California Court of Appeal
Second Appellate District

Civil Appellate Practices and Procedures for the Self-Represented

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DISCLAIMER

The materials included here are not legal advice and may not be used as legal authority. The primary legal authority for the practices described in this manual is the California Rules of Court.[1] [2]This manual does not replace or supersede the California Rules of Court. It is merely a general summary of the applicable rules. The rules themselves are subject to change, and you should consult them directly.

In the event the information here differs from the California Rules of Court, you must follow the California Rules of Court. The California Rules of Court are referred to throughout this manual as "CRC" (for example, "CRC, rule 8.108").

The California Rules of Court are available at any law library, on the Internet at www.courtinfo.ca.gov/rules, or can be ordered for a fee by calling (800) 328-9352.

[2] See CRC rules 8.100-8.552 if you are appealing from the unlimited jurisdiction of the superior court to the Court of Appeal. Appeals from the limited jurisdiction of the superior court to the appellate division of the superior court are covered by CRC rules 8.700-8.773; transfer from the Appellate Division of Superior Court to the Court of Appeal is covered by CRC rules 8.1000-8.1018. This manual discusses only appeals to the Second Appellate District Court of Appeal, not to the Appellate Division.

INTRODUCTION

This manual describes in simple terms what you must do when you lose in the trial court and decide to appeal. It also covers the related California Rules of Court. The manual is intended for persons who represent themselves (also called "self-represented litigants," "pro pers" or "pro ses") in the California Court of Appeal, Second Appellate District. The Second Appellate District hears all appeals from Los Angeles, Ventura, Santa Barbara and San Luis Obispo Counties. This manual only covers civil appeals. It does not discuss criminal or juvenile dependency appeals nor does it cover writs in civil or any other kind of case.

You should seriously consider hiring an attorney if you are able to do so. Bringing a case to the Court of Appeal without an attorney is hard work, extremely complicated, and takes a good deal of time. If you choose to be self-represented, even though you do not need to pay attorney's fees, there is still an expense associated with bringing an appeal, including filing and transcript fees. You also are held to the same standard as if you were an attorney. In most cases, you have only one chance to have the court hear your case. **You must follow all of the court's rules and procedures or your case may be dismissed.** An attorney who has done some appeals and knows how to handle them will know what to do when, and can guide your case through the appeal process. You can proceed with your appeal on your own, but given the particular nature of your case, you may want to consult with a lawyer.

You must complete many steps when appealing a civil case. The steps are presented in this manual in the order in which they must be completed. Make sure to read all of each chapter before attempting to complete the steps. Ideally, you should read through the entire manual before beginning the appeal process. Questions you may have often will be answered later in the text.

The appendices to this manual include a timeline to assist you in computing and meeting applicable deadlines for an appeal (Appendix 1) and a glossary defining important terms used in the manual (Appendix 4).

All of the forms referred to in this manual are included in the final section entitled "Sample Forms and Instructions," along with detailed instructions for filling them out.

If you are reading a hard copy of this manual, you may want to go to the website for the Second Appellate District at www.courtinfo.ca.gov/2dca. There you will find the entire manual online and can print the sample forms. Just click on "Self-Help Manual" to access the manual. Other useful information is also

available on this website, including directions to the court, parking information, answers to frequently asked questions (click on "FAQ"), and the local rules, practices, and procedures of the court. You may also find online information about your own case by clicking on "Case Information." (See Chapter 5.)

Many of the sample forms in this manual are also available online in Adobe Acrobat PDF format and may be filled out electronically for free at www.courtinfo.ca.gov/2dca/forms.htm. A shorter description of the civil appeal process (form APP-001) is also available at this Internet address.

It is extremely important to understand that the Court of Appeal does not retry the case, take new evidence, or decide which witnesses were telling the truth. Rather, it reviews the superior court trial or hearing for errors in law. The Court of Appeal presumes the superior court judgment is correct, and the appealing party must overcome this presumption to win the appeal. The Court of Appeal can only reverse a case if it finds an error of law that was so important to the trial court proceedings that it changed at least part (or all) of the outcome of the case. Because of this heavy burden of proof, it is quite difficult to win an appeal. Only about 15 percent of civil appeal cases are reversed.

You may not visit or talk about your case with a justice or a member of his or her staff. The staff in the Court of Appeal clerk's office will help you as much as they can, but they cannot give you legal advice or tell you what to put in your papers.

If you have any questions about the steps outlined in this guide, call the clerk's office at (213) 830-7000. The staff at the court would be happy to help you in any way that they can.

Good luck with your appeal.

CHAPTER 1
FILING THE NOTICE OF APPEAL

The filing of the *Notice of Appeal* is the event that begins the entire appeals process. It notifies the superior court, the Court of Appeal, and the opposing parties involved with the case of a person's intentions to have the Court of Appeal reexamine all or part of the superior court trial for errors of law. The *Notice of Appeal* must meet strict content and time requirements, set out in California Rules of Court (CRC). Additionally, the payment of certain fees must accompany the *Notice of Appeal*. The following chapter describes those requirements and Sample Form A provides detailed instructions for preparing your own *Notice of Appeal*. This chapter also discusses the topic of appealability, which determines if a person has the legal right to appeal a decision in a superior court case.

The Designation of the Record is discussed at length in Chapter 2. Frequently, however, appellants file their *Notice Designating the Record on Appeal* at the same time that they file their *Notice of Appeal*. If you would like to do so, make sure that you thoroughly read Chapter 2 along with Chapter 1.

Deciding If You Can Appeal What The Trial Court Did

Appealability, meaning a person's legal right to have the Court of Appeal review a decision that was made in the superior court, can be a tricky issue.

(1) In order to appeal, you must be aggrieved[3] by a decision at the superior court. Generally, you would have been considered to have "lost" at the superior court. You also must have been a party in the case in the superior court. You may not appeal for a spouse, a child (unless you are the child's guardian), or a friend.

