



What is an Appeal?

Hint: It's not a retrial

An Appeal is a Search for Harmful Legal Error

Trial Courts are Courts of Fact: they make credibility determinations, find facts, take sworn testimony and have juries.

The Court of Appeal is a Court of Law: We review the trial court's legal rulings for error. We don't subpoena witnesses, take testimony, receive new evidence hold hearings or have a jury.

In order to win on appeal you must find a **LEGAL** error made by the trial court. Arguing over the **FACTS** won't get you anywhere. We don't hold hearings or call witnesses, so the Court of Appeal isn't set up for fact finding. We have to take the facts as the trial court found them. It's the Judge's **RULINGS ON LEGAL QUESTIONS** that we review.

What does **harmful** mean? It means that you can show that the error hurt your chances at trial. Despite what you may have heard, not just any "technicality" will lead to the trial court being overturned.



General Court of Appeal Tips

Research Research Research!

In order to make a successful argument you need to research the law and examine the trial court's rulings. Often the Reporter's Transcript is your most important court record.

Everything Must Be In Writing

Clerks will be happy to give you information. However, if you want anything that effects your case – like an extension of time or permission to file something after the deadline – you need to ask the Justices in writing.

All arguments on appeal **MUST** be in the Appellant's Opening Brief

All statements of fact **MUST** be supported by references to the Record

All statements of law **MUST** be supported by references to case/statutes



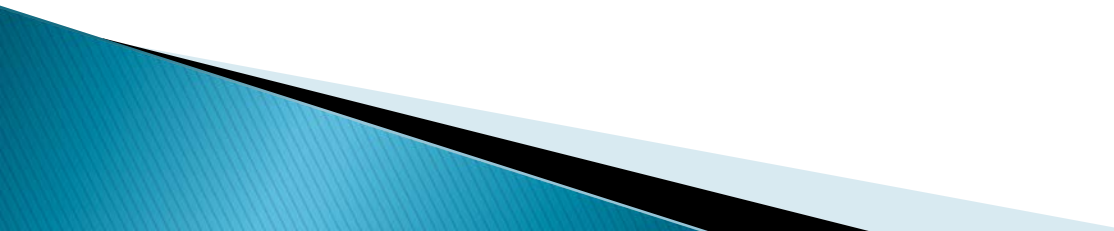
Tips . . . Continued . . .

Everything Must Be Served On All Parties

With the exception of fee waivers and other confidential documents, **EVERYTHING** filed in the Court of Appeal needs to be served on all parties to the case. No proof of service, no filing.

The Court of Appeal Usually Does Not Hold Hearings

Trial courts will often hold hearings on motions. The Court of Appeal does not hold hearings. You will only appear before the Justices if your case goes all the way to Oral Argument. Otherwise it's all done on paper.



How Can Clerks Help?

1. What's the procedure?

If you know what you want to do but not HOW to make it happen, a clerk is your best friend. We're experts on court procedure. We can't give personalized legal advice, but we can tell you how to file a motion to augment, how to seek relief from a default, or how to request an extension of time.

2. What's the Status?


Clerks are always happy to give you status updates about your case. We can tell you the outcomes of applications/motions, if/when the other side filed something, or what the Court is waiting for.

3. What's Next?

Because we know the process so well, clerks can tell you what to expect next in your case. Is there a due date coming up? Will the other side be filing something soon?

4. How do I fix this filing?

If any of your filings are rejected the clerk can tell you if there's a way to fix them so they get filed.

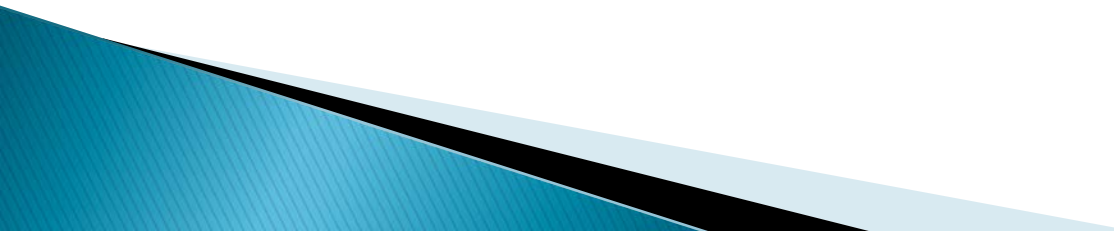


Notice of Appeal


► What is it?

