

Briefing in civil cases in the California Courts of Appeal¹

The briefs are the written legal arguments submitted by each party in an appeal. If you are the appellant, your brief will explain why you believe the trial court decision should be reversed. If you are the respondent, your brief will tell the Court of Appeal why the trial court decision should be affirmed.

The briefs are the single most important part of the appellate process. While the record on appeal (for example, a clerk's transcript and a reporter's transcript) provides the Court of Appeal with a picture of what occurred in the trial court, it is the role of the briefs to describe any error that occurred during those proceedings and to explain whether the error changed the outcome of the case.

The briefs should contain your entire argument, guiding the Court through the case and using the record and legal authority to support your points.

There are three briefs:

1. **The Appellant's Opening Brief (AOB)** – The appellant has the burden of convincing the Court of Appeal that the trial court made a prejudicial error – that is, an error that changed the outcome of the case. If you are the appellant, the AOB is your first and best opportunity to prove that error. The AOB must state the nature of the action; state the relief sought in the trial court; identify the judgment or order appealed from; demonstrate that the judgment or order is appealable; and provide a summary of the significant facts and procedure limited to matters in the record, supported by record citations. (California Rules of Court, Rule 8.204(a).)² In addition, the AOB must explain why the appellant thinks the trial court acted incorrectly in making those judgments or orders; provide legal authority that supports the appellant's argument; and specify what the appellant wants the Court of Appeal to do if it finds the trial court acted incorrectly.

¹ Adapted from (1) Civil Appellate Practices and Procedures for the Self-Represented, Chapter 4, Briefing the Case, <http://www.courts.ca.gov/documents/2DCA-SHM-Ch4.pdf>, and (2) Basic Civil Appellate Practice in the California Court of Appeal for the Second Appellate District, prepared by the Appellate Courts Section of the Los Angeles County Bar Association. http://www.courts.ca.gov/documents/AppCrtsSec-primer_2013rev.pdf

² Rule 8.204 is set out in full below.

Stated another way, the appellant's opening brief is a single bound document that contains the following:

- **Cover** (see Rule 8.204(b)(10)). The cover should be made out of stiff paper called "cardstock," and should be green. The back of the brief will be a blank page the same color as the front cover and made out of the same cardstock material. The rest of the brief should be bound within the cardstock covers. Plastic covers are not allowed. Generally, the cover must include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and California State Bar number of each attorney filing or joining in the document, or of the party if he or she is unrepresented. However, if more than one attorney from a law firm, corporation, or public law office is representing one party and is joining in the document, the name and State Bar number of each attorney joining in the document must be provided on the cover. The law firm, corporation, or public law office representing each party must designate one attorney to receive notices and other communication from the Court by placing an asterisk before that attorney's name on the cover and must provide the contact information specified above for that attorney. Contact information for the other attorneys from the same law firm, corporation, or public law office is not required but may be provided. (Rule 8.40(c).)

The cover must also include the title of the brief (for example, Appellant's Opening Brief); the title, trial court number and Court of Appeal number of the case; the name of the party that each attorney on the brief represents; and the name of the trial court and of each participating trial judge.

- **Certificate of Interested Entities or Persons** (see Rule 8.208(b), (d)(1)): Except in family, juvenile, guardianship, and conservatorship cases, the appellant's opening brief and the respondent's brief must include a Certificate of Interested Entities or Persons that appears immediately after the front cover of the brief.

- **Table of contents** (see Rule 8.204(a)(1)(A).) When you have finished writing your brief, copy each heading and subheading into a table of contents (which will be page i of your brief.) Write the page number of the brief on which each heading and subheading is found. The person reading your brief should be able to get a good overview of the case by skimming the table of contents.

- **Table of authorities** (see Rule 8.204(a)(1)(A)). The table of authorities lists the cases (in alphabetical order), the statutes and other authorities used in the brief, and the number of the page or pages on which each can be found in the brief. When you have finished writing your brief, go through the brief and write down all of the cases you cited, then all the statutes, then all the rules of court, then all the other books and articles. List the cases alphabetically, the statutes alphabetically by code and numerically by section number within each code, and the books and articles alphabetically by author. Type these lists—cases, statutes, and “other authorities”—and note on which page or pages each item is found in the brief. The table of contents and table of authorities should have a different set of numbers from the rest of the brief using small Roman numbers. For example, the tables could be pages i-iv, then you would start with page 1 for the text of your brief.