(2) Even if you were aggrieved, not every court ruling is appealable. While there are numerous exceptions, in most cases you can appeal only a **final judgment**. The final judgment tells what the final result of the case is – who has "won," who has "lost," and what actions must take place (i.e., the payment of

[2] Aggrieved means the superior court or administrative agency made a decision that negatively affects your legal rights (for example, it upheld your being fired by your employer) or cost you money (for example, ordering you to pay doctor bills for someone you hurt in a car accident that you caused).

money). The court usually issues a final judgment at the end of the case and that judgment says what one or more parties must do (such as pay money to the other party). This judgment may have been made by the superior court judge or a jury. All final judgments are appealable.

You can also appeal most **orders** the trial court makes after final judgment. After the judge or jury has issued a final judgment, the judge may order further instructions to one of the parties. For example, after a trial, sometimes the side that won may make a motion for attorney's fees, which the judge may grant with an order to pay attorneys fees. Such orders after final judgment are also appealable.

Many cases end without a trial because the judge decides the plaintiff doesn't have a case even if everything in the complaint is true. (This is called a demurrer.) Other cases don't get to trial because the judge decides the plaintiff doesn't have enough evidence to have a chance of winning at trial, even looking at that evidence most favorably to the plaintiff's position. (This is called a summary judgment.) When a trial court grants a demurrer or summary judgment, the defendant is entitled to a dismissal of the case. Such a dismissal is appealable. However, until the court issues an order dismissing the case, the demurrer or summary judgment cannot be appealed. Furthermore, if a trial court denies a demurrer or summary judgment, that denial is not appealable and can only be challenged through a writ.

Special considerations are discussed at length in Appendix 7. For a list of less typical decisions that can be appealed or for more information about what constitutes an appealable judgment or order, refer to the California Code of Civil Procedure, section 904.1.

Finding the Appealable Decision In The Record

To show the superior court and the Court of Appeal that you are appealing from an appealable judgment or order, the court requires a certified, **file-stamped** copy of the superior court's ruling. The file-stamping on the document shows the date that the superior court filed a particular document and certifies that the document is official. **This file-stamped documentation is required in all appeals; without it, your appeal will be rejected**.

Because of the different circumstances in each case, the file-stamped appealable judgment or order may be presented to the court in a number of different forms. In general it could be a minute order (explained below) or a separate piece of paper labeled Judgment, Order, or Order after Judgment. Sometimes, a final judgment will not have been prepared during the trial, in which

case either you or the opposing party must prepare it and get the trial court to file-stamp the document.

In the simplest situation, the superior court file will contain a formal judgment, signed by the judge and file-stamped. If this is the case, you can use a photocopy of that judgment as the basis for your appeal. As with all documents from the superior court case, the judgment can be found in the superior court file.

Other times an appealable order will appear in the **minutes**[4] of the case. You can identify the minutes by looking at the bottom of the pages in the superior court file and seeing the label "Minutes." If the court's ruling is an order, the clerk may record that ruling in the minutes. Because it is presented in the minutes, it is called a minute order. You can recognize the order because it is expressly called an order, or the language directs (orders) that something be done or it decides or resolves a dispute. If the minute order is signed by the judge and file-stamped, it may be used as the basis of the *Notice of Appeal*.

If you do not see something in the minutes labeled "Order," look closely through the minutes to see if the court has said that you or one of the other parties should prepare a formal judgment or order. If that is the case, you may not use the minutes but must wait until a separate document titled *Judgment*, *Order*, or *Order After Judgment* has been prepared by you or one of the other parties, signed by the superior court judge, and file-stamped. You then use this as the basis for your *Notice of Appeal*.

If there is no judgment in the court file, and nothing in the minutes says who is to prepare the judgment, then generally the winning party prepares the order or judgment. The Court of Appeal recommends that the order or judgment be signed by the judge and file-stamped in the upper right-hand corner. Before you start your appeal make sure you have a copy of this order or judgment. The date of the file-stamp is the date of the entry of the judgment. (If your order is in the minutes, the date of entry is the file stamp on the minutes.)

Finally, in some cases, no order or judgment has been prepared, no party has been directed to prepare the order or judgment, or the party who was directed to prepare one has failed to do so. Then, any party may prepare an order or judgment. Most often, it will be the appellant who does so because he or she needs the order or judgment to go ahead with the appeal. If you prepare a proposed order or judgment, under these circumstances, you must serve it (as discussed later) on opposing counsel and on the superior court. Ask for opposing counsel's approval within a certain number of days, say 10 or 15. If opposing counsel approves, take or mail the approval along with the proposed judgment or order to the superior

[3] The minutes are the official court record of what happened during the case and are written down by the clerk at the superior court.

court department where your case was heard. Ask the judge to sign it and the clerk to file-stamp it.

If opposing counsel does not approve the judgment or order or does not respond to your request for approval, the superior court will hold the proposed judgment for 20 days from the date of service. At the end of the 20 days the court may sign the order or judgment, hold a hearing, and/or make changes in the proposed order or judgment. In any case, the court will mail you a signed, file-stamped copy. It is this order or judgment that you should use as the basis of your appeal. A file-stamped copy of it must be filed with the court along with the Notice of Appeal.

Again, an appealable judgment or order is necessary in all appeals and a file-stamped copy of it must be filed with the Court of Appeal along with the Notice of Appeal. If you have questions about whether you have an appealable judgment or order, refer to the California Code of Civil Procedure, section 904.1, consult with an attorney, or contact the Clerk's Office at the Court of Appeal.

Preparing the Notice of Appeal

Look at Sample Form A and the accompanying instructions. They will guide you through the process of creating your *Notice of Appeal*. The *Notice of Appeal* is a relatively straightforward document. However, if you have questions about the document, refer to CRC rule 8.100(a) or contact the Clerk's Office at the Court of Appeal.

The *Notice of Appeal* must be filed at the superior court. Once the appellant has completed the *Notice of Appeal*, a copy must be served on all parties and the original must be filed, along with appropriate filing fees (discussed below), at any filing window of any branch of the superior court in the county in which your superior court case took place (CRC rule 8.100(a).) A Notice of Appeal may also be filed by the respondent of a case, in which case the respondent is filing a Notice of Cross-Appeal (CRC rule 8.100(e)). **Do not file the *Notice of Appeal* or *Notice of Cross-Appeal* at the Court of Appeal.** If you are filing your *Notice of Appeal* in Los Angeles County, it is highly recommended that you file the documents directly with the appeals section, located at 111 North Hill Street, Room #111, Los Angeles, CA 90012. For information on the locations of superior courts in the Second District, see Appendix 2.