- A notice of appeal is the form you file in Superior Court where your case was decided. This form lets the court and the other side know that you are appealing the court's decision. Rule 8.100.
- Filing the notice of appeal begins the entire appeals process. Use Judicial Council forms APP-001 and APP-002. Two separate fees are required: a \$775.00 filing fee and \$100.00 deposit OR a fee waiver is required Rule 8.100(b).

Timing

- ▶ Rule 8.104(b) In unlimited civil cases (such as civil cases involving an amount over \$25,000 or family law cases), you must file your notice of appeal by the earliest of the following times:
 - ▶ 60 days after either the trial court clerk or the other side serves you with notice that the judgment has been entered in your case or with a copy of the judgment stamped "Filed," or
 - ▶ 180 days after the entry of the judgment.
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How to file the Notice of Appeal

- ▶ Remember, you **MUST** serve AND file your notice of appeal no later than the deadline for your type of case. You can prepare the Notice of Appeal on your own. Or, if you prefer, you can fill out one of these preprinted forms:
 - ▶ Notice of Appeal/Cross-Appeal (Unlimited Civil Case) (Form APP-002) if you are appealing an unlimited civil case (such as a civil case involving an amount over \$25,000 or a family law case).
 - ▶ Make at least two copies of the notice of appeal.
 - ▶ One copy will be for you; another copy will be for the other side. The original is for the court.
 - ▶ Serve your notice of appeal on the other side.
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Serving the notice of appeal

- ▶ Serve the other side with a copy of your Notice of Appeal either in person or by mail. ("Serving" a document on a person means having the document delivered to that person in the proper legal way. There are 2 main ways to serve documents: (1) by mail and (2) by personal delivery. A proof of service must be attached to the document.
- ▶ Read What Is Proof of Service? (Form APP-109-INFO)
- ▶ Make sure your server serves a **copy** of the Notice of Appeal, not the original because the original is for the court.
- ▶ Have your server prepare a Proof of Service and make a copy. In an unlimited civil case (in the Court of Appeal), your server can fill out a Proof of Service (Court of Appeal) (Form APP-009). It is very important that the person doing the service prepare your Proof of Service correctly. The server must then give you the original and copy of the Proof of Service for you to file with the court.
- ▶ File your notice of appeal and proof of service with the court clerk before the deadline to file your appeal!

THE RECORD IS HALF YOUR ARGUMENT

This is not a trial court: we DON'T call witnesses, we DON'T take new evidence. As far as the Court is concerned, the only facts that matter are in the record. If something is not in the record, then there's nothing for the Court to review. So, if something isn't in the record, then, as far as the Court is concerned, it DIDN'T HAPPEN. This makes the act of designating the record one of the most important parts of the appeal process.



How to Designate

- ▶ When: The Appellant must serve and file the Notice Designating the Record **within 10 days** of filing the Notice of Appeal. The Notice must be served on all parties to the appeal. **The Respondent has 10 from the date of the Appellant's designation** to serve and file their own designation, if they want anything added to the record that the appellant has designated.
- ▶ Where: You serve the Notice on all parties to the action and file it with the Civil Appeals Office of the LA Superior Courts (not the Court of Appeal)
- ▶ What: You have 6 types of record to choose from
 1. Appendix only
 2. Appendix and Reporter's Transcript
 3. Appendix and Agreed/Settled Statement
 4. Clerk's Transcript Only
 5. Clerk's and Reporter's Transcripts
 6. Clerk's Transcript and Agreed/Settled Statement



