b. Adequate record; and
- c. Citation to authority.

Further Research: See Herrmann & Jenks, *Great Briefs and Winning Briefs*, 19 *Litigation* 56 (Summer 1993).

FORMAT OF BRIEF

a. Most briefs are produced by computer word processors and reproduced by office copiers (see Cal Rules of Ct 8.204); other allowed methods are (Cal Rules of Ct 8.204(b)):

(1) Printed (Cal Rules of Ct 8.204(b)(1)); and

(2) Typewritten, with original ribbon copies and carbon copies if you receive special permission from the chief justice or presiding justice, generally only for unrepresented persons filing in forma pauperis. Cal Rules of Ct 8.204(b)(11)(A).

b. Briefs are to be on 8½ by 11" paper (courts require use of recycled paper; see this step, below) with margins set depending on the method of reproduction you choose (printed: Cal Rules of Ct 8.204(b); typewritten: Cal Rules of Ct 8.204(b)(11)).

c. Briefs may use any conventional typeface, but the type style must be roman and type size must not be smaller than 13-point, except as permitted by the presiding judge. Cal Rules of Ct 8.204(b)(3)-(4), (b)(11).

d. Text lines must be unnumbered and at least 1½ spaced; headings and footnotes may be single-spaced (*i.e.*, six lines to a vertical inch); and quotations may be block-indented and single-spaced. Cal Rules of Ct 8.204(b)(5).

e. Pages must be numbered consecutively, although tables and body text may have different numbering systems. Cal Rules of Ct

8.204(b)(7).

f. Brief may be unsigned. Cal Rules of Ct 8.204(b)(9).

g. If typewritten (Cal Rules of Ct 8.204(b)(11)):

(1) Original and carbon copies may be filed only with permission of presiding justice, ordinarily given only to unrepresented parties proceeding in forma pauperis; otherwise must be filed as photocopies;

(2) If photocopy filed, use both sides; otherwise, if typewritten original and carbon copies are filed, use only one side; and

(3) Type size must not be smaller than standard pica, 10 characters per inch, unless party is incarcerated, in which case elite type, 12 characters per inch, may be used.

h. Cover of appellant's opening brief must be *green*. Cal Rules of Ct 8.40(b), 8.204(b)(10).

i. Bind brief along the left side in book or pamphlet form; if stapled, cover bound edge and staples with tape. Cal Rules of Ct 8.204(b)(8).

MAXIMUM LENGTH

Absent court permission, maximum length (excluding tables, certificate, and permissible attachments) is (Cal Rules of Ct 8.204(c)):

a. 14,000 words for computer-produced briefs, including footnotes;

b. 50 pages for typewritten or office copier reproductions of typewritten briefs; or

c. Double limits set out above if brief is combined in appeal governed by Cal Rules of Ct 8.216.

Certificate

A computer-generated brief must include certificate by counsel or unrepresented party stating number of words in brief. You may rely on word count function in computer program. Cal Rules of Ct 8.204(c)(1). The rule does not specifically require it, but most courts of appeal require that the certification be signed, even though the brief itself does not require a signature. See Cal Rules of Ct 8.204(b)(9).

NOTE

Support any request to file overlong brief with declaration setting forth facts showing why you need more pages, *e.g.*, factual and procedural history of case is complex, many issues must be covered, authorities are in conflict, public policy arguments require extensive discussion. If possible, document your experience in evaluating issues on appeal. See Cal Rules of Ct 8.204(c)(5).

SERVE AND FILE BRIEF

Serve

a. Serve copy on all parties;

b. Serve copy on clerk of superior court for delivery to trial judge (Cal Rules of Ct 8.212(c)(1)); and

c. Serve four hard copies or one electronic copy on supreme court. Cal Rules of Ct 8.212(c)(2).

File

File or deliver with a proof of service original and four copies to court of appeal. Cal Rules of Ct 8.44(b)(1). For requirements on appeal in the supreme court, see step 36, below.

NOTE

Do not forget to include with original brief proof of service of copies on opposing counsel, any agencies, *and other courts*. Cal Rules of Ct 8.212(c), 8.25, 8.29.

Further Research: See Cal Rules of Ct 8.25, 8.40, 8.44(b), 8.140, 8.204; Civ App Prac §11.34.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal/STEP 20. APPELLANT: FILE BRIEF OR APPLICATION FOR RELIEF IF YOU FAIL TO FILE OPENING BRIEF ON TIME

STEP 20. *APPELLANT*: FILE BRIEF OR APPLICATION FOR RELIEF IF YOU FAIL TO FILE OPENING BRIEF ON TIME

"GRACE" PERIOD IF YOU FAIL TO FILE BRIEF BY DEADLINE

If you fail to file your opening brief by the due date, the appellate court clerk will mail a notice that the court will dismiss appeal if you do not file the brief within **15 days** of the date of the notice. Cal Rules of Ct 8.220(a)(1).

FILE BRIEF OR APPLICATION

Within **15-day** deadline:

a. File brief (Cal Rules of Ct 8.212(a)); or

b. If you can show good cause for not filing brief in that time, file an application for extension of time to file brief. Cal Rules of Ct 8.220(d). See step 1Z, above.

Warning: If you are granted extension but fail to file brief within that extended time, court may dismiss appeal under Cal Rules of Ct 8.220(c) without further notice. Cal Rules of Ct 8.220(d).

Further Research: See Cal Rules of Ct 8.220; Civ App Prac §§11.20, 11.25, 12.66.

© The Regents of the University of California

After Filing Opening Brief

STEP 21. *RESPONDENT*: FILE RESPONDENT'S BRIEF

RESPONDENT'S DEADLINE

Respondent must file its brief within **30 days** after appellant files its opening brief. Cal Rules of Ct 8.212(a)(2).

STIPULATE OR APPLY TO EXTEND TIME

The rules that apply to stipulations or applications to extend time for opening briefs likewise apply to respondent's briefs. See step 17, above.

PREPARE BRIEF

Nearly all of the format, length, and content requirements for an opening brief detailed in the appellant's section (see step 19, above) apply to respondent's brief as well, with the exception of the statement of appealability. Some other differences include:

- a. If there is a cross-appeal, respondent states contentions as cross-appellant in separate section of this brief.
- b. Respondent's brief must have *yellow* cover. Cal Rules of Ct 8.40(b).

NOTE

Some attorneys prepare, file, and serve a separate opening brief on cross-appeal. See Cal Rules of Ct 8.200-8.204(a). Support any request to file an overlong respondent's brief with a declaration as in note in step 19, above, and include facts specific to respondent's brief, *e.g.*, that appellant's opening brief was overlong, or appellant's claims lack substantial evidence as basis for reversal but appellant failed to document all evidence supporting judgment, a task respondent now must do.

SERVE AND FILE BRIEF

Service and Filing Requirements

The requirements for filing and serving an appellant's opening brief also apply to the respondent's brief. See step 19, above.

Cross-Reference: For requirements on appeal in supreme court, see step 37, below.

NOTE

Do not forget to include, with original brief, proof of service of copies on opposing counsel and on *other courts*. See Cal Rules of Ct 8.25.

Further Research: See Cal Rules of Ct 8.25, 8.40, 8.44(b), 8.204, 8.212; Civ App Prac §§12.2, 13.1-13.10, 13.26.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Filing Opening Brief/STEP 22. APPELLANT: BENEFIT IF RESPONDENT FAILS TO FILE BRIEF ON TIME

STEP 22. *APPELLANT*: BENEFIT IF RESPONDENT FAILS TO FILE BRIEF ON TIME

RESPONDENT'S DEADLINE TO FILE BRIEF OR APPLICATION

Within **15 days** after date appellate court clerk mails notice that case will be submitted for decision based only on the record, appellant's opening brief, and oral argument by appellant, respondent must (Cal Rules of Ct 8.220(d)):

- a. File brief; or
- b. Apply for an extension of time to file brief, based on showing of good cause.

Warning: If you are granted extension but fail to file brief within that extended time, court may decide appeal based only on record, appellant's opening brief, and appellant's oral argument under Cal Rules of Ct 8.220(c) without further notice. Cal Rules of Ct 8.220(d).

EXTENSION UNNECESSARY

An extension is not necessary if a party can file its brief within the time set out in Cal Rules of Ct 8.220 as long as brief otherwise complies with rules. Cal Rules of Ct 8.212(b)(4).

EFFECT OF RESPONDENT'S FAILURE TO FILE

If respondent fails to file brief and has not obtained extension (see step 17, above), court may (Cal Rules of Ct 8.220(a)(2), (c), (d)):

- a. Accept as true the statement of facts in opening brief (see, *e.g.*, *Estate of Supeck* (1990) 225 CA3d 360, 363, 274 CR 706); or
- b. Submit case for decision unless counsel for appellant requests oral argument. See, *e.g.*, *Estate of Anastasio* (1989) 215 CA3d 486, 487 n1, 263 CR 622.

JUDGE'S PERSPECTIVE

If no respondent's brief is filed, the court will not permit oral argument on behalf of respondent.

Further Research: See Cal Rules of Ct 8.220(a)(2); Civ App Prac §13.8.

RELIEF FROM DEFAULT

Respondent may move for relief from a sanction imposed under Cal Rules of Ct 8.220(a)(2) by filing for relief under Cal Rules of Ct 8.60(d) on a showing of good cause.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Filing Opening Brief/STEP 23. APPELLANT: PREPARE, SERVE, AND FILE APPELLANT'S REPLY BRIEF

STEP 23. APPELLANT: PREPARE, SERVE, AND FILE APPELLANT'S REPLY BRIEF

DEADLINE TO FILE REPLY BRIEF

File and serve reply brief:

If No Cross-Appeal

Within **20 days** after last respondent's brief is filed, if there is no cross-appeal (Cal Rules of Ct 8.212(a)(3)); or

If Cross-Appeal

- a. Within **20 days** after second notice of appeal is filed, parties jointly, or separately if they cannot agree, submit proposed briefing sequence to court; and
- b. Reviewing court then orders briefing sequence and prescribes briefing periods consistent with Cal Rules of Ct 8.212(a). Cal Rules of Ct 8.216(a). On how to prepare brief, see below.

NOTE

Parties have responsibility to give their views on the most efficient briefing sequence to the court, which will decide the briefing sequence and periods, and then notify the parties of its decision.

EXTENSIONS OF TIME

By Stipulation

Parties can stipulate to extend time for filing brief for up to **60 days** (Cal Rules of Ct 8.212(b); see Cal Rules of Ct 8.216(a)(3)); court must approve additional time (see step 17, above):

- a. File stipulation with court; and
- b. File proof that you mailed a copy of stipulation to your client. Cal Rules of Ct 8.60(f).

By Court Order

If you are seeking an extension of time from the court, you must show good cause and that either:

- a. You were unable to obtain an extension by stipulation or it would have been futile to try (Cal Rules of Ct 8.212(b)(3)(A)); or
- b. The parties stipulated to the 60-day maximum but the applicant seeks a further extension. Cal Rules of Ct 8.212(b)(3)(B).

PREPARE BRIEF

- a. Party that appears as both appellant and respondent must combine its respondent's brief with its appellant's opening brief or its reply brief, if any, depending on which is appropriate under the briefing schedule ordered by court. Cal Rules of Ct 8.216(b)(1).
- b. Combined brief must address each appeal separately. Cal Rules of Ct 8.216(b)(2).
- c. Format requirements are similar to those for opening brief (see step 19, above), except that reply brief must have *tan* cover. Cal Rules of Ct 8.40(b).

NOTE

Reply brief must be limited to addressing only issues germane to party's own appeal. Cal Rules of Ct 8.216(b)(3). Do not use it to respond to points raised in another party's reply brief. See 2002 Advisory Committee Comment to Cal Rules of Ct 8.216.

SERVE AND FILE

Serve

- a. Serve copy of reply brief on all parties (Cal Rules of Ct 8.25(a));
- b. Serve copy on superior court clerk for delivery to trial judge (Cal Rules of Ct 8.212(c)(1)); and
- c. Serve one electronic copy or four paper copies on the supreme court. Cal Rules of Ct 8.212(c)(2).

File

File, with proof of service:

- a. Original and four copies in court of appeal (Cal Rules of Ct 8.44(b)(1)); and
- b. Proof of delivery of one electronic copy or four paper copies to the supreme court. Cal Rules of Ct 8.212(c)(2), 8.44(b)(1).

Cross-Reference: For requirements on appeal in supreme court, see step 38, below.

NOTE

Do not forget to include, with original brief, proof of service of copies on opposing counsel *and other courts*. See Cal Rules of Ct 8.25(a).

Further Research: See Cal Rules of Ct 8.212, 8.25, 8.44(b); Civ App Prac §§12.67-12.72, 12.76-12.78.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Filing Opening Brief/STEP 24. RESPONDENT: FILE REPLY BRIEF AS CROSS-APPELLANT

STEP 24. *RESPONDENT:* FILE REPLY BRIEF AS CROSS-APPELLANT

RESPONDENT'S DEADLINE

Follow the briefing sequence and periods ordered by the reviewing court. Cal Rules of Ct 8.216(a). Generally, the cross-appellant's reply brief is due **20 days** after filing of the appellant's reply brief/cross-respondent's brief. See step 23, above, for discussion of reply brief requirements in event of cross-appeal extensions of time. On stipulation to extend time to file brief, see step 17, above.

JUDGE'S PERSPECTIVE

Remember that the reviewing court may strike defective briefs, *e.g.*, overlong or otherwise in violation of format rules.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Filing Opening Brief/STEP 25. DETERMINE METHOD FOR OBTAINING, AND IF NECESSARY, REQUEST ORAL ARGUMENT

STEP 25. DETERMINE METHOD FOR OBTAINING, AND IF NECESSARY, REQUEST ORAL ARGUMENT

RIGHT TO ORAL ARGUMENT

Parties have a right to oral argument in any appeal considered on the merits and decided by written opinion, which right is implicitly grounded in Cal Const art VI, §3. *Moles v Regents of Univ. of Cal.* (1982) 32 C3d 867, 872, 187 CR 557. Parties may waive their right to oral argument in the appellate court. See, *e.g.*, 4th App Dist R 5; 6th App Dist IOPP §II(A)(3).

DETERMINE LOCAL PROCEDURE

Review local rules, policy memorandums, and Internal Operating Practices and Procedures (IOPP) of court to determine how to obtain oral argument. For example, in some courts, clerk will mail:

- a. Notice of date for oral argument, and you need take no further action (see, *e.g.*, 4th App Dist, Div 2, IOPP §VIII);
- b. Notice that requires you to request oral argument within a certain deadline (see, *e.g.*, 1st App Dist IOPP §B.3; 6th App Dist IOPP §II(A)(3)); or
- c. Questionnaire for you to complete and return:
 - (1) Stating:
 - (a) Whether you are willing to waive oral argument;
 - (b) Whether you request to appear in person at oral argument or consent to teleconference oral argument (see, *e.g.*, 5th App Dist R 4; 6th App Dist IOPP §II(A)(3)); and
 - (2) Including:
 - (a) Estimated time for oral argument; and
 - (b) Name of counsel who will appear for oral argument.

NOTE

Obtain a copy of the court's most recent Internal Operating Practices and Procedures by contacting the relevant court of appeal. Abbreviated versions are available online. See, *e.g.*, <http://www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict/iopp.htm>. The Civil and Criminal Rules volume of the annotated codes also contains the appellate and supreme court IOPPs.

IF NECESSARY, FILE AND SERVE REQUEST

File and serve a letter requesting oral argument as clerk's notice directs.

Deadline

Deadline to request oral argument varies from court to court, but clerk's notice specifies date, usually **10 days** after the date of notice. See sample clerk's notice, [Appendix F](#).

Note

This deadline is *not* extended by [CCP §1013\(a\)](#).

EFFECT OF FAILURE TO MAKE TIMELY REQUEST

If you fail to make a timely request as set forth in notice you received from clerk, you have likely *waived* right to oral argument.

Move for Relief

If you did *not* receive a notice and later discover that court deemed you to have waived oral argument:

- a. Move to have the matter reset for oral argument (see step 16, above); and
- b. Support motion with a declaration explaining that:
 - (1) You did not receive notice; and
 - (2) How you learned that oral argument had been deemed waived.

NOTIFY COURT IF YOU DO NOT WANT ORAL ARGUMENT

Promptly notify court if you later agree with opposing counsel that oral argument is unnecessary.

CLERK SENDS NOTICE

- a. At least **20 days** before argument date, clerk of court of appeal must send notice to all parties specifying time and place of oral argument. Cal Rules of Ct 8.256(b).
- b. For good cause, court may shorten notice period and clerk must notify parties by telephone or some other expeditious method. Cal Rules of Ct 8.256(b).

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Filing Opening Brief/STEP 26. IF APPLICABLE, RECEIVE TENTATIVE OPINION AND RECONFIRM OR WAIVE ORAL ARGUMENT

STEP 26. IF APPLICABLE, RECEIVE TENTATIVE OPINION AND RECONFIRM OR WAIVE ORAL ARGUMENT

WHEN APPLICABLE

At the present time, the only court to issue tentative opinions is the Fourth Appellate District, Division 2.

CONTENTS OF OPINION

Tentative opinion will set forth, in substantially the same form as final opinion, what appellate panel believes are:

- a. Correct facts;
- b. Dispositive legal issues; and
- c. Appropriate legal analysis.

JUDGE'S PERSPECTIVE

Concerning the facts as presented in the tentative opinion, be prepared to either:

- Stipulate, before you begin argument, that the facts stated are correct and no material facts were omitted; or
- Point out to the court how the facts stated are incorrect, or that facts material to the dispositive issues have been omitted from the tentative opinion, with appropriate citations to the record.

RECONFIRM OR WAIVE ORAL ARGUMENT

Notice accompanying tentative opinion will tell you whether panel believes that oral argument will be helpful:

- a. If notice reminds you that argument is limited to 15 minutes per party, you do not need to take any further action;
- b. If notice states that court believes that oral argument would not significantly aid its decision process, *promptly* either:
 - (1) Waive oral argument; or
 - (2) Telephone both court clerk and opposing counsel to confirm that you will appear for oral argument.

Deadline

Act to waive or confirm oral argument within deadline set forth in notice.

JUDGE'S PERSPECTIVE

The tentative opinion procedure was designed to help counsel focus and limit oral argument.

Use the tentative opinion as a basis for your oral argument, but do not neglect to prepare to address other issues you may have raised in your brief that were not treated as major issues in the tentative opinion.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Filing Opening Brief/STEP 27. PREPARE AND PRESENT ORAL ARGUMENT

STEP 27. PREPARE AND PRESENT ORAL ARGUMENT

ANTICIPATE TIME LIMITS ON ARGUMENT

- a. Determine whether district imposes any limits on the length of your oral argument (*e.g.*, 15 minutes in Third District):
 - (1) See local policy memoranda for each district and division;
 - (2) Review notice of oral argument sent by court clerk.
- b. If no limit is set by court, prepare to argue for no more than 30 minutes (preferably less). Cal Rules of Ct 8.256(c)(2).

DETERMINE IF YOU WANT ANY EXHIBITS

If you want to use any exhibits or affidavits during oral argument:

- a. Serve and file notice in superior court so that it can transmit exhibits to the reviewing court within **10 days** after the last respondent's or cross-respondent's brief is filed or could be filed under Cal Rules of Ct 8.220. Cal Rules of Ct 8.224(a)(1).
- b. If another party wants additional exhibits transmitted, within **10 days** after the first notice specified above, serve and file notice for additional exhibits. Cal Rules of Ct 8.224(a)(2).
- c. You must serve a copy of the notice on the reviewing court. Cal Rules of Ct 8.224(a)(3).

UPDATE YOUR RESEARCH

- a. Ascertain whether any new authorities affecting your case have appeared since briefs were filed.
- b. Check local rules and procedures to determine if you must notify court and opposing counsel of them before oral argument; better practice is to give such notice whether or not rule requires it.

JUDGE'S PERSPECTIVE

When you arrive at the appellate court, check in with the clerk and give the clerk copies of any new authority on which you intend to rely, *e.g.*, opinions that have been filed between the filing of your last brief and the date of oral argument. Provide enough copies for each justice. Be sure to give a copy to opposing counsel, too.

Recognize that if you could have cited these authorities in your brief, the court will probably *not* consider them.

NOTE

Check local rules and practice, as well as clerk's notice of oral argument (see step 25, above) for possible timing and other requirements for filing new authorities.

RECOGNIZE ORDER OF ARGUMENT

- a. Usually appellant argues first and may also argue last by reserving time for rebuttal, *i.e.*, appellant opens and closes. Cal Rules of Ct 8.256(c)(1).
- b. If court issued a tentative opinion in appellant's favor, court may allow respondent to argue first (but in that case would not usually allow respondent to also argue last).
- c. Only one counsel for each separately represented party may present argument on appeal. Cal Rules of Ct 8.256(c)(3).

JUDGE'S PERSPECTIVE

When your case is called, state:

- Your name;
- Name of party for whom you are appearing;
- Various capacities of your client, *e.g.*, defendant and cross-appellant; and
- Your estimate of the time you expect to take for:
- Both your opening and closing argument, if the appellant; or
- Responding, if respondent.

Bring the record in your case with you to the counsel table, and be prepared to refer to the record, *e.g.*, a justice may question you about a portion of the record or ask you where in the record a particular fact may be found.

When responding to questions from the bench, be polite, but do not forget your role as an advocate for your client's position. Remember to answer the questions in a straightforward and honest manner.

You are not required to accept as true any premise implied by or explicitly stated in a leading question simply because the person propounding the question is a justice.

NOTE

Judges of the appellate and supreme court are "Justices," and judges of the superior court appellate panel are "Judges"; it may be best to address either as "Your Honor," rather than by title and name.

IF MORE THAN ONE ATTORNEY FOR PARTY

Recognize that ordinarily only one counsel may argue for each separately represented party, except:

- If the court orders otherwise, you may choose that both appear by having one deliver opening argument and the other closing argument (Cal Rules of Ct 8.256(c)(3)); or
- Court may permit you to share your time with counsel for amicus curiae (only parties are allowed time to argue), but make sure that this is acceptable to court beforehand by filing an application under Cal Rules of Ct 8.50. Note, court may also expand time. Cal Rules of Ct 8.256(c)(2). See step 17, above.

JUDGE'S PERSPECTIVE

In a case of particularly broad public importance, the court may sometimes grant amicus curiae separate time for argument, if you or the amicus make application for that time.

CONSIDER SUPPLEMENTAL BRIEFING

- Court may request that you submit supplemental briefs to cover an issue not covered in the existing brief.
- You may ask court to allow supplemental briefs if you believe that your brief did not adequately cover an issue.

Further Research: See Cal Rules of Ct 8.224, 8.256; Civ App Prac, chap 16. See Appendix G for oral argument strategies.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Filing Opening Brief/STEP 28. SUBMIT CASE AND RECEIVE DECISION

STEP 28. SUBMIT CASE AND RECEIVE DECISION

WHEN CASE SUBMITTED

A case is submitted in a court of appeal when (Cal Rules of Ct 8.256(d)(1)):

- a. Court has heard oral argument; or
- b. Parties waive oral argument; and
- c. Time for filing all briefs and papers, including supplemental briefs, has expired.

NOTE

The court may vacate submission only by order stating the reasons and specifying timetable for resubmission. Cal Rules of Ct 8.256(e).

WHEN COURT FILES DECISION

- a. Court files its decision no later than **90 days** after submission of case (Cal Const art VI, §19 (judge will not receive salary if matter not decided for more than **90 days**); Govt C §68210); and
- b. Clerk mails copies to parties and when relevant to lower court or tribunal. Cal Rules of Ct 8.264(a)(1).

WHEN DECISION IS FINAL

For purposes of appeals and review of decision:

Decision Not Modified

Decision is final as to court of appeal **30 days** after it is filed. Cal Rules of Ct 8.264(b)(1).

Warning: Time decision becomes final for purposes of filing a petition for review with the supreme court is *not* extended if the 30th day after decision was filed is a Saturday, Sunday, holiday, or any other day that clerk's office is closed. Cal Rules of Ct 8.500(e)(1).

Decision Modified But Not Judgment

A decision that court of appeal later modifies *without* changing the judgment is final **30 days** after original decision was filed (not after the modification). Cal Rules of Ct 8.264(c)(2).

Judgment Modified or Opinion Certified for Publication

If court modifies its decision *and* modifies the judgment, it is final **30 days** after date of modification. Cal Rules of Ct 8.264(c)(2). Likewise, if the court decides after it initially issues a nonpublished opinion that the opinion should be published, it is final 30 days after the date the opinion is ordered published. Cal Rules of Ct 8.264(b)(5).

NOTE

Reviewing court may modify its decision until decision is final in that court. If clerk's office is closed on date of finality, court may modify decision on next day clerk's office is open. Cal Rules of Ct 8.264(c)(1).

Conditional Decision Reversing Judgment

Court may provide in the alternative that "judgment be reversed and new trial granted" *or* "judgment be affirmed on condition" that one of the parties consents to modifying amount of judgment, in which case:

- a. Decision *affirming* judgment is final **30 days** after date of consent.

b. Decision *reversing* judgment is final **30 days** after it is filed, *unless* (Cal Rules of Ct 8.264(d)):

- (1) Respondent, the party in whose favor judgment was rendered, consents to modifying judgment by remission (reduction) of part of judgment (*e.g.*, party agrees to reduction in punitive damages award);
- (2) Appellant, the party against whom judgment was rendered, consents to modifying judgment by an addition to judgment (*e.g.*, party agrees to increase in damages); or
- (3) Affected party obtains:
 - (a) Rehearing (see steps 29-31, below); or
 - (b) Review by California Supreme Court. See steps 32-41, below.

NOTE

Two copies of written consent must be filed in appellate court within **30 days** after opinion is filed. Cal Rules of Ct 8.264(d).

SUPREME COURT MAY TRANSFER

Before decision is final as to court of appeal, California Supreme Court may transfer case to itself on its own motion or on petition of a party. Cal Rules of Ct 8.552(a)-(b).

Further Research: See Civ App Prac §§17.1-17.3, 17.7, 17.25, 17.34, 17.42-17.44.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 29. IF APPROPRIATE, PETITION COURT OF APPEAL FOR REHEARING

When Seeking Rehearing or Review by Supreme Court

STEP 29. IF APPROPRIATE, PETITION COURT OF APPEAL FOR REHEARING

WHO MAY REQUEST

Party may petition for rehearing or court may order on its own motion. Cal Rules of Ct 8.268(a)(1).

WHEN APPROPRIATE

Petition for rehearing is appropriate when:

- a. Opinion contains a *material* misstatement or omission of a legal issue or material fact, *i.e.*, one that affects court's analysis.

NOTE

If you intend to petition the supreme court for review on these issues or facts, you *must* seek rehearing so that the court may correct the error. See Cal Rules of Ct 8.500(c)(2). See also *Marriage of Goddard* (2004) 33 C4th 49, 53 n2, 14 CR3d 50; *People v Alice* (2007) 41 C4th 668, 673, 61 CR3d 648 (defendant properly petitioned for rehearing when court based its opinion on an issue not proposed or briefed by any party, or not fairly included within the issues raised, and failed to provide the parties an opportunity for supplemental briefing on the matter, citing Govt C §68081). Note, however, that a petition for rehearing is generally not required when court of appeal relied on case authority not cited by either party. Nonetheless, if the opinion applied that case authority incorrectly, a petition for rehearing might convince the court of appeal to revisit the issue.

- b. Opinion fails to decide all issues raised, *e.g.*, entitlement to attorney fees or sanctions.
- c. Disposition of case is ambiguous or erroneous.
- d. In its opinion, court did not consider or address recent relevant and dispositive authority.
- e. Successful party, though pleased with disposition, wants to ask court via a petition for rehearing to simply modify opinion to correct errors and/or ambiguities rather than granting rehearing.

NOTE

Either party may have a reason to petition for rehearing.

JUDGE'S PERSPECTIVE

You *do* want to petition for rehearing if you believe that the court has:

- Misinterpreted the facts; or
- Made an apparent error of law.

You probably *do not* want to petition for rehearing if you disagree with the appellate court's:

- Legal analysis; or
- Application of public policy.

A petition for rehearing that points out either weaknesses in analysis or contrary public policy simply gives the appellate court an opportunity to strengthen the very same opinion that you will soon be asking the supreme court to reverse.

DEADLINE TO FILE AND SERVE PETITION

File and serve petition within **15 days** after (Cal Rules of Ct 8.268(b)(1)):

- a. Decision is filed;
- b. Publication order restarting finality period under Cal Rules of Ct 8.264(b)(5);
- c. Modification order changing judgment under Cal Rules of Ct 8.264(c)(2); or
- d. Filing of consent under Cal Rules of Ct 8.264(d).

NOTE

Rehearing may be granted only *before* decision becomes final, *i.e.*, within **30-day** period after decision is filed with appellate clerk. Cal Rules of Ct 8.268(a)(2).

RELIEF FROM DEFAULT

Before decision is final, presiding justice may relieve party from failure to file timely petition for good cause shown. Cal Rules of Ct 8.268(b)(4).

PREPARE PETITION

Grounds

- a. Include in petition any issue or material fact that court misstated or omitted from opinion; otherwise, the supreme court is unlikely to grant review on that ground.
- b. Format requirements are similar to those for opening briefs (see step 19, above), except that cover of petition must be *orange*. Cal Rules of Ct 8.40(b).

NOTE

Focus of petition should be to demonstrate court's error in reaching decision. See, *e.g.*, 1st App Dist IOPP §B.5. Do not simply reargue points on appeal.

Format

Petition must conform to format requirements of Cal Rules of Ct 8.204. Cal Rules of Ct 8.268(b)(3). See Format of Brief in step 19, above, for discussion of format requirements.

SERVE AND FILE PETITION

If you petition court of appeal for a rehearing:

Serve

Serve:

- a. Copy on all parties (Cal Rules of Ct 8.25(a)(1));
- b. One electronic copy or four paper copies on supreme court (Cal Rules of Ct 8.212(c)(2), 2.250; see also Advisory Committee Comment to Cal Rules of Ct 8.212(c)); and
- c. Copy on superior court clerk for delivery to trial judge. Cal Rules of Ct 8.212(c)(1).

File

File with proof of service, on all parties, original and four copies in court of appeal. Cal Rules of Ct 8.25, 8.44(b)(3).

NOTE

A petition for rehearing is considered a brief for purposes of service. See Cal Rules of Ct 8.25.

Further Research: See Cal Rules of Ct 8.212; Civ App Prac §§19.1-19.20.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 30. OPPOSING PARTY: FILE AND SERVE ANSWER TO PETITION FOR REHEARING

STEP 30. *OPPOSING PARTY*: FILE AND SERVE ANSWER TO PETITION FOR REHEARING

NO ANSWER WITHOUT REQUEST

Party may *not* file answer to petition for rehearing unless court requests one. Cal Rules of Ct 8.268(b)(2). Clerk will:

- a. Send copy of order requesting answer; and
- b. Immediately notify parties by telephone or other expeditious manner.

DEADLINE

Within **8 days** of a court order requesting an answer to petition for rehearing, file and serve that answer. Cal Rules of Ct 8.268(b)(2).

RELIEF FROM DEFAULT

Before decision is final, presiding justice may relieve party from failure to file timely answer for good cause shown. Cal Rules of Ct 8.268(b)(4).

PREPARE ANSWER

Contents

Respond directly to points raised in petition and rebut as concisely as possible.

Cover

Cover must be *blue*. Cal Rules of Ct 8.40(b).

Format

Petition must conform to format requirements of Cal Rules of Ct 8.204. Cal Rules of Ct 8.268(b)(3). See Format of Brief in step 19, above, for discussion of format requirements.

SERVE AND FILE ANSWER

Serve

Serve:

- a. Copy on all parties (Cal Rules of Ct 8.25(a)(1));
- b. One electronic copy or four paper copies on supreme court (Cal Rules of Ct 8.212(c)(2), 2.250; see also Advisory Committee Comment to Cal Rules of Ct 8.212(c)); and
- c. Copy on superior court clerk for delivery to trial judge. Cal Rules of Ct 8.212(c)(1).

File

File, with proof of service, original and four copies in court of appeal. Cal Rules of Ct 8.44(b)(3).

NOTE

An answer to a petition for rehearing is considered a brief for purposes of service. Cal Rules of Ct 8.25.

Further Research: See Civ App Prac §§19.1-19.26.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 31. ANTICIPATE COURT OF APPEAL ACTION (OR INACTION) ON PETITION FOR REHEARING

STEP 31. ANTICIPATE COURT OF APPEAL ACTION (OR INACTION) ON PETITION FOR REHEARING

REHEARING GRANTED

Within **30 days** after decision is filed (*i.e.*, the time court's decision becomes final), court may grant petition for rehearing. Cal Rules of Ct 8.268(c). See step 28, above.

NOTE

Court can order rehearing on its own motion at any time until decision is final. Cal Rules of Ct 8.268(a).

REHEARING DENIED

Court denies rehearing by *either* (Cal Rules of Ct 8.264(b)(4), 8.268(c)):

- a. Making an order denying petition; or
- b. Taking no action before decision becomes final. See step 28, above, for when decision becomes final.

COURT MAY MODIFY OPINION AND/OR JUDGMENT

Court may deny rehearing but modify judgment. See step 28, above.

NOTE

It is important to calendar the date on which the court of appeal opinion becomes final, as well as the deadline for filing the Petition for Review.