Service of documents means that you let the other parties and the court know what you are doing by having copies of the documents you plan to file with the court—in this case, the *Notice of Appeal*—mailed or hand-delivered to them. **Copies of all of the documents you prepare to file should be served on all**

counsel and self-represented parties, and the original should be filed with the court. Failure to properly serve a document on all appropriate parties will result in that document being rejected for filing by the superior court or the Court of Appeal.

A document may be hand-delivered or mailed only by someone who is over the age of 18 and is not a party in the lawsuit. For example, if you are self-represented in an appeal, you cannot hand-deliver or mail your *Notice of Appeal* to the parties. Someone else, an adult who is not a party, must do it for you. A *Proof of Service* must be filled out and attached to each document you file. This proof of service says who was served and how they were served. (See Sample Form C.) Depending on whether you are having service done by mail or in person, the person doing the service needs to fill out the Proof of Service properly.

Filing Fees

Additionally, at the time that the appellant files the *Notice of Appeal*, unless the appellant has a **fee waiver**, he or she must pay two separate fees by check, money order, or cash. (CRC rule 8.100(b))

1. A $655 filing fee payable to "Clerk, Court of Appeal," and
2. A $100 deposit, made payable to "Clerk of the Superior Court."

If you, as appellant, have received a fee waiver from the superior court for the case number(s) you are appealing, include a copy of the fee waiver with the *Notice of Appeal*. This fee waiver also applies to the Court of Appeal filing fee. If you, as appellant, did not get a fee waiver in superior court, you may apply to the Court of Appeal for a waiver under CRC rules 3.50-3.63. (See also CRC rule 8.100(b).) A fee waiver allows persons below a certain income level to file their appeals without paying the filing fee. (See Sample Forms D & E for information on fee waivers.)

Defaults

If your *Notice of Appeal* is missing something the law requires (proof of service, appropriate fees, etc.) the Court of Appeal will find you in **default** and issue a *Notice of Default* to you. The *Notice of Default* formally informs you that you have not complied with the Rules of Court pertaining to the *Notice of Appeal* and, if you do not fix the problem(s) within 15 days (e.g., by providing a properly completed *Proof of Service*, paying the fees, or achieving a fee waiver), the Court will dismiss the appeal.

Throughout the appeals process, the Court of Appeal uses the *Notice of Default* to notify a party that they have failed to properly comply with the rules. *Notices of Default* are a warning; a *Notice of Default* always allows some period of time (usually 15 days) for the party to fix the problem with their appeal. If the party fails to fix the problem(s) set out in the *Notice of Default* within the time allowed, the Court may dismiss the appeal. If you receive a *Notice of Default* and do not understand the problem with your filing, refer to the rule in the CRC specified in the Notice or call or visit the Clerk's Office at the Court of Appeal.

Time Limits for Filing a Notice of Appeal

In the same way that deciding whether you have an appealable order or judgment can be difficult, figuring out the time limits for filing a *Notice of Appeal* can also be confusing. But, the time limits are extremely important. **If the *Notice of Appeal* is late in a civil case, the case must be dismissed (CRC rule 8.104(b)). There are no exceptions to this rule.** You can file a Notice of Appeal as soon as the order or judgment is signed by the superior court judge and file-stamped by the court clerk. However, there are three different situations that put different time limits on the filing of the Notice of Appeal. You should identify which of the three applies to you and proceed accordingly.

1. The first situation occurs if a *Notice of Entry of Judgment* has been served on the parties. The judgment in the case is "entered" when it is file-stamped; this is also called the entry of judgment. The parties may not know the exact date when this was done. The court clerk or any party may provide notice that the judgment was entered. The clerk may do so by mailing a *Notice of Entry of Judgment* or a copy of the judgment or order to the parties in the case. If this happens, the *Notice of Appeal* must be filed within 60 days of the date that the clerk mailed the *Notice of Entry of Judgment or (Order)*. (CRC rule 8.104(a)(1).) Any party in the case may provide *Notice of Entry of Judgment* by serving each of the other parties with either (1) a *Notice of Entry of Judgment* (Sample Form B) or (2) a file-stamped copy of the judgment. A *Proof of Service* (Sample Form C) must be attached to either document. If this happens, the *Notice of Appeal* must be filed within 60 days of the date of the party's serving a copy of the judgment, minutes, or *Notice of Entry of Judgment*. (CRC rule 8.104(a)(2).) If the clerk mails the *Notice of Entry of Judgment* and a party serves the *Notice of Entry of Judgment*, the 60-day time limit starts on the earlier of the two.

2. The second situation occurs if there is no i. In this case, the appellant has 180 days after entry of the order or judgment to file the *Notice of Appeal*. (CRC rules 8.104(a)(3), 8.104(c).) Even if there are extensions (see next

section), the *Notice of Appeal* may not be filed if 180 days have passed since the entry of the order or judgment (recall that this is the file-stamped in the upper right-hand corner of the judgment or order).

3. Finally, if there is a *Notice of Entry of Judgment*, the time to file a Notice of Appeal can be extended if there is a timely motion:
    - For new trial (Civil Code of Procedure section 663(a) and CRC rule 8.108(a)).
    - To vacate (or set aside) the judgment (Civil Code of Procedure section 629 and CRC rule 8.108(b)).
    - For judgment notwithstanding the verdict or (Civil Code of Procedure section 659 and CRC rule 8.108(c)).
    - To reconsider an appealable order. (Civil Code of Procedure section 1008(a) and CRC rule 8.108(d)).

If any of these specified motions has been filed, you should carefully consult the appropriate Civil Code of Procedure and CRC rule 8.108 to determine the applicable deadline for filing the Notice of Appeal. A party filing a cross-appeal should carefully review CRC rule 8.108(e) to ensure compliance with the rule governing filing a cross appeal when the time to file an appeal has been extended by CRC rule 8.108(a)-(d).