- **Short introduction** (optional but useful)

- **Statement of appealability** (see Rule 8.204(a)(2)(B)). Here, the appellant tells the court why this case is appealable. The case may be appealable because there is a judgment or order of dismissal (after demurrer or other motion) and the case is finished, or there may be an order (usually one after the judgment, or after a hearing in a family law or probate case). If you are appealing an order or a non-final ruling, you need to explain why it is appealable. (Rule 8.204(a)(2)(B); Code of Civil Procedure, § 904.1.) Generally, an appellant states the statute that gives him or her the right to appeal the case.

- **Statement of facts and procedural history**, including a description of the nature of the action, the relief sought in the trial court, and the judgment or order appealed from, limited to matters in the record (Rule 8.204(a)(2)(C).) Support any reference to a matter in the record by a citation to the volume and page of the record where the matter appears. (Rule 8.204(a)(1)(B).)

Before starting on the statement of facts, the appellant should read through the entire record (the reporter’s transcript, clerk’s transcript or appendix, and exhibits, if any). In preparing the statement of facts, the appellant may use only the information contained in the record on appeal. For every statement of fact you make in the brief, you must provide a **citation** showing the page number where that information can be found in the record (the reporter’s transcript, clerk’s transcript or appendix, or exhibits).

Your statement of facts will depend on the nature of the proceedings in the trial court. If you are appealing after a full trial, you must remember that the Court of Appeal will not retry the case. The Court of Appeal does not change the facts that were found by the trial court judge or the jury in a trial, as long as there is sufficient evidence to support those findings. If the record includes conflicting facts (for example, one witness said the light was green, and the other said it was red), the Court of Appeal will presume the trial court's or the jury's findings on the facts are correct. The Court of Appeal does not change the judge's or jury's decision about whom to believe if the witnesses disagreed about what happened. This means that if you are appealing after a trial, you should assume that the Court of Appeal will resolve all evidentiary conflicts in favor of the judgment being appealed. In other words, if your only argument is that there is insufficient evidence to support the judgment, you must state the facts in the light most favorable to the judgment, even if your witnesses or other evidence gave a different version of what happened. Of course, you also may tell your side of the story as well, but you should base it only on evidence or testimony presented to the judge or jury.

Your statement of facts will be different if the case was dismissed without a trial. Demurrers and summary judgments are two common types of pretrial motions that may cause a case to be dismissed without a full trial. Because cases frequently are dismissed on demurrer or summary judgment, you must write the statement of facts differently than if the facts had already been established in the trial court proceedings.

For the procedural history, you should explain what happened in the trial court, in chronological order beginning with the filing of the complaint through the final judgment. The procedural history should tell about the motions, hearings, and orders that are relevant to the issues on appeal, including the date on which the complaint was filed and the date on which the Notice of Appeal was filed. The appellant must show where this information can be found in the record by putting in the numbers of the pages in the clerk's or reporter's transcript where this information appears. The reference is set out in parentheses as CT (clerk's transcript) or RT (reporter's transcript) followed by the page number. For example: "The complaint in this case was filed on December 25, 2000. (CT 1.)" The "(CT 1)" tells the court it can find the first page of the complaint (which will have the file-stamp on it) on page 1 of the clerk's transcript.

- **Argument**, stating each point under a separate heading or subheading summarizing the point, and supporting each point by argument and, if possible, by citation of legal authority (Rule 8.204(a)(1)(B)). This is the part of the brief in which you discuss each of the errors you believe the trial court made. In this section, the appellant must show that the trial court committed what is called “prejudicial error.” It is not enough to show the trial court made one or more mistakes. The error must be serious enough there is a very good chance it changed the outcome of the case. In order to show the trial court did something the appellate court will find to be legal error, it is necessary to have knowledge of the relevant legal authorities as they apply to the various decisions the trial court made. You should discuss each issue separately in light of the facts and the law. For every statement of law you make in the brief, you must cite an appellate court opinion, a statute, a rule, or legal treatise that supports that proposition. Citations usually appear at the end of the sentence in parentheses. Think of the argument section of your brief as a book in which each issue is a separate chapter. Set off each issue with a heading similar to a chapter title, and subheadings if needed, describing the arguments that will follow.