Further Research: See Cal Rules of Ct 8.264, 8.268; Civ App Prac §§11.27-11.30, 19.31-19.35.

EFFECT OF GRANT

Order granting rehearing (Cal Rules of Ct 8.268(d)):

- a. Vacates decision and any opinion filed; and
- b. Sets cause at large in court of appeal.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 32. IF APPROPRIATE, PETITION CALIFORNIA SUPREME COURT FOR REVIEW

STEP 32. IF APPROPRIATE, PETITION CALIFORNIA SUPREME COURT FOR REVIEW

WHEN APPROPRIATE

Petition supreme court for review of issues you raised on appeal when (Cal Rules of Ct 8.500(b)):

- a. Review is necessary to secure uniformity of decision (Cal Rules of Ct 8.500(b)(1));
- b. Review is necessary to settle an important question of law (Cal Rules of Ct 8.500(b)(1));
- c. Court of appeal lacked jurisdiction (Cal Rules of Ct 8.500(b)(2)); or
- d. Court of appeal decision lacks concurrence of required majority of qualified justices, *e.g.*, if one was disqualified. Cal Rules of Ct 8.500(b)(3).

NOTE

Supreme court may also order review of court of appeal decision to transfer matter to court of appeal for proceedings in accordance with court's order. Cal Rules of Ct 8.500(b)(4).

LIMITS OF REVIEW

As a matter of policy, supreme court will normally:

- a. Not consider issues not timely raised in court of appeal. Cal Rules of Ct 8.500(c)(1).
- b. Accept court of appeal's statement of facts and issues unless party raised errors in petition for rehearing. Cal Rules of Ct 8.500(c)(2).

DEADLINE TO PETITION

- a. File petition within **10 days** after court of appeal decision is *final* as to that court. Cal Rules of Ct 8.500(e)(1).
- b. Time within which decision becomes final is *not* extended if 30th day after decision was filed is a Saturday, Sunday, holiday, or another day that clerk's office is closed. Cal Rules of Ct 8.500(e)(1).

NOTE

Your petition for rehearing does not extend this deadline, because filing a petition for rehearing does not toll the time when the decision becomes final. See Cal Rules of Ct 8.264(b)(1), 8.268(c).

No Extension

Time to file petition for review may not be extended, although a party may be relieved from failure to file timely petition if court's time to order review on own motion has not expired. Cal Rules of Ct 8.500(e)(2).

Early Filing

If petition for review is presented for filing before court of appeal decision is final, supreme court clerk must accept petition and file it on day after decision becomes final. Cal Rules of Ct 8.500(e)(3).

PREPARE PETITION

Petition is similar to opening brief in court of appeals (see step 19, above), except:

Statement of Issues

At beginning of body of petition, provide a statement of issues you are asking court to review that is (Cal Rules of Ct

8.504(b)(1):

- a. Concise, without unnecessary detail;
- b. Expressed in terms and circumstances of the case;
- c. Not argumentative or repetitious; and
- d. Inclusive of *all* issues you want supreme court to consider.

Grounds for Review

State why supreme court should review your case based on criteria in Cal Rules of Ct 8.500(b), 8.504(b)(2), 8.516.

Issues Are Proper for Review

Show in your petition that issues you raise are appropriate for review under Cal Rules of Ct 8.500(b)-(c) (Cal Rules of Ct 8.504(b)(2)-(3)), *e.g.*:

- a. Briefs filed in court of appeal raised the issues (see step 19, above);
- b. Court of appeal in its opinion either:
 - (1) Addressed the issues; or
 - (2) If court of appeal omitted or misstated issues, a petition for rehearing called this omission or misstatement to court of appeal's attention. Cal Rules of Ct 8.500(c)(1)-(2), 8.504(b)(3).

Further Research: See Conservatorship of Susan T. (1994) 8 C4th 1005, 1013, 36 CR2d 40.

Copy of Decision

Petition must contain or be accompanied by a copy of court of appeal opinion showing date it was filed, *i.e.*, attach opinion as an appendix to petition. Include any publication or modification order, or any order denying petition for rehearing. Cal Rules of Ct 8.504(b)(4).

Legal Authority

Set forth all your contentions and legal arguments for why court should grant review, supported by legal authority. Cal Rules of Ct 8.204(a)(1), 8.504(a).

FORMAT OF PETITION

- a. *Format* requirements (not content) are similar to opening brief in court of appeal (see step 19, above), except that cover of petition must be *white*. Cal Rules of Ct 8.40(b).
- b. Petition should be a single document, including legal authority in support of request for review.
- c. Exhibits or appendixes are limited to (Cal Rules of Ct 8.504(e)):
 - (1) Opinion of court of appeal (Cal Rules of Ct 8.500(b)(4));
 - (2) Any trial court opinion or any order from which you seek relief (Cal Rules of Ct 8.504(e)(1)(A));
 - (3) Any evidentiary exhibit or court order you believe is unusually significant (Cal Rules of Ct 8.504(e)(1)(B));
 - (4) Copies of statutes, rules, or other authorities that are not easily accessible (Cal Rules of Ct 8.504(e)(1)(C)); and
 - (5) Any material you want to incorporate by reference as permitted in Cal Rules of Ct 8.504(e)(3), such as a petition, answer, and reply filed by another party in the same case or a petition, answer, and reply filed in a similar case or on similar issues that is pending review or for which review has been granted.

NOTE

Items (2)-(4) above must not exceed 10 pages total. Cal Rules of Ct 8.504(e)(2).

d. Title of case and designation of parties on cover must be identical to title and designation in court of appeal opinion or order that party wants reviewed. Cal Rules of Ct 8.504(b)(5).

MAXIMUM LENGTH

Exclusive of court of appeal opinion, index, attachments, word count certificate, and table of authorities, limit petition to (Cal Rules of Ct 8.500(d)):

- a. 8400 words if produced by computer; or
- b. 30 pages, if typewritten.

NOTE

Chief Justice may permit a longer petition or attachment on application and for good cause. Cal Rules of Ct 8.500(d)(4).

SERVE AND FILE PETITION

Serve

Serve a copy on:

- a. Clerks of the court of appeal and superior court (Cal Rules of Ct 8.500(f)(1));
- b. All parties (see Cal Rules of Ct 8.500(e)(1)); and
- c. A public officer or agency, when required by statute or Cal Rules of Ct 8.29. Cal Rules of Ct 8.500(f)(2).

File

File in supreme court, with proof of service of other copies, original *plus* 13 copies. Cal Rules of Ct 8.44(a)(1), 8.25(b).

NOTE

The supreme court clerk must file the petition even if the proof of service is defective. Petitioner has **5 days** after clerk gives notice of defect to file corrected proof of service, or court may strike petition or impose lesser sanction. Cal Rules of Ct 8.500(f)(3).

Further Research: See Cal Rules of Ct 8.500, 8.504, 8.516(a), 8.25; Civ App Prac §§22.3-22.39.

PAY FILING FEES

Pay fees (totaling \$590) associated with filing petition for review:

- a. Filing fee of \$420 (Govt C §68927); and
- b. Fee of \$170 for deposit in Appellate Court Trust Fund. Govt C §§68926.1(b), 68933.

NOTE

If possible, enlist amicus support for your client's position and have any amicus file letter briefs in support of the petition for review. Cal Rules of Ct 8.500(g). This may help convince the court that the issues presented in the petition are of statewide concern, rather than just limited to your case.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 33. OPPOSING PARTY: FILE AND SERVE ANSWER TO PETITION FOR SUPREME COURT REVIEW

STEP 33. OPPOSING PARTY: FILE AND SERVE ANSWER TO PETITION FOR SUPREME COURT REVIEW

OPPOSING PARTY'S DEADLINE

Within **20 days** after petition for review is filed, file and serve answer to petition. Cal Rules of Ct 8.500(e)(4).

PREPARE ANSWER

Answer is similar to respondent's brief (see step 21, above), except:

Statement of Issues

At beginning of body of answer to petition, provide a statement of *additional* issues (if any) to be considered if court grants review of issues in petition (Cal Rules of Ct 8.204(a)(1)); make sure statement of issues is (Cal Rules of Ct 8.504(c)):

- a. Concise, without unnecessary detail;
- b. Expressed in terms and circumstances of the case; and
- c. Not argumentative or repetitious.

Contentions

Set forth all contentions in opposition to petition and ask for review of any additional issues. Cal Rules of Ct 8.204(a)(1), 8.500(a)(2), 8.504(c).

FORMAT REQUIREMENTS

Format requirements are similar to those for opening briefs in court of appeal (see step 19, above), except:

- a. Cover of answer must be *blue* (Cal Rules of Ct 8.40(b)); and
- b. Exhibits and appendixes are limited, as they are for the petition. See step 32, above; Cal Rules of Ct 8.504(e).

MAXIMUM LENGTH

Exclusive of index, attachments, word count certificate, and table of authorities, limit answer to (Cal Rules of Ct 8.504(d)):

- a. 8400 words if produced by computer; or
- b. 30 pages, if typed.

NOTE

Chief Justice may permit a longer answer or attachment on application and for good cause. Cal Rules of Ct 8.504(d)(4).

SERVE AND FILE ANSWER

Serve

Serve a copy of answer on (Cal Rules of Ct 8.25(a)-(b)):

- a. Clerks of court of appeal and superior court as a courtesy (see Cal Rules of Ct 8.500(f)(1));
- b. All parties (see Cal Rules of Ct 8.500(e)(4)); and
- c. A public officer or agency, when required by statute or Cal Rules of Ct 8.29. Cal Rules of Ct 8.500(f)(2).

File

File in supreme court, with proof of service of other copies original *plus* 13 copies. Cal Rules of Ct 8.44(a), 8.25(b).

Further Research: See Cal Rules of Ct 8.500, 8.504, 8.512, 8.516(a), 8.25; Civ App Prac §§22.40-22.44.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 34. PETITIONER: FILE AND SERVE REPLY TO ANSWER TO PETITION FOR SUPREME COURT REVIEW

STEP 34. *PETITIONER*: FILE AND SERVE REPLY TO ANSWER TO PETITION FOR SUPREME COURT REVIEW

DEADLINE FOR REPLY

File reply within **10 days** after answer is filed. Cal Rules of Ct 8.500(e)(5).

FORMAT

Format requirements are similar to those for opening briefs in court of appeal (see step 19, above), except that cover of reply must be *white*. Cal Rules of Ct 8.40(b).

MAXIMUM LENGTH

Exclusive of court of appeal opinion, index, attachments, word count certificate, and table of authorities, limit your reply to (Cal Rules of Ct 8.504(d)(1), (2)):

- a. 4200 words if produced by computer; or
- b. 15 pages, if typed.

NOTE

Chief Justice may permit a longer reply on application and for good cause. Cal Rules of Ct 8.504(d)(4).

SERVE AND FILE REPLY

Serve

Serve (Cal Rules of Ct 8.25(a)):

- a. Clerks of court of appeal and superior court as a courtesy (see Cal Rules of Ct 8.500(f)(1));
- b. All parties (see Cal Rules of Ct 8.500(e)(4)); and
- c. A public officer or agency, when required by statute or Cal Rules of Ct 8.29. Cal Rules of Ct 8.500(f)(2).

File

File in supreme court, with proof of service of other copies, original *plus* 13 copies. Cal Rules of Ct 8.44(a)(1), 8.25(b).

Further Research: See Cal Rules of Ct 8.500, 8.504, 8.25; Civ App Prac §§22.45-22.46.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 35. ANTICIPATE SUPREME COURT ACTION (OR INACTION) ON REVIEW

STEP 35. ANTICIPATE SUPREME COURT ACTION (OR INACTION) ON REVIEW

DEADLINE FOR COURT TO ACT

Supreme court may grant review by an order within:

- a. **60 days** after filing of last petition for review (Cal Rules of Ct 8.512(b)(1)); see 2004 Advisory Committee Comment to Cal Rules of Ct 8.512(b)); or
- b. **30 days** after court of appeal decision is final as to that court, if no petition for review was filed, *i.e.*, if court acts on its own motion. Cal Rules of Ct 8.512(c)(1).

If Time Extended

Supreme court may extend its time to grant review for up to an additional:

- a. **30 days** after last petition was filed (Cal Rules of Ct 8.512(b)(1)); or
- b. **60 days** if no petition was filed, *i.e.*, if court acts on its own motion. Cal Rules of Ct 8.512(c)(1).

HOW COURT GRANTS REVIEW

Supreme court may grant review of court of appeal decision by (Cal Rules of Ct 8.512(d)(1)):

- a. At least four justices signing an order granting review; and
- b. Filing order with clerk.

HOW REVIEW IS DENIED

Supreme court may deny review by:

- a. Chief Justice signing an order (Cal Rules of Ct 8.512(d)(1)) (order is final when it is filed (Cal Rules of Ct 8.532(b)(2)); or
- b. Taking no action within time specified to act to grant review on its own motion or on petition. Cal Rules of Ct 8.512(b)(2).

AFTER ORDER GRANTING REVIEW

Supreme court may:

- a. Choose to review fewer than all issues you raised or may review additional issues (Cal Rules of Ct 8.516(a)(2)) by specifying the issues you should argue and brief (Cal Rules of Ct 8.516(a)(1)).

NOTE

If the court specifies the issues you should brief and argue, you must confine briefs on the merits to those issues. See Cal Rules of Ct 8.520(b)(3).

- b. "Grant and hold," *i.e.*, defer further action on case (*e.g.*, briefing and/or review) until court decides another pending case. Cal Rules of Ct 8.512(d)(2).

Further Research: See Cal Rules of Ct 8.504, 8.512, 8.520, 8.528, 8.532; Civ App Prac §§22.47-22.54.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 36. PETITIONER: WHEN REVIEW IS GRANTED, FILE BRIEFS ON MERITS IN SUPREME COURT

STEP 36. *PETITIONER*: WHEN REVIEW IS GRANTED, FILE BRIEFS ON MERITS IN SUPREME COURT

DETERMINE WHICH BRIEF TO FILE

You may choose to file either (Cal Rules of Ct 8.520(a)(1)):

- a. Briefs you filed in court of appeal with a notice of intention to rely on those briefs; or
- b. A new brief on the merits.

NOTE

A new brief on the merits is almost always filed because the petitioning party will likely seek to address the holding of the court of appeal, which could not have been known when the court of appeal briefs were filed. The supreme court may *request* additional briefs on all or any issues, whether or not you choose to file a new brief. Cal Rules of Ct 8.520(e). Do not file any briefs if the supreme court granted review on a "grant and hold" basis. See Cal Rules of Ct 8.512(d)(2).

DEADLINES

You must file the new opening brief on the merits (or a notice of intent to rely on court of appeal brief) within **30 days** after filing of order granting review. Cal Rules of Ct 8.520(a)(1).

NOTE

Only the Chief Justice of the California Supreme Court can extend the time for filing petitioner's brief; parties cannot stipulate to extend time to file. See Cal Rules of Ct 8.520(a)(5).

RELY ON COURT OF APPEAL BRIEF

SERVE AND FILE NOTICE AND BRIEF

Serve

Serve notice of intent to rely on court of appeal brief and copy of that brief on all parties. Cal Rules of Ct 8.520(a)(4), 8.25(a).

File

File in supreme court, with proof of service of other copies, original *plus* 13 copies. Cal Rules of Ct 8.44(a)(1), 8.25(b).

FILE NEW opening BRIEF on the merits

PREPARE NEW BRIEF

State Issues

At beginning of opening brief on the merits (Cal Rules of Ct 8.520(b)(2)):

- a. Quote supreme court order specifying issues, if any; or
- b. Quote statement of issues set forth in petition for review and in answer to petition. See steps 32-33, above.

Legal Argument

Argue only issues (Cal Rules of Ct 8.520(b)(2)-(3)):

- a. Specified by supreme court (Cal Rules of Ct 8.516(a), 8.520(b)(2)(A)); or
- b. Set forth in petition and answer (Cal Rules of Ct 8.520(b)(2)(B)); and
- c. Issues fairly included in a and b, above. Cal Rules of Ct 8.520(b)(3).

FORMAT

Format requirements are similar to those for opening briefs in court of appeal (see step 19, above), except that cover of brief must be *white*. Cal Rules of Ct 8.40(b).

MAXIMUM LENGTH

Limit your brief to (Cal Rules of Ct 8.520(c)):

- a. 14,000 words if produced by computer; or
- b. 50 pages if typewritten.

SERVE AND FILE BRIEF

Serve

Serve a copy of brief on all parties. Cal Rules of Ct 8.520(a).

File

File in supreme court, with proof of service of other copies, original *plus* 13 copies. Cal Rules of Ct 8.44(a)(1), 8.25(b).

Further Research: See Cal Rules of Ct 8.512, 8.520, 8.25.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 37. OPPOSING PARTY: FILE AND SERVE BRIEF IN SUPREME COURT

STEP 37. OPPOSING PARTY: FILE AND SERVE BRIEF IN SUPREME COURT

OPPOSING PARTY MAY CHOOSE BRIEF

Opposing party may choose to file either (Cal Rules of Ct 8.520(a)(2)):

- a. Brief filed in court of appeal with a notice of intention to rely on that brief; or
- b. New brief on the merits.

NOTE

Like the petitioner in step 36, above, the opposing party almost always files a new brief on the merits. The petitioning party will likely seek to address the holding of the court of appeal, which could not have been known when the court of appeal briefs were filed.

OPPOSING PARTY'S DEADLINES

File answer brief on the merits (or notice of intent to reply on court of appeal brief) within **30 days** after filing of opening brief on the merits or notice of intent to rely on court of appeal briefs. Cal Rules of Ct 8.520(a)(2).

NOTE

Only the Chief Justice can extend the time for filing the answer brief or its equivalent; parties cannot stipulate to extend time to file. See Cal Rules of Ct 8.520(a)(5).

PREPARE BRIEF

Opposing party should include argument on the issues that petition and answer present.

Format

Format requirements for a new brief on the merits in supreme court are similar to those for opening briefs in court of appeal (see step 19, above), except that cover of respondent's brief must be *blue*. Cal Rules of Ct 8.40(b)-(c).

Maximum Length

Opposing party's brief cannot exceed (Cal Rules of Ct 8.520(c)(1)):

- a. 14,000 words if produced by computer; or
- b. 50 pages if typewritten.

SERVE AND FILE

Depending on brief that opposing party chooses to use:

Brief Filed in Court of Appeal

- a. Serve notice of intent to rely on court of appeal brief and serve copy of brief on all parties. Cal Rules of Ct 8.520(a)(2), (4), 8.25(a).
- b. File in supreme court, with proof of service of other copies, original *plus* 13 copies. Cal Rules of Ct 8.44(a)(1), 8.25(b).

New Brief

- a. Serve copy of new brief on the merits of the issues on all parties. Cal Rules of Ct 8.520(a)(2), 8.25.

b. File in supreme court, with proof of service of other copies, original *plus* 13 copies. Cal Rules of Ct 8.44(a)(1), 8.25(b).

Further Research: See Cal Rules of Ct 8.520, 8.25.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 38. PETITIONER: IF APPROPRIATE, FILE AND SERVE REPLY BRIEF IN SUPREME COURT

STEP 38. *PETITIONER*: IF APPROPRIATE, FILE AND SERVE REPLY BRIEF IN SUPREME COURT

DEADLINE TO FILE REPLY BRIEF

File reply brief within **20 days** after answer brief on the merits or its equivalent is filed. Cal Rules of Ct 8.520(a)(3).

PREPARE BRIEF

Format

Format requirements are similar to those for opening briefs in court of appeal (see step 19, above), except that cover of reply brief must be *white*. Cal Rules of Ct 8.40(b).

Maximum Length

Reply brief cannot exceed (Cal Rules of Ct 8.520(c)):

- a. 4200 words if produced by computer; or
- b. 15 pages if typewritten.

SERVE AND FILE

Serve

Serve copy of reply brief on all parties. Cal Rules of Ct 8.520(a)(3), 8.25(a)(1).

File

File in supreme court, with proof of service of other copies, original *plus* 13 copies. Cal Rules of Ct 8.44(a)(1), 8.25(b).

Further Research: See Cal Rules of Ct 8.520, 8.25.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 39. EITHER PARTY: IF APPROPRIATE, FILE AND SERVE SUPPLEMENTAL BRIEF IN SUPREME COURT

STEP 39. *EITHER PARTY:* IF APPROPRIATE, FILE AND SERVE SUPPLEMENTAL BRIEF IN SUPREME COURT

WHEN APPROPRIATE

File and serve supplemental brief when you have material that was not available in time to have been included in your brief on the merits (Cal Rules of Ct 8.520(d)(1)), *e.g.*:

- a. New authorities;
- b. New legislation; or
- c. Other intervening matters.

DEADLINE FOR SUPPLEMENTAL BRIEF

No later than **10 days** before oral argument, file and serve supplemental brief. Cal Rules of Ct 8.520(d)(2).

PREPARE BRIEF

Include in supplemental brief *only* new material, as described above. Cal Rules of Ct 8.520(d)(1).

Format

Format requirements are similar to those for opening briefs in court of appeal (see step 19, above), except that no color is specified for this brief's cover. (Suggestion: Use *white* cover for petitioner's supplemental brief; use *blue* cover for respondent's supplemental brief.)

NOTE

Consider asking the court if you may file a letter brief; if court assents or requests letter briefs, do not use the brief format.

Maximum Length

Supplemental brief cannot exceed (Cal Rules of Ct 8.520(d)(2)):

- a. 2800 words if produced by computer; or
- b. 10 pages if typewritten.

SERVE AND FILE

Serve

Serve a copy of supplemental brief on all parties. See Cal Rules of Ct 8.520(a), 8.25(a)(1).

File

File in supreme court, with proof of service of other copies, original *plus* 13 copies. Cal Rules of Ct 8.44(a)(1), 8.25(b).

Further Research: See Cal Rules of Ct 8.520, 8.25.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 40. PREPARE FOR AND PRESENT ORAL ARGUMENT IN SUPREME COURT

STEP 40. PREPARE FOR AND PRESENT ORAL ARGUMENT IN SUPREME COURT

COURT WILL SET ORAL ARGUMENT

The supreme court hears argument in every case it decides on the merits. The date will be at least **20 days** after notice of time and place of argument is sent. If time is shortened for good cause, clerk will notify parties expeditiously. Cal Rules of Ct 8.524(c).

NOTE

Once a matter has been placed on calendar, it is difficult for the court to change the date. Relief in extreme cases may be available by motion.

PREPARE AND PRESENT ORAL ARGUMENT

Rules for oral argument are generally the same as for court of appeal. See step 27, above; Appendix G.

NOTE

In oral argument before the supreme court, there will likely be more questioning from the bench than you might experience in a typical court of appeal argument. Be prepared for numerous questions from different judicial viewpoints.

Further Research: See Cal Rules of Ct 8.524; Civ App Prac §§16.3, 22.63.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 41. RECEIVE SUPREME COURT DECISION

STEP 41. RECEIVE SUPREME COURT DECISION

WHAT COURT MAY DECIDE

Disposition by supreme court will be one (or more) of the following:

- a. Court of appeal (not trial court) judgment on any one or more issues is (Cal Rules of Ct 8.528(a)):
 - (1) Affirmed;
 - (2) Reversed; or
 - (3) Modified;
- b. Transfer of case to court of appeal with instructions (Cal Rules of Ct 8.528(d));
- c. Dismissal of review for any reason (Cal Rules of Ct 8.528(b)); see 2003 Advisory Committee Comment to Cal Rules of Ct 8.528(b));
- d. Retransfer of case to court of appeal without decision and with or without instructions (Cal Rules of Ct 8.528(e)); see 2003 Advisory Committee Comment to Cal Rules of Ct 8.528(e)); or
- e. Remand to court of appeal to decide any issues not decided by supreme court. Cal Rules of Ct 8.528(c).

Further Research: Cal Rules of Ct 8.529. See Civ App Prac §§22.55-22.57, 22.61-22.70.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 42. PETITIONER: IF APPROPRIATE, PETITION SUPREME COURT FOR REHEARING

STEP 42. *PETITIONER*: IF APPROPRIATE, PETITION SUPREME COURT FOR REHEARING

DEADLINE TO FILE AND SERVE PETITION

Within **15 days** after decision is filed, file and serve petition for rehearing. Cal Rules of Ct 8.268(b)(1), 8.536(b).

GROUND

Rehearing may be sought:

- a. On any ground that would support rehearing in court of appeal (see step 29, above); or
- b. If court decided case based on issue that was not raised or briefed by any party, or was not fairly included within the issues raised, and failed to give parties opportunity to file supplementary briefs on that issue. Govt C §68081.

PREPARE PETITION

Format

Format requirements are similar to those for opening briefs (see step 19, above), except that cover of petition must be *orange*. Cal Rules of Ct 8.40(b).

SERVE AND FILE

If you petition supreme court for a rehearing:

Serve

Serve a copy on opposing counsel;

File

File in supreme court, with proof of service of other copies, original *plus* 13 copies. Cal Rules of Ct 8.44(a)(1), 8.25(b).

NOTE

Consider carefully whether any grounds exist for requesting a rehearing. Is there anything new to point out in the petition for rehearing? Did the court really misunderstand the law or facts, or simply disagree with your client's position? If the latter, filing a petition for rehearing will likely be futile.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 43. OPPOSING PARTY: FILE AND SERVE ANSWER TO PETITION FOR REHEARING

STEP 43. *OPPOSING PARTY*: FILE AND SERVE ANSWER TO PETITION FOR REHEARING

OPPOSING PARTY'S DEADLINE

Within **8 days** after petition for rehearing is filed, if allowed by court, file and serve answer. Cal Rules of Ct 8.268(b)(2), 8.536(b).

NOTE

Format requirements are similar to those for opening briefs (see step 19, above), except that cover of answer must be *blue*. Cal Rules of Ct 8.40(b).

SERVE AND FILE ANSWER

Serve

Serve a copy of answer on all parties. Cal Rules of Ct 8.25(a)(1).

File

File in supreme court, with proof of service of other copies, original *plus* 13 copies. Cal Rules of Ct 8.44(a)(1), 8.25(b).

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 44. ANTICIPATE SUPREME COURT ACTION (OR INACTION) ON PETITION FOR REHEARING

STEP 44. ANTICIPATE SUPREME COURT ACTION (OR INACTION) ON PETITION FOR REHEARING

DEADLINE FOR COURT TO ACT

Court must act on petition for rehearing before its decision becomes final. Cal Rules of Ct 8.536(c).

When Decision Becomes Final

Supreme court's decision becomes final **30 days** after filing unless (Cal Rules of Ct 8.532(b)(1)):

- a. Court orders shorter time; or
- b. Court orders extension before 30-day period or any extension expires.

WHEN PETITION IS DEEMED DENIED

Court denies rehearing by *either*:

- a. Making an order denying petition before decision is final (Cal Rules of Ct 8.536(d)); or
- b. Taking no action before decision is final. Cal Rules of Ct 8.536(c).

HOW COURT GRANTS PETITION

At least four justices must sign order granting rehearing. Cal Rules of Ct 8.536(d). This is extremely rare.

Further Research: See Cal Rules of Ct 8.264, 8.268, 8.532, 8.536; Civ App Prac §22.70.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Seeking Rehearing or Review by Supreme Court/STEP 45. IF SUPREME COURT TRANSFERS CASE TO COURT OF APPEAL, FILE SUPPLEMENTAL BRIEFS WHEN APPROPRIATE

STEP 45. IF SUPREME COURT TRANSFERS CASE TO COURT OF APPEAL, FILE SUPPLEMENTAL BRIEFS WHEN APPROPRIATE

WHEN APPROPRIATE

If matters have arisen after previous decision of court of appeal, and if supreme court transfers case to court of appeal, file supplemental briefs in court of appeal. Cal Rules of Ct 8.528(f), 8.200(b).

DEADLINE TO FILE SUPPLEMENTAL BRIEF

Within **15 days** after supreme court orders case transferred to court of appeal, file supplemental brief. Cal Rules of Ct 8.200(b)(1).

PREPARE BRIEF

Include in brief only (Cal Rules of Ct 8.200(b)(2)):

- a. Matters that have arisen after previous decision of court of appeal; and
- b. Any matters on which presiding justice of court of appeal permits briefing.

SERVE AND FILE BRIEF

Serve

- a. Serve a copy on all parties; and
- b. Serve a copy on superior court clerk for delivery to trial judge. Cal Rules of Ct 8.212(c)(1).

File

File or deliver with proof of service:

- a. Original and four copies to court of appeal (Cal Rules of Ct 8.44(b)(1)); and
- b. Proof of delivery of one electronic copy or four paper copies to supreme court. Cal Rules of Ct 8.212(c)(2), 8.44(b)(1).

Further Research: See Cal Rules of Ct 8.212, 8.528

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Requesting Publication or Depublication of Opinion/STEP 46. IF APPROPRIATE, PREPARE AND FILE REQUEST FOR PUBLICATION OF OPINION

When Requesting Publication or Depublication of Opinion

STEP 46. IF APPROPRIATE, PREPARE AND FILE REQUEST FOR PUBLICATION OF OPINION

WHEN APPROPRIATE

Publication request is appropriate if court of appeal decides not to publish an opinion, and you (or *anyone*) believe that opinion meets criteria for published opinions, *i.e.*, opinion:

- a. Sets new rule of law (Cal Rules of Ct 8.1105(c)(1));
- b. Applies current law to set of facts significantly different from those in prior published opinions (Cal Rules of Ct 8.1105(c)(2));
- c. Analytically modifies, explains, or criticizes existing rule of law (Cal Rules of Ct 8.1105(c)(3));
- d. Creates a new interpretation, explanation, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule (Cal Rules of Ct 8.1105(c)(4));
- e. Discusses or creates apparent conflict in law (Cal Rules of Ct 8.1105(c)(5));
- f. Considers legal issue of continuing public interest (Cal Rules of Ct 8.1105(c)(6));
- g. Makes significant contribution to legal literature (Cal Rules of Ct 8.1105(c)(7));
- h. Discusses a previously neglected rule of law, or reaffirms a principle of law not discussed in a recently reported decision (Cal Rules of Ct 8.1105(c)(8)); or
- i. Includes a separate opinion concurring or dissenting on a legal issue, and publication of the majority and separate opinions would significantly assist in the law's development (Cal Rules of Ct 8.1105(c)(9)).

NOTE

The supreme court publishes all its opinions. Cal Rules of Ct 8.1105(a).

PREPARE AND FILE REQUEST

To request that court of appeal publish an opinion, submit to *court that rendered opinion* (Cal Rules of Ct 8.1120(a)):

- a. Letter concisely stating interest and reason why opinion meets publication standard; and
- b. Proof of service on all parties.

SERVE REQUEST

You must serve each party with a copy of the letter. Cal Rules of Ct 8.1120(a)(4).

DEADLINE

Within **20 days** after date opinion is filed, submit letter requesting publication. Cal Rules of Ct 8.1120(a)(3).

JUDGE'S PERSPECTIVE

Court may grant request if decision is not yet final as to that court.

IF COURT DOES NOT OR CANNOT GRANT REQUEST BEFORE DECISION BECOMES FINAL

If court does not or cannot grant request before decision is final as to that court, court will (Cal Rules of Ct 8.1120(b)):

a. Within **15 days** after decision is final in that court, forward your request along with court's recommendation to supreme court; and

b. Send a copy of court's recommendations to all parties and anyone requesting publication.

© **The Regents of the University of California**

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Requesting Publication or Depublication of Opinion/STEP 47. IF APPROPRIATE, PREPARE AND FILE REQUEST FOR DEPUBLICATION OF OPINION

STEP 47. IF APPROPRIATE, PREPARE AND FILE REQUEST FOR DEPUBLICATION OF OPINION

WHEN APPROPRIATE

Request for depublication is appropriate when you (or *anyone*) believe that opinion does not meet criteria for published opinions, *i.e.*, opinion does *not* (Cal Rules of Ct 8.1105(c)):

- a. Set new rule of law;
- b. Apply current law to set of facts significantly different from those in prior published opinions;
- c. Analytically modify, explain, or criticize existing rule of law;
- d. Create a new interpretation, explanation, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule;
- e. Discuss or create apparent conflict in law;
- f. Consider legal issue of continuing public interest;
- g. Make significant contribution to legal literature;
- h. Discuss a previously neglected rule of law, or reaffirm a principle of law not discussed in a recently reported decision; or
- i. Significantly assist in the law's development.

PREPARE AND FILE REQUEST

To request that a court of appeal opinion *not* be published, submit to *supreme court* (Cal Rules of Ct 8.1125(a)):

- a. A letter requesting that court depublish opinion; and
- b. Proof of service that shows you served:
 - (1) Court of appeal; and
 - (2) Each party to the action or proceeding.

Deadline

Within **30 days** after decision becomes final in court of appeal, submit request for depublication. See step 28, above.

INCLUDE IN REQUEST

In request, concisely state interest and reasons why opinion should not be published. Cal Rules of Ct 8.1125(a)(3).

Maximum Length

Do not exceed ten pages. Cal Rules of Ct 8.1125(a)(2).

ANYONE MAY RESPOND

Within **10 days** after supreme court receives your request, anyone may submit a response not longer than ten pages, stating interest and supporting or opposing request for depublication. Cal Rules of Ct 8.1125(b).