CHAPTER 2
DESIGNATING THE RECORD

After filing the Notice of Appeal, the appellant needs to designate the record. That means picking out which parts of the record you want the justices to see when they are reviewing your case and deciding your appeal. The **record** in an appeal is the official account of what went on at the hearing or trial that is being appealed. A party designates the record by listing what items to include in a *Notice Designating Record on Appeal* (Sample Form F). This notice must be served and filed at the superior court within 10 days of the filing of the *Notice of Appeal* (CRC rules 8.120(a), 8.124(a), 8.128(a), 8.130(a), 8.134) A record is required in every case. Because the short time period between the filing of the Notice of Appeal and the *Notice Designating Record on Appeal*, **appellants often file both documents at the same time**. However, the Court does not require that they be filed simultaneously.

The record may consist of two parts:

1. A clerk's transcript (CRC rule 8.120), and
2. A reporter's transcript (CRC rule 8.130).

The **clerk's transcript** can include anything that is in the superior court file—the papers that were filed, the orders that were made, the things that were done. A clerk's transcript is prepared by the superior court based on what you listed in the Notice Designating the Record on Appeal. Or instead of having the superior court prepare a clerk's transcript, you or you and the opposing party may prepare and file a CRC rule 8.124 appendix (discussed later). But either a clerk's transcript or a CRC rule 8.124 appendix is required in all cases.

The **reporter's transcript** is a word-for-word record of everything that was said in court during the hearings or trial. It is taken down by a certified court reporter, who then types it out (transcribes it) for the appeal. A reporter's transcript is optional, and you are not required to include a transcript of the entire trial or every hearing.

With very few exceptions, the appellant must pay the fees for the preparation of both the clerk's transcript (unless they elect to produce an 8.124 appendix) and the reporter's transcript.

When you file the *Notice Designating Record on Appeal*, you will need to make a decision about what type of record you would like. There are four options

spelled out on the first page of the designation form. You must choose one (see Sample Form F):

1. 8.124 Appendix only; no Reporter's Transcript,
2. 8.124 Appendix and Reporter's Transcript,
3. Clerk's Transcript only; no Reporter's Transcript, and
4. Clerk's Transcript and Reporter's Transcript.

The record is an extremely important part of an appeal. Think of the record as a package that contains all of the information that the justices might need to know about what happened in the trial court in order to review the case. You can only put into the package those items (filings, transcripts, orders, motions, minutes, etc.) that were part of the trial court proceedings. Furthermore, when writing your brief and conducting oral argument, you can only refer to parts of the trial court proceedings that are included in the package. The contents of the record limit the scope of issues and information that the parties can use in their arguments and that the Court of Appeal will consider as it reviews the case. Anything in the record can be examined and considered. For the purpose of appellate review, any parts of the superior court trial that are not included in the record *do not exist*, will not be examined or considered by the Court, and cannot be used by either party to support their case.

What you choose to include will depend on the issues that you are appealing. The appellant needs to think about the trial, what rulings may have been legally wrong, and what part of the record will best tell the Court of Appeal why these rulings were legally wrong. These are the items the appellant should put into the package and designate for the record.

The following section will tell you how to designate the record.

Preparing the Clerk's Transcript/CRC Rule 8.124 Appendix

In all appeals, the Court requires either a clerk's transcript or a Rule 8.124 appendix. These contain the same material and serve the same purpose: to provide the court with the procedural history of the hearing or trial that is being appealed. Both are "books" that contain the papers that were filed in the trial court in chronological order. The major difference between the two is that the clerk's transcript is prepared by the superior court while the 8.124 appendix is either prepared jointly by the appellant and respondent or by either of the parties individually. Additionally, the appellant must pay for the preparation of the clerk's

transcript; the only cost associated with preparing an 8.124 appendix is the expense of photocopying and binding the relevant documents. With these differences in mind, the clerk's transcript and 8.124 appendix will be discussed separately.

Clerk's Transcript

In order to have the clerk's transcript prepared, the appellant must properly complete pages 1 and 2 of the *Notice Designating Record on Appeal*. This involves checking a box on page 1 indicating that the appellant would like to proceed with a clerk's transcript, and then, on page 2, listing all of the documents that the appellant would like included in the clerk's transcript (Sample Form F). Within 10 days of the filing of the Notice of Appeal, the appellant must serve and file the completed *Notice Designating Record on Appeal* at the superior court. The superior court, not the Court of Appeal, prepares the record.

The clerk's transcript automatically includes (CRC rule 8.120(b)):

- The Notice of Appeal,
- The judgment or order being appealed and any notice of entry,
- Any notice of intention to move for new trial, to vacate the judgment, for judgment notwithstanding the verdict, or for motion for reconsideration,
- Any notices or stipulations to prepare the clerk's or reporter's transcripts or to proceed by agreed or settled statement, and
- The register of actions, if any.

You must specifically designate any other document you want included. Ordinarily this means you will have to go to the clerk's office at the superior court to look at the entire file for your case. That's the only way you will be able to pick the documents you want to include in the clerk's transcript and also know the names of those documents, the dates they were filed, etc. To designate a document, list the date of the filing or lodging of a document and its exact title. If the date on which the document was filed is unknown, use the date the document was signed. The appellant does not have to individually designate each jury instruction or minute order. You can list "all" jury instructions and "all" minutes.

All exhibits, whether admitted into evidence or refused, are considered part of the clerk's transcript. If some or all of the exhibits are needed in the appeal, the ones to be used are designated, and most often transmitted to the court under CRC rule 8.224, after the respondent's brief is filed. However, if a party wants one or more of the exhibits copied and put in the clerk's transcript to be available while the briefs are being written, the exhibits to be included must be noted by number or letter in the *Notice Designating Record on Appeal*.

Within 10 days after service of appellant's designation, the respondent may provide a list of additional items to be included in the clerk's transcript. (CRC rule 8.120(a)(3).) This list must also be specific as to the title of each document and the date it was filed.