- **Conclusion**

- **Certificate of compliance with length limitations.** (Rule 8.204(c)(1).) Every brief produced on a computer must include a certificate of compliance stating the number of words in the brief. A brief produced on a computer must not exceed 14,000 words, including footnotes. A brief produced on a typewriter must not exceed 50 pages. The table of contents and table of authorities are not counted in computing the number of pages or words. You may rely on the word count of the computer program used to prepare the brief.

- **Proof of service**

2. **The Respondent’s Brief (RB)** –The respondent’s brief gives the respondent an opportunity to reply to the arguments that the appellant makes in the appellant’s opening brief and to explain why the Court of Appeal should *not* reverse the trial court. The covers are yellow.

The respondent's brief should follow the same general format as the appellant’s opening brief.

The facts are already set out in the appellant's opening brief. However, remember the decision is in the respondent's favor and (generally) the facts must be set out to support the winning side of the case. Make sure the appellant has properly presented the facts. You may decide to provide a shorter version of the facts. Or, if you agree with the way the appellant has set out the facts, you can adopt those facts as yours. As with the appellant's opening brief, you need to make a reference to the record for every fact and cite legal authority to support every legal statement, in addition to providing headings and subheadings for each point. (Rule 8.204(a).)

As the respondent, you will want to address the facts and legal issues raised in the appellant's opening brief. First, make sure (1) there is a final judgment, if the appeal is from a judgment; or (2) the order is appealable, if the appeal is from an order; and (3) the Notice of Appeal was filed on time. If there is a problem with the appeal, you may file a motion to dismiss the appeal and/or argue in your respondent's brief that the appeal should be dismissed.

The respondent has the burden of responding to the issues raised by the appellant and showing that the ruling of the trial court was correct. If the court's ruling was incorrect, you, as respondent, must show that the mistake the court made was so small that there was no prejudice. You should not rely on the legal references made by the appellant in his or her opening brief. You probably will need to do some reading on the subject and conduct your own legal research.

3. **The Appellant's Reply Brief (ARB)** – The ARB is optional. It addresses the arguments made in the respondent's brief and shows how they do not overcome the arguments made in the appellant's opening brief. A reply brief generally does not contain another statement of facts and procedural history. No new issues may be raised in the reply brief. The covers are tan. In the reply brief the appellant should:

- show how the respondent has not countered the appellant's claims stated in the opening brief;
- address the cases and the arguments raised in the respondent's brief; and
- respond to any new issues the respondent raises in its brief.

Important points:

1. **Citing the record.** The statement of any factual or procedural matter in any brief must be followed by a reference to the pages of the record that support the statement. For example:

Jones left his house “early in the morning” (Reporter’s Transcript (“RT”) 485) and followed his usual route to work (RT 490). Although he testified that he looked both ways when he reached Fifth Street (RT 495), in a pretrial declaration received in evidence he swore that he looked only to the left (Clerk’s Transcript (“CT”) 150).

or

In a special verdict, the jury found that Brown held an easement (Joint Appendix (“JA”) 345), but that she had abandoned it (JA 346). The trial court entered judgment for Green (JA 360), who served notice of entry of judgment on May 10, 2001 (JA 365).

In an appeal from a summary judgment, a brief’s statement of facts should cite both the statements of undisputed/disputed facts and the underlying evidence.

Ordinarily, you may not rely on anything that does not appear in the record on appeal.

2. **Citing legal authorities.** Each legal proposition in a brief should be supported by an accurate citation to a statute, decision, or other legal authority (such as a treatise or law review article). The citation should include the specific pages containing the language or reasoning you rely on. For example:

As the California Supreme Court has observed, “Standing alone, a conspiracy does no harm and engenders no tort liability.” (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 511.)

You should not rely solely on the research you did before the appeal. There may be new cases, and a fresh look at the applicable authorities is always valuable.