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Decision Is Final/STEP 48. RECEIVE NOTICE THAT CLERK HAS ISSUED REMITTITUR

After Decision Is Final

STEP 48. RECEIVE NOTICE THAT CLERK HAS ISSUED REMITTITUR

NATURE AND FUNCTION OF REMITTITUR

Remittitur is:

- a. Prepared by clerk of reviewing court, *e.g.*, supreme court or court of appeal clerk; and
- b. Sent to lower court, *e.g.*, court of appeal or superior court, to:
 - (1) Notify lower court that opinion of reviewing court is final;
 - (2) Direct lower court to take action that opinion requires; or
 - (3) Return case to lower court.

Further Research: See Cal Rules of Ct 8.272; Civ App Prac §§18.1-18.5.

WHEN SUPREME COURT CLERK ISSUES REMITTITUR

Supreme court clerk will issue remittitur to court of appeal after *final* determination of the appeal (Cal Rules of Ct 8.540(a)), *i.e.*, either:

- a. **30 days** after supreme court decision is filed, if supreme court reviewed court of appeal decision and did not shorten or extend the time (see step 44, above; Cal Rules of Ct 8.540(b)(2)); or
- b. On filing of supreme court order denying review of court of appeal decision. See Cal Rules of Ct 8.264(b)(2)

WHEN APPELLATE COURT CLERK ISSUES REMITTITUR

If Court of Appeal Reviewed Decision

If court of appeal reviewed lower court case, appellate court clerk issues remittitur to lower court immediately:

- a. After time expires for supreme court to grant review, including any extensions (Cal Rules of Ct 8.272(b)(1)(A)); see step 32, above);
- b. After supreme court denies review (Cal Rules of Ct 8.272(b)(1)(A)); or
- c. On filing of supreme court order dismissing review, if supreme court granted review and then dismissed it for any of a variety of reasons. Cal Rules of Ct 8.528(b)(2); 2003 Advisory Committee Comment to Cal Rules of Ct 8.528(b).

Clerk Mails Notice of Remittitur

Appellate court clerk must immediately mail notice of issuance of remittitur and file-stamped copy of opinion or order to all parties. Cal Rules of Ct 8.272(d)(1).

If Supreme Court Reviewed Decision

If supreme court reviewed decision of court of appeal, appellate court clerk (Cal Rules of Ct 8.272(b)(2)):

- a. Issues remittitur to lower court immediately if there will be no further proceedings in court of appeal; and
- b. Sends to lower court:

- (1) Copy of appeal remittitur;
- (2) Copy of supreme court remittitur; and
- (3) File-stamped copy of supreme court opinion or order.

WHEN COURT ORDERS REMITTITUR

Supreme Court

Supreme court may:

- a. Direct that clerk immediately issue remittitur on parties' stipulation or for good cause (Cal Rules of Ct 8.540(c)(1)); or
- b. On party's or its own motion, and for good cause, stay issuance of remittitur for reasonable period or order its recall. Cal Rules of Ct 8.540(c)(2).

Court of Appeal

Court of appeal may:

- a. Direct that clerk immediately issue remittitur *only* on parties' stipulation or if appeal is dismissed under Cal Rules of Ct 8.244(c)(2) (Cal Rules of Ct 8.272(c)(1)); or
- b. On party's or its own motion and for good cause, stay issuance of remittitur for reasonable period or order its recall. Cal Rules of Ct 8.272(c)(2).

WHEN TO REQUEST IMMEDIATE ISSUANCE

You may ask court to order immediate issuance of remittitur when, *e.g.*:

- a. Matters are pending in trial court that must be decided immediately, *e.g.*, decision remands for retrial;
- b. Issue is time sensitive, *e.g.*, an election challenge.

WHEN TO REQUEST STAY OF ISSUANCE

You may ask court to stay issuance of remittitur (Cal Rules of Ct 8.540(c)(2)) when, *e.g.*:

- a. You want time to present a request for sanctions after court has indicated that appeal was frivolous (see, *e.g.*, San Bernardino Community Hosp. v Meeks (1986) 187 CA3d 457, 463 n1, 231 CR 673); or
- b. You have agreed to settle case on condition that remittitur be stayed; or
- c. The losing party intends to petition the United States Supreme Court for certiorari and can demonstrate a reasonable likelihood that such a petition will be granted.

HOW CLERK ISSUES REMITTITUR

If Supreme Court Decision

If supreme court reviewed court of appeal decision (Cal Rules of Ct 8.540(b)(2)):

- a. Clerk of supreme court:
 - (1) Enters in record of case that remittitur is issued;
 - (2) Transmits remittitur and two certified copies of supreme court opinion or order to court of appeal; and
 - (3) Mails notice of issuance to all parties (Cal Rules of Ct 8.272(d)(1), 8.540(b)(4)); and
- b. Clerk of court of appeal then issues its own remittitur.

NOTE

Either court may recall the remittitur for good cause. Cal Rules of Ct 8.272(c)(2), 8.540(c)(2). See step 49, below.

Further Research: See Cal Rules of Ct 8.272, 8.540; Civ App Prac, chap 18, §22.70.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Decision Is Final/STEP 49. PREVAILING PARTY: IF APPROPRIATE, MOVE TO RECALL REMITTITUR

STEP 49. *PREVAILING PARTY*: IF APPROPRIATE, MOVE TO RECALL REMITTITUR

WHEN APPROPRIATE

Move to recall remittitur (Cal Rules of Ct 8.272(c)(2), 8.540(c)(2)) if, *e.g.*, the remittitur did not correctly:

- a. Include costs that court had expressly awarded; or
- b. Award costs to prevailing party. See step 50, below.

DEADLINE TO MOVE

Move promptly to recall remittitur after clerk issues it. *Bryan v Bank of America* (2001) 86 CA4th 185, 190, 103 CR2d 148; *Southwestern Inv. Corp. v City of Los Angeles* (1952) 38 C2d 623, 628, 241 P2d 985, citing *Ellenberger v City of Oakland* (1946) 76 CA2d 828, 836, 174 P2d 461. See also Cal Rules of Ct 8.272(c)(2), 8.540(c)(2).

PREPARE MOTION

Ask court to recall remittitur so that clerk can correct it to include proper costs. See step 16, above, for motion procedures in reviewing court.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Decision Is Final/STEP 50. PREVAILING PARTY: IF APPROPRIATE, FILE MEMORANDUM OF COSTS

STEP 50. *PREVAILING PARTY*: IF APPROPRIATE, FILE MEMORANDUM OF COSTS

WHEN COSTS APPROPRIATE

Prevailing Party

Prevailing party is entitled to costs on appeal unless court orders otherwise (see discussion of court orders under Cal Rules of Ct 8.278(a)(1), below); prevailing party is, *e.g.* (Cal Rules of Ct 8.278(a)(2)-(3)):

- a. Appellant or petitioner if appellate court reverses judgment in its entirety; or
- b. Respondent if trial court's judgment was:
 - (1) Affirmed without substantial modification; or
 - (2) Dismissed.

As Ordered by Court

Court:

- a. May order, deny, or apportion costs as the interests of justice require (Cal Rules of Ct 8.278(a)(5));
- b. Shall specify award or denial of costs if (Cal Rules of Ct 8.278(a)(3)):
 - (1) There is more than one notice of appeal; or
 - (2) Court reverses judgment in part, or modifies it.

As Sanctions

Court may sanction parties by, *e.g.* (Cal Rules of Ct 8.276(a), 8.278):

- a. An award of costs against party, *e.g.*, for a frivolous appeal; or
- b. A denial of costs against prevailing party, *e.g.*, for requiring preparation of unnecessary records.

Warning: Always make a noticed motion to claim *contractual attorney fees* (see step 52, below); do not rely on a memorandum of costs. See Russell v Trans Pac. Group (1993) 19 CA4th 1717, 24 CR2d 274 (trial court cannot disregard noncompliance with CC §1717(b) noticed motion requirement). But see Gunlock Corp. v Walk on Water, Inc. (1993) 15 CA4th 1301, 19 CR2d 197 (trial court may overlook noncompliance). See also Lee v Wells Fargo Bank (2001) 88 CA4th 1187, 106 CR2d 726 (fees and costs to plaintiff affirmed; motion to vacate court's earlier order denying plaintiff's motions as untimely was properly filed under CCP §473).

DEADLINE TO FILE MEMORANDUM

Within **40 days** after clerk of reviewing court mails notice of remittitur to parties, file in superior court and serve verified memorandum setting forth costs claimed under Cal Rules of Ct 3.1700 (for what to include in memorandum, see below). Cal Rules of Ct 8.278(c)(1). See also Cal Rules of Ct 3.1700, 3.1702.

NOTE

The parties may stipulate in writing to extend the deadline to file the memorandum. Cal Rules of Ct 3.1700(b)(3).

INCLUDE IN MEMORANDUM

Include in memorandum request for the following costs (Cal Rules of Ct 8.278):

Record

- a. Generally, cost of preparing record by one of the methods authorized in the rules. Cal Rules of Ct 8.278(d)(1)(B).
- b. Reasonable cost of preparing original or one copy of any type of record on appeal, or both. The record may include an appendix or a stipulated superior court record. Cal Rules of Ct 8.278(d)(1)(B) and Advisory Committee Comment to Cal Rules of Ct 8.278(d).

NOTE

Cost to copy parts of a prior record under Cal Rules of Ct 8.147(b)(2) is not recoverable unless ordered by reviewing court.

Briefs

Reasonable costs of (Cal Rules of Ct 8.278(d)(1)(E)):

- a. Printing; and
- b. Reproducing briefs.

Additional Evidence

Reasonable costs of producing additional evidence. Cal Rules of Ct 8.278(d)(1)(C).

Fixed Attorney Fees

Attorney fees on appeal that are fixed by statute or contract without need for court determination (see Cal Rules of Ct 8.278(d)(2), 3.1702; see step 52, below, for motion procedure to obtain contractual attorney fees).

Fees

- a. Filing fees;
- b. Notary fees, if necessary; and
- c. Expense of service, and transmission and filing of record, briefs, and other papers. Cal Rules of Ct 8.278(d)(1)(A), (D). This may include the cost of serving briefs through an overnight delivery service or by express mail.

Bond Premium

Cost of premium on any surety bond (see step 8, above), unless court determines that bond was unnecessary. Cal Rules of Ct 8.278(d)(1)(F).

Other Expense

Cost of other expenses reasonably necessary to procure surety bond, such as expense of acquiring a letter of credit as collateral for bond. Cal Rules of Ct 8.278(d)(1)(F).

VERIFY MEMORANDUM

Verify that itemized costs are correct and necessarily incurred, to the best of knowledge of (Cal Rules of Ct 3.1700(a)(1)):

- a. Party;
- b. Attorney; or
- c. Agent of party or attorney.

SERVE AND FILE MEMORANDUM

Serve

Serve a copy on opposing party.

File

File original of memorandum with *trial* court. Cal Rules of Ct 8.278(c)(1).

Further Research: See CCP §1034; Cal Rules of Ct 8.276, 8.278, 3.1700(a), 3.1702; Civ App Prac §§20.1-20.12.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Decision Is Final/STEP 51. OPPOSING PARTY: FILE AND SERVE MOTION TO TAX COSTS

STEP 51. *OPPOSING PARTY*: FILE AND SERVE MOTION TO TAX COSTS

WHEN APPROPRIATE

Opposing party will serve and file motion to tax costs when dissatisfied or if disagreeing with costs set forth in costs memorandum.

OPPOSING PARTY'S DEADLINE

Opposing party must serve and file motion (Cal Rules of Ct 3.1700(b)(1)):

If Personally Served

If prevailing party personally served memorandum of costs, within **15 days** after memorandum was served;

If Served by Mail

If prevailing party served memorandum by mail (see CCP §1013(a)), within:

- a. **20 calendar days** if mailed from or to opposing party at an address in California;
- b. **25 calendar days** if mailed from or to opposing party at an address outside California but in the United States;
- c. **35 calendar days** if mailed from or to opposing party at an address outside the United States;

If Served by Fax/Overnight Mail

If prevailing party served memorandum by fax, Express Mail, or other overnight delivery, within **15 days plus 2 court days** after service. Cal Rules of Ct 3.1700(b)(1); CCP §1013(c), (e).

NOTE

The parties may stipulate in writing to extend the deadline to file the motion to tax costs. Cal Rules of Ct 3.1700(b)(3), 8.278. Service by fax requires the agreement of both parties, confirmed in writing. CCP §1013(e).

INCLUDE IN MOTION

In motion, opposing party should (Cal Rules of Ct 3.1700(b)(2), 8.278(c)(2)):

- a. Refer to each item objected to by same number and in same order as item appears in memorandum; and
- b. State why that item is objectionable.

SERVE AND FILE

Opposing party (Cal Rules of Ct 8.278(c)(2), 3.1700(b)(2)):

Serve

Serves a copy of motion to tax on prevailing party;

File

Files original motion to have costs taxed in *trial* court.

DEADLINE FOR COURT TO DECIDE MOTION

Generally, a court must decide a motion within **90 days**; otherwise, judge will not receive his or her salary. See Cal Const art VI,

§19.

NOTE

California Rules of Court 8.278 and 3.1700(b)(4) discuss the expiration of the time for the court to tax costs or rule on the motion, but they do not prescribe a time. Use the **90-day** deadline in Cal Const art VI, §19.

Further Research: See Cal Rules of Ct 8.278(c)(2), 3.1700(b); Civ App Prac §§20.1-20.12.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Decision Is Final/STEP 52. PREVAILING PARTY: IF APPROPRIATE, FILE AND SERVE NOTICED MOTION FOR CONTRACTUAL (INCLUDING CC §1717) ATTORNEY FEES OR FEES AUTHORIZED BY LAW INCURRED DURING APPEAL

STEP 52. *PREVAILING PARTY:* IF APPROPRIATE, FILE AND SERVE NOTICED MOTION FOR CONTRACTUAL (INCLUDING CC §1717) ATTORNEY FEES OR FEES AUTHORIZED BY LAW INCURRED DURING APPEAL

WHEN APPROPRIATE

Prevailing party (for definition, see below) files and serves noticed motion for attorney fees if:

- a. Contract containing an attorney fee provision entitles counsel to attorney fees (see CC §1717; CCP §1033.5(a)(10)(A), (c)(5));
- b. Statute entitles prevailing party to attorney fees (see CCP §1033.5(a)(10)(B)); or
- c. Law entitles prevailing party to attorney fees. See CCP §1033.5(a)(10)(C), (c)(5).

"Prevailing Party" Defined

For purposes of recovering contractual or statutory attorney fees, prevailing party is party who obtained an appellate decision that finally resolves action in that party's favor; a decision that contemplates a retrial is not such a decision. Presley v Whelan (1983) 146 CA3d 959, 961, 196 CR 1. For more information on prevailing parties, see California Attorney Fee Awards §§2.17, 6.23, 12.13, 14.5, 15.2 (2d ed Cal CEB 1994).

NOTE

The provision in CCP §1033.5(a)(10)(C) for attorney fees authorized by "law" appears to cover fees recoverable according to common law, rather than statute or contract. See, e.g., Bank of America v Cory (1985) 164 CA3d 66, 90, 210 CR 351 (fees available when plaintiff in equitable action recovers or preserves common fund or benefit).

APPELLATE COURT MAY AWARD

Appellate court may award attorney fees under CCP §1021.5 (fees in cases resulting in public benefit) if it is convinced that it is in a position to assess the propriety of such an award. See:

- a. City of Fresno v Press Communications, Inc. (1994) 31 CA4th 32, 43, 36 CR2d 456 (appellate court awarded appellant attorney fees under CCP §1021.5);
- b. Lyons v Chinese Hosp. Ass'n (2006) 136 CA4th 1331, 39 CR3d 550 (plaintiff entitled to attorney fees under CCP §1021.5 for both trial and appeal).

DEADLINE TO FILE MOTION

- a. Within **40 days** after clerk of reviewing court mails notice of remittitur to parties, file motion in *trial* court. Cal Rules of Ct 8.278(c)(1).
- b. By stipulation filed within the same period, parties may extend the period; also, the trial judge, for good cause, may extend the period in the absence of stipulation for a maximum of **30 days**. Cal Rules of Ct 3.1700(b)(3). See also legislative comment in Stats 1990, ch 804, §2.

NOTE

Be sure to set the hearing on the motion at least **16 days** after you serve notice of the motion, plus additional days if you mail the notice or serve it by fax or overnight delivery. See CCP §§1005(b), 1013.

INCLUDE IN MOTION

Include in motion:

Memorandum

A memorandum that shows:

- a. Your legal entitlement to attorney fees incurred on appeal; and
- b. Standards court should use to assess whether fees are reasonable (see, *e.g.*, Clayton Dev. Co. v Falvey (1988) 206 CA3d 438, 447, 253 CR 609).

Declaration

Declaration establishing:

- a. Your hourly billing rate for attorney and attorney support personnel time (see, *e.g.*, Salton Bay Marina, Inc. v Imperial Irrig. Dist. (1985) 172 CA3d 914, 951, 218 CR 839);
- b. That your hourly rate is reasonable for the type of work you performed in your geographic area;
- c. Total hours spent at each rate, including, *e.g.*:
 - (1) Total hours you, any associate, paralegal, or other support personnel spent in preparing for appeal, *e.g.*, preparing briefs, oral argument;
 - (2) If applicable, an explanation of how losing party's actions required you to spend some of the time billed, *e.g.*, opposing counsel failed to cite to record in support of his or her statement of facts and you were forced to spend otherwise unnecessary time to ascertain whether those facts were found in record;
- d. Total fees requested; and
- e. Reasonableness of total fees, using factors cited in Clayton Dev. Co. v Falvey (1988) 206 CA3d 438, 447, 253 CR 609.

Exhibits

Exhibits, *e.g.*, time sheets, which you properly authenticate in your declaration.

SERVE AND FILE MOTION

Moving party:

Serve

Serves a copy on opposing party;

File

Files original motion with *trial* court. Cal Rules of Ct 8.278(c), 3.1700. See also legislative comment in Stats 1990, ch 804, §2.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Decision Is Final/STEP 53. OPPOSING PARTY: FILE AND SERVE OPPOSITION TO MOTION FOR ATTORNEY FEES INCURRED ON APPEAL

STEP 53. *OPPOSING PARTY:* FILE AND SERVE OPPOSITION TO MOTION FOR ATTORNEY FEES INCURRED ON APPEAL

WHEN APPROPRIATE

Opposing party files and serves opposition to motion for fees when dissatisfied or disagreeing with:

- a. Hourly rate prevailing party requests for attorney fees;
- b. Total hours spent; or
- c. Assertion that fees are reasonable under *Clayton Dev. Co. v Falvey* (1988) 206 CA3d 438, 447, 253 CR 609.

OPPOSING PARTY'S DEADLINE

At least **9 court days** before date set for hearing on motion, opposing party must file opposition. CCP §1005(b). Opposing papers must be served so that they arrive no later than the close of the business day following the day of filing. CCP §1005(c).

NOTE

Check local rules for any special requirements for serving opposition papers.

INCLUDE IN OPPOSITION

Include:

Memorandum

A memorandum setting forth why:

- a. Prevailing party is not entitled to fees; and/or
- b. Fees requested are unreasonable.

Declarations

If needed, set forth in a declaration additional facts supporting your position, *e.g.*, what is considered a reasonable hourly rate for attorneys with appropriate experience for a particular type of work.

NOTE

A third party expert opinion may be beneficial.

SERVE AND FILE OPPOSITION

Serve

Serve a copy of opposition on moving party.

File

File original opposition with *trial* court.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Decision Is Final/STEP 54. MOVING PARTY: IF APPROPRIATE, FILE AND SERVE REPLY TO OPPOSITION

STEP 54. *MOVING PARTY*: IF APPROPRIATE, FILE AND SERVE REPLY TO OPPOSITION

WHEN APPROPRIATE

File and serve reply when you need to respond to opposing party's opposition.

DEADLINE

At least **5 court days** before hearing date, file and serve reply. CCP §1005(b). The reply must be served no later than the close of the business day following the day of filing. CCP §1005(c).

SERVE AND FILE REPLY

Serve

Serve reply on opposing party.

File

File reply with *trial* court.

NOTE

Check local rules for any special requirements for serving reply papers to make sure that opposing party actually receives them before the hearing.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/After Decision Is Final/STEP 55. PREVAILING PARTY: ENFORCE COSTS AFTER ENTERED BY CLERK

STEP 55. *PREVAILING PARTY:* ENFORCE COSTS AFTER ENTERED BY CLERK

WHEN CLERK ENTERS COSTS

Clerk enters costs after (Cal Rules of Ct 8.278, 3.1700(b)(4)):

a. Court taxes costs; or

b. Time for taxing costs expires, *e.g.*:

(1) Responding party did not file a motion before deadline (see step 51, above); or

(2) Time for court to tax costs has expired, *i.e.*, after **90 days** (for deadline for court to decide motion, see step 51, above; Cal Const art VI, §19).

EFFECT OF ENTRY OF COSTS

After entry of costs, you can enforce costs as a money judgment. Cal Rules of Ct 8.278(c)(3).

Further Research: See CCP §1034; Cal Rules of Ct 8.278, 3.1700; Civ App Prac §§20.1-20.12.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Limited Civil Case Decision/STEP 56. DETERMINE WHETHER JUDGMENT OR ORDER OF LIMITED CIVIL CASE IS APPEALABLE

When Appealing From Limited Civil Case Decision

STEP 56. DETERMINE WHETHER JUDGMENT OR ORDER OF LIMITED CIVIL CASE IS APPEALABLE

FOLLOW RULES FOR APPEALS FROM SUPERIOR COURT

In general, you can follow procedures set forth in [steps 16-55](#), above, except as specified below.

NOTE

All counties have now consolidated their courts; hence, all orders and judgments in a limited civil case now come from the superior court. See former Cal Const art VI, §23 (repealed as of January 1, 2007 "to reflect completion of the process of unification of the municipal and superior courts").

Warning: On February 22, 2008, the Judicial Council of California adopted revisions to the California Rules of Court. Most of the relevant appellate changes are effective on January 1, 2009, and apply to rules in Title 8, Division 2, Chapter 1 (Rules 8.800-8.816, containing general definitional appellate rules); Title 8, Division 2, Chapter 2, Article 1 (Rules 8.820-8.825, on taking appeals in limited civil cases); Title 8, Division 2, Chapter 2, Article 2 (Rules 8.830-8.842, on the record in limited civil cases); and Title 8, Division 2, Chapter 4 (Rules 8.880-8.891, covering briefing and decision making). The revised rules that were available at the time of this writing are cited in this Guide for your reference. However, you should always be sure to check the California Rules of Court at the Judicial Council website at <http://www.courtinfo.ca.gov/rules/> for more information on these revisions and any others that may have been adopted after the time of this writing.

WHEN JUDGMENT IS APPEALABLE

A final judgment is appealable (see [step 16](#), above) ([CCP §904.2\(a\)](#)), *except*:

Interlocutory Judgment

Interlocutory judgment is not appealable; and

Contempt Judgment

Contempt judgment is not appealable if it is made final and conclusive under [CCP §1222](#).

WHEN ORDER IS APPEALABLE

Generally, the time that order is appealable is the same as for superior court orders (see [step 16](#), above), *except*:

Venue Orders

Orders changing or refusing to change place of trial are appealable ([CCP §904.2\(c\)](#)); and

Small Claims

Judgments of small claims courts are appealable. [CCP §904.5](#).

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Limited Civil Case Decision/STEP 57. FILE NOTICE OF APPEAL

STEP 57. FILE NOTICE OF APPEAL

FILE WITH COURT CLERK

With superior court clerk, file:

- a. Notice of appeal (Cal Rules of Ct 8.750(a) (Cal Rules of Ct 8.821, effective January 1, 2009)); and
- b. Filing fee of \$300, unless amount of demand is \$10,000 or less (excluding costs and attorney fees); then filing fee is \$180 (Cal Rules of Ct 8.750(c) (Cal Rules of Ct 8.821(b), effective January 1, 2009; Advisory Committee Comment to Cal Rules of Ct 8.821, effective January 1, 2009); Govt C §70621).

FORM

At the time of this writing, it is anticipated that by January 1, 2009, the Judicial Council will release an optional form for use in filing a notice of appeal in unlimited civil cases (Notice of Appeal/Cross-Appeal (Limited Civil Case) (Judicial Council Form APP-102)). See <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>. You may also draft your own notice of appeal.

GENERAL DEADLINE FOR NOTICE

a. Time deadlines are shorter than from judgments or appealable orders in "unlimited" cases. Unless time is extended (see [step 58](#), below), file notice of appeal by *earliest* of following dates (Cal Rules of Ct 8.751(a) (Cal Rules of Ct 8.822, effective January 1, 2009)):

- (1) **30 days** after date clerk mails the document titled "Notice of Entry" of judgment or appealable order (if clerk must mail notice under CCP §664.5(b));
- (2) **30 days** after date any party serves written notice of that entry; or
- (3) **90 days** after date of entry of judgment.

b. If you file a late notice of appeal, the appellate division *must dismiss* your appeal. Cal Rules of Ct 8.812, 8.822(d), effective January 1, 2009.

NOTE

A file-stamped copy of the judgment or appealable order may be used in place of the document titled "Notice of Entry." Cal Rules of Ct 8.752(a) (Cal Rules of Ct 8.822(a), effective January 1, 2009).

Further Research: See 20th Century Ins. Co. v Superior Court (1994) 28 CA4th 666, 672, 33 CR2d 674 (document titled "Notice of Ruling" that was not date-stamped copy of judgment or order did not trigger 30-day period of Cal Rules of Ct 8.751(a) (Cal Rules of Ct 8.822, effective January 1, 2009)).

"DATE OF ENTRY" DEFINED

Date of entry is (Cal Rules of Ct 8.751(b) (Cal Rules of Ct 8.822(b), effective January 1, 2009)):

- a. Date clerk enters judgment into minute book or docket;
- b. If judgment directs a party to prepare a written order, date signed order is filed; or
- c. Date clerk files a signed appealable order, if not entered in minutes or docket.

DEADLINE FOR FEE

File the fee, or waiver (Cal Rules of Ct 8.750(c) (Cal Rules of Ct 8.82, effective January 1, 2009)):

- a. With notice of appeal; or

b. Within **10 days** after filing notice of appeal.

NOTE

California Rules of Ct 8.821(b)(1), effective January 1, 2009, specifically requires that the fee *must* accompany the notice, and sets forth penalties including dismissal of appeal in the event of nonpayment or a dishonored check. You are strongly urged to consult Cal Rules of Ct 8.821(b)-(c), effective January 1, 2009.

Further Research: See Cal Rules of Ct 8.750-8.751 (Cal Rules of Ct 8.821-8.822, effective January 1, 2009); Civ App Prac §§10.5, 10.7, 10.13-10.15.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Limited Civil Case Decision/STEP 58. DETERMINE WHETHER TIME FOR FILING NOTICE OF APPEAL IS EXTENDED

STEP 58. DETERMINE WHETHER TIME FOR FILING NOTICE OF APPEAL IS EXTENDED

WHEN DEADLINE FOR NOTICE EXTENDED

Time to file a notice of appeal may be extended:

Motion for New Trial

If you timely file a *valid* motion for new trial that is denied, file notice of appeal by *earliest* of **15 days** after (Cal Rules of Ct 8.752(a) (Cal Rules of Ct 8.823(a)-(b)), effective January 1, 2009):

- a. Clerk enters order denying motion;
- b. Motion is denied by operation of law; or
- c. In no event later than **90 days** after date of entry of judgment. See definition of "date of entry," above.

NOTE

California Rules of Ct 8.823(b)(1)(A), effective January 1, 2009, triggers the 15 days *not* from entry of order, but from the date the clerk *mails* or a party *serves* the notice of entry of order denying the new trial motion.

Be aware that an order *granting* a new trial is an appealable order (CCP §904.1(a)(4)), but it does not extend the time to appeal from the underlying judgment. See Cal Rules of Ct 8.752(a) (Cal Rules of Ct 8.823(b)(1)), effective January 1, 2009).

Motion to Vacate Judgment

a. Before January 1, 2009, if you file a *valid, e.g.,* timely, motion to vacate a judgment, and the motion is denied or not decided by the trial court within **75 days** after entry of judgment, file notice of appeal by *earliest* of (Cal Rules of Ct 8.752(b)):

- (1) **15 days** after clerk enters order denying motion; or
- (2) **90 days** after clerk enters judgment.

b. After January 1, 2009, if within the time set for an appeal by Cal Rules of Ct 8.822, effective January 1, 2009 (see step 5Z, above), you file a *valid* motion to vacate a judgment or an intention to file a motion, all parties may file a notice of appeal by the *earliest* of (Cal Rules of Ct 8.823(a)), (c), effective January 1, 2009):

- (1) **15 days** after the trial clerk *mails*, or a party *serves*, an order or notice of order denying motion;
- (2) **45 days** after the first motion or notice of intention to move is filed; or
- (3) **90 days** after clerk enters judgment.

Cross-Appeal

a. Before January 1, 2009, file notice of cross-appeal by the *later* of (Cal Rules of Ct 8.752(c)):

- (1) Within **10 days** after clerk mails notification of first appeal; or
- (2) Within applicable additional time, if time to appeal has been extended by a valid motion for new trial or motion to vacate.

b. After January 1, 2009, file notice of cross-appeal (Cal Rules of Ct 8.823(a)), (f), effective January 1, 2009):

- (1) Within **10 days** after clerk mails notification of first appeal; or
- (2) If appellant *timely* appeals an order *granting* a motion for new trial, a judgment notwithstanding the verdict (JNOV), or a motion to vacate the judgment (within **75 days** after entry of judgment), any party may appeal from original judgment or from an

order denying a JNOV, within **10 days** after clerk mails notification of first appeal.

Motion for Reconsideration

- a. Before January 1, 2009, see step 4, above, on whether a motion for reconsideration is treated like a motion for new trial.
- b. After January 1, 2009, if other party files a *valid*, *e.g.*, timely, motion to reconsider an order that is appealable under CCP §1008(a), file notice of appeal from that order the *earliest* of (Cal Rules of Ct 8.823(a), (e), effective January 1, 2009):
 - (1) Within **15 days** after superior court clerk mails, or party serves, an order or notification denying that motion;
 - (2) Within **45 days** of the filing of the first motion to reconsider; or
 - (3) Within **90 days** after entry of the appealable order.

Motion for Judgment Notwithstanding the Verdict

Effective January 1, 2009, if you file a *valid* motion for judgment notwithstanding the verdict, and the motion is denied, file notice of appeal by *earliest* of (Cal Rules of Ct 8.823(a), (d), effective January 1, 2009):

- a. **15 days** after trial clerk enters order denying motion or party serves notice of entry of order denying motion;
- b. **15 days** after motion is denied by operation of law; or
- c. **90 days** after clerk enters judgment.

Further Research: See Cal Rules of Ct 8.752 (Cal Rules of Ct 8.823, effective January 1, 2009); Civ App Prac §19.33.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Limited Civil Case Decision/STEP 59. RESPONDENT: FILE NOTICE OF CROSS-APPEAL

STEP 59. *RESPONDENT*: FILE NOTICE OF CROSS-APPEAL

GENERAL DEADLINE FOR NOTICE

File notice of cross-appeal by the *later* of (Cal Rules of Ct 8.752(c)) (Cal Rules of Ct 8.823(f), effective January 1, 2009):

- a. Within **10 days** after clerk mails notification of first appeal; or
- b. Within applicable additional time, if time to appeal has been extended by a valid motion for new trial, motion for reconsideration, motion for judgment notwithstanding the verdict, or motion to vacate. See steps 57-58, above.

FILE NOTICE AND FEE

File with court clerk:

- a. Notice of cross-appeal (Cal Rules of Ct 8.750(a), (e)) (Cal Rules of Ct 8.822(a), (e), effective January 1, 2009)); and
- b. Filing fee. Cal Rules of Ct 8.750(c) (Cal Rules of Ct 8.822(b)-(c), effective January 1, 2009); see step 57, above.

NOTE

Trial court clerk notifies other counsel, and any party not represented by counsel, of filing of notice of cross-appeal. Cal Rules of Ct 8.750(b), 8.752(d) (Cal Rules of Ct 8.821(d)-(e), effective January 1, 2009).

Further Research: See Cal Rules of Ct 8.750, 8.752 (Cal Rules of Ct 8.821, effective January 1, 2009); Civ App Prac §10.12.

© The Regents of the University of California

When Obtaining Record for Appeal from Limited Court Decision

STEP 60. DESIGNATE FORM AND CONTENT OF RECORD TO SHOW ERROR ASSERTED

DEADLINE TO CHOOSE RECORD

Within **10 days** after you file the notice of appeal, serve and file:

- a. Notice to prepare reporter's transcript (RT) (Cal Rules of Ct 8.753(a)); and/or
- b. Notice designating clerk's transcript (CT) (Cal Rules of Ct 8.754(a)) (Cal Rules of Ct 8.830(a), 8.831, effective January 1, 2009); or
- c. Preliminary stipulation that parties are attempting to prepare an agreed statement (Cal Rules of Ct 8.755(a)-(b)) (Cal Rules of Ct 8.830(a), 8.831, effective January 1, 2009) (for description of agreed statement, see step 63, below); or
- d. Proposal to use settled statement in lieu of RT (Cal Rules of Ct 8.756(a)) (for description of settled statement, see step 14, above, and step 63, below); or

NOTE

The effect of the preliminary stipulation is to extend appellant's time to designate another form of the record if all parties cannot agree on a statement. See step 63, below.