Clerk's Fees

After the respondent's designation is filed, or the time to file has passed, the superior court appeals clerk locates the documents that have been designated and determines the cost of preparing the clerk's transcript. The cost of a clerk's transcript depends on how many pages there are. The superior court charges a copying fee based on the number of pages designated, and a volume fee based on the number of volumes in the clerk's transcript. The superior court appeals clerk then notifies the parties of the estimated cost of the clerk's transcript and, upon payment by the appellant, begins to prepare it. Unless the court waives appellant's $100 deposit (which was paid at the time of the filing of the Notice of Appeal), that money is put toward the cost of the clerk's transcript. If the total cost is more than $100, the superior court sends a notice of the remaining amount that is due. A person who is unable to pay for the clerk's transcript can file with the superior court an application for a waiver of the clerk's transcript fees. (CRC rule 8.120(c).) (Sample Forms D and E.) **The appellant pays the entire cost for preparation of the original clerk's transcript and one copy, even when the respondent has designated items to be included**.

The respondent does not automatically get a copy of the record. If he or she wants a copy of the clerk's and/or reporter's transcript, the request must be made promptly. The superior court appeals clerk will provide the respondent with an estimate of the cost to prepare the clerk's transcript. (CRC rule 8.120(c).) The respondent has 10 days to pay.

If the respondent does not wish to have to pay for his or her own copy, he or she may borrow the appellant's copy after notifying the appellant no more than 20 days after the record is filed in the Court of Appeal. The record is lent to the respondent when the appellant's opening brief is served, and returned to appellant when the respondent's brief is served. (CRC rule 8.150(b).)

If fees are not paid, the superior court sends a *Notice of Default* telling the appellant to pay within 15 days or the appeal may be dismissed. (CRC rule 8.140(a).) If the fees are not paid within 15 days after that *Notice of Default* is sent, the superior court sends a *Notice of Failure to Clear Default* to all parties and to the Court of Appeal. The Court of Appeal then dismisses the appeal.

Once the designation has been made and the fees paid, the appeals division of the superior court will prepare the clerk's transcript. The papers you designated on your *Notice Designating Record on Appeal* are arranged chronologically in the

order in which they were filed in the superior court, beginning with the first papers filed in the case and ending with the last papers filed in the case. After the papers are arranged in order, they are numbered in sequence. The clerk prepares two indexes and inserts them at the beginning of the transcript. One index lists the papers in the order they were filed, and the second index lists the papers in alphabetical order by the first letter of the first word in the title of the document. Each index includes the page numbers and, if there is more than one volume, the volume number where the papers can be found in the transcript. A cover is prepared, and everything is then bound in book form.

Within 30 days after the appellant deposits money for costs or the court files an order waiving costs, the clerk's transcript should be ready. The superior court clerk should then send a copy of the transcript to the Court of Appeal and the appellant. But in practice, the clerk usually sends a copy to the court and notifies the parties that the clerk's transcripts and the reporter's transcripts (if requested) are complete. The notice tells the appellant and any other party who paid for a copy of the record to pick up their transcripts from the clerk's office. (CRC rules 8.120(d), 8.150(a).)

8.124 Appendix

Any party may elect to proceed by an appendix. In order to proceed by an 8.124 **appendix**, within 10 days of filing the Notice of Appeal, the appellant must serve and file his or her intention to proceed under CRC rule 8.124, along with a Proof of Service on all parties. The appellant gives notice of his or her intention by checking a box on the first page of the *Notice Designating Record on Appeal* form (Sample Form F).

For detailed directions on how to construct an 8.124 appendix, see Appendix 6 of this manual.

If the appellant opts for a clerk's transcript, but the respondent would prefer a 8.124 appendix, the respondent may file an election to proceed with an appendix within 10 days of the filing of the notice of appeal and, if timely, this election will govern the record preparation, and the parties must proceed with an appendix. However, if the appellant would prefer a clerk's transcript, the appellant must challenge the election of an 8.124 appendix by filing a written motion in superior court. The motion must be filed within 10 days after the *Notice Designating Record on Appeal* is served and filed. (CRC rule 8.124(a)(1).)

If the parties ultimately decide to proceed by appendix, two different scenarios can occur – a joint appendix or a separate appendix from each party.

The simplest and most desirable is if the two parties agree to file a **joint appendix**. This means that the parties cooperate together to produce and jointly

file one appendix that follows the rules laid out in CRC rule 8.124(b) and contains all of the documents necessary for the case. The Court prefers this type of appendix.

If the parties cannot cooperate to create an appendix, each side must prepare their own appendix, meaning the appellant files an **appellant's appendix**, the respondent files a **respondent's appendix**, and if necessary, the appellant files an **appellant's reply appendix**. In either case, the joint or appellant's appendix must be served on the respondent(s) and filed with the court at the same time as the appellant's opening brief. A respondent's appendix, if any, must be served on the appellants and filed with the court at the same time as the respondent's brief. An appellant's reply appendix, if any, must be served on the respondent and filed with the court at the same time as the appellant's reply brief. For information on the timing for the filing of the briefs, see Chapter 4.

In filing an appendix you are certifying that the papers included are true and that correct copies of the documents are filed or lodged with the superior court. (CRC rule 8.124(d), (g).)

All exhibits admitted in evidence or rejected are considered as part of the appendix even if they are not physically included in the bound volumes. (CRC rule 8.124(b).) They can later be lodged with the Court of Appeal by transmitting them under CRC rule 8.224.

From a financial perspective, the advantage of an appendix is that it only costs the appellant or both parties the expense and time of photocopying the relevant documents and binding.

Reporter's Transcript

The reporter's transcript is a word-for-word typewritten record of everything that was said in court during the trial or hearing. It is an optional part of the record on appeal. The appellant should consider requesting a reporter's transcript if what was said at the trial or hearing relates to the issues the appellant wants to talk about on appeal. If what was said at the trial or hearing has nothing to do with the issues for the appeal and the appellant does not want it typed up, the appellant does not need to request a reporter's transcript. **If you choose to go on without a reporter's transcript, be sure that you will not need any part of it to make your case. Without the reporter's transcript, you will not be able to refer to or use anything that was said during the trial to support your argument**.

As discussed in the section on the clerk's transcript, within 10 days of the filing of the Notice of Appeal, you must serve and file a *Notice Designating Record on Appeal* (Sample Form F) with the appeals section of the superior court.

On page 1, the appellant must indicate whether he or she wants a reporter's transcript by checking the proper box. *If the appellant does not ask for a reporter's transcript, the respondent may not ask for one, either*. (CRC rule 8.130(a).)