Types of Record

- ▶ **Appendix:** An appendix is a collection of documents from the lower court case that you assemble yourself. Any document included **MUST** have been received by the lower court in the previous action.
- ▶ **Reporter's Transcript:** A verbatim transcription of things that were said in the trial court during a given hearing. This is often the **MOST IMPORTANT PART** of an appellate record, because it contains both the Judge's rulings from the bench **AND** any oral objections from the trial counsel or party. You can only get a Reporter's Transcript if a reporter was present at the hearing. Otherwise you might need a Settled Statement.
- ▶ **Agreed Statement:** A statement of the nature of the case, the basis for the Court's jurisdiction and how the Superior Court decided the issues to be reviewed on appeal. It's called an Agreed Statement because **both sides must agree** to it.
- ▶ **Settled Statement:** A short version of the things that were said in the lower court trial that the appellant thinks are necessary for the appeal. Useful when a Reporter wasn't present for a hearing or you can't afford the Reporter's fees.
- ▶ **Clerk's Transcript:** A collection of documents filed in the Superior Court. You tell the Clerk what to put in the transcript and she prepares it and sends it to you and the Court.



Record Fees

Clerk's Fees:

If you elect to have a Clerk's Transcript prepared the Superior Court Clerk will charge you a fee to assemble the transcript. The charge will depend upon how many documents you have designated as part of the record. At the time that you file the designation you will be asked to deposit \$100 with the clerk to be put toward the cost of the transcript. If the total cost exceeds \$100 you will be sent a bill from Superior Court.

If you wish to have the fees for the Clerk's Transcript waived you must apply for a fee waiver in Superior Court (not the Court of Appeal).

Reporter's Fees:

If you elect to have a Reporter prepare transcripts you will have to pay the Reporter's fees. Neither Superior Court nor the Court of Appeal can waive Reporter's fees. You can, however, apply for payment or reimbursement from the Court Reporter's Board. At the time you file your designation you can serve and file your Application to the Board.



Record Problems

Q: What if you discover that something you included in your designation isn't in the transcripts?

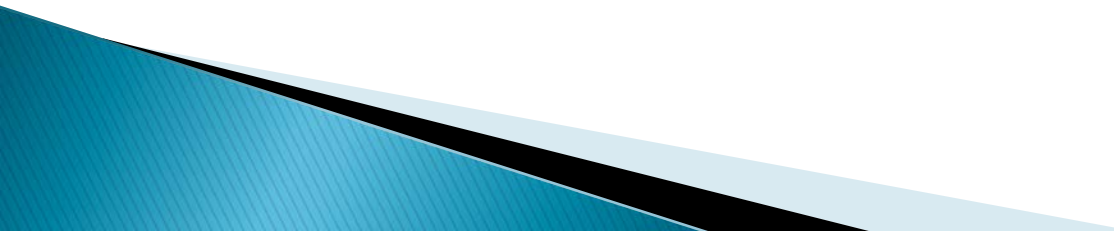
A: You can simply serve and file a notice in **Superior Court** specifying the missing parts of the record. You must serve a copy of the letter on the Court of Appeal. The omitted information will be certified and sent to the Court of Appeal.

Q: What if you discover that something you DIDN'T include in your designation is necessary for your case?

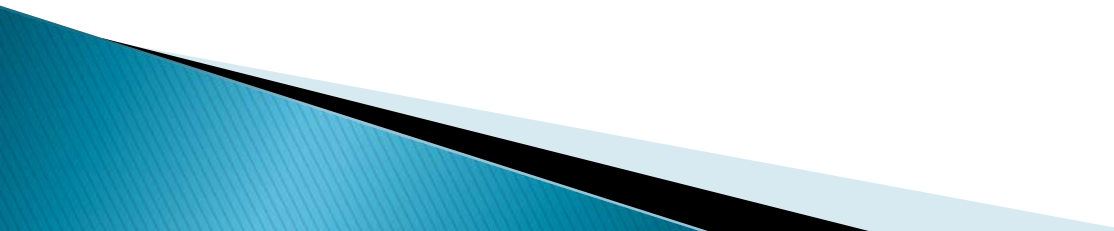
A: You can serve and file a Motion to Augment the Record in the Court of Appeal. You should attach the document(s) you want added to the record with your motion. The court will decide whether to grant or deny your motion. This is why you must be extra careful when designating the record initially.