- e. After January 1, 2009 and if permitted by local rule, the original trial court file (TCF) (Cal Rules of Ct 8.830(a), 8.831, 8.837, 8.836, effective January 1, 2009)).

Further Research: See Cal Rules of Ct 8.753-8.756 (Cal Rules of Ct 8.830-8.837, effective January 1, 2009); Civ App Prac §§10.42-10.56.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Obtaining Record for Appeal from Limited Court Decision/STEP 61. DESIGNATE REPORTER'S TRANSCRIPT (RT)

STEP 61. DESIGNATE REPORTER'S TRANSCRIPT (RT)

FILE AND SERVE NOTICE TO PREPARE RT

File notice to prepare RT with court, and serve copy on respondent. Cal Rules of Ct 1.21, 8.753(a) (Cal Rules of Ct 8.830, 8.834, effective January 1, 2009).

Deadline

Within **10 days** after filing notice of appeal, file notice to prepare RT. Cal Rules of Ct 8.753(a) (Cal Rules of Ct 8.831(a), 8.834, effective January 1, 2009). You may file both the notice to appeal and the notice designating the record at the same time (Cal Rules of Ct 8.831(a), effective January 1, 2009).

IF YOU WANT PARTIAL TRANSCRIPT

If you want only portions of oral proceedings to be transcribed (Cal Rules of Ct 8.753(b) (Cal Rules of Ct 8.830(a)(1)-(2), effective January 1, 2009)):

Stipulate

You may file a stipulation designating certain portions of oral proceedings to be transcribed (Cal Rules of Ct 8.753(b)); or

Designate

- a. Within **10 days** after you serve notice to prepare RT, respondent may serve and file notice designating additional oral proceedings to be transcribed (Cal Rules of Ct 8.753(b) (Cal Rules of Ct 8.834(a)(3), effective January 1, 2009)).
- b. Effective January 1, 2009, you must designate in the notice, by date, the specific proceedings to be included. Cal Rules of Ct 8.834(a)(1), effective January 1, 2009.
- c. If you do not choose to designate *all* testimony, the notice must state the issues that will be pursued on appeal, and unless a motion is granted to expand the appeal, the appeal will be limited to issues specified (Cal Rules of Ct 8.834(a)(2), effective January 1, 2009).

NOTE

Reporter will not transcribe jury voir dire, opening statements, closing arguments, or proceedings on motion for new trial unless you specifically request them in notice to prepare RT. Cal Rules of Ct 8.753(a) (Cal Rules of Ct 8.834(c)(2), effective January 1, 2009).

ANTICIPATE NOTICE OF ESTIMATED COST

Within **10 days** after you file and serve notice to prepare RT, court reporter notifies appellant or lower court clerk, or both, of estimated cost of RT. Cal Rules of Ct 8.753(a) (Cal Rules of Ct 8.834(b), effective January 1, 2009).

NOTE

You may make your own arrangements with the reporter for payment for transcript; see note, step 10, above. See also Cal Rules of Ct 8.834(d)(1), effective January 1, 2009.

DEPOSIT ESTIMATED COST

Deposit amount of estimate with clerk, or file waiver of deposit signed by reporter. Cal Rules of Ct 8.753(c) (Cal Rules of Ct 8.834(b)(2), effective January 1, 2009).

Deadline

Within **10 days** after you receive notice from clerk or reporter, deposit amount of estimate or file waiver of deposit signed by

reporter. Cal Rules of Ct 8.753(c) (Cal Rules of Ct 8.834(b)(2)), effective January 1, 2009).

REPORTER FILES TRANSCRIPT

Reporter files original transcript with clerk within **20 days** after reporter receives your fee deposit or is directed to do so by clerk. Cal Rules of Ct 8.753(d) (Cal Rules of Ct 8.834(d)(1)), effective January 1, 2009).

NOTE

Confirm local procedures about whether the reporter will provide you with a copy of this transcript; the reporter is not required to provide copies to appellant or respondent. See Cal Rules of Ct 8.756; step 64, below. If you have arranged to pay reporter directly (see note, step 10, above), reporter should send you a copy.

IF REPORTER FAILS TO FILE

Before January 1, 2009, if reporter fails to file all or any portion of transcript of oral proceedings designated by parties (Cal Rules of Ct 8.753(e)):

a. Within **15 days** after date reporter was supposed to file transcript (see above):

(1) You may move for leave to file settled statement of portions of transcript that reporter refused, failed, or was unable to transcribe; and

(2) Hearing on motion must be at least **5 days** after you give written notice to other parties that you will so move; or

b. You may seek an order from superior court directing reporter to prepare transcript. See Cal Rules of Ct 8.759.

NOTE

Effective January 1, 2009, new procedures apply if the reporter cannot transcribe the designated oral proceedings. For details, see Cal Rules of Ct 8.830(a)(2), 8.834, effective January 1, 2009.

Further Research: See Civ App Prac §§10.37-10.41, 10.57-10.58.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Obtaining Record for Appeal from Limited Court Decision/STEP 62. DESIGNATE CLERK'S TRANSCRIPT (CT)

STEP 62. DESIGNATE CLERK'S TRANSCRIPT (CT)

FILE AND SERVE NOTICE TO PREPARE CT

- a. Prepare notice designating papers in court file that you want included in CT (Cal Rules of Ct 8.754(a) (Cal Rules of Ct 8.830(a)(1), 8.831, effective January 1, 2009));
- b. File notice with lower court; and
- c. Serve notice on respondent.

Deadline

Within **10 days** after filing notice of appeal, file and serve notice designating CT. Cal Rules of Ct 8.754(a) (Cal Rules of Ct 8.831, effective January 1, 2009).

DOCUMENTS INCLUDED IN CT

Clerk shall include in transcript either a copy or original of (Cal Rules of Ct 8.754(d)-(e) (Cal Rules of Ct 8.832, effective January 1, 2009)):

Even If Not Designated

Even if you do not designate:

- a. Notice of appeal;
- b. Notices or stipulations to prepare:
 - (1) CT and RT, if any; and
 - (2) Settled statement or agreed statement, if any;
- c. Judgment appealed from with endorsement showing date that notice of entry was:
 - (1) Mailed by clerk; or
 - (2) Served by a party; and
- d. If any:
 - (1) Notice of intention to move for a new trial and ruling on the motion;
 - (2) Motion to vacate judgment and ruling on it; or
 - (3) After January 1, 2009, judgment notwithstanding the verdict or motion for reconsideration.

If Designated

If you designate:

- a. All or part of judgment roll (see CCP §670 for documents included in judgment roll);
- b. Any other papers or records, filed or lodged with clerk, including
 - (1) Notices;
 - (2) Declarations;

- (3) Orders;
- (4) Exhibits admitted in evidence or rejected; and
- (5) Written jury instructions given or refused.

NOTE

Up until January 1, 2009, if you designate only the judgment roll as the record, the respondent cannot designate any additional documents. Respondent can, however, move the court to allow additional record material to prevent a miscarriage of justice. See Cal Rules of Ct 8.754(f). Check local procedures on whether the clerk will provide you with a copy of this transcript; the clerk is not required to provide copies to appellant or respondent. See Cal Rules of Ct 8.756; step 64, below.

RESPONDENT MAY DESIGNATE ADDITIONAL PAPERS

Respondent may file and serve notice designating additional papers to be included in CT within **10 days** after notice of designation of CT is served (Cal Rules of Ct 8.754(b) (Cal Rules of Ct 8.832(b)(1), effective January 1, 2009)), *except* (Cal Rules of Ct 8.754(f)):

- a. If you did not designate RT, respondent cannot require it (Cal Rules of Ct 8.834(a)(3), effective January 1, 2009); and
- b. If you designated only judgment roll (see CCP §670 for documents included in judgment roll) as the record, respondent cannot designate any additional documents.

ANTICIPATE NOTICE OF ESTIMATED COST

Clerk will notify you of estimated cost to prepare CT. Cal Rules of Ct 8.754(c) (Cal Rules of Ct 8.832(c), effective January 1, 2009).

DEPOSIT ESTIMATED COST

Arrange with clerk to pay estimated cost. Cal Rules of Ct 8.754(c) (Cal Rules of Ct 8.832(c)(3), effective January 1, 2009).

Deadline

Within **10 days** after receiving notice from clerk of estimated cost of CT, pay estimated cost. Cal Rules of Ct 8.754(c) (but see Cal Rules of Ct 8.832(c), effective January 1, 2009) (within **10 days** after clerk *sends* notice, which is due within **30 days** after respondent designates or time expires to do so).

CLERK PREPARES CT

- a. Before January 1, 2009, clerk prepares original and one copy of CT within **10 days** after clerk receives payment for cost of CT. Cal Rules of Ct 8.754(d).
- b. Effective January 1, 2009, clerk prepares original and one copy of CT within **30 days** after clerk receives appellant's payment for cost of CT. Additional copies will be filed for any other party who pays estimated costs. Cal Rules of Ct 8.832(d), effective January 1, 2009.

NOTE

The transcript may contain either copies or originals. Cal Rules of Ct 8.754(d) (Cal Rules of Ct 8.830(a), 8.832, effective January 1, 2009).

Further Research: See Cal Rules of Ct 8.754; Civ App Prac §§10.30-10.36, 10.57-10.58.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Obtaining Record for Appeal from Limited Court Decision/STEP 63. USE AGREED STATEMENT OR SETTLED STATEMENT INSTEAD OF OR IN ADDITION TO TRANSCRIPTS

STEP 63. USE AGREED STATEMENT OR SETTLED STATEMENT INSTEAD OF OR IN ADDITION TO TRANSCRIPTS

AGREED STATEMENT

DEADLINE TO FILE AGREED STATEMENT

Within **30 days** after appellant files notice of appeal, file agreed statement. Cal Rules of Ct 8.755(a) (Cal Rules of Ct 8.836(c), effective January 1, 2009).

PREPARE STATEMENT

All parties sign statement, which includes (Cal Rules of Ct 8.755(a) (Cal Rules of Ct 8.836(b), effective January 1, 2009)):

Body of Statement

- a. Attributes of controversy;
- b. Basis of jurisdiction for reviewing court;
- c. How questions arose in and were decided by trial court; and
- d. Facts alleged and proved, or sought to be proved, that are necessary to determine the questions on appeal.

Appendixes

A copy of (after January 1, 2009, if replacing clerk's transcript (Cal Rules of Ct 8.836(b), effective January 1, 2009)):

- a. Judgment;
- b. Notice of appeal with its filing date; and
- c. If applicable:
 - (1) Notice of intention to move for a new trial, ruling on motion (notice of entry of order), oral proceedings on the motion, and after January 1, 2009, supporting and opposing memoranda and attachments;
 - (2) Motion to vacate judgment, ruling on motion (notice of entry of order), oral proceedings on the motion, and after January 1, 2009, supporting and opposing memoranda and attachments; or
 - (3) Effective January 1, 2009, judgment notwithstanding the verdict or motion for reconsideration, ruling on motion (notice of entry of order), oral proceedings on the motion, and effective January 1, 2009, supporting and opposing memoranda and attachments; and
 - (4) Effective January 1, 2009, register of actions.

List of Documents to Accompany Statement

List of documents you want transmitted with statement, *e.g.*:

- a. Exhibits admitted in evidence or rejected;
- b. Notices;
- c. Affidavits;

- d. Orders;
- e. Instructions given or refused; and
- f. Other relevant papers on file or lodged with clerk.

IF PARTIES CANNOT AGREE ON STATEMENT

Appellant has **40 days** (before January 1, 2009) or **30 days** (effective January 1, 2009) after filing notice of appeal to designate some other form of record (Cal Rules of Ct 8.755(b) (Cal Rules of Ct 8.836(c), effective January 1, 2009)) if:

- a. Parties filed a preliminary stipulation, stating that they are attempting to prepare agreed statement, with clerk within **10 days** after filing notice of appeal (see step 60, above); and
- b. All parties are unable to agree on a statement.

SETTLED STATEMENT

WHEN APPROPRIATE

Settled statement (or statement on appeal) is appropriate when:

- a. Appellant desires a narrative statement instead of transcript (Cal Rules of Ct 8.756(a) (Cal Rules of Ct 8.837, effective January 1, 2009) (applies to oral proceedings only under Cal Rules of Ct 8.830(a), effective January 1, 2009)); or
- b. Without fault of appellant, reporter refuses, becomes unable, or fails to prepare transcript. Cal Rules of Ct 8.753(e) (Cal Rules of Ct 8.830(a)(2), 8.834(e), effective January 1, 2009).

NOTE

If you need a settled statement because the reporter did not prepare the transcript, you must move for leave to proceed with a settled statement. See Cal Rules of Ct 8.753(e). See also discussion of what to do if the reporter fails to file the transcript in step 61, above.

Warning: After January 1, 2009, you are strongly encouraged to review Cal Rules of Ct 8.837, effective January 1, 2009, in its entirety, if you opt to designate a statement on appeal.

DEADLINE TO DESIGNATE SETTLED STATEMENT

Within **10 days** (before January 1, 2009) after filing notice of appeal, serve and file notice of intent to use settled statement instead of RT. Cal Rules of Ct 8.756(a) (Cal Rules of Ct 8.830(a), 8.831, 8.837(b), effective January 1, 2009).

PREPARE STATEMENT

- a. Prepare (Cal Rules of Ct 8.756(a) (Cal Rules of Ct 8.837(c), effective January 1, 2009)) a condensed statement in narrative form of all or material portions of oral proceedings, including a synopsis of the trial court's holding and judgment; and
- b. If necessary and subject to approval of court when settling statement, set forth evidence in a series of questions and answers.

If Only Part of Oral Proceedings

If you choose to include only part of oral proceedings (Cal Rules of Ct 8.756(a) (Cal Rules of Ct 8.837(c)(2), effective January 1, 2009)):

- a. State which points you raised on appeal;
- b. Recognize that you will be limited to those points covered by statement on appeal.

Warning: Effective January 1, 2009, the revised Cal Rules of Ct direct you more specifically to include all evidence necessary to support any raised points. See Cal Rules of Ct 8.837(c)(2), effective January 1, 2009.

DEADLINE TO FILE AND SERVE PROPOSED STATEMENT

File and serve proposed statement within **20 days** after:

- a. You filed notice of intention to use settled statement or statement on appeal (Cal Rules of Ct 8.756(a) (Cal Rules of Ct 8.830-8.831, 8.837, effective January 1, 2009)); or
- b. Court grants leave to prepare settled statement if reporter did not prepare a transcript. Cal Rules of Ct 8.753(e).

RESPONDENT MAY OBJECT TO STATEMENT

Within **10 days** after appellant serves the proposed statement, respondent may serve and file any proposed amendments. Cal Rules of Ct 8.753(e), 8.756(a) (Cal Rules of Ct 8.837(d)(1), effective January 1, 2009).

HEARING ON SETTLED STATEMENT

Judge who tried case will settle statement at hearing (after January 1, 2009, a *party may request* a hearing) that clerk sets within **10 days** after *earlier* of (Cal Rules of Ct 8.756(c)):

- a. Respondent's filing of proposed amendments; or
- b. Expiration of time for respondent's amendments.

NOTE

After January 1, 2009, *if* judge determines that material issues are at stake, clerk will "promptly" set hearing date, giving parties at least **5 days'** written notice. You are strongly encouraged to review Cal Rules of Ct 8.837, effective January 1, 2009, in its entirety, if you decide to designate a statement on appeal.

PREPARE AND FILE ENGROSSED STATEMENT

File engrossed statement within time designated by trial court. Cal Rules of Ct 8.756(c). See, in its entirety, Cal Rules of Ct 8.837, effective January 1, 2009.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Obtaining Record for Appeal from Limited Court Decision/STEP 64. REVIEW RECORD AND OBTAIN CERTIFICATION AND TRANSMITTAL OF RECORD

STEP 64. REVIEW RECORD AND OBTAIN CERTIFICATION AND TRANSMITTAL OF RECORD

CLERK NOTIFIES PARTIES WHEN TRANSCRIPT IS COMPLETE

Before January 1, 2009, when the record on appeal is complete, lower court clerk will mail notice of completion to all parties (you, the attorney, do *not* receive a copy of transcripts). See Cal Rules of Ct 8.757(a).

REQUEST CORRECTION OF TRANSCRIPT

- a. *Immediately after receiving notice of completion*, review transcripts at lower court clerk's office, or review your copy if you made arrangements with reporter to get a copy directly from him or her.
- b. If necessary, file a request for correction of such transcripts.

Deadline

Before January 1, 2009, within **10 days** after clerk mails notice of completion, file request for correction. Cal Rules of Ct 8.757(a). California Rules of Ct 8.841, effective January 1, 2009, outlines the procedure to augment or correct the record, which may be done at any time.

If You Miss Deadline

Clerk will certify transcripts as correct if you miss this deadline. Cal Rules of Ct 8.757(a) (Cal Rules of Ct 8.841, effective January 1, 2009).

IF CORRECTION REQUESTED, CLERK SETS HEARING

If a party files a request for correction, lower court clerk will (Cal Rules of Ct 8.757(b) (after January 1, 2009, see Cal Rules of Ct 8.841, effective January 1, 2009)):

- a. Set a time not more than **10 days** thereafter for trial judge to review transcripts and your request for correction; and
- b. Give parties at least **5 days'** notice of hearing by mail.

JUDGE WILL CERTIFY TRANSCRIPTS

Judge will review transcripts and either (Cal Rules of Ct 8.757(b) (after January 1, 2009, see Cal Rules of Ct 8.840-8.841, effective January 1, 2009)):

- a. Certify transcripts as correct; or
- b. Allow corrections and, after they are made, certify transcripts as correct.

DEADLINE

Corrections must be made **30 days** after they are allowed unless judge sets a different deadline. Cal Rules of Ct 8.757(b) (after January 1, 2009, see Cal Rules of Ct 8.840-8.841, effective January 1, 2009).

NOTE

The parties may at any time stipulate that all or part of the record is correct, and that certification of the stipulated portion(s) is unnecessary. Cal Rules of Ct 8.757(b).

CLERK TRANSMITS RECORD

- a. Before January 1, 2009, when appellant has paid or been excused from paying filing fee, and transcripts and other forms of record are complete, lower court clerk transmits original record to superior court clerk for filing (you do *not* receive a copy). Cal Rules of Ct 8.759.

b. Effective January 1, 2009, the trial court clerk sends the appellate court the original record and sends copies to parties who have purchased them. This may include an official electronic recording if authorized by local rules or a transcript from that recording. Cal Rules of Ct 8.830, 8.835, 8.840, effective January 1, 2009.

Further Research: See Cal Rules of Ct 8.759; Civ App Prac §§10.59-10.62.

© The Regents of the University of California

During Appeal From Limited Civil Case Decision

STEP 65. *APPELLANT*: FILE APPELLANT'S OPENING BRIEF

DEADLINE TO FILE APPELLANT'S OPENING BRIEF

Before January 1, 2009, file appellant's opening brief in appellate division of superior court within **20 days** after record is filed. Cal Rules of Ct 8.706(a) (Cal Rules of Ct 8.882, effective January 1, 2009 (file brief within **30 days**)).

PREPARE BRIEF

Content of brief is similar to that in opening briefs in appeals from superior court. See step 19, above. See also Cal Rules of Ct 8.883, effective January 1, 2009.

Format

- a. Format of brief is similar to that of opening briefs in appeals from superior court (see step 19, above), except that quotations from record or legal authorities cannot exceed 15 typewritten lines. Cal Rules of Ct 8.706(c).
- b. No limitation after January 1, 2009. Cal Rules of Ct 8.883(c), effective January 1, 2009.

Maximum Length

- a. Before January 1, 2009, maximum length is 15 pages, absent permission from presiding judge for a longer brief. Cal Rules of Ct 8.706(c).
- b. Effective January 1, 2009, maximum length is 6800 words, including footnotes, or if typewritten, 20 pages. Cal Rules of Ct 8.883(b), effective January 1, 2009.

Cover and Binding

- a. The rules do not designate a color for the brief cover. Generally, use a *white* cover; and
- b. Before January 1, 2009, bind pages along the top. See Cal Rules of Ct 8.706(d). Effective January 1, 2009, bind on left margin, unless local rule says otherwise. If not bound on top, text can be double-sided. Cal Rules of Ct 8.883(c)(1), (8), effective January 1, 2009.

Use Recycled Paper

Use recycled paper for (Cal Rules of Ct 2.101(a), 8.204(b)(1), 1.22, 8.706(g) (Cal Rules of Ct 8.883(c)(1), effective January 1, 2009); see discussion and note, step 19, above):

- a. Original papers you file with court; and
- b. All copies of papers, documents, and exhibits you file with court or serve on other parties. Cal Rules of Ct 2.101(a).

SERVE AND FILE

Appellant:

Serve

Serves a copy on:

- a. All adverse parties (Cal Rules of Ct 1.21, 8.706(e) (Cal Rules of Ct 8.882(d), effective January 1, 2009);
- b. Clerk of trial court for delivery to judge who heard case (Cal Rules of Ct 8.706(f)) (Cal Rules of Ct 8.882(d)(3), effective

January 1, 2009); and

c. If required, to governmental entity (Cal Rules of Ct 8.882(d)(4), effective January 1, 2009).

File

Files original with proof of service with superior court clerk. Cal Rules of Ct 8.706(e) (Cal Rules of Ct 8.882(d)(2), effective January 1, 2009 (unless local rule states otherwise)).

Further Research: See Cal Rules of Ct 8.706 (Cal Rules of Ct 8.882-8.883, effective January 1, 2009); Civ App Prac §§10.63-10.67.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal From Limited Civil Case Decision/STEP 66.
RESPONDENT: FILE RESPONDENT'S BRIEF

STEP 66. *RESPONDENT: FILE RESPONDENT'S BRIEF*

RESPONDENT'S DEADLINE

Before January 1, 2009, respondent must file brief within **20 days** after opening brief is filed. Cal Rules of Ct 8.706(a) (Cal Rules of Ct 8.882(a)(2), effective January 1, 2009 (file brief within **30 days**)).

PREPARE BRIEF

Format and content requirements are similar to those for opening briefs. See step 65, above.

SERVE AND FILE BRIEF

Respondent (Cal Rules of Ct 8.706(e) (Cal Rules of Ct 8.882(a)(2), effective January 1, 2009)):

Serve

Serves a copy on:

- a. All adverse parties (Cal Rules of Ct 8.706(e) (Cal Rules of Ct 8.882(d), effective January 1, 2009));
- b. Clerk of trial court for delivery to judge who heard case (Cal Rules of Ct 8.706(f) (Cal Rules of Ct 8.882(d)(3), effective January 1, 2009)); and
- c. If required, to governmental entity (Cal Rules of Ct 8.882(d)(4), effective January 1, 2009).

File

Files, with clerk of superior court, original with proof of service. Cal Rules of Ct 8.706(e) (Cal Rules of Ct 8.882(d)(2), effective January 1, 2009).

Further Research: See Cal Rules of Ct 8.706 (Cal Rules of Ct 8.882, effective January 1, 2009); Civ App Prac §10.68.

NOTE

Respondent may file a motion for sanctions if the appeal is frivolous, was filed only for delay, or if there has been an unreasonable infraction of the rules. Cal Rules of Ct 8.764(e) (Cal Rules of Ct 8.891(e), effective January 1, 2009 (motion must be filed before appeal dismissed but no later than **10 days** after appellant's reply brief is due)).

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal From Limited Civil Case Decision/STEP 67.
APPELLANT: PREPARE, SERVE, AND FILE REPLY BRIEF

STEP 67. *APPELLANT*: PREPARE, SERVE, AND FILE REPLY BRIEF

DEADLINE TO FILE REPLY BRIEF

Before January 1, 2009, file reply brief within **10 days** after respondent's brief is filed, but not later than hearing. Cal Rules of Ct 8.706(a) (Cal Rules of Ct 8.882(a)(3), effective January 1, 2009 (file brief within **20 days**)).

PREPARE BRIEF

Format requirements are similar to those for opening briefs. See step 65, above.

SERVE AND FILE

Appellant (Cal Rules of Ct 8.706(e) (Cal Rules of Ct 8.882(a)(3), effective January 1, 2009)):

Serve

Serves a copy on:

- a. All adverse parties (Cal Rules of Ct 8.706(e) (Cal Rules of Ct 8.882(d), effective January 1, 2009); and
- b. Clerk of trial court for delivery to judge who heard case (Cal Rules of Ct 8.706(f) (Cal Rules of Ct 8.882(d)(3), effective January 1, 2009)); and
- c. If required, to governmental entity (Cal Rules of Ct 8.882(d)(4), effective January 1, 2009).

File

Files original with proof of service. Cal Rules of Ct 8.882(d)(2), effective January 1, 2009.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal From Limited Civil Case Decision/STEP 68.
PREPARE AND PRESENT ORAL ARGUMENT

STEP 68. PREPARE AND PRESENT ORAL ARGUMENT

WHEN CLERK SCHEDULES ARGUMENT

- a. Before January 1, 2009, unless otherwise ordered, superior court clerk schedules argument at least **50 days** after record is filed. Cal Rules of Ct 8.704(a).
- b. Effective January 1, 2009, **40 days or more** before date of next regular appellate division session after reply brief filed or time for filing expired, appeal must be placed on calendar, unless ordered otherwise. Cal Rules of Ct 8.885(a), effective January 1, 2009.

PREPARE ARGUMENT

Follow tips for oral argument on appeal from superior court. See step 27, above, and Appendix G.

NOTE

In some appellate divisions, a tentative opinion is available before oral argument.

Further Research: See Cal Rules of Ct 8.704(a) (Cal Rules of Ct 8.885(a), effective January 1, 2009); Civ App Prac §§10.82-10.83.

STEP 69. RECEIVE DECISION

COURT MAY MAKE ORAL DECISION

Court's opinion need not be in writing. Cal Rules of Ct 8.707(b) (Cal Rules of Ct 8.887(a), effective January 1, 2009).

WHEN DECISION IS FINAL

a. Appellate division's judgment becomes final (Cal Rules of Ct 8.708(a) (Cal Rules of Ct 8.888, effective January 1, 2009)):

(1) Before January 1, 2009, **15 days** after court pronounces it, unless a party files timely petition for rehearing (Cal Rules of Ct 8.708(a)(1)); effective January 1, 2009, **30 days** after decision filed (Cal Rules of Ct 8.888(a)(1), effective January 1, 2009);

(2) Before January 1, 2009, if timely petition for rehearing or application for correction is filed, the earlier of (Cal Rules of Ct 8.708(a)(2)):

(a) **30 days** after pronouncement of judgment; or

(b) Date when all such petitions or applications are denied.

NOTE

Order granting hearing vacates judgment effective January 1, 2009. Cal Rules of Ct 8.889(d), effective January 1, 2009.

b. Appellate division may modify its judgment before it becomes final; if modification changes appellate judgment, finality period runs from filing date of modification order; modification that does not change that judgment does not extend time for judgment's finality. Cal Rules of Ct 8.708(b) (Cal Rules of Ct 8.888(b), effective January 1, 2009).

c. Before January 1, 2009, if appellate division orders reversal and grants new trial, or affirms judgment on condition that a party consents to addition or remission (Cal Rules of Ct 8.709):

(1) Within **15 days** after that decision is filed, party who must consent to modification files two copies of its written consent; or

(2) Judgment of reversal and granting of new trial becomes final after **15 days** if consent is not filed.

NOTE

Effective January 1, 2009, if appellate court affirms on condition of increase or decrease, new rules regarding consent apply. See Cal Rules of Ct 8.888(c), effective January 1, 2009.

d. If appellate court certifies decision for publication before decision becomes final, the decision will become final from the filing date of the order for publication. Cal Rules of Ct 8.888(a)(2), effective January 1, 2009.

Further Research: See Cal Rules of Ct 8.707-8.709 (Cal Rules of Ct 8.887-8.889, effective January 1, 2009); Civ App Prac §§10.85-10.94, 10.97-10.98.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal From Limited Civil Case Decision/STEP 70.
PETITION FOR TRANSFER OR REHEARING

STEP 70. PETITION FOR TRANSFER OR REHEARING

TRANSFER

WHEN APPROPRIATE

After reviewing decision, serve and file with appellate division of superior court application for certification that case should be transferred to court of appeal, if you believe that transfer is necessary to (Cal Rules of Ct 8.1005(b)(2)):

- a. Secure uniformity of decisions; or
- b. Settle important question(s) of law.

DEADLINE TO PETITION FOR TRANSFER

After record on appeal is filed in appellate division and within **15 days** after judgment is pronounced or a modification order changing appellate division judgment is filed, apply to appellate division of superior court to certify case for transfer to court of appeal. You may include the application in a petition for rehearing. Cal Rules of Ct 8.1005(b)(1). On when decision becomes final, see step 69, above.

NOTE

Court of appeal also can order transfer of case to itself under the procedures of either Cal Rules of Ct 8.1005 or 8.1008. Cal Rules of Ct 8.1002.

Further Research: See Civ App Prac §§10.97-10.100 and Cal Rules of Ct 8.1005, 8.1008, for certification and transfer requirements.

REHEARING

WHEN APPROPRIATE

Petition for rehearing if you believe that, *e.g.*, judgment is based on an issue not proposed or briefed by any party. See step 29, above, for other grounds for rehearing.

DEADLINE TO FILE AND SERVE PETITION

- a. Before January 1, 2009, within **15 days** after appellate division pronounces judgment or its modification order changing judgment is filed, file and serve petition for rehearing. Cal Rules of Ct 8.708(c).
- b. After January 1, 2009, within **15 days** after filing of decision or publication order, modification order, or consent, file and serve petition for rehearing (Cal Rules of Ct 8.888, 8.889(b), effective January 1, 2009). See step 69, above, for finality periods.

PREPARE PETITION

- a. Include in petition any issue or material fact that was misstated or omitted from decision.
- b. Format requirements are similar to those for opening briefs. See step 19, above.

FILE AND SERVE

Petitioner (Cal Rules of Ct 1.21, 8.25, 8.708(c) (Cal Rules of Ct 8.882, 8.883(d), 8.889, effective January 1, 2009)):

Serve

Serves a copy on opposing counsel;

File

Files original with proof of service in superior court appellate division.

Further Research: See Civ App Prac §§10.87-10.88.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal From Limited Civil Case Decision/STEP 71.
OPPOSING PARTY: FILE AND SERVE OPPOSITION TO APPLICATION FOR CERTIFICATION FOR TRANSFER OR ANSWER TO PETITION FOR REHEARING

STEP 71. *OPPOSING PARTY: FILE AND SERVE OPPOSITION TO APPLICATION FOR CERTIFICATION FOR TRANSFER OR ANSWER TO PETITION FOR REHEARING*

OPPOSING PARTY'S DEADLINE

- a. Before January 1, 2009, within **8 days** after petition for rehearing is served, opposing party must file answer to petition. Cal Rules of Ct 8.708(c)(3). Effective January 1, 2009, answer is due within **8 days** of order requesting an answer. Cal Rules of Ct 8.889(b)(2), effective January 1, 2009.
- b. Within **5 days** after request for certification to transfer case is filed, any opposing party must file and serve opposition to the request. Cal Rules of Ct 8.1005(b)(3). For certification requirements, see Cal Rules of Ct 8.1000-8.1018.

FILE AND SERVE ANSWER

Opposing party (Cal Rules of Ct 8.708(c)), but effective January 1, 2009, only if requested by court (Cal Rules of Ct 8.889(b)(2), effective January 1, 2009):

Serve

Serves a copy of answer on petitioner's counsel;

File

Files original with proof of service in appellate division of superior court.

NOTE

Format requirements are similar to those for opening briefs in appeals from lower court. See step 19, above.

Further Research: See Civ App Prac §10.97.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal From Limited Civil Case Decision/STEP 72. ANTICIPATE COURT ACTION (OR INACTION) ON APPLICATION FOR CERTIFICATION FOR TRANSFER OR PETITION FOR REHEARING

STEP 72. ANTICIPATE COURT ACTION (OR INACTION) ON APPLICATION FOR CERTIFICATION FOR TRANSFER OR PETITION FOR REHEARING

COURT MAY GRANT APPLICATION FOR CERTIFICATION

For proceedings if court certifies case for transfer to court of appeals, see Cal Rules of Ct 8.1000-8.1018.

COURT MAY DENY APPLICATION

Under Cal Rules of Ct 8.1005(b)(4):

- a. No hearing is held on application for certification to court of appeals;
- b. Failure to certify case is considered a denial of the application.

COURT MAY GRANT REHEARING

Before January 1, 2009, if rehearing is ordered, superior court appellate division may (Cal Rules of Ct 8.708(c)(5)):

- a. Place matter on calendar for further argument; or
- b. Submit the matter for a decision.