If you choose to proceed without a reporter's transcript, you can skip the rest of this section.

If you do elect to have a reporter's transcript prepared, you must make a list of each day that is to be typed up (transcribed). The list must include the date, the reporter's name, department (that the trial or hearing was in that day), and the nature of the proceedings. This information can be found in the minutes located in the superior court file. Page 3 of the form *Notice Designating Record on Appeal* (Sample Form F) may be used for this purpose. This list must be filed with the superior court. If only a portion of a witness's testimony is needed, the opposing parties (respondent(s)) must agree, or stipulate to that, and the stipulation must be filed with the superior court.[5] If you choose to include this limited part of a witness's testimony, you must set out the issues that you intend to raise on appeal. (CRC rule 8.130(a)(5), 8.130(a), (e).)

Reporter's Fees

At the same time that the *Notice Designating Record on Appeal* is filed, the appellant must also include a deposit for reporter's fees. The cost of the reporter's transcript depends on how many days or hours the reporter is asked to transcribe. Reporter's transcripts are expensive. You can ask the reporter for an estimate in advance or, you may calculate the deposit yourself. The rate is $650 per day for each day in which there were more than three hours of proceedings, and $325 per day for each day in which there were less than three hours of proceedings. For example, a transcript with 4 days with more than three hours of proceedings and 2 days with less than three hours of proceedings would cost $3250 ($650x4 +$325x2=$3250).

If the appellant does not have sufficient funds to cover the deposit, there are a few options. First, the appellant can ask for a waiver of deposit from the reporter(s) themselves. Please note that a waiver of deposit is merely that. It waives only the need for the deposit, not the cost of the reporter's transcript. This means

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[4] A stipulation is a written agreement between the parties about something they are going to do. In this context, it is an agreement that only parts of the testimony will be considered in the appeal. It is signed by all counsel and self-represented parties. If you want or need a stipulation, call or write counsel or a self-represented party and ask whether he or she is willing to agree to what you propose. If he or she is agreeable, prepare a written statement that "The parties agree (stipulate) to. . . ." setting out what has been agreed to. Add a separate signature line for each counsel or self-represented party to sign, with the person's name typed under the signature line and a place for the date on which the document was signed.

the appellant will need to pay the reporter's fees sometime in the future. If the reporter(s) grants the waiver, the appellant must provide a copy of the waiver at the time the appellant files the *Notice Designating Record on Appeal*.

The Court of Appeal has the power only to waive its own filing fee of $655 and cannot waive the reporter's fees.

If the appellant has already had some or all of the proceedings transcribed, a certified copy of that transcript can be substituted for the reporter's transcript and the deposit is not necessary. The transcript(s) must comply with CRC rule 8.144. The appellant should be sure to keep a copy of this transcript for writing the brief.

The *Notice Designating Record on Appeal* must be filed with either a money deposit for the cost of the transcript, a signed waiver of deposit, or a certified copy of the transcript.

If, after being served with the appellant's *Notice Designating Record on Appeal*, the respondent wishes to designate additional parts of the transcript, a respondent's designation or *Notice Designating Record on Appeal* must be served and filed with the superior court within 10 days of the service of the appellant's designation. (CRC rule 8.130(a).)

After the time limit for the respondent to designate additional items has passed, it generally takes 30 to 60 days for the transcript to be completed. The Court of Appeal may grant extensions of time for the reporter if he or she is unable to complete the transcript on time. (CRC rule 8.130(f).)

Record Problems

If you fail to properly designate the record by not filing a *Notice Designating Record on Appeal* or if you have not paid the costs of the clerk's and/or reporter's transcript, or if you have failed to correct the designation of the record after notice was sent to you by the superior court, you will be sent a *Notice of Default*. A party has 15 days from the date of the notice to cure the problem. If the problems to be fixed are still not cured after the 15 days, the superior court sends a *Notice of Failure to Clear Default* to all parties and to the Court of Appeal. If the appellant is the party who has not complied with the rules, the Court of Appeal may dismiss the appeal; if the respondent is the party that has not complied on time, the appeal may go forward on the appellant's record alone. (CRC rule 8.140(b).)

If either party discovers that something is missing from the record after the record has been filed, there are ways to fix the problem. If the clerk or reporter left out a required or requested item, a *Notice of Correction* must be filed in the superior court and served on all parties. (CRC rule 8.155(b).) If the item was not

listed in the designation of record, a motion to augment will be needed. (See Chapter 6.)

When filing the *Designation of the Record on Appeal* in Los Angeles County, the Court strongly suggests that you make those filings at the appeals section of the Superior Court, Room #111, at 111 North Hill Street, in Los Angeles. However, the court will accept the *Designation of the Record on Appeal* at any superior court clerk's office. Information on the various superior court locations in Second District can be found in Appendix 3.

CHAPTER 3

CIVIL CASE INFORMATION STATEMENT

A *Civil Case Information Statement* (Sample Form J) 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.

Once the Court of Appeal receives the Notice of Appeal from the superior court, the clerk mails the appellant a notice, confirming receipt of the Notice of Appeal, along with a blank *Civil Case Information Statement* form. 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 10 days. (CRC rule 8.100(f).)

If the *Civil Case Information Statement* is not received within the 10-day limit, the Court of Appeal clerk will send a *Notice of Default*. If the appellant does not cure the default within 15 days (presumably by correctly filing the Civil Case Information Statement), the Court may dismiss the appeal.

CERTIFICATE OF INTERESTED ENTITIES

Rule 8.208(c)(1) requires that each party serve and file a *Certificate of Interested Entities or Persons* at the time it files its first document in the Court Of Appeal (which is usually the above-referenced *Civil Case Information Statement*). Each party must also include a copy of the certificate in its principal brief. (See Sample Form V.)

The purpose of this rule is to provide justices of the Courts of Appeal with additional information to help them determine whether to disqualify themselves from a proceeding. (See rule 8.208(a).)

For the purposes of rule 8.208, "Certificate" means a Certificate of Interested Entities or Persons signed by appellate counsel or an unrepresented

party. “Entity” means a corporation, a partnership, a firm, or any other association, but does not include a government entity or its agencies or a natural person. (See rule 8.208(b).)

