



# 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.



# 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 can help. 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, clerks can tell you what to expect next in your case.

## 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 you can get your documents filed.

# Legal vs. Procedural

- ▶ Clerks are available to answer *procedural questions* not legal questions about your appeal.
- ▶ What's the difference between the two?:
  - **Procedural question**: What is the word count for my brief? OR What happens after I file my opening brief?
  - **Legal question**: Should I include a comment by the judge that I thought showed bias in my brief's argument?

# Notice of Appeal

- Filing the notice of appeal begins the entire appeals process. Use Judicial Council form APP-002. This form lets the court and the other side know that you are appealing the court's decision. Rule 8.100.
  - File your Notice of Appeal in the **Superior Court** where your case was decided. After Superior Court has filed your appeal they will forward it to The Court of Appeal.
  - **NOTE: Two separate filing fees are required - Rule 8.100(b) :**
    - (1) \$100.00 filing fee made payable to Superior Court **and**;
    - (2) \$775.00 filing fee made payable to The Court of Appeal
- OR
- (3) You may request a fee waiver

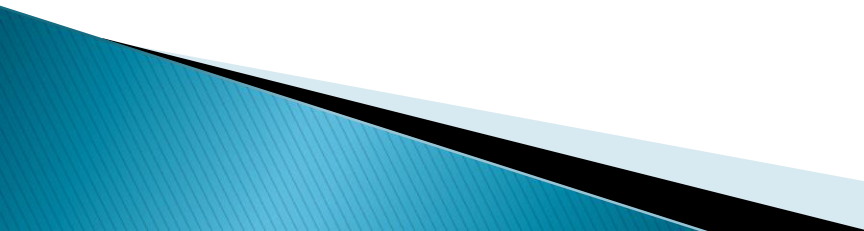
# Timing

- ▶ Rule 8.104(b) You must file your notice of appeal by **the earliest** of the following times:
  - ▶ 1. **60 days** after either the trial court clerk or the other side
    - (a.) Serves you with notice that the judgment has been entered or
    - (b.) Serves you with a copy of the judgment stamped "**Filed,**"

*OR*

- ▶ 2. **180 days** after the entry of the judgment

# How to file the Notice of Appeal

- ▶ Remember, you **MUST** serve **AND** file your notice of appeal before the deadline.
  - ▶ 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.
- 

# Serving the notice of appeal

- ▶ **"Serving" a document on a person means having the document delivered to that person in the proper legal way**
- ▶ A proof of service must be attached to all documents filed with the court. This includes your Notice of Appeal.
- ▶ There are 2 main ways to serve documents:
  - (1) by mail and;
  - (2) by personal delivery
- ▶ Make sure your server serves a **copy** of the Notice of Appeal. The original Notice of Appeal is for the court.
- ▶ Have your server prepare a Proof of Service (Form APP-009) and make a copy. The original Proof of Service is for the court. It is very important that the person doing the service prepare your Proof of Service correctly. Read What Is Proof of Service? (Form APP-109-INFO).



# General Court of Appeal Tips

- **Everything Must Be In Writing, served on all parties and must include a PROOF OF SERVICE.** (*Exceptions: Fee Waivers & Other Confidential Documents*) Clerks will be happy to give you general information. However, if you want anything that effects your case such as (1) An extension of time or (2) Permission to file something after the deadline.... You must ask in writing.
- All arguments **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 . . .

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 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 Designation 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



<b>APP-003</b>	
ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>	SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on (date):	COURT OF APPEAL CASE NUMBER (if known):
<b>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.</b>	

**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 court (check a, b, c, or d, 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 submitted the following document with this notice designating the record (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, and Fourth 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).)

**2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT**

I elect to proceed (you must check a or b below):

- 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.

# 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.



# Record Problems

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

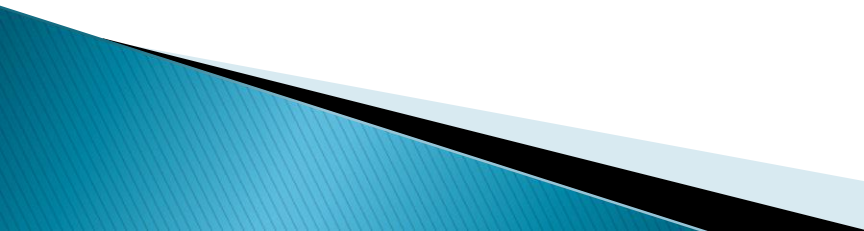
A: You can simply serve and file a notice in **Superior Court** specifying the missing parts of the record. You must serve a copy of the letter on the Court of Appeal. The omitted information will be certified and sent to the Court of Appeal.