WHEN REHEARING IS DENIED

Court denies rehearing by *either* (Cal Rules of Ct 8.708(a)(2)):

- a. Making an order denying petition during the **30 days** after judgment was pronounced; or
- b. Taking no action during the **30 days** after judgment was pronounced. After January 1, 2009, court must file order for rehearing before decision is final. Any timely petition filed will be deemed denied if order granting rehearing is not made before decision is final. Cal Rules of Ct 8.889(a), (c), effective January 1, 2009. See step 69, above, for decision finality periods

Further Research: See Cal Rules of Ct 8.708 (Cal Rules of Ct 8.889, effective January 1, 2009); Civ App Prac §10.97.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal From Limited Civil Case Decision/STEP 73.
REQUEST PUBLICATION OF SUPERIOR COURT APPELLATE DIVISION OPINION

STEP 73. REQUEST PUBLICATION OF SUPERIOR COURT APPELLATE DIVISION OPINION

WHEN APPROPRIATE

Request publication of opinion of appellate division of superior court if you believe that opinion meets criteria for published opinions, *i.e.*, opinion:

- a. Sets new rule of law (Cal Rules of Ct 8.1105(c)(1));
- b. Applies current law to set of facts significantly different from those in prior published opinions (Cal Rules of Ct 8.1105(c)(2));
- c. Analytically modifies, explains, or criticizes existing rule of law (Cal Rules of Ct 8.1105(c)(3));
- d. Creates a new interpretation, explanation, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule (Cal Rules of Ct 8.1105(c)(4));
- e. Discusses or creates apparent conflict in law (Cal Rules of Ct 8.1105(c)(5));
- f. Considers legal issue of continuing public interest (Cal Rules of Ct 8.1105(c)(6));
- g. Makes significant contribution to legal literature (Cal Rules of Ct 8.1105(c)(7));
- h. Discusses a previously neglected rule of law, or reaffirms a principle of law not discussed in a recently reported decision (Cal Rules of Ct 8.1105(c)(8)); or
- i. Includes a separate opinion concurring or dissenting on a legal issue, and publication of the majority and separate opinions would significantly assist in the law's development (Cal Rules of Ct 8.1105(c)(9)).

PREPARE AND FILE REQUEST

To request that an appellate division opinion be published, submit to *court that rendered opinion* a letter requesting that court publish opinion, stating person's interest and reason why opinion meets standard for publication. Cal Rules of Ct 8.1120(a)(1)-(2).

Serve Request

You must serve each party with a copy of the letter. Cal Rules of Ct 8.1120(a)(4).

Deadline

Within **20 days** after date opinion is filed, submit letter requesting publication. Cal Rules of Ct 8.1120(a)(3).

IF COURT DOES NOT OR CANNOT GRANT REQUEST BEFORE DECISION BECOMES FINAL

If court does not or cannot grant request before decision is final as to that court, court will (Cal Rules of Ct 8.1120(b)):

- a. Within **15 days** after decision is final in that court, forward your request along with its recommendation to supreme court; and
- b. Send a copy of its recommendations to all parties and anyone requesting publication.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal From Limited Civil Case Decision/STEP 74.
RECOVER COSTS

STEP 74. RECOVER COSTS

WHEN COSTS APPROPRIATE

On when costs are appropriate, see Cal Rules of Ct 8.764 (Cal Rules of Ct 8.891(a), effective January 1, 2009) and discussion in step 50, above.

DEADLINE TO FILE MEMORANDUM

Within **30 days** after clerk files remittitur with trial court, file and serve verified memorandum of costs. Cal Rules of Ct 8.764(d) (Cal Rules of Ct 8.891(c)(1), effective January 1, 2009), Cal Rules of Ct 3.1702(a)(1).

INCLUDE IN MEMORANDUM

Include in memorandum request for (Cal Rules of Ct 8.764(c)(1) (Cal Rules of Ct 8.891(d)(1)(B), effective January 1, 2009)):

Record

- a. If appellant, cost of preparing original and one copy of any type of authorized record on appeal;
- b. If respondent, cost of preparing one copy of record.

NOTE

The parties can stipulate that additional costs to prepare the record by a method other than typewriting are recoverable. Cal Rules of Ct 8.764(c)(1).

Additional Evidence

Reasonable costs of producing additional evidence (Cal Rules of Ct 8.764(c)(2) (Cal Rules of Ct 8.891(d)(1)(C), effective January 1, 2009)); and

Fees

Amount of (Cal Rules of Ct 8.278(d)(1), 8.764(c)(3) (Cal Rules of Ct 8.891(d)(1)(A), (D)-(E), effective January 1, 2009)):

- a. Filing fees;
- b. Notary fees, if necessary; and
- c. Expenses of service, transmission, and filing of record, briefs, and other papers. Costs may include those spent in preparing an appendix or getting a stipulated superior court file. See Advisory Committee Comment to Cal Rules of Ct 8.278.

VERIFY MEMORANDUM

Verify items of costs as correct and necessarily incurred in case, to the best of the knowledge of (Cal Rules of Ct 3.1700(a)(1) (Cal Rules of Ct 8.891(c), effective January 1, 2009)):

- a. Party;
- b. Attorney; or
- c. Agent of party or attorney.

SERVE AND FILE MEMORANDUM

Prevailing party (Cal Rules of Ct 8.278(a)(1), 8.764(d) (Cal Rules of Ct 8.891(c), effective January 1, 2009)):

Serve

Serves a copy on all parties;

File

Files original of memorandum with trial court. Cal Rules of Ct 8.278(c)(1) (Cal Rules of Ct 8.891(c), effective January 1, 2009).

Further Research: See CCP §1034; Cal Rules of Ct 8.278, 8.764 (Cal Rules of Ct 8.891(c), effective January 1, 2009), Cal Rules of Ct 3.1700(a), 3.7102; Civ App Prac §§20.1-20.8.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal From Limited Civil Case Decision/STEP 75.
OPPOSING PARTY: FILE AND SERVE MOTION TO TAX COSTS

STEP 75. *OPPOSING PARTY*: FILE AND SERVE MOTION TO TAX COSTS

HOW TO FILE AND SERVE

On how to file and serve motion to tax costs, see [step 51](#), above. See also [Cal Rules of Ct 8.764\(d\)](#) ([Cal Rules of Ct 8.891\(c\)\(2\)](#)), effective January 1, 2009), [Cal Rules of Ct 3.1700](#).

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/During Appeal From Limited Civil Case Decision/STEP 76.
ENFORCE COSTS AFTER CLERK ENTERS JUDGMENT

STEP 76. ENFORCE COSTS AFTER CLERK ENTERS JUDGMENT

HOW TO ENFORCE

For how to enforce costs, see [step 55](#), above. See also [Cal Rules of Ct 8.764\(d\)](#) ([Cal Rules of Ct 8.891\(c\)\(3\)](#)), effective January 1, 2009).

© The Regents of the University of California

When Appealing From Small Claims Court Decision

STEP 77. DETERMINE WHETHER CLIENT CAN APPEAL JUDGMENT

WHO CAN APPEAL

The following can appeal from small claims court decision:

- a. Defendant with respect to plaintiff's claim (CCP §116.710(b));
- b. Plaintiff with respect to defendant's claim (CCP §116.710(b)); and
- c. Insurer of defendant if (CCP §116.710(c)):
 - (1) Judgment exceeds \$2500; and
 - (2) Insurer stipulates that its policy covers matter to which judgment applies.

WHO CANNOT APPEAL

- a. Plaintiff in a small claims action cannot appeal own claim, although he or she can file a motion to vacate if not present at hearing. CCP §§116.720(a), 116.320(b)(15), (c)(2).
- b. Defendant who did not appear at hearing cannot appeal, but may move to vacate judgment and appeal from order denying that motion. CCP §116.710(d).

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Small Claims Court Decision/STEP 78. FILE NOTICE OF APPEAL

STEP 78. FILE NOTICE OF APPEAL

DEADLINE TO FILE NOTICE WITH SMALL CLAIMS COURT CLERK

File notice of appeal with small claims court clerk:

- a. Within **30 days** after clerk mails notice of entry of judgment (CCP §116.750(b));
- b. If either party did not appear at hearing but moves to vacate judgment and that motion is *denied*, within **10 days** after small claims court mails or delivers notice of order denying motion to vacate. CCP §§116.710(a), (d), 116.720(a), 116.730(a), (e).

NOTE

These deadlines are *not* extended by CCP §1013 when the clerk mails notice of entry. CCP §1013(a).

PREPARE NOTICE

Generally follow format of notice for other appeals (see steps 5, 5Z, above), but (Cal Rules of Ct 8.904(a)):

- a. Notice must be signed by appellant or appellant's attorney;
- b. Notice is sufficient if it states in substance that appellant appeals from:
 - (1) A specified judgment; or
 - (2) Denial of motion to vacate judgment; and
- c. Notice must be liberally construed in favor of sufficiency. Cal Rules of Ct 8.904(a).

PAY FEE

Appellant must pay a filing fee of \$75. CCP §116.760(a). See step 5Z, above for limited civil case filing fee.

NOTE

You do not need to seek a stay of a small claims judgment, as you would with a superior court judgment, because the enforcement of a small claims judgment is *automatically* suspended. See CCP §116.810.

CLERK MAILS NOTICE

Small claims court clerk must promptly mail notification of appeal to all other parties at their last known addresses. Cal Rules of Ct 8.904(b).

Further Research: See CCP §§116.710-116.760; Cal Rules of Ct 8.904; Civ App Prac §§10.103-10.117.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/When Appealing From Small Claims Court Decision/STEP 79. CLERK TRANSMITS RECORD

STEP 79. CLERK TRANSMITS RECORD

DEADLINE FOR CLERK TO TRANSMIT RECORD

Within **5 days** after notice of appeal is filed and payment made of any fees required by law, small claims court clerk transmits record to clerk of court assigned to hear that appeal. Cal Rules of Ct 8.907.

CONTENTS OF RECORD

Record consists of small claims court file and all related papers, including notice of appeal. Cal Rules of Ct 8.907.

Further Research: See Civ App Prac §10.120.

© The Regents of the University of California

STEP 80. PREPARE FOR TRIAL DE NOVO

SCOPE OF APPEAL

Claims of parties are heard in a new hearing (CCP §116.770(a), (d)), *i.e.*, appeals judge (superior court judge) hears all the evidence as in a small claims hearing (not relying only on a record). CCP §116.770(c).

CLERK SETS TRIAL

Superior court clerk will automatically (CCP §116.770(e)):

- a. Set case for hearing at earliest available time; and
- b. Mail notice to parties at least **14 days** before trial date.

OBTAIN CONTINUANCE

For good cause, court may grant continuances of up to **30 days** on application of one party or by stipulation. Cal Rules of Ct 8.910.

NOTE

In cases of extreme hardship, court may grant continuance of more than 30 days. Cal Rules of Ct 8.904.

PREPARE FOR INFORMAL TRIAL

Court conducts trial informally with some limitations, *i.e.* (CCP §116.770(b)):

- a. No pretrial discovery;
- b. No right to jury trial; and
- c. No tentative decision or statement of decision.

WHAT YOU MAY OBTAIN

Superior court may:

- a. Award reimbursement of attorney fees up to \$150 (CCP §116.780(c));
- b. Award actual loss of earnings and expenses of transportation and lodging reasonably incurred in appeal, up to \$150 (CCP §116.780(c));
- c. If court finds that appeal was without substantial merit, award sanctions. See CCP §116.790. See also step 18, above, for more about sanctions.

EFFECT OF JUDGMENT

- a. Judgment is not appealable. CCP §116.780(a).
- b. Superior court transfers case back to small claims court for enforcement

Further Research: See CCP §§116.710-116.795; Cal Rules of Ct 8.902, 8.904; Rosse v DeSoto Cab Co. (1995) 34 CA4th 1047, 40 CR2d 680 (collateral estoppel doctrine does not apply to judgment of small claims court or superior court in action arising under Small Claims Act). See also Civ App Prac §§10.122, 10.126.

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX A Notice of Appeal/Cross-Appeal (Unlimited Civil Case) (Judicial Council Form APP-002)

APPENDIX A
Notice of Appeal/Cross-Appeal (Unlimited Civil Case)
(Judicial Council Form APP-002)



ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, state bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<input type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER:
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. NOTICE IS HEREBY GIVEN that (*name*):
 appeals from the following judgment or order in this case, which was entered on (*date*):
- Judgment after jury trial
 - Judgment after court trial
 - Default judgment
 - Judgment after an order granting a summary judgment motion
 - Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
 - Judgment of dismissal after an order sustaining a demurrer
 - An order after judgment under Code of Civil Procedure section 904.1(a)(2)
 - An order or judgment under Code of Civil Procedure section 904.1(a)(3)–(13)
 - Other (*describe and specify code section that authorizes this appeal*):

2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal:
 - b. Date superior court clerk mailed notice of original appeal:
 - c. Court of Appeal case number (*if known*):

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)



CASE NAME:	CASE NUMBER:
------------	--------------

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

Mail Personal Service

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is (*specify*):
3. I mailed or personally delivered a copy of the *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* as follows (*complete either a or b*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope and
 - (a) **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____  _____
 (TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX B Civil Case Information Sheet (Judicial Council Form APP-004)

APPENDIX B
Civil Case Information Sheet
(Judicial Council Form APP-004)



CIVIL CASE INFORMATION STATEMENT	Court of Appeal Case Number (<i># known</i>):
COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	FOR COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	
APPELLANT: RESPONDENT:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
JUDGES (<i>all who participated in case</i>):	Superior Court Case Number:
<p>NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 10 days after the clerk mails you a notice that this form must be filed. You must attach to this form (1) a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 8.104 for definition of "entered") and (2) proof of service of this form on all parties to the appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2), or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).</p>	

PART I – APPEAL INFORMATION

A. APPEALABILITY

1. Appeal is from:

- Judgment after jury trial
- Judgment after court trial
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code Civ. Proc., §§ 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code Civ. Proc., § 904.1(a)(2)
- An order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13)
- Other (*describe and specify code section that authorizes this appeal*):

2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

- Yes No If no, please explain why the judgment is appealable:

B. TIMELINESS OF APPEAL (*Provide all applicable dates.*)

1. Date of entry of judgment or order appealed from: ____/____/____
2. Date that notice of entry of judgment or a copy of the judgment was mailed by the clerk or served by a party under California Rules of Court, rule 8.104: ____/____/____
3. Was a motion for new trial, judgment notwithstanding the verdict, reconsideration, or to vacate the judgment made and denied?
 Yes No If yes, please specify the type of motion:

Date motion filed: ____/____/____ Date denied: ____/____/____ Date denial served: ____/____/____

4. Date notice of appeal or cross-appeal filed: ____/____/____

C. BANKRUPTCY OR OTHER STAY

Is there a related bankruptcy case or a court-ordered stay that affects this appeal? Yes No (*If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.*)



APPELLATE CASE TITLE:	SUPERIOR COURT CASE NUMBER:
-----------------------	-----------------------------

D. APPELLATE CASE HISTORY (Provide additional information, if necessary, on attachment I.D.)

Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court? Yes No If yes, insert name of appellate court:

Appellate court case no.:

Title of case:

Name of trial court:

Trial court case no.:

E. SERVICE REQUIREMENTS

Is service of documents in this matter, including a brief or a petition, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 8.29 or a statute? Yes No If yes, please indicate the rule or statute that applies.

Rule 8.29

Gov. Code, § 4461 (Disabled access to public buildings)

Bus. & Prof. Code, § 17209 (Unfair Competition Act)

Gov. Code, § 12656(a) (False Claims Act)

Bus. & Prof. Code, § 17536.5 (False advertising)

Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)

Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney)

Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations)

Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing)

Other (please specify statute):

NOTE: The rule and statutory provisions listed above require service of a copy of a party's brief or petition and brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply. (See, e.g., Code Civ. Proc., § 1355; Gov. Code, § 946.6(d); Pub. Resources Code, § 21167.7.)

PART II – NATURE OF ACTION

A. Nature of action (check all that apply):

1. Conservatorship

2. Contract

3. Eminent domain

4. Equitable action a. Declaratory relief b. Other (describe):

5. Family law

6. Guardianship

7. Probate

8. Real property rights a. Title of real property b. Other (describe):

9. Tort

a. Medical malpractice

b. Product liability

c. Other personal injury

d. Personal property

e. Other tort (describe):

10. Trust proceedings

11. Writ proceedings in superior court

a. Mandate (Code Civ. Proc., § 1085)

b. Administrative mandate (Code Civ. Proc., § 1094.5)

c. Prohibition (Code Civ. Proc., § 1102)

d. Other (describe):

12. Other action (describe):

B. This appeal is entitled to calendar preference/priority on appeal (cite authority):

PART III – PARTY AND ATTORNEY INFORMATION

Please attach to this form a list of all the parties and all their attorneys of record who will participate in the appeal. For the parties, include the following information: the party's name and his or her designation in the trial court proceeding (plaintiff, defendant, etc.). For the attorneys, include the following information: name, State Bar number, mailing address, telephone number, fax number, and e-mail address.

Date:

This statement is prepared and submitted by:

(SIGNATURE OF ATTORNEY OR UNREPRESENTED PARTY)

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX C Appellant's Notice Designating Record on Appeal (Unlimited Civil Case) (Judicial Council Form APP-003)

APPENDIX C
Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)
(Judicial Council Form APP-003)



ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	Superior Court Case Number:
RE: Appeal filed on (<i>date</i>):	Court of Appeal Case Number (<i>if known</i>):
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior (*check a, b, c, d, or e and fill in any required information*):

- a. A clerk's transcript under rule 8.122. (*You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.*)
- (1) I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have attached the following document (*check (a) or (b)*):
- (a) An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use Request to Waive Court Fees (form FW-001) to prepare and file this application.*)
- b. An appendix under rule 8.124.
- c. The original superior court file under rule 8.128. (*NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.*)
- d. An agreed statement under rule 8.134. (*You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).*)
- e. A settled statement under rule 8.137. (*You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).*)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

- a. WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

CASE NAME:	CASE NUMBER:
------------	--------------

- b. WITH the following record of the oral proceedings in the superior court:
- (1) A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)*
I have *(check all that apply)*:
- (a) Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
- (b) Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c) Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
- (i) all of the designated proceedings.
- (ii) part of the designated proceedings.
- (d) Attached a certified transcript under rule 8.130(b)(3).
- (2) An agreed statement. *(Check and complete either (a) or (b) below.)*
- (a) I have attached an agreed statement to this notice.
- (b) All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3) A settled statement under rule 8.137. *(You must attach the motion required under rule 8.137(a) to this form.)*

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

- I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding)*:

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

- a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
--------------------------------	----------------

- (1) Notice of appeal
- (2) Notice designating record on appeal *(this document)*
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment *(if any)*
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*
- (6) Ruling on one or more of the items listed in (5).
- (7) Register of actions or docket *(if any)*

CASE NAME:	CASE NUMBER:
------------	--------------

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

- b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in a. above to be included in the clerk's transcript, you must identify those documents here.)

I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed)

Document Title and Description	Date of Filing
--------------------------------	----------------

(8)

(9)

(10)

(11)

(12)

See additional pages.

- c. **Exhibits to be included in clerk's transcript.**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

Exhibit Number	Description	Admitted (Yes/No)
----------------	-------------	-------------------

(1)

(2)

(3)

(4)

(5)

See additional pages.

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

- a. I request that the reporters provide (check one):

- (1) My copy of the reporter's transcript in paper format.
- (2) My copy of the reporter's transcript in computer-readable format.
- (3) My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX D First Appellate District, Misc. Order 94-1: Granting Extension of Time to File Reporter's Transcript

APPENDIX D

First Appellate District, Misc. Order '94-1: Granting Extension of Time to File Reporter's Transcript

(See step 10, above)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT

GENERAL ORDER 94-1

THE COURT:

IT IS HEREBY ORDERED that all certified shorthand court reporters in the counties within the First Appellate District be granted extensions of time to prepare and file reporters' transcripts on appeal as follows:

In criminal appeals, court reporters are hereby granted one extension of 30 days (Cal Rules of Ct 35(d)) to prepare reporters' transcripts where the defendant appeals from a judgment of conviction after trial by jury or by the court. Transcripts shall be due within 50 days after the filing of the notice of appeal (Cal Rules of Ct 35(b), (d)). This order *does not apply* where the defendant appeals from (1) an order after judgment (Pen C §1237(b)); (2) a judgment entered on a plea of guilty or nolo contendere; (3) a judgment pronounced on resentencing after remand from the appellate court; (4) an order revoking probation or a judgment imposed after revocation of probation; or (5) an order extending the defendant's term of commitment to a state hospital (Pen C §1026.5). Nor does this order apply to appeals by the People. Transcripts in these latter cases shall be due within 20 days after the notice of appeal is filed.

In all appeals from orders or judgments in juvenile court proceedings (Welf & I C §§300-302, 601-602), the reporters' transcripts shall be filed within 20 days after the filing of the notice of appeal.

In civil appeals, other than juvenile court proceedings, the court reporters are hereby granted an extension of 30 days to prepare transcripts where a party appeals from a final judgment after a trial by a jury or the court. Transcripts shall be due within 60 days after notice to prepare the transcripts. This order *does not apply* where a party appeals from (1) an order after judgment (CCP §904.1(b)); (2) a summary judgment; (3) a judgment of dismissal after the sustaining of a demurrer without leave to amend; (4) a default judgment; (5) a judgment of dismissal for failure to proceed in a timely manner (CCP §§583.110-583.430); or (6) any other appealable pretrial order or judgment of dismissal. Nor does this order apply where the appeal is from a superior court order declaring a minor free from the custody and control of his or her parents (former CC §232, operative until Jan. 1, 1994, and Fam C §§7802-7808, operative Jan. 1, 1994). Transcripts in these latter cases shall be due within 30 days after notice to prepare the transcripts.

Nothing in this order shall preclude a court reporter from applying and showing good cause for an extension of time as provided by court rules (Cal Rules of Ct 35(d), 43, 45(b)-(d)). However, no additional extension of time shall be granted without the recommendation of the appeals supervising judge of the superior court.

This order supersedes this court's Miscellaneous Order No. 91-1.

Date: April 4, 2000

Carl W. Anderson

Administrative Presiding Justice

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX E Application for Extension of Time to File Brief (Civil Case) (Judicial Council Form APP-006)

APPENDIX E
Application for Extension of Time to File Brief (Civil Case)
(Judicial Council Form APP-006)



COURT OF APPEAL, APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address)</i>	Superior Court Case Number:
TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i> : _____ E-MAIL ADDRESS <i>(Optional)</i> : _____ ATTORNEY FOR <i>(Name)</i> : _____	FOR COURT USE ONLY
APPELLANT: RESPONDENT:	
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)	
Notice: Please read Judicial Council form APP-001 before completing this form.	

1. I *(name)*:
request that the time to file appellant's opening brief (AOB) respondent's brief (RB) appellant's reply brief (ARB),
now due on *(date)*: _____ be extended to *(date)*: _____
2. I have have not received a rule 8.220 notice.
3. I have received:
 no previous extensions to file this brief. the following previous extensions:

(number of extensions): _____	extensions by stipulation totaling <i>(total number of days)</i> : _____
(number of extensions): _____	extensions from the court totaling <i>(total number of days)</i> : _____
4. I am unable to file a stipulation to an extension because
 the other party is unwilling to stipulate to an extension. other reason *(please specify)*: _____
5. The reason I need an extension to file this brief is *(please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions)*: _____
6. The last brief filed by any party was: AOB RB filed on *(date)*: _____
7. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Appendix/Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/other:	_____	_____	_____
8. The trial court has ordered the proceedings in this case stayed until this appeal is decided.
9. For attorneys filing application on behalf of client:
 I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

(TYPE OR PRINT NAME) ▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

EXTENSION OF TIME IS:

ORDER

- Granted to _____
 Denied _____

Date: _____ (SIGNATURE OF PRESIDING JUSTICE)



CASE NAME:	CASE NUMBER:
------------	--------------

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

Mail Personal Service

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is (*specify*):
3. I mailed or personally delivered a copy of the *Application for Extension of Time to File Brief (Civil Case)* as follows (*complete either a or b*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope and
 - (a) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

APPENDIX F
Sample Notice Concerning Oral Argument

(See step 25, above)

Court of Appeal
State of California
Fourth Appellate District
Stephen M. Kelly, Clerk

Division Two
3389 Twelfth Street
Riverside, CA 92501
(951) 383-4441

August 1, 2008

Esteban Hernandez

110 West A St., Ste. 700

San Diego, CA 92101

RE: PEOPLE OF THE STATE OF CALIFORNIA

ANSHEW, MICHAEL ALAN

E008625

San Bernardino County No. SCR37292

Dear Counsel:

Unless counsel files a letter requesting oral argument in the above matter on or before August 11, 2008, oral argument will be deemed waived and the case will be submitted for decision when the court has approved the waiver. Cal Rules of Ct 8.256(d)(1). The date for filing the request is not extended by five days under CCP §1013(a).

If the court determines that oral argument is required, you will be notified in writing by our office.

Counsel may serve and file within ten days a letter with this court requesting the early transmission of exhibits. The letter must establish the necessity of the exhibits for a proper resolution of the appeal. Cal Rules of Ct 8.224. Unless otherwise notified, the request will be granted.

STEPHEN M. KELLY, Clerk

By: _____

Deputy Clerk

cc: All Counsel

Appellant Defenders, Inc.

APPENDIX G

Preparing and Delivering Oral Argument*

(See also [step 27](#), above, for Judge's Perspective with pointers for presenting oral argument)

PURPOSES OF ORAL ARGUMENT

Your objective: To represent your client properly, you must:

Understand the goals of oral argument from *both* sides of the bench; and

Tailor your arguments to meet these goals.

Judges' purposes:

Clarify issues. Judges rely on oral argument to:

- Help them pin down the issues they must decide; and
- Resolve any ancillary questions that may not have been the subject of briefing, but could arise in resolving the appeal, *e.g.*, jurisdiction, standing, mootness.

Clarify factual and legal points. Judges may ask you to substantiate factual claims by reference to the record, or to explain confusing holdings and party positions in the court below.

Clarify the scope of claims. Judges pose hypothetical questions to test the limits of the principles underlying your argument.

Examine the logic of claims. Judges will ask you to address seeming inconsistencies in your arguments.

Examine the practical impact of claims. Judges will question whether acceptance of your arguments could produce impractical, unduly burdensome, or nonsensical results.

Lobby for or against particular positions. Some judges use argument to explain their views and press them on their fellow judges.

Lawyer's purposes: You should use oral argument to:

Ensure that the judges understand and focus on your claims. Only during oral argument can you meet the judges eye to eye, without any intervening "screening" from law clerks and without any distractions from the dozens of other cases on their dockets. Use this opportunity to persuade the judges to rule in your client's favor.

Correct incorrect impressions of fact or law that the judges may have about the case. Be alert to any indications that the judges are proceeding on erroneous assumptions of fact or law, and take the opportunity to correct such errors.

Demonstrate the soundness of your position. Show the judges that your position hangs together under fire and can withstand the hypotheticals they pose.

Eradicate the judges' concerns. Find out what troubles the judges and address those problems.

Impress the judges positively and memorably. Be candid, prepared, and helpful, and advocate reasonable positions. This will enhance your credibility with the judges and make them more receptive to your position.

BEFORE DELIVERING THE ARGUMENT

Investigate the court: Make sure you find out from the court clerks or other attorneys who practice in that court:

Preparation. Court's preparation for the oral argument, *e.g.*, whether the court:

- Reads the briefs; or
- Prepares an opinion.

Focus. Judges' focus or dispositional tendency, *e.g.*, the judge tends to apply economic analysis to contract cases, or is a staunch

supporter of the right to privacy.

Visit the court: If possible, visit the court and observe the argument of another case:

Layout. Become familiar with the physical layout, space available on the podium, location of the clock.

Check-in. Learn how you check in and make special arrangements with the clerk or bailiff, *e.g.*, providing copies of cases not cited in brief to the bench.

Time. Find out who keeps track of time and whether there are signals when you run out of time allotted.

Research court limitations on argument: Review local rules and policies about (see [step 27](#), above), *e.g.*:

Time. Amount of time allotted for your argument;

Sequence. Who will argue first;

Argument. How many attorneys will be allowed to argue.

Tailor your argument to fit the court, *e.g.*:

Less explanation needed. If the court is familiar with the briefs or prepares an opinion before argument, you will not need to explain all the facts and issues in the briefs.

More explanation needed. If the court is *not* familiar with the briefs, you will need to take more time to explain the facts and issues. See "Substance of Oral Argument; Statement of facts," in this appendix, below.

Emphasize strong points. If the court limits your time, make sure you tailor your argument to emphasize your strongest points.

Review briefs, record, argument, and authority:

Your case. Read your briefs and the proposed oral argument from the viewpoint of a hostile or skeptical judge; write out questions that you expect the judge to ask:

- Make sure you have the answers to all these questions; then
- Distill answers on important issues so that you can answer in two or three sentences (keep a longer version in reserve if you have time or if the court asks other questions).

Opponent's case. Read your opponent's brief carefully and with an open mind to understand the points it makes that are potentially most troublesome for your position. Try to think of every difficult question that a judge might ask.

Authority. Read *all* authorities cited in the briefs and Shepardize them right up to the time of oral argument:

- Make sure any authority cited has not been overruled; and
- If an authority is important to the issues in your case, read other authorities:
- Cited in that authority; and
- That cite the case you are relying on.
- Make abstracts (or copies) of the important authority.

Record. Review *all* relevant portions of the record:

- Be prepared to answer questions about all relevant portions;
- Be able to refer to the record to answer questions or to find references to support your answers.

Other authorities. Read relevant law review articles and economic or similar studies.

Practice:

Present case. Prepare to concisely explain your case by presenting your case to other attorneys or lay persons.

Mock court. If available, participate in mock or moot court, especially to practice responding to the judges' questions.

Anticipate questions. To prepare for questions you may have missed, encourage lay persons and other lawyers to ask questions. Ask fellow lawyers acting as judges in a moot court to raise questions you otherwise might miss.

Listen to a tape recording of your argument to make sure that you:

- Don't mumble, slur, use too many "umms" or "ahs";
- Vary the tone and volume of your presentation, while making sure you can still be heard on the tape (and by the judges).

Videotape your presentation, and check that your techniques are correct. See "Technique of Delivery," in this appendix, below.

SUBSTANCE OF ORAL ARGUMENT

Introduction: Tell the judges in a couple of sentences:

How the case reached them;

Type of case (*e.g.*, real estate fraud, personal injury);

Your position; and

What points you plan to cover.

Statement of facts:

State facts only briefly. Spend little time in stating the facts unless there is an affirmative tactical goal in doing so (*i.e.*, your case is particularly strong on the facts).

Avoid wasting time. The judges are usually familiar with the statement portion of your brief, and there is a real risk of becoming bogged down in factual minutiae and wasting valuable argument time.

Focus your argument: Limit yourself to, at most, three or four crucial points.

Reduce your case to its simplest terms, *i.e.*, what do you want the court to do, and how?

Isolate the most important reason for deciding in your favor;

Choose a theme that sums up your case and that you can refer to throughout the argument.

Example: Appellant, a reclamation agency, had failed to pay for work performed by respondent. Appellant attacked the legality of the conduct of officers of the reclamation agency, along with numerous other issues that made a confusing appeal more confusing. Respondent's counsel focused the argument on one theme: Appellant should not be allowed to avoid paying for services respondent rendered. Respondent won.

Keep your main points simple and hard-hitting: Judges may miss subtle or rhetorical comments. Keep your points straightforward.

Using cases:

Limit your case discussion. Many excellent arguments never refer to specific cases. Lengthy discussions of holdings in cases that the judges haven't read or aren't familiar with can be a real turn-off. Unless the interpretation of potentially controlling precedents is crucial in your case, it is usually more effective to leave analysis of cases to the briefs, and devote the argument to conveying the logic and common sense of your position.

Don't rely on noncontrolling case authorities. You may refer to the reasoning of inferior courts or courts in other jurisdictions, but don't expect the judges in your case to reach a certain result just because other courts have done so.

Using the record:

Know the record. Be prepared to answer questions about relevant parts of the record.

Stick to the record. Ordinarily, refrain from referring to matters outside the record, such as newspaper articles. However, if a judge asks you to go outside the record, you may do so.

TECHNIQUE OF DELIVERY

Your presence:

Maintain eye contact. Walk to the lectern and look at the judges. Then talk to the judges, not at them.

Avoid delay. Don't let unnecessary preparations delay your argument:

- Don't gulp water, shuffle papers, remove your watch, etc.
- Walk to the lectern, set down your watch and papers, wait for the presiding judge to recognize you, and then begin.

Stand upright and still, but don't be rigid. Stand, don't slouch. Stay close to the microphone. Don't wander around the courtroom.

Control your nonverbal communication. Be earnest, alert, and confident. Avoid distracting movements, such as picking at your sleeve while a judge questions you. Don't adopt combative positions, such as crossing your arms.

Your voice:

Enunciate clearly. Judges abhor mumbling and muttering.

Control your volume. Don't speak softly, but don't bellow. Vary your volume so you don't speak in a monotone.

Keep your cadence. Oral argument should move with a carefully regulated cadence. It is important to maintain a conversational tone. Avoid long pauses while you grope for your next point or look for a citation to the record. Equally important, do not race through an argument.

Communicating with the Judges:

Be courteous and respectful. The proper relationship to the judges is that of respectful equality. Don't be scornful or belligerent. At the same time, don't be timorous or overawed. In particular, don't buckle or concede a point just because an individual judge seems displeased with your position.

Address the judges correctly. Don't try to address a judge by name, unless you can do so correctly. If you address "Judge or Justice Smith" as "Judge or Justice Jones," neither judge will be pleased. [Note: Judges of the appellate and supreme courts are "Justices," and judges of the superior court appellate panel are "Judges"].

Don't read to the judges. Reading from statutes, cases, or legislative history will bore the judges, even if it does not bore you. However, you may briefly quote pivotal language crucial to your argument.