If an entity is a party, that party’s certificate must list any other entity or person that the party knows has ownership interest of 10 percent or more in the party. (See rule 8.208(d)(1).) If a party knows of any other person or entity that has a financial or other interest in the outcome of the proceeding that the party reasonably believes the justices should consider in determining whether to disqualify themselves, the party’s certificate must list that entity or person and identify the nature of the interest of the person or entity. (See rule 8.208(d)(2).) If the party knows of no entity or person that must be listed under rule 8.208(d)(1) or 8.208(d)(2), the party must so state in the certificate. (See rule 8.208(d)(3).) A party that learns of changed or additional information that must be disclosed under rule 8.208(d) must promptly serve and file a supplemental certificate in the reviewing court.

Note that while the Certificate of Interested Parties must be filed simultaneously with the party’s first document filed in the Court of Appeal, the Certificate must be treated as a separate filing and have attached to it a separate proof of service and may not be simply attached to the first document filed and listed on that document’s proof of service.

CHAPTER 4
BRIEFING THE CASE

The briefs are written arguments put together by each party. If you are the appellant, your brief will explain why you believe the trial judge was wrong. If you are the respondent, your brief will tell the justices why the trial judge was right.

The briefs are the single most important part of the appellate process. The record (the clerk's or appendix and reporter's transcripts) provides the court with a picture of what occurred at the lower court. But it is the arguments in the briefs that tell whether or not there was an error in those proceedings and whether it changed the outcome of the trial. The best briefs contain your entire argument, guiding the Court through the case and using the record and legal authority to justify your points. Because of the specialized knowledge necessary for writing a good brief, the briefs are also by far the most difficult part of the appellate process.

There are three briefs:

1. The Appellant's Opening Brief (AOB) – The AOB tells the Court of Appeal (a) what judgments or orders the appellant is appealing, (b) why the appellant thinks the superior court acted incorrectly in making those judgments or orders, (c) what legal authority supports the appellants argument, (d) how the court's actions hurt the appellant, and (e) what the appellant wants the Court of Appeal to do if it finds the superior court acted incorrectly.
2. The Respondent's Brief (RB) – The RB responds to each of the issues raised by the appellant, explaining why the appellant's arguments are not correct and expressing support for the trial court's decision.
3. The Appellant's Reply Brief (ARB) – The ARB addresses the arguments made by the respondent and shows how they do not overcome the arguments made in the appellant's opening brief. No new issues may be raised in the reply brief.

Appellant's Opening Brief (green)

The appellant carries the burden of convincing the appellate court that the trial court made a prejudicial error – that is, an error that changed the outcome of the case. If you are an appellant, the AOB provides your first and best chance to

prove that error. The rest of this section will provide guidance that may be helpful in preparing that critical brief.

Time Limits

There are two potential due dates for the AOB depending on whether the case is proceeding with a clerk's transcript or with an 8.124 appendix (for explanation of these components of the record, see Chapter 2):

- If the appellant chooses to have a clerk's transcript prepared, once the Court of Appeal receives the record on appeal (the clerk's and reporter's transcripts, or just the clerk's transcript), the clerk sends a notice to all parties that the record has been filed. Then the AOB is due 30 days from the notice.
- If the appellant or the parties chose to prepare their own 8.124 appendix and did not request a reporter's transcript, the clerk's office **will not** send a notice. The appellant's opening brief and appendix are due 70 days from the date appellant filed the rule 8.124 election in the superior court. (CRC rule 8.212(a).)

Contents

The appellant's opening brief is a single bound document that contains:

- Cover
- Table of contents
- Table of authorities
- Statement of the case
- Statement of appealability
- Statement of facts
- Argument
- Conclusion
- Certificate of compliance with length limitations
- Proof of service

(For a discussion of attachments to the brief, see "Considerations that Apply to All Briefs" later in this chapter.) A short example of an appellant's opening brief is included as Sample Form K. In this example, we have used the facts from *Goldilocks and the Three Bears* as our case. There are only one or two items in our statement of authority and only one issue. We hope that this example from a familiar story will be helpful as you prepare your tables of contents and authorities and set out the facts and issues of your case. You may find it useful to follow

along in this sample brief as you read about the various parts of a brief in the discussion that follows.

Cover

The cover includes identifying information about the case. (See Sample Form K.) 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. (See *General format requirements* later in this chapter.)

Table of Contents and Table of Authorities

The **table of contents** lists the sections of the brief by page number (CRC 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 (CRC rule 8.204(a)(1)(A)). Don't put in the page numbers until the brief is completed, for only then will the final page numbers be known. (See Sample Form K.)

Statement of the Case

The statement of the case tells the Court of Appeal the procedural history of the case. You should explain what happened in the trial court, in chronological order from the filing of the complaint through the final judgment. The statement of the case 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. (See Sample Form K.) 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.[6] The "statement of the case" differs from the facts of the case. The statement of the case refers to what happened to the case *within the court*. There will be a time to address the facts of the case later in the brief. (See Sample Form K.)

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[5] Other sources that may be referenced are abbreviated as follows:

Appellant's appendix – AA	Appellant's reply appendix – ARA
Joint appendix – JA	Appellant's opening brief – AOB
Respondent's appendix – RA	Respondent's brief – RB
Appellant's reply brief – ARB	Superior Court file – SC file

Statement of Appealability

Here, the appellant tells the court why this case is appealable. This may already be clear to the appellant, but for the person reading the brief for the first time, this is the statement that sets the stage. Remember in chapter 1 we discussed the problem of appealability and why it was so important. (See pages 3-4.) 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) *or* there may be a non-final judgment. If you are appealing an order or a non-final ruling, you need to explain why it is appealable. (CRC rule 8.204(a)(2)(B); Code of Civil Procedure, section 904.1.) Generally, an appellant states the statute that gives him or her the right to appeal the case. (See Sample Form K.)

Statement of the Facts

Before starting on the 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 he or she designated to be included in the record. For every statement of fact you make in the brief, there must be 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 superior 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 superior 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, you should state the facts in the way that supports 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. (See Sample Form K.)

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. These concerns are discussed in Appendix 7 which discusses demurrer and summary judgment.