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.
- 



Please fill out the following form.

Highlight Existing Fields

TO BE FILED IN THE COURT OF APPEAL

2DCA/APP-004

<b>CIVIL CASE INFORMATION STATEMENT</b>		Court of Appeal Case Number (if known):
COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____		
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____		<b>FOR COURT USE ONLY</b>
APPELLANT: RESPONDENT:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
JUDGES (all who participated in case):		Superior Court Case Number:
<p><b>NOTE TO APPELLANT:</b> You must file this form with the clerk of the Court of Appeal within 15 days after the superior court clerk mails notification of the filing of the notice of appeal. 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.</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: \_\_\_\_/\_\_\_\_/\_\_\_\_

# Civil Case Information Statement

- ▶ Must be filed in the Court of Appeal within 15 days after the Superior Court notifies you the appeal is filed.
- ▶ **THREE ITEMS MUST BE INCLUDED:**
  - Civil Case Information
  - Lower court judgment you are appealing from.
  - Proof of Service.
- ▶ **WE DON'T MAIL THIS TO YOU.**
- ▶ You can e-file via TrueFiling, or you can place it in the mail, or file over the counter if you are representing yourself.

# **What happens if you are in default or if your appeal is dismissed?**

**Don't panic! In most cases you can correct your default and vacate the courts dismissal order.**

# 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:
  - E-file via TrueFiling or submit hard copy
  - Reason why the default/dismissal should be vacated.
  - Include a proposed order
  - Preferably, submit the document needed to cure the dismissal or default
  - Make sure to file your motion to vacate in a timely manner
  - Serve one copy on each opposing party.

# Formatting Your Brief

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 Contents:

- A table of contents and table of authorities
- 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.

Sample briefs are located on the Court's website at:

<http://www.courts.ca.gov/2dca.htm> under "Samples"

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION [Division No.]

THE THREE BEARS,  
Plaintiffs and Respondents,  
v.  
GOLDILOCKS,  
Defendant and Appellant.

Court of Appeal No. B \_\_\_\_\_  
Superior Court No. \_\_\_\_\_

Appeal from a Judgment [or Order]  
of the Superior Court, County of [County Name]  
Hon. [Judge's name], Judge

[BRIEF NAME]

[Attorney or Party Name]  
State Bar No. [if any]  
[Address]  
[City, State ZIP]  
[Telephone Phone Number]  
[E-mail Address]

Attorney for Appellant  
GOLDILOCKS

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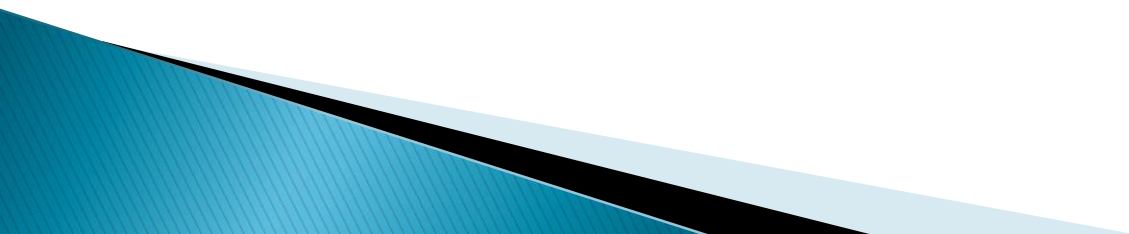
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# Oral Argument

After the case is fully brief, the record is assigned to a chamber.

Approximately 60-90 days, oral argument is scheduled.

At the conclusion of oral argument, the court has up to 90 days to file an opinion.



# If you don't agree with the Court's Opinion

- You can file a petition for rehearing.
  - This must be filed within ***FIFTEEN (15) DAYS*** after the filing of the opinion to be considered timely.
    - ***NO EXTENSION OF TIME WILL BE GRANTED*** to file a petition for rehearing.
  - An opinion becomes final and the Court loses jurisdiction over the appeal ***THIRTY-ONE (31) DAYS*** after the opinion is filed.

# True Filing (Electronic Submissions)

- ▶ The Court is now utilizing the electronic filing system called TrueFiling, meaning all of your court documents can now be submitted electronically.
- ▶ If you have a fee waiver on file for your case, filing through this system is *FREE*.
- ▶ TrueFiling phone support is (855) 959-8868, hours of operation Monday-Friday, 8:00-6:00pm, Pacific Standard Time.
- ▶ More information located at:
  - <http://www.courts.ca.gov/2dca-efile.htm>
  - <http://www.truefiling.com>