Avoid long sentences, numbers, and citations. Remember that oral and written communication are different. Keep your sentences simple and vivid.

Limit reliance on help from others at the counsel table. Conferring with counsel makes you look ill-prepared and should be done only in limited circumstances. Offer to submit a supplemental brief on a significant point that you cannot address adequately. But if you cannot answer an important question and your counsel knows the answer, quickly consult him or her. Limit note passing with co-counsel. Passing notes distracts the judges. Pass notes only to obtain information, not to toss around ideas.

Remember the forum. Appellate judges are not jurors and greatly resent being addressed as though they are. Avoid emotional rhetoric; instead, view oral argument as an intellectual exchange or debate.

Know what to do when the judges seem to be ignoring you. Don't be unnerved if they get up, turn chairs around, read, talk, etc., during your argument. Often, the judges are talking about your case. You may pause briefly to catch their attention. But usually you should plunge ahead and try to make your argument lively and interesting.

Your argument:

Be prepared to modify your argument. Think of your argument as an accordion that expands or contracts based on the time available. The more the judges question you, the less time you have to present what you planned. Be ready to discard less important matters if time is running short.

Have something in writing at the lectern. Without written help, you may ramble and overlook pivotal points.

Use the written format that works best for you. Experiment with different techniques during moot court sessions until you find the one you are most comfortable with, *e.g.*:

- Outline with key words and sentences.
- List of key arguments on note cards.
- Script of what you intend to say, *but*:
- Do not read your argument.
- Don't do more than glance at it to refresh your memory on key points.

Remember that written and spoken communication use entirely different diction. A written argument will sound stilted unless you take great care to use words and phrases appropriate to oral communication.

Be well armed with the material you may need, *e.g.*:

- All briefs and appendixes.
- Pertinent record materials, legislative history, and important cases. If you plan to quote any authorities, have copies available for the judges if they request them.

Tab important parts of the transcript and the appendix, so that you don't lose time searching for a reference.

Don't use distracting exhibits or physical evidence. You may lose several minutes of precious time while the judges pass your exhibits around. Know that some judges see them as a stunt. If certain exhibits really will assist you, get the clerk's permission to copy and distribute them to the judges before oral argument.

Your time:

Cover important points. Keep track of your remaining time, so that you can cover your most important points.

Save time. If you are the appellant, be sure to save time for rebuttal.

End on time. End your argument when the red light signals that your time is up (if available).

Close promptly. Thank the judges and sit down.

Answer questions. You may answer questions posed by the judges after your time is up.

ANSWERING QUESTIONS

By far the most important part of an oral argument is responding to the judges' questions. The purposes of the argument are communication and persuasion. Responding to what the judges have on their minds is much more valuable than repeating the points you have already made in your brief.

Preparing for questions: See "Before Delivering the Argument; Review briefs, record, argument, and authority," and "Practice," above, in this appendix.

How to answer questions, generally:

Listen carefully to the questions. Make sure you understand them. You will frustrate and perhaps confuse the judges if you answer questions not posed.

Answer the questions directly:

- Whenever possible, begin your response with "yes" or "no," then provide an explanation, if necessary to answer the question. Don't beat around the bush. You don't have time.
- If a question leads naturally to an important point you were going to make later in the argument, consider rearranging the argument to cover the point while you have the judges' attention.

Do answer the questions:

- Don't be so anxious to get back to your argument that you give off-the-cuff answers to the judges' questions.
- The case will be decided based on what is important to the judges, and their questions frequently signal the topics that require thorough consideration.

Don't evade the questions. Don't try to escape a question by explaining its unimportance, or arguing that your case differs from the hypothetical. Obviously, the judge believes the question matters, otherwise he or she would not ask it.

Don't postpone answers. Always answer immediately. Delaying your answer may irritate the judges. If you must postpone, answer briefly and promise to elaborate after you have laid a foundation for your answer; be sure that you do return to the point as promised.

How to respond to different types of questions: Bear in mind that judges ask different kinds of questions, demanding different responses:

Questions that go to the heart of the case. Spend most of your time on these.

Background questions. Answer quickly and accurately and then move on.

Fencing or debating questions. Try to avoid being bogged down too long on peripheral points that a judge wants to bat back and forth. Give your best answer, then find a tactful way to return to your main point.

Humorous questions or observations. Enjoy the remarks and then get back to business.

Irrelevant questions. Even if you think the question is irrelevant, don't say so. Respond briefly, and then explain why your case presents a "somewhat different issue."

Hostile questions. Don't be unnerved or disappointed. Hostility may signal that the questioner is in the minority. Answer politely and firmly, and then return to your argument.

Friendly questions that lead to incorrect conclusions. Accept the help, but politely correct the mistake: "I would agree with your Honor's approach, but I think the main support in this situation comes from"

Questions that test principles underlying your argument. The judges will question you on the scope of these underlying principles.

- Answer carefully and know the limits of your principles in advance:
- Every principle has its breaking point; every principle clashes with a contrary principle at some point.
- Avoid radical arguments that extend your principle too far.
- Offer some neutral basis for distinguishing cases that you would not include within your principle.

Example: You are arguing that the Speech and Debate Clause immunizes your client's speech. If a judge asks, "Would the Speech and Debate Clause immunize a physical assault during an emotional debate on the floor of the Senate?" Do not say "Yes." Instead, you could say, "The Speech and Debate Clause protects speech and debate, not assaultive physical conduct." Remember, do not merely say that the hypothetical differs from your case, because the judges know that. They want to know what principle separates your case from their troubling hypotheticals.

Don't expect law school questions. The judges won't ask you to "give the facts in the *Drybones* case." But you should know enough about relevant cases to answer general factual questions.

What to do when you can't answer a question:

Factual questions. If someone at your counsel table knows the answer, ask that person. If not, tell the judges you can't answer. Occasionally, you may be forced to say, "I regret that I cannot supply that information. However, I believe that X's testimony addresses that point." Ideally, no crucial record fact will escape your recall.

Legal questions. You cannot answer a legal or hypothetical question with "I don't know." You should answer the question on the spot. You may say that you haven't considered that variant of your situation, but then state the relevant factors and answer as well as you can. If you don't follow the question, say so, and the judge will rephrase it.

Don't bluff about cases you haven't read. If you get a point-blank question about an unfamiliar case, admit it, and ask the judge to refresh your memory. This should never happen with respect to a significant case if you prepare properly.

Integrating questions and your argument:

Be flexible. During some oral arguments, you may have time only to hop from question to question quickly. During others, you may never stray from your planned presentation. Be prepared for either situation.

- "Hot" argument in which you get nothing but questions:
- In general, you should welcome active questioning and be prepared to set aside your notes entirely and answer the questions.
- But try not to let the argument break down into a series of unrelated responses or a cross-examination in which the judges force you to concede point after point until your time is up. See "Be careful with concessions," below.
- Focus on the main points that you want to convey, no matter how intense the questioning. Weave those points into your argument.
- "Cold" argument with few or no questions:
- Prepare an argument that you can present without supporting dialogue between you and the judges, leaving sufficient time for questions and answers.
- You don't have to use your entire time. Make your points and then signal the judges that you are about to finish: "That will conclude my presentation, unless the Court has further questions." If they have none, thank the judges and sit down. The judges will greatly appreciate your brevity.

Beware of the relentless judge. Sometimes a judge will not let go of a point. However, you must move on. Give your best answer and then politely but firmly steer the argument back on course.

Be careful with concessions: If the court asks you to concede a point, be cautious; the judges may use a concession against you in deciding the case. Of course, answer the questions honestly and candidly and don't extend your position beyond its reasonable limits so that it produces absurd results.

Factual and legal concessions. Recognize the difference between factual and legal concessions:

- You must concede unfavorable facts, in order not to lose your credibility, although you can then explain why your concessions don't destroy your case.
- Be extremely careful about legal concessions. Think through the implications before conceding any legal point.

Example: A judge may ask you, "Wouldn't you admit that your position should be rejected if ... ?" Don't agree too readily. Where appropriate, say, "That presents a different case, but I wouldn't concede that it would produce a different result. The factors that would have to be weighed include"

Don't concede a point merely because a judge thinks you should. If a judge believes you should concede a point, but you do not, say "I do acknowledge your Honor's point, but it does not dispose of the issues here"

THE APPELLEE'S ARGUMENT

Same general rules apply:

Prepare notes and have your main points in mind.

Quickly make your affirmative case. Give the judges the emotional and intellectual basis for ruling in your client's favor.

Don't argue in a vacuum; be flexible:

Annotate your outline as your opponent speaks. Note the main points that you want to add to your argument in light of your opponent's argument and the judges' comments.

Start with an important exchange. If an important exchange between the judges and your opponent goes to the heart of your case, you may wish to start with that.

Don't spend your time nattering about your opponent's every mistake:

Correct only your opponent's crucial misstatements, *e.g.*, if your opponent waffled or incorrectly answered a question on a significant point, pose and answer the question correctly: "Judge Roberts asked ...," "My opponent said ...," "In fact,"

REBUTTAL

Save time for rebuttal: Whether or not you use it, it is essential for opposing counsel to know that you have the opportunity to correct any misstatements of fact or law that may be made. This has a salutary restraining influence.

Never prepare in advance: You can't rebut what you haven't heard.

Limit your points: During your opponent's argument, select the two or three major points that you wish to rebut. Address those and no more.

Use dispositive authority: Cite the authority that most effectively rebuts your opponent's position.

Waiving rebuttal: If your opponent's argument did not impress the judges, simply stand up and confidently tell the judges, "Unless the Court has questions, we will waive rebuttal."

Do it well or not at all: Judges often are visibly impatient with rebuttal, so make it snappy and make it good.

Appendix G is based on an article by and used with permission of Andrew L. Frey, Mayer, Brown & Platt, Washington, D. C.

© The Regents of the University of California

APPENDIX H

Principles Governing Appellate Review

COURT'S POWER TO REVIEW

Do you have standing to appeal?

- You can lose your right to appeal (see Civ App Prac §§4.18-4.21):
 - By waiver;
 - By compliance with the judgment;
 - By acceptance of the benefits of the judgment; or
 - As a penalty.
- Court may not review an error on appeal that (see Civ App Prac §§4.11-4.15, 4.18-4.21):
 - Is in appellant's favor;
 - Appellant:
 - Expressly or impliedly waived; or
 - Invited; or
 - Affects nonappealing party (unless appealing and nonappealing losing parties' rights are inseparable, and justice requires reversal as to all losing parties).

Can the court review the issue or matter on appeal?

- Court cannot review (see Civ App Prac §§5.40-5.45):
 - Severable issues not asserted in partial appeal;
 - Matters not in record;
 - Matters occurring after judgment;
 - Matters unnecessary to appeal's resolution (however, appellate court may determine all matters necessary for trial court's guidance on remand).
- Court may review (see Civ App Prac §§4.15, 5.30):
 - Respondent's request to determine if appellant was prejudiced by error asserted (CCP §906); and
 - All matters necessary for trial court's guidance on remand.

COURT'S STANDARDS OF REVIEW

The reviewing court will:

- Not reverse trial court's exercise of discretion except if discretion was abused. See Civ App Prac §§5.24-5.28, 13.26.
- Not consider a new legal theory on appeal, unless (see Civ App Prac §§5.4, 5.16, 5.44):
 - There was no evidentiary conflict in the trial court; and
 - Only legal questions are presented on appeal.
- Presume that (see Civ App Prac §§1.18-1.22, 5.11-5.15, 5.40, 9.3, 9.6, 9.13, 13.2, 19.18-19.20):

- Judgment is correct even if it is based on erroneous ground; and
- An incomplete record contains all matters material to determining points on appeal (unless you appeal only on judgment role or clerk's transcript).
- Reverse judgments and orders only if error resulted in a miscarriage of justice, *i.e.*, it is reasonably probable that a result more favorable to appellant would have occurred absent the error. Cal Const art VI, §13; CCP §475; Evid C §§353-354. See Civ App Prac §§1.1, 5.13, 5.29-5.39, 13.2.

If you assert that there was not sufficient evidence to support the trial court's decision, the court will (see Civ App Prac §§5.19-5.22, 11.76-11.80, 13.1-13.2, 13.16):

- Based on the entire record:
- Review record in light most favorable to judgment; and
- Determine whether there was substantial evidence (of reasonable, credible, and solid value) to support judgment.
- Affirm judgment if supported by substantial evidence; court cannot reweigh the evidence.
- Resolve all conflicts in respondent's favor, unless respondent's evidence is inherently incredible (conflicting evidence rule).
- If two or more inferences can reasonably be drawn from the facts, accept the inferences in respondent's favor (conflicting inference rule).

If you ask court to interpret a writing as part of reviewing the sufficiency of evidence, court will (see Civ App Prac §§5.4-5.5, 5.19-5.22):

- Independently determine as a question of law whether a writing is ambiguous on its face;
- Independently interpret a writing as a question of law, *if*:
- No extrinsic evidence was admitted at trial; or
- Extrinsic evidence was admitted but not in conflict.
- If conflicting extrinsic evidence was admitted at trial, resolve all conflicts in extrinsic evidence in respondent's favor under conflicting evidence rule.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX I Sample First Appellate District Letter to Counsel

APPENDIX I
Sample First Appellate District Letter to Counsel

(See [steps 9-11, 13, 17](#), above)

Diana Herbert, Chief Deputy Clerk	Office of the Clerk	Court of Appeal,
Deputy Clerks	Court of Appeal	350 McAllister Street,
Nick Arreola	State of California	San Francisco, CA 94102-3600
Norman Batteate	First Appellate District	
James Campbell	Ron D. Barrow, Clerk	
Claire Diepenbrock		
Susan Graham		
Walter Harper		
Channing Hoo		
Penny Keeley		
Ronald Poellath		
Richard Sandvik		
Joan Taylor		
Cynthia Turner		
Joy Washington		

Dear Counsel:

We ask that you assist the court in perfecting the record of your appeal as follows:

(1) Inadvertent Omissions: If the clerk's or reporter's transcript has omitted an item, please follow the procedure authorized by Local Rule 7(a); do *not* file a formal written motion with the Court of Appeal; *do* call the county clerk to arrange for the omitted item to be forwarded to us immediately.

(2) Augmentations: For other necessary augmentations, please timely follow the procedures authorized in Local Rule 7.

Counsel are encouraged to use [Cal Rules of Ct 8.124](#) in lieu of designating a clerk's transcript.

Chief Justice George has appointed an appeals supervising judge to assist in expediting record preparation in each of the twelve counties comprising the First District (see attached list). If you are experiencing difficulties with timely record preparation, please contact the appeals supervising judge at the superior court directly.

Please note that extensions of time to file briefs will only be granted on a demonstrated showing of good cause (see Local Rule 11 and [Cal Rules of Ct 8.63](#)). In civil cases, such extensions will only be considered AFTER the parties have stipulated to an extension pursuant to [Cal Rules of Ct 8.212](#)(b), or show good cause for failing to obtain such a stipulation.

Very truly yours,

Ron D. Barrow

Clerk of the Court

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX J-1 Sample Notice Accompanying the Tentative Opinion

APPENDIX J-1

Sample Notice Accompanying the Tentative Opinion

(See step 26, above)

Henry Espinoza

Office of the Clerk

3389 Twelfth Street

Chief Deputy

COURT OF APPEAL

Riverside, CA 92501

STATE OF CALIFORNIA

Telephone: (909) 248-0200

Fourth Appellate District

Division Two

Stephen M. Kelly, Clerk

NOTICE

Enclosed is the tentative opinion of a majority of the panel of three justices hearing the appeal. Limit and focus your oral argument accordingly. Oral argument for each party will be limited to 30 minutes under Cal Rules of Ct 8.256. The tentative opinion is, of course, subject to change in both language and result after oral argument.

© **The Regents of the University of California**

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX J-2 Sample Notice That Court Has Determined Oral Argument Would Not Significantly Aid Decision

APPENDIX J-2

Sample Notice That Court Has Determined Oral Argument Would Not Significantly Aid Decision

(See step 26, above)

Henry Espinoza	Office of the Clerk	3389 Twelfth Street
Chief Deputy	COURT OF APPEAL	Riverside, CA 92501
	STATE OF CALIFORNIA	Telephone: (909) 248-0200
	Fourth Appellate District	
	Division Two	
	Stephen M. Kelly, Clerk	

NOTICE

Enclosed is the tentative opinion of a majority of the panel of three justices hearing the appeal. In this case the court has determined that the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. The court is therefore willing to submit this case without oral argument.

Based on the foregoing:

- (1) Waiver of oral argument: Counsel must notify this court if he or she wishes to waive oral argument pursuant to Cal Rules of Ct 8.256. Failure to do so will be deemed a waiver of oral argument, and the cause will be submitted at that time.
- (2) Reconfirmation of oral argument: Counsel must reconfirm his or her initial decision requesting oral argument pursuant to Cal Rules of Ct 8.256.
- (3) Counsel shall advise opposing counsel of his or her decision and so advise the calendar clerk of this court by telephone at (909) 248-0200 not later than 2 p.m. on the Friday prior to the scheduled oral argument calendar.
- (4) Should counsel desire that the matter remain on the oral argument calendar, each party will be limited to 15 minutes of argument. Because the panel of Justices has read and studied the briefs, discussed the case, and has a tentative opinion before it, you will not be permitted to repeat the arguments set forth in your brief.
- (5) No continuances of oral argument will be permitted on stipulation of the parties without an order of approval by the court.

Failure to comply with this notice may result in the imposition of sanctions.

© **The Regents of the University of California**

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX K Request for Dismissal of Appeal (Civil Case) (Judicial Council Form APP-007)

APPENDIX K
Request for Dismissal of Appeal (Civil Case)
(Judicial Council Form APP-007)



COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	Court of Appeal Case Number (<i>if known</i>): Superior Court Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): _____ TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
APPELLANT: RESPONDENT:	
REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE)	

The undersigned appellant hereby requests that the appeal filed on (*date*) _____ in the above entitled action be dismissed.

Date:

_____ (TYPE OR PRINT NAME)  _____ (SIGNATURE OF APPELLANT OR ATTORNEY)

NOTE: File this form in the Court of Appeal if the record on appeal has already been filed in the Court of Appeal. If the record has not yet been filed in the Court of Appeal, you cannot use this form; you must file an *Abandonment of Appeal (Unlimited Civil Case)* (form APP-005) in the superior court.



CASE NAME:	CASE NUMBER:
------------	--------------

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

Mail Personal Service

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is (*specify*):
3. I mailed or personally delivered a copy of the *Request for Dismissal of Appeal (Civil Case)* as follows (*complete either a or b*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope and
 - (a) **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX L Certificate of Interested Entities or Parties
(Judicial Council Form APP-008)

APPENDIX L

Certificate of Interested Entities or Parties
(Judicial Council Form APP-008)



TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): _____	Superior Court Case Number:
TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	<i>FOR COURT USE ONLY</i>
APPELLANT/PETITIONER:	
RESPONDENT/REAL PARTY IN INTEREST:	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(<i>Check one</i>): <input type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (*name*): _____

2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
 b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (<i>Explain</i>):
--	--

- (1)
(2)
(3)
(4)
(5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date:

_____ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)



APPENDIX M
Appellate Checklist

NEW APPEAL CHECKLIST*

When first undertaking the responsibility for handling a new case on appeal, make sure that all of the relevant steps below are attended to without delay. First, go through the entire list and cross out all procedures that do not apply to the case. Then, fill in the blanks where indicated. As each step or procedure is carried out, initial on the line next to it to verify that nothing is overlooked. Keep this form inside the file jacket.

Warning: On February 22, 2008, the Judicial Council of California adopted revisions to the California Rules of Court. Most of the relevant appellate changes are effective on January 1, 2009, and apply to rules in Title 8, Division 2, Chapter 1 (Rules 8.800-8.816, containing general definitional appellate rules); Title 8, Division 2, Chapter 2, Article 1 (Rules 8.820-8.825, on taking appeals in limited civil cases); Title 8, Division 2, Chapter 2, Article 2 (Rules 8.830-8.842, on the record in limited civil cases); and Title 8, Division 2, Chapter 4 (Rules 8.880-8.891, covering briefing and decision making). The revised rules that were available at the time of this writing are cited in this Guide for your reference. However, you should always be sure to check the California Rules of Court at the Judicial Council website at <http://www.courtinfo.ca.gov/rules/> for more information on these revisions and any others that may have been adopted after the time of this writing.

1. *FOR ALL CASES:*

- **APPEAL FILE:** See that an appropriate file is set up to store and organize all materials generated in the appellate proceeding. If the appeal arises from an existing case in the office, it may be helpful to mark the litigation file and advise that all further materials be put in a separate "Appeal" file.
- **APPELLATE INFORMATION SHEET:** Obtain the necessary data and fill out this form as completely as possible. Use pencil to allow for later revisions.
- **LOCAL COURT RULES:** Identify the reviewing court and ascertain whether it has adopted any "local rules" or policy guidelines. If so, obtain a copy, study it carefully, and keep it handy inside the file jacket.

2. *FOR EXISTING FILES AND CLIENTS:*

- **NOTICE RE CHANGE OF HANDLING ATTORNEY [AND MAILING ADDRESS]:** Use this form to help make sure that all future notices and papers are properly directed to your attention. Cal Rules of Ct 2.200, 8.32. Remember to use recycled paper. Cal Rules of Ct 1.22, 2.101, 8.204(b)(1), 8.706(g) (Cal Rules of Ct 8.883(c)(1), effective January 1, 2009).
- This Notice should be submitted to the *reviewing court*. Serve copies on all parties/attorneys of record, and on the clerk of the trial court (directed to the Appeal/Transcript Clerk, if any).
- If appellate proceedings have not commenced or been docketed yet, leave the Appeal Number blank and indicate as follows: **NOTICE OF APPEAL FILED ON** _ _[*month*] [*day*], [*year*]_ _.
- **NOTIFY OFFICE ADMINISTRATION:** Advise the following personnel that you are now the "handling attorney" on the file:
 - Office Administrator.
 - Mailroom Supervisor—For proper distribution of incoming mail.
 - Docket/Calendar Clerk.
 - Billing/Bookkeeping Department.
- **WRITE TO THE CLIENT:** Send a letter to the client or clients, including both the represented party(ies) and the appropriate claims person in insurance cases. Introduce yourself as the lawyer assigned to handle the appeal and, if appropriate, provide a brief description of appellate procedures. For example, discuss the relevant deadlines, preparation of the record, the briefing process, and overall time factors.

If you feel comfortable doing so, you can also explain your anticipated strategy for handling the appeal. However, be very careful about providing an evaluation or predicting success.

The client is entitled to your best estimate of hours, fees, and related expenses for handling the appeal. Again, use caution in how you word your estimate.

Finally, promise to keep in touch with periodic status reports and timely advisements of new developments. THEN, KEEP YOUR PROMISE.

- **RETAINER AGREEMENT:** Check to see whether a new Retainer Agreement will be required. (Usually, an existing client will be asked to sign a new Retainer Agreement when special "appellate rates" are to be charged, or when the prior Retainer Agreement was expressly limited to trial court proceedings.) If so, prepare the appropriate form and send it to the client for review and execution. Enclose a cover letter and return mailer.

3. FOR NEW CLIENTS AND CASES:

- **CONFLICT CHECK:** Run a standard *Conflict of Interest* check to make sure that you can represent the client.
- **OPEN CLIENT BILLING FILE:** If you have not already done so, have a new file opened and a new file number assigned.
- **RETAINER AGREEMENT:** Prepare and send to client, as described above.
- **NOTICE AND STIPULATION/CONSENT RE SUBSTITUTION OF APPELLATE COUNSEL (CCP §§284(1), 285; Cal Rules of Ct 8.36(b)):** As soon as possible, prepare this form, obtain the client's signature, and have it served and filed.

4. WHEN CLIENT IS THE APPELLANT:

- **IDENTIFY DEADLINES (Malpractice Opportunities):** Prepare and submit a Docket Slip for entry of all deadlines into the office "Tickler System."
- Date of Judgment or Order to be appealed: ___/___/___
- Denial of New Trial, JNOV, or Reconsideration: ___/___/___
- Time to Appeal otherwise extended? (___ days)
- **Deadline for Notice of Appeal:** ___/___/___
(Cal Rules of Ct 8.104, 8.108; Fed R App P 4(a)(1))
- **Deadline for Designating the Record on Appeal:**
- CLERK'S TRANSCRIPT/APPENDIX ELECTION: ___/___/___ (see Cal Rules of Ct 8.121(a), 8.122(a), 8.124; Compare Fed R App P 10(a), 11(a).)
- REPORTER'S TRANSCRIPT and DEPOSIT/WAIVER: ___/___/___ (see Cal Rules of Ct 8.121(a), 8.130(a)-(c); Fed R App P 10(b); 9th Cir R 10-3.1(a).)
- Other Deadlines:
 - _____: ___/___/___
 - _____: ___/___/___
- **CONTACT TRIAL LAWYER:** If feasible and appropriate, get in touch with the client's trial court lawyer and discuss the following:
 - Potential issues and arguments for appeal.
 - Anticipated counterarguments by the Respondent.
 - Potential grounds for a cross-appeal by the Respondent.

- Relevant hearing dates for the Reporter's Transcript.
- Relevant documents and pleadings for inclusion in the Clerk's Transcript, Appendix, or Excerpts of Record.
- Other: _____
- **PREPARE AND FILE NOTICE OF APPEAL (remember to use recycled paper (Cal Rules of Ct 8.204(b)(1), 1.22, 8.706(g) (Cal Rules of Ct 8.883(c)(1), effective January 1, 2009), Cal Rules of Ct 2.101(a)):**
- File Notice of Appeal in the *trial court*. See Cal Rules of Ct 8.100(a); Fed R App P 3(a).
- Filing Fees:

CAL: Fee of \$655, payable to Clerk, Court of Appeal, plus deposit of \$100 with the superior court clerk, and fee of \$170 for deposit in the Appellate Court Trust Fund. Cal Rules of Ct 8.100(b); Govt C §§68926, 68926.1(b), 68927.

FED: Fee of \$455 payable to Clerk of the District Court. 28 USC §§1913, 1917. This total includes a \$5 "filing fee" under 28 USC §1917 and a \$450 "docket fee" under 28 USC §1913.

- **DESIGNATE REPORTER'S TRANSCRIPT:** Identify the date, department, and hearing officer of all reported proceedings of possible significance to the issues on appeal. Remember to use recycled paper. Cal Rules of Ct 8.204(b)(1), 1.22, 8.706(g) (Cal Rules of Ct 8.883(c)(1), effective January 1, 2009), Cal Rules of Ct 2.101(a).
- **State Practice:** Select appropriate alternative, depending on time requirements, financial considerations, and whether the proceedings were reported:
- NOTICE TO PREPARE REPORTER'S TRANSCRIPT (Cal Rules of Ct 8.120, 8.121, 8.130(a)):
- Check the file to see if transcripts already were ordered and obtained. You may submit "Original" transcripts with your Notice and avoid the expense of having them transcribed again. Cal Rules of Ct 8.130(b)-(c).
- Determine Deposit Amount:
- Obtain written estimate from the court reporter (or a written waiver of deposit if appropriate); or
- \$650 per day for each day in which proceedings exceed three hours; or
- \$325 for any day in which proceedings did not exceed three hours; or
- Prepare "written directions to the clerk to retain the deposit and use it to pay the reporter's fee when the transcript is complete." (A letter is probably sufficient.)
- Prepare the notice and *serve* copies:
 - On all parties/counsel of record.
 - On each reporter whose identity is known.
- File in superior court:
 - The original notice;
 - An appropriate deposit check (or copy of the reporter's written waiver);
 - A copy of the reporter's written estimate (if any); and
 - Your "written directions."
- PARTIAL TRANSCRIPT: See Cal Rules of Ct 8.130(a)(2), 8.163.
- SETTLED STATEMENT: See Cal Rules of Ct 8.130(g), 8.137(a)-(b).
- AGREED STATEMENT: See Cal Rules of Ct 8.134.

- **Federal Practice:** Select appropriate alternative, governed by same considerations described above:
- ORDER FULL TRANSCRIPT: Prepare, serve, and file written Order per Fed R App P 10(b) and/or 9th Cir R 10-3.1(d) (special form required by Ninth Circuit—obtain blank from clerk).
- PARTIAL TRANSCRIPT: See Fed R App P 10(b)(3).
- STATEMENT ON THE EVIDENCE OR PROCEEDINGS: When transcript not available, see Fed R App P 10(c).
- AGREED STATEMENT: See Fed R App P 10(d).
- NO TRANSCRIPT NEEDED: See Fed R App P 10(b)(1)(B); 9th Cir R 10-3.1(c).
- **DESIGNATE CLERK'S TRANSCRIPT (OR ELECT TO FILE APPENDIX):** Identify all papers, pleadings, jury instructions, trial exhibits, and other documents filed or lodged in the trial court that may be germane to the issues on appeal. In most cases, you should travel to the courthouse and examine the file in person. Identify each document by title or description and filing date.
- **State Practice:** Select appropriate alternative, depending on time requirements, financial considerations, availability of documents, and the relative difficulty of each method:
- NOTICE TO PREPARE CLERK'S TRANSCRIPT: Prepare, serve, and file per Cal Rules of Ct 8.122. Remember to use recycled paper. Cal Rules of Ct 8.204(b)(1), 1.22, 8.706(g) (Cal Rules of Ct 8.883(c)(1), effective January 1, 2009), Cal Rules of Ct 2.101(a).
- JUDGMENT ROLL ONLY: See Cal Rules of Ct 8.163 (see CCP §670 for documents included in judgment roll). This is a poor choice unless you have exceptional reasons.
- APPELLANT'S (OR JOINT) APPENDIX: Serve and file a Rule 8.124 election. See Cal Rules of Ct 8.124. Begin *now* to locate and assemble copies of all relevant papers. As soon as possible, contact opposing counsel and try to agree on the contents of a Joint Appendix per Cal Rules of Ct 8.124(a)-(d). Remember to use recycled paper. Cal Rules of Ct 8.204(b)(1), 1.22, 8.706(g) (Cal Rules of Ct 8.883(c)(1), effective January 1, 2009), Cal Rules of Ct 8.40(a), 2.101(a).
- SUPERIOR COURT FILE: See Cal Rules of Ct 8.128.
- AGREED STATEMENT: See Cal Rules of Ct 8.134(a).
- SETTLED STATEMENT: See Cal Rules of Ct 8.137.
- FURNISH COPIES OF PAPERS: See Cal Rules of Ct 8.122(d).
- **Federal Practice:** Appendix or "Excerpts of Record."
- NINTH CIRCUIT: All relevant documents are to be submitted as "Excerpts of Record." See 9th Cir R 30-1—30-2. A formal Designation of the "Clerk's Record" may still be required. See Fed R App P 11(a).
- OTHER CIRCUITS: Generally, all relevant documents are to be assembled and submitted in an "Appendix to the Briefs." Fed R App P 30. However, check the individual Circuit Rules to see if an alternative method is prescribed.
- **STAY ENFORCEMENT OF JUDGMENT:** Immediately determine what effect the judgment or ruling will have if implemented, and if it is necessary to stay enforcement by some means to protect the client's interests. Consult with the client and discuss available options below.
- **State Practice:** See generally CCP §§916-936.1.
- Automatic Stay: See CCP §916.
- Appeal Bond (Undertaking) To Stay Enforcement of Money Judgment: See CCP §917.1.
- Admitted Insurer Bond (1½ times the judgment amount plus costs): See CCP §§917.1(b), 995.310, 995.510-995.520, 995.910-995.960.
- Cash Deposit (1½ times the judgment amount plus costs, except for deposits with Secretary of State): See CCP §§917.1(b), 995.710.

- Securities Deposit (same as cash deposit).
- Personal Sureties (twice the judgment amount plus costs): See CCP §§917.1(b), 995.310, 995.510-995.520, 995.910-995.960
- Temporary/Discretionary Stay: See CCP §918.
- Stay To Protect Possible Set-Off: See CCP §918.5.
- Writ of Supersedeas (Court of Appeal): See CCP §923; Cal Rules of Ct 8.112, 8.116.
- *Federal Practice*: See Fed R Civ P 62; Fed R App P 8; 9th Cir R 27-2.
- **CIVIL APPEALS DOCKETING STATEMENT:**
- *State Practice*: The local rules in some appellate districts require that Civil Docketing Statements be submitted:
- *Federal Practice*: See 9th Cir R 3-4 (Form 6), 5-1. If not otherwise provided or available, obtain the prescribed form by calling the Clerk's Office in San Francisco (415/355-8000) or through <http://www.ca9.uscourts.gov/ca9/Documents.nsf/>.
- **COST BOND (Federal Appeals)**: "In a civil case, the district court may require an appellant to file a bond or provide other security ... to ensure payment of costs on appeal." Fed R App P 7. Find out if such an order was made in your case and check the district court's local rules to see if there is any standard requirement for fixing a cost bond on appeal.