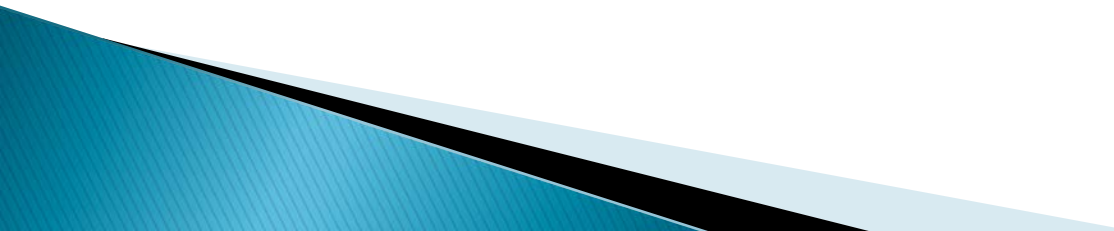
Civil Case Information Statement

- ▶ What it is?
 - ▶ A Civil Case Information Statement is a questionnaire about the case that
 - ▶ appellants and cross-appellants, if any, must fill out and return to the Court of Appeal for all civil cases. The answers on the Civil Case Information Statement help the court to know whether the Notice of Appeal is on time and whether the order or judgment is appealable.
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Civil Case Information Statement

- ▶ Where it is done? Court of Appeal.
 - ▶ Timing?
 - ▶ Once the Superior Court Clerk mails the notification of the filing of the Notice of Appeal, the completed Civil Case Information Statement, a copy of the judgment or order being appealed, and a Proof of Service on all parties must be filed in the Court of Appeal within 15 days. (CRC, rule 8.100(g)(1);
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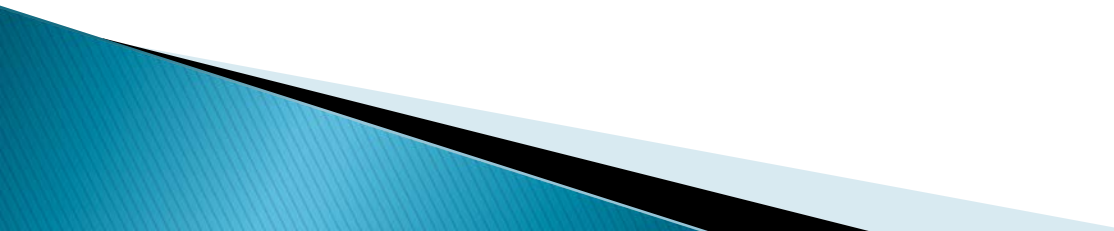
Civil Case Information Statement

- ▶ **THREE ITEMS**
 - ▶ Civil Case Information
 - ▶ Lower court judgment you are appealing from.
 - ▶ Proof of Service.
 - ▶ **WE DON'T MAIL THIS TO YOU.**
 - ▶ You can e-file, mail, or give it to us over the counter.
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Briefs:

The Other Half of Your Argument

The brief is your chance to tell the Justices your story. However, the story you can tell is very limited by the requirements for an appeal:

- All arguments on appeal must be in your brief
 - All statements of fact must be supported by citation to the record.
 - All statements of law must be supported by citation to legal authority: cases, statutes, constitutions.
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Formatting Your Brief

| Type of Brief | Cover Color |
|---------------------|-------------------|
| Appellant's Opening | Green |
| Respondent's | Yellow |
| Appellant's Reply | Tan (light brown) |

The cover of your brief should include:

1. Brief title (e.g., Appellant's Opening Brief, Respondent's Brief, etc.)
2. Case title, Court of Appeal number and trial court number
3. Trial judge's or trial judges' names
4. The name, address, telephone number, California state bar number, and (preferably) the fax number and e-mail address of each attorney filing or joining in the brief.