5. *WHEN CLIENT IS THE RESPONDENT (STATE) OR APPELLEE (FEDERAL)*:

- **VERIFY THAT APPEAL IS PROPERLY TAKEN:**
- Was Appellant's Notice of Appeal timely? (See above.)
- Did that Notice specify a properly "Appealable" Order?
- *State*: See CCP §§904.1-904.5
- *Federal*: See Fed R App P 4-6.
- If not, consider a Motion to Dismiss Appeal. (See Cal Rules of Ct 8.57(a); Fed R App P 27; see also Fed R App P 11(g) on transmitting relevant file materials to Court of Appeal for consideration in connection with this motion.)
- **IDENTIFY DEADLINES (Malpractice Opportunities)**: Prepare and submit a Docket Slip for entry of all deadlines into the office "Tickler System."
- *Deadline for Notice of Cross-Appeal*: See Cal Rules of Ct 8.108(f); Fed R App P 4(a)(3).
- *Deadline for Counter-Designating the Record*:
- CLERK'S TRANSCRIPT: See Cal Rules of Ct 8.122(a).
- REPORTER'S TRANSCRIPT: / /
See Cal Rules of Ct 8.121(a), 8.130(a); Fed R App P 10(b)(3); 9th Cir R 10-3.1(b).
- *Other Deadlines*:
- _____: / /
- _____: / /
- **CONTACT TRIAL LAWYER**: If feasible and appropriate, get in touch with the client's trial court lawyer and discuss the following:
- Potential issues and arguments that the Appellant is likely to present on appeal.
- Suggested counterarguments.

- Potential grounds for a cross-appeal.
- Erroneous rulings in Appellant's favor that may warrant review under CCP §906.
- Relevant hearing dates for the Reporter's Transcript.
- Relevant documents and pleadings for inclusion in the Clerk's Transcript, Appendix, or Excerpts of Record.
- Other: _____
- **VERIFY PROPER DESIGNATION OF THE RECORD:** Carefully review Appellant's designation of the record to make sure that (1) all relevant papers and proceedings are included, and (2) no improper (irrelevant, inflammatory, or extrinsic) matters are specified.
- **State Practice** (remember to use recycled paper for all filings and service copies (Cal Rules of Ct 8.204(b)(1), 1.22, 8.706(g) (Cal Rules of Ct 8.883(c)(1), effective January 1, 2009), Cal Rules of Ct 2.101(a)):
- CLERK'S TRANSCRIPT:
- **Counterdesignation:** To include additional materials. Cal Rules of Ct 8.122(a)(2).
- **Motion Or Stipulation To Correct:** See Cal Rules of Ct 8.155.
- **Motion To Strike:** See Cal Rules of Ct 8.54, 8.57(b).
- **Augmentation:** If you fail to timely counterdesignate. Cal Rules of Ct 8.155(a).
- APPENDIX PER CAL RULES OF CT 8.124: If indicated, serve and file a Rule 8.124 election. See Cal Rules of Ct 8.124. Remember, even if the Appellant has designated a Clerk's Transcript, the Respondent still may choose to proceed by Appendix. If timely submitted, that election is also binding on the Appellant. Begin *now* to locate and assemble copies of all relevant papers. As soon as possible, contact opposing counsel and try to agree on the contents of a Joint Appendix per Cal Rules of Ct 8.124(a)-(d).
- REPORTER'S TRANSCRIPT (if appellant has not given notice to prepare a Reporter's Transcript, the Respondent may not require one; but on the Respondent's suggestion or reviewing the court's own motion, augmentation of the record may be ordered under Cal Rules of Ct 8.155(c) (Cal Rules of Ct 8.130(a)(4)):
- **Counterdesignation:** See Cal Rules of Ct 8.130(b)-(c). Note that a deposit will be required unless waived in writing by the reporter.
- **Augmentation:** If you fail to timely counterdesignate, or if the appellant did not request a Reporter's Transcript in the first instance, to prevent a miscarriage of justice. Cal Rules of Ct 8.130(a)(4), 8.155(a).
- **Federal Practice:**
- APPENDIX/EXCERPTS: See Fed R App P 10(e); 9th Cir R 30-1.6.
- REPORTER'S TRANSCRIPT:
- **Additional Portions:** See Fed R App P 10(b)(3); 9th Cir R 10-3.1(b).
- **Corrections:** See Fed R App P 10(e).
- **EVALUATE NEED FOR CROSS-APPEAL:** Determine if it will be necessary and/or appropriate to bring a cross-appeal for purposes of challenging an adverse ruling or otherwise to protect the client's interests. (See California Civil Appellate Practice, chap 8 (3d ed Cal CEB 1996).) Discuss this with the client's trial lawyer, if possible.
- **State Practice** (remember to use recycled paper for all filings and service copies (Cal Rules of Ct 8.204(b)(1), 1.22, 8.706(g) (Cal Rules of Ct 8.883(c)(1), effective January 1, 2009), Cal Rules of Ct 2.101(a)):
- See Cal Rules of Ct 8.108(f).
- Compare Cal Rules of Ct 8.108(f) with CCP §906 (matters reviewable on request of respondent).

- ***Federal Practice:*** See Fed R App P 4(a)(3).
- **STAY ENFORCEMENT OF JUDGMENT:** Occasionally it is a Respondent/Cross-Appellant who is most in need of staying enforcement of the judgment/order pending appeal. Ascertain whether that is the case and, if so, see discussion above.
- **OBTAIN COPIES OF THE RECORD:** Make all necessary arrangements to make sure that a complete copy of the entire record is obtained.
- ***State Practice:***
- **CLERK'S TRANSCRIPT:**
- **Purchase a Separate Copy:** Contact the Superior Court Clerk's Office, Appeal Transcript Section, and ask to purchase a copy. (For LASC, call 213/974-5237).
- **Borrow a Copy (to save \$\$):** If possible, arrange to borrow a copy from other counsel in the case. Otherwise, serve and file "Notice That Respondent [*Has*][*Will*] Not Procure[d] Copy of the Record and Demand for Appellant's Copy of Clerk's Transcript." This step can be taken at any time until 20 days after the record is filed in the Court of Appeal. The lending party must provide the record when they file their brief. Cal Rules of Ct 8.153(a).
- **REPORTER'S TRANSCRIPT:**
- **Purchase a Separate Copy:** Contact the court reporter directly by letter or phone. (To locate the reporter in L.A. County, call 213/974-5451.)
- **Borrow a Copy:** Or serve and file a similar Notice as described above per Cal Rules of Ct 8.153(a).
- ***Federal Practice:*** Contact the court reporter directly by letter or phone, advising that you want a copy of the Reporter's Transcript. Copies of the Appellant's Appendix (or Excerpts of Record) are to be served with Appellant's Opening Brief. Fed R App P 30(a); 9th Cir R 30-1.1.

Appendix M is provided by and used with permission of Kent M. Bridwell, Law Offices of Kent M. Bridwell, Los Angeles.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX N-1 Timeline and Deadlines for Handling Civil Appeals in Court of Appeal

APPENDIX N-1

Timeline and Deadlines for Handling Civil Appeals in Court of Appeal

ACTION	DEADLINE AND AUTHORITY	SEE*	DATE
Judgment or order entered		<u>step 3</u>	_____
Party serves Notice of Entry or copy of judgment or order			_____
Clerk mails Notice of Entry or copy of judgment or order			_____
File appeal	Generally, <i>earliest</i> of (<u>Cal Rules of Ct 8.104(a)</u>):	<u>step 3</u>	_____
	60 days after date any party serves Notice of Entry or copy of judgment or order;		
	60 days after date superior court clerk mails Notice of Entry or copy of order;		
	180 days after entry of judgment (or appealable order).		
Clerk files docketing statement	Check local rule. See 1st App Dist R 1.	<u>step 6</u>	_____
File designation of record	10 days after you file a notice of appeal. <u>Cal Rules of Ct 8.121</u> .	<u>step 9</u>	_____
Deposit estimated cost of CT	10 days after receiving notice from clerk of estimated cost of CT, unless otherwise provided by law, or party successfully applies for order granting waiver of that cost under <u>Cal Rules of Ct 3.50-3.63</u> . <u>Cal Rules of Ct 8.122(c)(3)</u> .	<u>step 11</u>	_____
RT filed	Reporter should file with superior court clerk	<u>step 10</u>	_____
	30 days after reporter receives notice to prepare from clerk. <u>Cal Rules of Ct 8.130(e)-(f)</u> .		
Transcript prepared and filed	Clerk prepares CT 30 days after clerk receives estimated cost from appellant or court files order waiving that cost. <u>Cal Rules of Ct 8.122(d)</u> .	<u>step 11</u>	_____
	Transmits record when completed to the appellate court clerk. <u>Cal Rules of Ct 8.150(a)</u> .		
File appellant's opening brief	30 days after superior court clerk files record in appellate court (<u>Cal Rules of Ct 8.212(a)</u>);	<u>step 19</u>	_____
	30 days after RT is filed <i>if</i> appellant has elected an appendix instead of a CT under <u>Cal Rules of Ct 8.124</u> ; or		
	70 days after appellant files notice of election to prepare an appendix instead of RT <i>and</i> CT under <u>Cal Rules of Ct 8.124</u> . <u>Cal Rules of Ct 8.212(a)(1)(B)</u> .		
File brief or application for relief if you fail to file opening brief on time	Within 15 days after date appellate court clerk mails notice that court will dismiss appeal if you do not file opening brief by that deadline. <u>Cal Rules of Ct 8.220(a)</u> . If you are granted that extension, however, but fail to file your brief within that extended	<u>step 20</u>	_____

	time, court of appeal may dismiss appeal under <u>Cal Rules of Ct 8.220(c)</u> without further notice. <u>Cal Rules of Ct 8.220(d)</u> .		
File joint appendix	Same deadline as for appellant's opening brief. <u>Cal Rules of Ct 8.124(a)(3), (e)(2)-(4)</u> .	<u>step 13</u>	_____
File respondent's brief	30 days after appellant files opening brief. <u>Cal Rules of Ct 8.212(a)(2)</u> .	<u>step 21</u>	_____
File appellant's reply brief	20 days after respondent files brief if no cross-appeal. <u>Cal Rules of Ct 8.212(a)(3)</u> . If there is cross-appeal, reviewing court orders briefing schedule after receiving proposal(s) from parties. <u>Cal Rules of Ct 8.216(a)</u> .	<u>step 23</u>	_____
File settlement conference statement if required	Check local rule.	<u>step 15</u>	_____
Request oral argument	Check local rule or policy.	<u>step 25</u>	_____
Decision filed	90 days after submission of case. See Cal Const art VI, §19; <u>Govt C §68210</u> .	<u>step 28</u>	_____
Petition for rehearing	15 days after decision is filed. <u>Cal Rules of Ct 8.268(b)(1)</u> .	<u>step 29</u>	_____
Answer petition for rehearing	Within 8 days of a court order requesting an answer to petition for rehearing, file and serve that answer. <u>Cal Rules of Ct 8.268(b)(2)</u> . No answer should be filed unless court requests it in an order. <u>Cal Rules of Ct 8.268(b)(2)</u> .	<u>step 30</u>	_____
Decision final	30 days after filing, generally. <u>Cal Rules of Ct 8.264(b)</u> . See <u>Cal Rules of Ct 8.264(b)(2)</u> for decisions that are final when filed.	<u>step 28</u>	_____
Petition supreme court for review	10 days after date court of appeal decision is final as to that court under <u>Cal Rules of Ct 8.264</u> . <u>Cal Rules of Ct 8.500(e)(1)</u> . Date of finality is <i>not</i> extended if 30th day after decision was filed is a Saturday, Sunday, holiday, or another day that clerk's office is closed. <u>Cal Rules of Ct 8.500(e)(1)</u> .	<u>step 32</u>	_____
Answer petition for review	20 days after filing of petition for review. <u>Cal Rules of Ct 8.500(e)(4)</u> .	<u>step 33</u>	_____
Reply to answer to petition	10 days after answer is filed. <u>Cal Rules of Ct 8.500(e)(5)</u> .	<u>step 34</u>	_____
Supreme court acts on petition	60 days after filing of last petition for review (whose filing was either timely or treated as being timely) (<u>Cal Rules of Ct 8.512(b)(1)</u> and <u>2004 Advisory Committee Comment to Cal Rules of Ct 8.512</u>); or	<u>step 35</u>	_____
	30 days after court of appeal decision is final as to that court, if no petition for review was filed, <i>i.e.</i> , if court acts on its own motion. <u>Cal Rules of Ct 8.512(c)(1)</u> .		
	Supreme court may extend its time to grant review for up to an additional:		
	30 days after last petition was filed, if extension is ordered before end of initial 60-day period or any prior extension of those 60 days (<u>Cal Rules of Ct 8.512</u>); or		
	60 days if no petition was filed, if extension is ordered before end of initial 30-day period or any prior extension of those 30 days, <i>i.e.</i> , if court acts on its own motion. <u>Cal Rules of Ct</u>		

Request that opinion be depublished	<u>8.512(c)(1)</u> . Within 30 days after decision becomes final in court of appeal. <u>Cal Rules of Ct 8.1125(a)(4)</u> .	<u>step 47</u>	_____
Clerk issues remittitur	Generally, when time for review expires. <u>Cal Rules of Ct 8.272</u> .	<u>step 48</u>	_____
Move to recall remittitur	Promptly after clerk issues it. <u>Southwestern Inv. Corp. v City of Los Angeles (1952) 38 C2d 623, 628, 241 P2d 985</u> , citing <u>Ellenberger v City of Oakland (1946) 76 CA2d 828, 836, 174 P2d 461</u> . See also <u>Cal Rules of Ct 8.272(c)(2), 8.540(c)(2)</u> .	<u>step 49</u>	_____
File memorandum of costs on appeal	40 days after clerk of reviewing court mails notice of issuance of remittitur to parties. <u>Cal Rules of Ct 8.278(c)(1)</u> .	<u>step 50</u>	_____
File motion to tax costs	15 days after memorandum served (plus additional days if served by mail, fax, or overnight delivery). <u>Cal Rules of Ct 3.1700(b)(1), 8.278; CCP §1013</u> .	<u>step 51</u>	_____

Note: Cross-references are to applicable steps.

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/APPENDIX N-2 Timeline and Deadlines for Handling Civil Appeals in Supreme Court*

APPENDIX N-2

Timeline and Deadlines for Handling Civil Appeals in Supreme Court

ACTION	DEADLINE & AUTHORITY	SEE*	DATE
Supreme court grants review	<p>60 days after filing of last petition for review (whose filing was either timely or treated as being timely) (<u>Cal Rules of Ct 8.512(b)(1)</u> and 2004 Advisory Committee Comment to <u>Cal Rules of Ct 8.512</u>); or</p> <p>30 days after court of appeal decision is final as to that court, if no petition for review was filed, <i>i.e.</i>, if court acts on its own motion. <u>Cal Rules of Ct 8.512(c)(1)</u>.</p> <p>Supreme court may extend its time to grant review for up to an additional:</p> <p>30 days after last petition was filed, if extension is ordered before end of initial 60-day period or any prior extension of those 60 days (<u>Cal Rules of Ct 8.512</u>); or</p> <p>60 days if no petition was filed, if extension is ordered before end of initial 30-day period or any prior extension of those 30 days, <i>i.e.</i>, if court acts on its own motion. <u>Cal Rules of Ct 8.512(c)(1)</u>.</p>	<u>step 35</u>	_____
File opening brief	<p>Within 30 days after filing of order granting review, if you choose to rely on same brief you filed in court of appeal; or</p>	<u>step 36</u>	_____
Opponent files brief	<p>Within 30 days after filing of order granting review, if you file a new brief. <u>Cal Rules of Ct 8.520(a)(1)</u>.</p> <p>Within 30 days after petitioner files or should have filed opening brief, if relying on same brief as in court of appeal; or</p>	<u>step 37</u>	_____
File reply brief	<p>Within 30 days after petitioner files or should have filed opening brief, if filing a new brief. <u>Cal Rules of Ct 8.520(a)(2)</u>.</p> <p>Within 20 days after respondent's brief is filed. <u>Cal Rules of Ct 8.520(a)(3)</u>.</p>	<u>step 38</u>	_____
File supplemental brief	<p>Within 10 days before oral argument. <u>Cal Rules of Ct 8.520(d)(2)</u>.</p>	<u>step 39</u>	_____
<p>Decision filed</p> <p>File petition for rehearing in supreme court</p> <p>File answer to petition for rehearing</p>	<p>15 days after decision is filed. <u>Cal Rules of Ct 8.268(b)(1)</u>.</p> <p>Within 8 days of a court order requesting an answer to petition for rehearing, file and serve that answer. <u>Cal Rules of Ct 8.268(b)(2)</u>. No answer should be filed unless court requests it in an order. <u>Cal Rules of Ct 8.268(b)(2)</u>.</p>	<u>step 41</u>	_____
Decision final	<p>30 days after filing, generally. <u>Cal Rules of Ct 8.532(b)(1)</u>. <u>Cal Rules of Ct 8.523(b)(2)</u> lists decisions that are final when filed.</p>	<u>step 44</u>	_____

Note: Cross-references are to applicable steps.

© **The Regents of the University of California**

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/TABLE OF STATUTES, REGULATIONS, AND RULES

TABLE OF STATUTES, REGULATIONS, AND RULES

CALIFORNIA

Constitution

art VI, §3: [Step 25](#)

art VI, §13: [App H](#)

art VI, §19: [Steps 28, 51, 55, App N-1](#)

art VI, §23 (former): [Step 56](#)

Statutes

BUSINESS AND PROFESSIONS CODE

6086.7(a)(3): [Step 18](#)

8030.2-8031: [Step 10](#)

8030.6: [Step 10](#)

8030.6(d): [Step 10](#)

8030.8: [Step 10](#)

CIVIL CODE

232 (former): [App D](#)

1717: [Step 52](#)

1717(b): [Step 50](#)

CODE OF CIVIL PROCEDURE

10: [Step 3](#)

12-12a: [Step 3](#)

116.320(b)(15): [Step 77](#)

116.320(c)(2): [Step 77](#)

116.710-116.760: [Step 78](#)

116.710-116.795: [Step 80](#)

116.710(a): [Step 78](#)

116.710(b): [Steps 1, 77](#)

116.710(c): [Step 77](#)

116.710(d): [Steps 77-78](#)

116.710(e): [Step 78](#)

116.720(a): [Steps 77-78](#)

116.730(a): [Step 78](#)
116.730(e): [Step 78](#)
116.750(b): [Step 78](#)
116.760(a): [Step 78](#)
116.770(a): [Step 80](#)
116.770(b): [Step 80](#)
116.770(c): [Step 80](#)
116.770(d): [Step 80](#)
116.770(e): [Step 80](#)
116.780(a): [Step 80](#)
116.780(c): [Step 80](#)
116.790: [Step 80](#)
116.810: [Steps 8, 78](#)
128.7: [Step 1](#)
128(a)(8): [Step 16](#)
128(8)(A)-(B): [Step 16](#)
170.3: [Step 1](#)
170.6: [Step 1](#)
284(1): [App M](#)
285: [App M](#)
329.5: [Step 3](#)
367.5: [Step 15](#)
425.16: [Step 1](#)
437c(m)(1): [Step 1](#)
473: [Step 50](#)
475: [App H](#)
577: [Step 1](#)
583.110-583.430: [App D](#)
662: [Step 1](#)
664.5: [Step 3](#)
664.5(b): [Step 57](#)
668.5: [Step 3](#)
670: [Step 62, App M](#)

860: Step 3

863: Step 3

870(b): Step 3

902: Step 2

904.1: Step 1

904.1-904.5: App M

904.1(a): Step 1

904.1(a)(1)(A): Step 1

904.1(a)(1)(B): Step 1

904.1(a)(2): Step 1

904.1(a)(3): Step 1

904.1(a)(4): Steps 1, 4, 58

904.1(a)(5): Step 1

904.1(a)(6): Step 1

904.1(a)(7): Step 1

904.1(a)(8): Step 1

904.1(a)(9): Step 1

904.1(a)(10): Step 1

904.1(a)(11): Step 1

904.1(a)(11)-(12): Step 1

904.1(a)(12): Step 1

904.1(a)(13): Step 1

904.1(b): Step 1, App D

904.2: Step 1

904.2(a): Step 56

904.2(c): Step 56

904.5: Steps 1, 56

906: Step 7, Apps H, M

907: Step 18

914: Step 1

916: Steps 1, 8, App M

916-936.1: App M

917.1: App M

917.1-917.2: Step 8

917.1-917.9: Step 8

917.1-919: Step 8

917.1(a)(1): Step 8

917.1(a)(2)-(3): Step 8

917.1(b): Step 8, App M

917.2: Step 8

917.4: Step 8

917.4-917.5: Step 8

917.7-917.9: Step 8

917.9: Step 8

917.15: Step 8

917.65: Step 8

918: Step 1, App M

918-919: Step 8

918.5: App M

921: Step 3

922: Step 8

923: Step 8, App M

995.140: Step 8

995.190: Step 8

995.210: Step 8

995.230: Step 8

995.240: Step 8

995.310: App M

995.310-995.440: Step 8

995.340: Step 8

995.510-995.520: Step 8, App M

995.610-995.675: Step 8

995.710: App M

995.710-995.770: Step 8

995.710(b): Step 8

995.910-995.960: Step 8, App M

995.960: Step 8

1005(b): Steps 52-54

1005(c): Steps 53-54

1008(a): Steps 4, 58

1013: Steps 3, 7, 52, 78, App N-1

1013(a): Steps 3, 7, 25, 51, 78, App F

1013(c): Step 51

1013(e): Step 51

1021.5: Step 52

1033.5: Step 8

1033.5(a)(10)(A): Step 52

1033.5(a)(10)(B): Step 52

1033.5(a)(10)(C): Step 52

1033.5(c)(5): Step 52

1034: Steps 50, 55, 74

1110b: Step 8

1222: Step 56

1294: Step 1

1294.2: Step 1

2033.420: Step 1

2033(o) (former): Step 1

ELECTIONS CODE

16603: Step 3

16702: Step 3

EVIDENCE CODE

353-354: App H

450-455: Step 19

459: Step 19

FAMILY CODE

2025: Step 1

7802-7808: App D

GOVERNMENT CODE

984: [Step 3](#)

53341: [Step 3](#)

53359: [Step 3](#)

68081: [Steps 29, 42](#)

68210: [Step 28, App N-1](#)

68926: [Steps 5, 7, App M](#)

68926.1(a): [Steps 5, 7](#)

68926.1(b): [Steps 5, 7, 32, App M](#)

68927: [Step 32, App M](#)

68933: [Step 32](#)

70621: [Step 57](#)

PENAL CODE

1026.5: [App D](#)

1237(b): [App D](#)

PROBATE CODE

1300: [Step 1](#)

1962(b): [Step 3](#)

REVENUE AND TAXATION CODE

23301: [Step 2](#)

STREETS AND HIGHWAYS CODE

10400: [Step 3](#)

WELFARE AND INSTITUTIONS CODE

300-302: [App D](#)

366.26(l): [Step 1](#)

601-602: [App D](#)

5350: [Step 3](#)

SESSION LAWS

Stats 1999, ch 508, §1: [Step 16](#)

Stats 1990, ch 804, §2: [Step 52](#)

ACTS BY POPULAR NAME

Lanterman-Petris-Short Act: [Step 3](#)

Mello-Roos Community Facilities Act of 1982: [Step 3](#)

Small Claims Act: Step 80

Rules

CALIFORNIA RULES OF COURT

1.21: Steps 61, 65, 70

1.22: Steps 19, 65, App M

2.101: App M

2.101(a): Step 65, App M

2.200: App M

2.250: Steps 29-30

2.950: Step 10

3.50-3.63: Step 5, App N-1

3.50-3.65: Step 5

3.670: Step 15

3.670(d)(3): Step 15

3.670(e)(3): Step 15

3.1312: Step 3

3.1700: Steps 50, 52, 55, 75

3.1700(a): Steps 50, 74

3.1700(a)(1): Steps 50, 74

3.1700(b): Step 51

3.1700(b)(1): Step 51, App N-1

3.1700(b)(2): Step 51

3.1700(b)(3): Steps 50-52

3.1700(b)(4): Steps 51, 55

3.1702: Step 50

3.1702(a)(1): Step 74

3.1804: Step 3

3.7102: Step 74

5.180: Step 1

5.540(c): Step 3

8.25: Steps 19, 21, 23, 29-30, 32-34, 36-39, 70

8.25(a): Steps 23, 34, 36-37

8.25(a)-(b): Step 33

8.25(a)(1): Steps 29-30, 38-39, 43

8.25(b): Steps 32-34, 36-39, 42-43

8.25(b)(1): Step 19

8.25(b)(3): Step 19

8.29: Steps 19, 32-34

8.32: App M

8.32(b): Step 5

8.36(b): App M

8.40: Steps 16-17, 19, 21

8.40(a): Step 19, App M

8.40(b): Steps 8, 19, 21, 23, 29-30, 32-34, 36, 38, 42-43

8.40(b)-(c): Step 37

8.44(a): Step 33

8.44(a)(1): Steps 32, 34, 36-39, 42-43

8.44(b): Steps 16, 19, 21, 23

8.44(b)(1): Steps 16, 19, 23, 45

8.44(b)(3): Steps 29-30

8.44(b)(4): Step 16

8.44(b)(7): Step 17

8.50: Steps 16-17, 27

8.50(c): Step 17

8.54: Step 16, App M

8.54(a): Step 16

8.54(a)(2): Step 16

8.54(a)(3): Step 16

8.54(b)(1): Step 16

8.54(b)(2): Step 16

8.54(c): Step 16

8.57(a): Step 16, App M

8.57(b): App M

8.60: Steps 11, 17

8.60(a): Step 3

8.60(b): Steps 10, 11

8.60(d): Step 22

8.60(d)-(e): Step 3

8.60(f): Steps 17, 23

8.63: Steps 11, 17, App I

8.66: Step 3

8.82: Step 57

8.82-8.825: Step 1

8.100: Step 5

8.100(a): Steps 5, 7, App M

8.100(b): App M

8.100(b)(1): Steps 5, 7

8.100(b)(2): Steps 5, 7

8.100(b)(3): Step 5

8.100(c)-(d): Step 5

8.100(e): Step 5

8.100(f): Step 7

8.100(g)(1): Step 6

8.100(g)(2): Step 6

8.100(g)(3): Step 6

8.104: Steps 4-5, 9, App M

8.104(a): Steps 3-4, App N-1

8.104(a)(1): Step 3

8.104(b): Step 3

8.104(c): Step 3

8.104(d)(1)-(4): Step 3

8.104(d)(2): Steps 1, 3

8.104(d)(2)-(3): Steps 1, 3

8.104(d)(4): Step 3

8.104(e)(1): Step 3

8.104(e)(2): Step 3

8.108: Steps 4, 9, App M

2002 Advisory Committee Comment: Step 4

8.108(a): Step 4

8.108(b): Step 4

8.108(b)(1): Step 4

8.108(c): Step 4

8.108(d): Step 4

8.108(d)(1): Step 4

8.108(d)(2): Step 4

8.108(e): Step 4

8.108(f): Steps 4, 7, App M

8.108(f)(1): Step 4

8.108(f)(2): Step 4

8.108(g): Step 4

8.112: Step 8, App M

8.112(a)(4): Step 8

8.112(c): Step 8

8.116: Step 8, App M

8.116(a): Step 8

8.116(b): Step 8

8.120: Step 14, App M

8.120-8.122: Step 11

8.120(a)(1): Steps 10-11

8.120(b)(1): Steps 10-11

8.121: Steps 10, 14, Apps M-N-1

8.121(a): Steps 9, 11, App M

8.121(b)-(c): Step 10

8.122: Steps 7, 16, App M

8.122(a): Step 11, App M

8.122(a)(1): Steps 9, 11

8.122(a)(2): Step 11, App M

8.122(a)(3): Step 11

8.122(b): Step 9

8.122(b)(1): Steps 11, 13

8.122(b)(1)-(2): Step 14

8.122(b)(1)(A)-(D): Step 11

8.122(b)(2): Steps 9, 11

8.122(b)(3)(A): Step 11

8.122(b)(3)(B): Step 11

8.122(b)(3)(C): Step 11

8.122(b)(4): Step 11

8.122(c)(1): Step 11

8.122(c)(3): Step 11, App N-1

8.122(d): Step 11, Apps M-N-1

8.122(d)(2): Step 11

8.123: Step 13

8.124: Steps 5, 7, 9, 13, 19, Apps I, M-N-1

8.124(a): Steps 9, 13

8.124(a)-(d): App M

8.124(a)(2): Step 13

8.124(a)(3): Step 13, App N-1

8.124(b)(1): Step 13

8.124(b)(1)(B): Step 13

8.124(b)(1)(C): Step 13

8.124(b)(1)(D): Step 13

8.124(b)(2): Step 13

8.124(b)(3): Step 13

8.124(b)(4): Step 13

8.124(b)(5): Step 13

8.124(c): Step 13

8.124(d): Step 13

8.124(d)(3): Step 13

8.124(e)(1)(A)-(B): Step 13

8.124(e)(2): Step 13

8.124(e)(2)-(4): App N-1

8.124(e)(3): Step 13

8.124(e)(4): Step 13

8.124(f): Step 13

8.124(g): Step 13

8.128: Step 9, App M

8.128(a): Step 9

8.130: Steps 7, 9-10

8.130(a): Steps 9-10, App M

8.130(a)-(b): Step 10

8.130(a)-(c): App M

8.130(a)(1): Step 10

8.130(a)(2): Step 10, App M

8.130(a)(3): Step 10

8.130(a)(4): Steps 9-10, App M

8.130(b): Step 10

8.130(b)-(c): App M

8.130(b)(1): Step 10

8.130(b)(2): Step 10

8.130(c): Step 10

8.130(c)(2): Step 10

8.130(c)(3): Step 10

8.130(d): Step 10

2002 Advisory Committee Comment: Step 10

8.130(d)(1): Step 10

8.130(d)(2): Step 10

8.130(d)(3): Step 10

8.130(d)(4): Step 10

8.130(e)-(f): App N-1

8.130(e)(1): Step 10

8.130(e)(2): Step 10

8.130(e)(3): Steps 10-11

8.130(f)(1): Step 10

8.130(f)(2): Step 10

8.130(f)(4): Step 10

8.130(g): Steps 10, 14, App M

8.134: Steps 9-10, 14, App M

8.134(a): Step 14, App M

8.134(a)(1): Step 14

8.134(b): Steps 10, 14

8.134(b)(1): Step 9

8.137: Steps 9-10, 14, App M

8.137(a): Step 9

8.137(a)-(b): App M

8.137(a)(2): Step 14

8.137(a)(3): Step 14

8.137(b): Step 14

8.137(b)(3): Step 9

8.137(b)(4): Step 14

8.137(c)(1): Step 14

8.137(c)(2): Step 14

8.137(c)(3): Step 14

8.137(c)(4): Step 14

8.140: Steps 10-11, 19

8.140(a)-(c): Step 10

8.140(a)(1): Step 10

8.140(b)(1): Steps 10, 16

8.144: Step 13

8.144(a)-(c): Step 13

8.144(e): Step 13

8.147: Steps 7, 11

8.147(a): Steps 9-11

8.147(b)(2): Step 50

8.150: Steps 10, 19

8.150(a): App N-1

8.150(b): Step 10

8.153(a): App M

8.155: Steps 9-11, App M

8.155(a): Step 10, App M

8.155(a)-(b): Step 10

8.155(a)(2): Step 11

8.155(b): Steps 10-11

8.155(b)(1)-(2): Step 11

8.155(b)(2): Steps 10-11

8.155(c): Step 11, App M

8.155(c)(1): Step 10

8.163: App M

8.200-8.204(a): Step 21

8.200(b): Step 45

8.200(b)(1): Step 45

8.200(b)(2): Step 45

8.204: Steps 19, 21, 29-30

8.204(a)(1): Steps 32-33

8.204(a)(1)(A): Step 19

8.204(a)(1)(B): Step 19

8.204(a)(1)(C): Step 19

8.204(a)(2): Step 19

8.204(a)(2)(B): Step 19

8.204(b): Steps 17, 19

8.204(b)(1): Steps 19, 65, App M

8.204(b)(10): Step 19

8.204(b)(10)(D): Step 16

8.204(b)(10)(D)-(E): Step 19

8.204(b)(11): Step 19

8.204(b)(11)(A): Step 19

8.204(b)(3)-(4): Step 19

8.204(b)(5): Step 19

8.204(b)(7): Step 19

8.204(b)(8): Step 19

8.204(b)(9): Step 19

8.204(c): Step 19

8.204(c)(1): Step 19

8.204(c)(5): Step 19

8.204(d): Step 19

8.204(b)(1): Step 19

8.212: Steps 21, 23, 29, 45

8.212(a): Steps 14, 19-20, 23, App N-1

8.212(a)(1)(B): Step 19, App N-1

8.212(a)(2): Step 21, App N-1

8.212(a)(3): Step 23, App N-1

8.212(b): Steps 17, 23, App I

8.212(b)(3)(A): Steps 17, 23

8.212(b)(3)(B): Steps 17, 23

8.212(b)(4): Step 22

8.212(c): Step 19

Advisory Committee Comment: Steps 29-30

8.212(c)(1): Steps 19, 23, 29-30, 45

8.212(c)(2): Steps 19, 23, 29-30, 45

8.216: Step 19

2002 Advisory Committee Comment: Step 23

8.216(a): Steps 14, 23-24, App N-1

8.216(a)(3): Step 23

8.216(b)(1): Step 23

8.216(b)(2): Step 23

8.216(b)(3): Step 23

8.220: Steps 12, 20, 22, 27

8.220(a): App N-1

8.220(a)(1): Step 20

8.220(a)(2): Step 22

8.220(c): Steps 20, 22, App N-1

8.220(d): Steps 20, 22, App N-1

8.224: Step 27, App F

8.224(a): Step 12

8.224(a)(1): Steps 12, 27

8.224(a)(2): Steps 12, 27

8.224(a)(3): Steps 12, 27

8.224(b)(1): Step 12

8.224(b)(2): Step 12

8.224(c): Step 12

8.224(d): Step 12

8.240: Step 16

8.240(b)(10): Step 19

8.244: Step 15

8.244(c)(2): Step 48

8.248: Step 15

8.248(c)(1): Step 15

8.248(c)(2): Step 15

8.248(d): Step 15

8.256: Step 27, App J-1

8.256(b): Step 25

8.256(c)(1): Step 27

8.256(c)(2): Step 27

8.256(c)(3): Step 27

8.256(d)(1): Step 28, App F

8.256(e): Step 28

8.264: Steps 31, 44, App N-1

8.264(a)(1): Step 28

8.264(b): App N-1

8.264(b)(1): Steps 28, 32

8.264(b)(2): Step 48, App N-1

8.264(b)(4): Step 31

8.264(b)(5): Steps 28-29

8.264(c)(1): Step 28

8.264(c)(2): Steps 28-29

8.264(d): Steps 28-29

8.268: Steps 31, 44

8.268(a): Step 31

8.268(a)(1): Step 29

8.268(a)(2): Step 29

8.268(b)(1): Steps 29, 42, App N-1

8.268(b)(2): Steps 30, 43, App N-1

8.268(b)(3): Steps 29-30

8.268(b)(4): Steps 29-30

8.268(c): Steps 31-32

8.268(d): Step 31

8.272: Step 48, App N-1

8.272(b)(1)(A): Step 48

8.272(b)(2): Step 48

8.272(c)(1): Step 48

8.272(c)(2): Steps 48-49, App N-1

8.272(d)(1): Step 48

8.276: Step 50

8.276(a): Steps 18, 50

8.276(a)(1)-(2): Step 18

8.276(a)(4): Step 18

8.276(b)(1)-(2): Step 18

8.276(c): Step 18

8.276(d): Step 18

8.278: Steps 50-51, 55, 74, App N-1

Advisory Committee Comment: Step 74

8.278(a)(1): Steps 50, 74

8.278(a)(2)-(3): Step 50

8.278(a)(3): Step 50

8.278(a)(5): Steps 18, 50

8.278(c): Step 52

8.278(c)(1): Steps 50, 52, 74, App N-1

8.278(c)(2): Step 51

8.278(c)(3): Step 55

8.278(d): Step 50

Advisory Committee Comment: Step 50

8.278(d)(1): Step 74

8.278(d)(1)(A): Step 50

8.278(d)(1)(B): Step 50

8.278(d)(1)(C): Step 50

8.278(d)(1)(D): Step 50

8.278(d)(1)(E): Step 50

8.278(d)(1)(F): Steps 8, 50

8.278(d)(2): Step 50

8.308: Step 3

8.400-8.474: Step 1

8.400(a)(1): Step 3

8.400(d): Step 3

8.408: Step 3

8.412: Step 3

8.416: Step 3

8.450: Step 3

8.450(e): Step 3

8.452: Step 3

8.454: Step 3

8.456: Step 3

8.470: Step 3

8.472: Step 3

8.474: Step 3

8.480: Step 3

8.482(b): Step 3

8.500: Steps 32-34

8.500(a)(2): Step 33

8.500(b): Step 32

8.500(b)-(c): Step 32

8.500(b)(1): Step 32

8.500(b)(2): Step 32

8.500(b)(3): Step 32

8.500(b)(4): Step 32

8.500(c)(1): Step 32

8.500(c)(1)-(2): Step 32

8.500(c)(2): Steps 29, 32

8.500(d): Step 32

8.500(d)(4): Step 32

8.500(e)(1): Steps 28, 32, App N-1

8.500(e)(2): Step 32

8.500(e)(3): Step 32

8.500(e)(4): Steps 33-34, App N-1

8.500(e)(5): Step 34, App N-1

8.500(f)(1): Steps 32-34

8.500(f)(2): Steps 32-34

8.500(f)(3): Step 32

8.500(g): Step 32

8.504: Steps 32-35

8.504(a): Step 32

8.504(b)(1): Step 32

8.504(b)(2): Step 32

8.504(b)(2)-(3): Step 32

8.504(b)(3): Step 32

8.504(b)(4): Step 32

8.504(b)(5): Step 32

8.504(c): Step 33

8.504(d): Step 33

8.504(d)(1): Step 34

8.504(d)(2): Step 34

8.504(d)(4): Steps 33-34

8.504(e): Steps 32-33

8.504(e)(1)(A): Step 32

8.504(e)(1)(B): Step 32

8.504(e)(1)(C): Step 32

8.504(e)(2): Step 32

8.504(e)(3): Step 32

8.512: Steps 33, 35-36, App N-1

2004 Advisory Committee Comment: App N-1

8.512(b): Step 35

2004 Advisory Committee Comment: Step 35

8.512(b)(1): Step 35, App N-1

8.512(b)(2): Step 35

8.512(c)(1): Step 35, App N-1

8.512(d)(1): Step 35

8.512(d)(2): Steps 35-36

8.516: Step 32

8.516(a): Steps 32, 33, 36

8.516(a)(1): Step 35

8.516(a)(2): Step 35

8.516(b): Step 19

8.520: Steps 35-39

8.520(a): Steps 36, 39

8.520(a)(1): Step 36, App N-1

8.520(a)(2): Step 37, App N-1

8.520(a)(3): Step 38, App N-1

8.520(a)(4): Steps 36-37

8.520(a)(5): Steps 36-37

8.520(b)(2): Step 36

8.520(b)(2)-(3): Step 36

8.520(b)(2)(A): Step 36

8.520(b)(2)(B): Step 36

8.520(b)(3): Steps 35, 36

8.520(c): Steps 36, 38

8.520(c)(1): Step 37

8.520(d)(1): Step 39

8.520(d)(2): Step 39, App N-1

8.520(e): Step 36

8.523(b)(2): App N-1

8.524: Step 40

8.524(c): Step 40

8.528: Steps 35, 45

8.528(a): Step 41

8.528(b): Step 41

2003 Advisory Committee Comment: Steps 41, 48

8.528(b)(2): Step 48

8.528(c): Step 41

8.528(d): Step 41

8.528(e): Step 41

2003 Advisory Committee Comment: Step 41

8.528(f): Step 45

8.529: Step 41

8.532: Steps 35, 44

8.532(b)(1): Step 44, App N-1

8.532(b)(2): Step 35

8.536: Step 44

8.536(b): Steps 42-43

8.536(c): Step 44

8.536(d): Step 44

8.540: Step 48

8.540(a): Step 48

8.540(b)(2): Step 48

8.540(b)(4): Step 48

8.540(c)(1): Step 48

8.540(c)(2): Steps 48-49, App N-1

8.552(a)-(b): Step 28

8.704(a): Step 68

8.706: Steps 65-66

8.706(a): Steps 65-67

8.706(c): Step 65

8.706(d): Step 65

8.706(e): Steps 65-67

8.706(f): Steps 65-67

8.706(g): Steps 19, 65, App M

8.707-8.709: Step 69

8.707(b): Step 69

8.708: Step 72

8.708(a): Step 69

8.708(a)(1): Step 69

8.708(a)(2): Steps 69, 72

8.708(b): Step 69

8.708(c): Steps 70-71

8.708(c)(3): Step 71

8.708(c)(5): Step 72

8.709: Step 69

8.750: Step 59

8.750-8.751: Step 57

8.750(a): Steps 57, 59

8.750(b): Step 59

8.750(c): Steps 57, 59

8.750(e): Step 59

8.751(a): Step 57

8.751(b): Step 57

8.752: Steps 58-59

8.752(a): Steps 57-58

8.752(b): Step 58

8.752(c): Steps 58-59

8.752(d): Step 59

8.753-8.756: Step 60

8.753(a): Steps 60-61

8.753(b): Step 61

8.753(c): Step 61

8.753(d): Step 61

8.753(e): Steps 61, 63

8.754: Step 62

8.754(a): Steps 60, 62

8.754(b): Step 62

8.754(c): Step 62

8.754(d): Step 62

8.754(d)-(e): Step 62

8.754(f): Step 62

8.755(a): Step 63

8.755(a)-(b): Step 60

8.755(b): Step 63

8.756: Steps 61-62

8.756(a): Steps 60, 63

8.756(c): Step 63

8.757(a): Step 64

8.757(b): Step 64

8.759: Steps 61, 64

8.764: Step 74

8.764(c)(1): Step 74

8.764(c)(2): Step 74

8.764(c)(3): Step 74

8.764(d): Steps 74-76

8.764(e): Step 66

8.800-8.816: Steps 1, 56, App M

8.812: Step 57

8.820-8.825: Step 56, App M

8.821: Steps 57, 59

Advisory Committee Comment: Step 57

8.821-8.822: Step 57

8.821(b): Step 57

8.821(b)-(c): [Step 57](#)

8.821(b)(1): [Step 57](#)

8.821(d)-(e): [Step 59](#)

8.822: [Steps 57-58](#)

8.822(a): [Steps 57-59](#)

8.822(b): [Step 57](#)

8.822(b)-(c): [Step 59](#)

8.822(d): [Step 57](#)

8.822(e): [Step 59](#)

8.823: [Step 58](#)

8.823(a): [Step 58](#)

8.823(a)-(b): [Step 58](#)

8.823(b)(1): [Step 58](#)

8.823(b)(1)(A): [Step 58](#)

8.823(c): [Step 58](#)

8.823(d): [Step 58](#)

8.823(e): [Step 58](#)

8.823(f): [Steps 58-59](#)

8.830: [Steps 61, 64](#)

8.830-8.831: [Step 63](#)

8.830-8.837: [Step 60](#)

8.830-8.842: [Steps 1, 56, App M](#)

8.830(a): [Steps 60, 62-63](#)

8.830(a)(1): [Step 62](#)

8.830(a)(1)-(2): [Step 61](#)

8.830(a)(2): [Steps 61, 63](#)

8.831: [Steps 60, 62-63](#)

8.831(a): [Step 61](#)

8.832: [Step 62](#)

8.832(b)(1): [Step 62](#)

8.832(c): [Step 62](#)

8.832(c)(3): [Step 62](#)

8.832(d): [Step 62](#)

8.834: Step 61

8.834(a)(1): Step 61

8.834(a)(2): Step 61

8.834(a)(3): Steps 61-62

8.834(b): Step 61

8.834(b)(2): Step 61

8.834(c)(2): Step 61

8.834(d)(1): Step 61

8.834(e): Step 63

8.835: Step 64

8.836: Step 60

8.836(b): Step 63

8.836(c): Step 63

8.837: Steps 60, 63

8.837(b): Step 63

8.837(c): Step 63

8.837(c)(2): Step 63

8.837(d)(1): Step 63

8.840: Step 64

8.840-8.841: Step 64

8.841: Step 64

8.880-8.891: Steps 1, 56, App M

8.882: Steps 65-66, 70

8.882-8.883: Step 65

8.882(a)(2): Step 66

8.882(a)(3): Step 67

8.882(d): Steps 65-67

8.882(d)(2): Steps 65-67

8.882(d)(3): Steps 65-67

8.882(d)(4): Steps 65-67

8.883: Step 65

8.883(b): Step 65

8.883(c): Step 65

8.883(c)(1): Steps 19, 65, App M

8.883(c)(8): Step 65

8.883(d): Step 70

8.885(a): Step 68

8.887-8.889: Step 69

8.887(a): Step 69

8.888: Steps 69-70

8.888(a)(1): Step 69

8.888(a)(2): Step 69

8.888(b): Step 69

8.888(c): Step 69

8.889: Steps 70, 72

8.889(a): Step 72

8.889(b): Step 70

8.889(b)(2): Step 71

8.889(c): Step 72

8.889(d): Step 69

8.891(a): Step 74

8.891(c): Step 74

8.891(c)(1): Step 74

8.891(c)(2): Step 75

8.891(c)(3): Step 76

8.891(d)(1)(A): Step 74

8.891(d)(1)(B): Step 74

8.891(d)(1)(C): Step 74

8.891(d)(1)(D)-(E): Step 74

8.891(e): Step 66

8.902: Step 80

8.904: Steps 78, 80

8.904(a): Step 78

8.904(b): Step 78

8.907: Step 79

8.910: Step 80

8.1000-8.1018: Steps 1, 71-72

8.1002: Step 70

8.1005: Step 70

8.1005(b)(1): Step 70

8.1005(b)(2): Step 70

8.1005(b)(3): Step 71

8.1005(b)(4): Step 72

8.1008: Step 70

8.1105(a): Step 46

8.1105(c): Step 47

8.1105(c)(1): Steps 46, 73

8.1105(c)(2): Steps 46, 73

8.1105(c)(3): Steps 46, 73

8.1105(c)(4): Steps 46, 73

8.1105(c)(5): Steps 46, 73

8.1105(c)(6): Steps 46, 73

8.1105(c)(7): Steps 46, 73

8.1105(c)(8): Steps 46, 73

8.1105(c)(9): Steps 46, 73

8.1120(a): Step 46

8.1120(a)(1)-(2): Step 73

8.1120(a)(3): Steps 46, 73

8.1120(a)(4): Steps 46, 73

8.1120(b): Steps 46, 73

8.1125(a): Step 47

8.1125(a)(2): Step 47

8.1125(a)(3): Step 47

8.1125(a)(4): App N-1

8.1125(b): Step 47

10.503: Step 13

35(b): App D

35(d): [App D](#)

43: [App D](#)

45(b)-(d): [App D](#)

FIRST APPELLATE DISTRICT RULES

1: [App N-1](#)

3: [Step 15](#)

3(3): [Step 15](#)

3(b)(1): [Step 15](#)

3(b)(3): [Step 15](#)

3(c)(1): [Step 15](#)

3(c)(2): [Step 15](#)

7: [App I](#)

7(a): [App I](#)

8: [Step 9](#)

11: [App I](#)

11(a): [Step 16](#)

FIRST APPELLATE DISTRICT ORDERS

Misc Order 94-1: [Step 10](#)

SECOND APPELLATE DISTRICT RULES

2: [Step 16](#)

THIRD APPELLATE DISTRICT RULES

2: [Step 9](#)

FOURTH APPELLATE DISTRICT RULES

1: [Step 8](#)

3: [Step 9](#)

5: [Step 25](#)

Div 2

4: [Step 15](#)

4(c)(3): [Step 15](#)

4(d)(2): [Step 15](#)

4(f): [Step 15](#)

4(f)(3): [Step 15](#)

4(f)(6): [Step 15](#)

FIFTH APPELLATE DISTRICT RULES

2(d): [Step 15](#)

2(g): [Step 15](#)

2(h): [Step 15](#)

4: [Step 25](#)

5: [Step 9](#)

Internal Operation Practices and Procedures

FIRST APPELLATE DISTRICT

B.3: [Step 25](#)

B.5: [Step 29](#)

FOURTH APPELLATE DISTRICT

Div 2

VIII: [Step 25](#)

Div 3

IV(H): [Step 15](#)

SIXTH APPELLATE DISTRICT

II(A)(3): [Step 25](#)

UNITED STATES

Statutes

UNITED STATES CODE

Title 11

108(c)(2): [Steps 4, 19](#)

Title 28

1913: [App M](#)

1917: [App M](#)

Rules

NINTH CIRCUIT RULES

3-4 (Form 6): [App M](#)

5-1: [App M](#)

10-3.1(a): [App M](#)

10-3.1(b): [App M](#)

10-3.1(c): [App M](#)

10-3.1(d): [App M](#)

27-2: [App M](#)

30-1—30-2: [App M](#)

30-1.1: [App M](#)

30-1.6: [App M](#)

FEDERAL RULES OF APPELLATE PROCEDURE

3(a): [App M](#)

4-6: [App M](#)

4(a)(1): [App M](#)

4(a)(3): [App M](#)

7: [App M](#)

8: [App M](#)

10(a): [App M](#)

10(b): [App M](#)

10(b)(1)(B): [App M](#)

10(b)(3): [App M](#)

10(c): [App M](#)

10(d): [App M](#)

10(e): [App M](#)

11(a): [App M](#)

11(g): [App M](#)

27: [App M](#)

30: [App M](#)

30(a): [App M](#)

FEDERAL RULES OF CIVIL PROCEDURE

62: [App M](#)

© The Regents of the University of California

Source: Civil Litigation/Handling Civil Appeals (Action Guide)/TABLE OF CASES

TABLE OF CASES

A

Alan v American Honda Motor Co. (2007) 40 C4th 894, 55 CR3d 534: [Step 3](#)

Alice, People v (2007) 41 C4th 668, 61 CR3d 648: [Step 29](#)

ALRB v Tex-Cal Land Mgmt., Inc. (1987) 43 C3d 696, 238 CR 780: [Step 8](#)

Anastasio, Estate of (1989) 215 CA3d 486, 263 CR 622: [Step 22](#)

Annette F. v Sharon S. (2005) 130 CA4th 1448, 30 CR3d 914: [Step 4](#)

Anthony D. v Superior Court (1998) 63 CA4th 149, 73 CR2d 479: [Step 1](#)

B

Bailey v County of El Dorado (1984) 162 CA3d 94, 210 CR 237: [Step 1](#)

Baize v Eastridge Cos. (2006) 142 CA4th 293, 47 CR3d 763: [Step 18](#)

Bank of America v Cory (1985) 164 CA3d 66, 210 CR 351: [Step 52](#)

Barton v Ahmanson Devs., Inc. (1993) 17 CA4th 1358, 22 CR2d 56: [Step 1](#)

Bates v John Deere Co. (1983) 148 CA3d 40, 195 CR 637: [Step 2](#)

Berge v International Harvester Co. (1983) 142 CA3d 152, 190 CR 815: [Step 7](#)

Black, People v (1961) 55 C2d 275, 10 CR 459: [Step 1](#)

Bryan v Bank of America (2001) 86 CA4th 185, 103 CR2d 148: [Step 49](#)

Burch v George (1994) 7 C4th 246, 27 CR2d 165: [Step 15](#)

Burrow v Pike (1987) 190 CA3d 384, 235 CR 408: [Step 2](#)

C

Calhoun v Vallejo City Unified Sch. Dist. (1993) 20 CA4th 39, 24 CR2d 337: [Steps 1-2](#)

California Ass'n for Safety Educ. v Brown (1994) 30 CA4th 1264, 36 CR2d 404: [Step 19](#)

California Commerce Casino, Inc. v Schwarzenegger (2007) 146 CA4th 1406, 53 CR3d 626: [Step 3](#)

Canal Ins. Co. v Tackett (2004) 117 CA4th 239, 11 CR3d 626: [Step 13](#)

City of Fresno v Press Communications, Inc. (1994) 31 CA4th 32, 36 CR2d 456: [Step 52](#)

City of Los Angeles v Glair (2007) 153 CA4th 813, 63 CR3d 280: [Step 1](#)

City of South San Francisco v Mayer (1998) 67 CA4th 1350, 79 CR2d 704: [Step 1](#)

Clayton Dev. Co. v Falvey (1988) 206 CA3d 438, 253 CR 609: [Steps 52-53](#)

Clifford S. v Superior Court (1995) 38 CA4th 747, 45 CR2d 333: [Step 2](#)

Cohen v General Motors Corp. (1992) 2 CA4th 893, 3 CR2d 619: [Step 18](#)

Computer Prepared Accounts, Inc. v Katz (1991) 235 CA3d 428, 286 CR 556: [Step 18](#)

Concerned Citizens Coalition of Stockton v City of Stockton (2005) 128 CA4th 70, 26 CR3d 735: [Step 1](#)

Conservatorship of Susan T. (1994) 8 C4th 1005, 36 CR2d 40: [Steps 19, 32](#)

Cooperman v California Unemployment Ins. Appeals Bd. (1975) 49 CA3d 1, 122 CR 127: [Step 7](#)

Crabtree, Estate of (1992) 4 CA4th 1119, 6 CR2d 224: [Step 3](#)

Crook v Contreras (2002) 95 CA4th 1194, 116 CR2d 319: [Step 2](#)

D

Day v Collingwood (2006) 144 CA4th 1116, 50 CR3d 903: [Step 1](#)

Department of Transp., People ex rel v Outdoor Media Group (1993) 13 CA4th 1067, 17 CR2d 19: [Step 18](#)

DeZerega v Meggs (2000) 83 CA4th 28, 99 CR2d 366: [Step 1](#)

Dodge, Warren & Peters Ins. Servs., Inc. v Riley (2003) 105 CA4th 1414, 130 CR2d 385: [Step 18](#)

Drum v Superior Court (2006) 139 CA4th 845, 43 CR3d 279: [Step 1](#)

E

E.L. White, Inc. v City of Huntington Beach (1978) 21 C3d 497, 146 CR 614: [Step 19](#)

ECC Constr., Inc. v Oak Park Calabasas Homeowners Ass'n (2004) 118 CA4th 1031, 13 CR3d 580: [Steps 4, 19](#)

Eileen A., In re (2000) 84 CA4th 1248, 101 CR2d 548, disapproved on other grounds in In re Zeth S. (2003) 31 C4th 396, 2 CR2d 683: [Step 1](#)

Ellenberger v City of Oakland (1946) 76 CA2d 828, 174 P2d 461: [Step 49](#), [App N-1](#)

Ellenberger v Espinosa (1994) 30 CA4th 943, 36 CR2d 360: [Step 19](#)

Estate of Anastasio (1989) 215 CA3d 486, 263 CR 622: [Step 22](#)

Estate of Crabtree (1992) 4 CA4th 1119, 6 CR2d 224: [Step 3](#)

Estate of Supeck (1990) 225 CA3d 360, 274 CR 706: [Step 22](#)

Evans v CenterStone Dev. Co. (2005) 134 CA4th 151, 35 CR3d 745: [Step 18](#)

F

Finnie v Town of Tiburon (1988) 199 CA3d 1, 244 CR 581: [Step 18](#)

Flaherty, Marriage of (1982) 31 C3d 637, 183 CR 508: [Step 18](#)

Fresno, City of v Press Communications, Inc. (1994) 31 CA4th 32, 36 CR2d 456: [Step 52](#)

Fundamental Inv. Realty Fund v Gradow (1994) 28 CA4th 966, 33 CR2d 812: [Step 7](#)

G

General Electric Capital Auto Fin. Servs., Inc. v Appellate Div. (2001) 88 CA4th 136, 105 CR2d 552: [Step 1](#)

Goddard, Marriage of (2004) 33 C4th 49, 14 CR3d 50: [Step 29](#)

Goehring v Chapman Univ. (2004) 121 CA4th 353, 17 CR3d 39: [Step 13](#)

Grant v List & Lathrop (1992) 2 CA4th 993, 3 CR2d 654: [Step 1](#)

Gunlock Corp. v Walk on Water, Inc. (1993) 15 CA4th 1301, 19 CR2d 197: [Step 50](#)

H

Haywood v Superior Court (2000) 77 CA4th 949, 92 CR2d 182: [Step 9](#)

Herrscher v Herrscher (1953) 41 C2d 300, 259 P2d 901: [Step 1](#)

Hill v Ghamaty (2006) 143 CA4th 1156, 50 CR3d 247: [Step 1](#)

Hogya v Superior Court (1977) 75 CA3d 122, 142 CR 325: [Step 1](#)

Hollister Convalescent Hosp. v Rico, Inc. (1975) 15 C3d 660, 125 CR 757: [Step 3](#)

Hoveida v Scripps Health (2005) 125 CA4th 1466, 23 CR3d 667: [Step 1](#)

Hughey v City of Hayward (1994) 24 CA4th 206, 30 CR2d 678: [Steps 1, 3](#)

I

In re Eileen A. (2000) 84 CA4th 1248, 101 CR2d 548, disapproved on other grounds in In re Zeth S. (2003) 31 C4th 396, 2 CR2d 683: [Step 1](#)

In re Markaus V. (1989) 211 CA3d 1331, 260 CR 126: [Steps 1, 3](#)

In re Matthew C. (1993) 6 C4th 386, 24 CR2d 765: [Step 1](#)

In re Miguel E. (2004) 120 CA4th 521, 15 CR3d 530: [Step 2](#)

In re Pacific Standard Life Ins. Co. (1992) 9 CA4th 1197, 12 CR2d 50: [Step 2](#)

Insurance Co. of the West v Haralambos Beverage Co. (1987) 195 CA3d 1308, 241 CR 427, disapproved on other grounds in Bass v Superior Court (1997) 16 C4th 35, 50 65 CR2d 366: [Step 19](#)

Interinsurance Exch. v Collins (1994) 30 CA4th 1445, 37 CR2d 126: [Step 19](#)

J

Johnson v Threats (1983) 140 CA3d 287, 189 CR 447: [Step 1](#)

Jonathan Neil & Assocs. v Jones (2006) 138 CA4th 1481, 42 CR3d 350: [Step 1](#)

K

Kaatz v City of Seaside (2006) 143 CA4th 13, 49 CR3d 95: [Step 3](#)

Krug, Norman I., Real Estate Inv., Inc. v Praszker (1990) 220 CA3d 35, 269 CR 228: [Step 1](#)

L

Lakin v Watkins Assoc. Indus. (1993) 6 C4th 644, 25 CR2d 109: [Step 1](#)

Lamb v Holy Cross Hosp. (1978) 83 CA3d 1007, 148 CR 273: [Step 4](#)

Lee v Brown (1976) 18 C3d 110, 132 CR 649: [Step 2](#)

Lee v Wells Fargo Bank (2001) 88 CA4th 1187, 106 CR2d 726: [Step 50](#)

Lezama-Carino v Miller (2007) 149 CA4th 55, 56 CR3d 671: [Step 5](#)

Life v County of Los Angeles (1990) 218 CA3d 1287, 267 CR 557: [Steps 4, 7](#)

Live Oak Publishing Co. v Cohagan (1991) 234 C3d 1277, 286 CR 198: [Step 19](#)

London v Dri-Honing Corp. (2004) 117 CA4th 999, 12 CR3d 240: [Step 1](#)

Los Angeles, City of v Glair (2007) 153 CA4th 813, 63 CR3d 280.: [Step 1](#)

Lucich v City of Oakland (1993) 19 CA4th 494, 23 CR2d 450: [Step 16](#)

Lundquist v Reusser (1994) 7 C4th 1193, 31 CR2d 776: [Step 15](#)

Lyons v Chinese Hosp. Ass'n (2006) 136 CA4th 1331, 39 CR3d 550: [Step 52](#)

M

Mansell v Board of Admin. (1994) 30 CA4th 539, 35 CR2d 574: [Step 19](#)

Markaus V., In re (1989) 211 CA3d 1331, 260 CR 126: [Steps 1, 3](#)

Markley v Superior Court (1992) 5 CA4th 738, 7 CR2d 328: [Step 8](#)

Marriage of Flaherty (1982) 31 C3d 637, 183 CR 508: [Step 18](#)

Marriage of Goddard (2004) 33 C4th 49, 53 14 CR3d 50: [Step 29](#)

Marriage of Stich (1985) 169 CA3d 64, 214 CR 919: [Step 18](#)

Marriage of Tushinsky (1988) 203 CA3d 136, 249 CR 611: [Step 2](#)

Matera v McLeod (2006) 145 CA4th 44, 51 CR3d 331: [Step 3](#)

Matthew C., In re (1993) 6 C4th 386, 24 CR2d 765: [Step 1](#)

McConnell v Merrill Lynch, Pierce, Fenner & Smith (1985) 176 CA3d 480, 222 CR 228: [Step 18](#)

Miguel E., In re (2004) 120 CA4th 521, 15 CR3d 530: [Step 2](#)

Modica v Merin (1991) 234 CA3d 1072, 285 CR 673: [Step 3](#)

Moles v Regents of Univ. of Cal. (1982) 32 C3d 867, 187 CR 557: [Step 25](#)

Morehart v County of Santa Barbara (1994) 7 C4th 725, 29 CR2d 804: [Step 1](#)

N

National Secretarial Serv., Inc. v Froelich (1989) 210 CA3d 510, 258 CR 506: [Step 18](#)

Neary v Regents of Univ. of Cal. (1992) 3 C4th 273, 10 CR2d 859: [Step 16](#)

Nimmagadda v Krishnamurthy (1992) 3 CA4th 1505, 5 CR2d 351: [Step 1](#)

Norman I. Krug Real Estate Inv., Inc. v Praszker (1994) 22 CA4th 1814, 28 CR2d 498: [Step 16](#)

P

Pacific Standard Life Ins. Co., In re (1992) 9 CA4th 1197, 12 CR2d 50: [Step 2](#)

Palmer v GTE Cal., Inc. (2003) 30 C4th 1265, 135 CR2d 654: [Step 4](#)

People ex rel Dep't of Transp. v Outdoor Media Group (1993) 13 CA4th 1067, 17 CR2d 19: [Step 18](#)

People v Alice (2007) 41 C4th 668, 61 CR3d 648: [Step 29](#)

People v Black (1961) 55 C2d 275, 10 CR 459: [Step 1](#)

Presley v Whelan (1983) 146 CA3d 959, 196 CR 1: [Step 52](#)

R

Rail-Transport Employees' Ass'n v Union Pac. Motor Freight (1996) 46 CA4th 469, 54 CR2d 713: [Step 1](#)

Ramirez v Moran (1988) 201 CA3d 431, 247 CR 117: [Step 4](#)

Ramon v Aerospace Corp. (1996) 50 CA4th 1233, 58 CR2d 217: [Step 4](#)

Rapp v Golden Eagle Ins. Co. (1994) 24 CA4th 1167, 30 CR2d 126: [Step 5](#)

Rosse v DeSoto Cab Co. (1995) 34 CA4th 1047, 40 CR2d 680: [Step 80](#)

Russell v Trans Pac. Group (1993) 19 CA4th 1717, 24 CR2d 274: [Step 50](#)

S

Safeco Ins. Co. v Architectural Facades Unlimited (2005) 134 CA4th 1477, 36 CR3d 754: [Steps 4, 18](#)

Salton Bay Marina, Inc. v Imperial Irrig. Dist. (1985) 172 CA3d 914, 218 CR 839: [Step 52](#)

San Bernardino Community Hosp. v Meeks (1986) 187 CA3d 457, 231 CR 673: [Steps 18, 48](#)

Sears, Roebuck & Co. v National Union Fire Ins. Co. (2005) 131 CA4th 1342, 32 CR3d 717: [Step 1](#)

Sheets v Cleveland (1942) 51 CA2d 148, 124 P2d 200: [Step 3](#)

Shelley v City of Los Angeles (1995) 36 CA4th 692, 42 CR2d 529: [Step 1](#)

Shelton v Rancho Mortgage & Inv. Corp. (2002) 94 CA4th 1337, 115 CR2d 82: [Step 1](#)

Shpiller v Harry C's Redlands (1993) 13 CA4th 1177, 16 CR2d 814: [Step 1](#)

Slaughter v Edwards (1970) 11 CA3d 285, 90 CR 144: [Step 2](#)

Smith v Superior Court (1994) 31 CA4th 205, 36 CR2d 897: [Step 1](#)

Soldate v Fidelity Nat'l Fin., Inc. (1998) 62 CA4th 1069, 72 CR2d 404: [Step 1](#)

Solis v Vallar (1999) 76 CA4th 710, 90 CR2d 677: [Step 2](#)

South San Francisco, City of v Mayer (1998) 67 CA4th 1350, 79 CR2d 704: [Step 1](#)

Southwestern Inv. Corp. v City of Los Angeles (1952) 38 C2d 623, 241 P2d 985: [Step 49](#), [App N-1](#)

Stich, Marriage of (1985) 169 CA3d 64, 214 CR 919: [Step 18](#)

Supeck, Estate of (1990) 225 CA3d 360, 274 CR 706: [Step 22](#)

T

TMS, Inc. v Aihara (1999) 71 CA4th 377, 83 CR2d 834: [Step 2](#)

Tudor Ranches, Inc. v State Comp. Ins. Fund (1998) 65 CA4th 1422, 77 CR2d 574: [Step 1](#)

Tushinsky, Marriage of (1988) 203 CA3d 136, 249 CR 611: [Step 2](#)

20th Century Ins. Co. v Superior Court (1994) 28 CA4th 666, 33 CR2d 674: [Step 57](#)

V

Vadas v Sosnowski (1989) 210 CA3d 471, 258 CR 374: [Step 8](#)

Varian Med. Sys., Inc. v Delfino (2005) 35 C4th 180, 25 CR3d 298: [Step 1](#)

Vo v Virgenes Mun. Water Dist. (2000) 79 CA4th 440, 94 CR2d 143: [Step 9](#)

W

Walker v Los Angeles County Metro. Transp. Auth. (2005) 35 C4th 15, 23 CR3d 490: [Step 1](#)

Warner Bros. Co. v Freud (1901) 131 C 639: [Step 2](#)

Weinstein v E. F. Hutton & Co. (1990) 220 CA3d 364, 269 CR 443: [Step 1](#)

Wenzoski v Central Banking Sys. (1987) 43 C3d 539, 237 CR 167: [Step 4](#)

White, E.L., Inc. v City of Huntington Beach (1978) 21 C3d 497, 146 CR 614: [Step 19](#)

© **The Regents of the University of California**