Length Limits:

Appeal: 14,000 Words

Cross Appeal: 28,000 Words

Brief Writing Resources

Briefing is one of the most technical parts of the appeal process. There's no way we can cover it in even a whole hour, and we have an hour to cover EVERYTHING. So the best we can do is point you to resources.

You can find a collection of sample briefs here at the Law Library or you can come to the Clerk's Office at the Court of Appeal and ask to see samples.

The Court of Appeal's website has a guide to brief writing:


<http://www.courts.ca.gov/documents/2DCA-SHM-Ch4.pdf>



Tell Your Story – But the Right Way

The brief is your chance to tell the Justices what you think went wrong in the lower court. However, knowing what to focus on can help point the justices to issues that could help you.

Remember:

- Don't argue with the facts that the trial court found – The Court of Appeal can't reverse them.
 - Don't discuss facts that aren't in the record – The Court of Appeal can't hear them.
 - Focus on rulings that the Judge made – These are likely to raise legal questions.
 - Remember to talk about how what went wrong hurt your case – the error has to be harmful!
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Motions to Vacate and Rehearings

What to do if your appeal is dismissed

Motions to Vacate:

- ▶ Are necessary if you have defaulted on your case and it has been dismissed.
 - Usually occurs due to failure to file a document on time
 - Such as: the filing fee, the case information statement or the opening brief.
- ▶ Requirements:
 - Blue Cover and bound
 - Original + One Copy
 - Reason why the default/dismissal should be vacated.
 - Loose copy of the proposed order
 - Attach a copy of the document that was not submitted.
 - One copy on each opposing party.

Petitions for Rehearing

- The court cannot modify or change an opinion *or grant rehearing* after an opinion becomes final. (Rules 8.264(b)(1), 8.264(b)(3), 8.264(c)(2), 8.268(a)(2), 8.268(c))
- ▶ Therefore, you ***MUST*** file a Petition for Rehearing ***within FIFTEEN (15) days*** after:
 - The filing of the decision
 - A “decision can mean the filing of the opinion OR a granting of a dismissal
 - A publication order
 - A publication order will restart the finality period under rule 8.264(b)(3), ***IF*** the party has ***not*** already filed a petition for rehearing.
 - A modification order changing the appellate judgment under rule 8.264(c)(2)
 - The date of the filing of a consent to increase or decrease the amount of a money judgment under rule 8.264(d)

Petitions for Rehearing

- ***NO EXTENSION OF TIME WILL BE GRANTED*** to file a petition for rehearing. (Rule 8.268(c)).
- If the court does not rule on the petition for rehearing before the decision is final, the petition is deemed ***DENIED***. (Rule 8.268(c)).
- Petitions for Rehearing are ***ONLY*** applicable to Appeals cases, they **cannot be filed with writs**.
- An order granting a rehearing vacates the decision and any opinion filed in the case and sets the cause at large in the Court of Appeal. (Rule 8.268(d))
- An answer to a petition for rehearing will only be filed upon request by the Court of Appeal. (Rule 8.268(b)(2)).

Petition for Rehearing: Requirements

- ▶ Orange cover
- ▶ Service Requirements:
 - Original + Four copies to the Court of Appeal (Five total)
 - The fourth copy can be *e-submitted*.
 - E-submitting also satisfies service requirements on the Supreme Court.
 - If the fourth copy is not e-submitted it:
 - Must be submitted to the court “*scan-ready*”, meaning it must be *unbound*, AND
 - You must serve **FOUR** copies to the Supreme Court of California.
 - Serve ONE copy to the Superior Court
 - Serve ONE copy to each opposing party.

Petitions for Review

- Must be filed *to the California Supreme Court* within **TEN** days after the date of finality. (Rule 8.500(e)).
 - Date of finality is: (Rule 8.264(b))
 - a Court of Appeal decision in a civil appeal, including an order dismissing an appeal involuntarily, is final in that court 30 days after filing OR
 - Upon filing the denial of a writ OR
 - Upon filing a dismissal by request or stipulation.
 - HOWEVER, if a Court of Appeal certifies its opinion for publication or partial publication after filing its decision and before its decision becomes final in that court, the finality period runs from the filing date of the order for publication