Argument

This is the part of the brief in which you discuss each of the errors you believe the superior court made. Without question, this is the most important part of the brief, if not of the entire appeal. Within this section, the appellant must show that the trial court committed what is called "prejudicial error." It is not enough to show the trial judge made one or more mistakes. The error must be bad 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 judge made. This is the part of the brief that is hardest for self-represented parties. This law can be learned, but for anyone not trained as a lawyer, that learning process will probably be slow and difficult.

You should discuss each issue separately in light of the facts and the law. The appellant has the burden of showing that there was an error (or errors) so serious that the court's decision must be reversed. In figuring out the issues, think about what happened at the trial or hearing where the alleged errors were made. Did these errors involve findings of fact, discretionary rulings by the judge, or questions of law? Do you think these rulings were really wrong? What did these rulings do to the outcome of your case? You will need to read some legal materials on the subject. Public law libraries are excellent resources for conducting legal research, and law librarians are trained to help with legal research. See Appendix 2 for information on library locations and hours. Look at books that are written about the area of law that your case involves. For example, if your case involves a possible breach of contract for work that was not done or work that was not done properly look in the area of contract law. Ask the librarian to suggest readings about contracts and breaches of contract. In books written about the law ("secondary sources"), you will find mention of appellate opinions previously decided in the area of contracts. You may want to read those cases. They may tell you which laws apply to your case. Based on this information and the facts of the case, the appellant should make a list of the issues he or she wants to raise—the issues the appellant thinks hurt his or her case in superior court the most or the ones that would help his or her case the most now.

After making a list of the issues, the appellant then needs to determine what **standard of review**[7] the court will apply to each issue. When the appellant argues that the superior court erred in its ruling, the Court of Appeal looks first at what the standard of review is for that particular issue. The three most common standards of review are (1) abuse of discretion, (2) substantial evidence, and (3) de novo review.

1. *Abuse of Discretion* – If the superior court's decision is one that involved the exercise of its discretion, the "abuse of discretion" standard is used. Any decision for which the judge exercises his or her discretion, such as admissibility of evidence or issuance of restraining orders, comes under this standard. Abuse of discretion occurs when the superior court judge makes a ruling that is arbitrary or absurd—which does not happen very often. The Court of Appeal rarely reverses a superior court judge's ruling using this standard.

2. *Substantial Evidence* – If you are appealing the factual findings of a judge or jury after trial, the "substantial evidence" standard is used. The Court of Appeal reviews the record to make sure there is substantial evidence to support the factual findings made by the court or jury. The Court of Appeal's function is not to decide whether it would have reached the same factual conclusions as the judge or jury. Instead, the Court of Appeal merely decides whether a reasonable fact-finder could have come to this conclusion based on the facts in the record. If there is a conflict in the evidence, and a reasonable fact-finder could have resolved the conflict either way, the Court of Appeal will affirm the decision. Because the judge or jury at the trial saw the witnesses and heard what the witnesses said, they are in a better position to decide what actually happened and who is telling the truth.

3. *De Novo – De novo* is a Latin phrase meaning "from the beginning." In de novo review, the Court of Appeal does not defer to the decisions made in superior court. Instead it looks at the issues as if the superior court had never ruled on it. This type of review is generally limited to issues involving questions of *law*. If the issues involve questions of law—for example, the interpretation of a contract or a statute—the Court of Appeal does not assume the superior court's ruling is correct but looks at the issue "from the beginning," exercising its independent judgment. A trial court's ruling granting a demurrer or motion for summary judgment is also reviewed under the de novo standard of review. For this reason, reversals happen more often when what is being appealed is a trial court's decision to grant a demurrer or

[6] When the Court of Appeal reviews an issue, it needs some kind of rules or guidelines to determine whether the superior court made an error in its decision. Different kinds of rulings require different kinds of review guidelines. These guidelines are called **standards of review**.

a summary judgment rather than when you are appealing after a full trial of the case.

Once you determine which standard of review applies to the issue, you must point out why you think the court made the wrong decision and why you are entitled to reversal under that standard of review. Explain why this incorrect decision harmed your case so much that the error should cause the superior court's order or judgment to be reversed.

For every statement of law you make in the brief, there must be a citation to an appellate court opinion, a statute, a rule, or legal treatise that sets out that proposition. This is where legal research will be required in the writing of your brief. Citations usually appear at the end of the sentence in parentheses. For more information on legal citations, see Appendix 3.

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. (CRC rule 8.204(a)(1)(B).) (Sample Form K.)

Conclusion

After you have discussed each issue, you should briefly restate your position in a **conclusion** and tell the court what you want it to do. (See Sample Form K.) Be specific in your directions to the court, detailing how you think the court should rule on the matter.

Certificate of Compliance and Proof of Service

If the opening brief is produced on a computer, it must also include a certificate of compliance with the length limitations (see Sample Form K). Finally, in all cases, the brief must include a proof of service. (Sample Form C.)

Respondent's Brief (yellow)

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.

Time Limits

The respondent's brief is due 30 days after the appellant's opening brief is filed. (CRC rule 8.212(a).)

Contents

The respondent's brief should follow the same general format as the appellant's opening brief, with a cover (for a respondent's brief the cover is yellow), table of contents, table of authorities, statement of the case, statement of facts, argument, conclusion, certificate of compliance, and proof of service. (For a discussion of attachments to the brief, see *Attachments to briefs* later in this chapter.)

The facts are already set out in the appellant's opening brief. However, remember the decision is in the respondent's favor and the facts must be set out to support the winning side of the case. Make sure the facts, as stated by the appellant, are accurate and any conflicts in the facts have been resolved to support the decision. You may end up including a shorter version of the facts. Or, if you totally agree with the way the appellant has set out the facts, you can ask to 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 for every legal statement, and provide headings and subheadings for each point. (CRC 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 of all, 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, or "timely filed." 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. Go to the county public law library (see Appendix 2) and research the case law and statutes that relate to the issues on appeal. Reread the court's statement of decision, if there is one, or the orders and judgment set out in the minutes of the court. Be sure to respond to each and every issue raised in appellant's opening brief. Deal with each issue separately, with headings and subheadings that match the ones used by the appellant.

Check the record and make sure that an objection or motion was made to challenge the ruling in the trial court at the time the ruling was made. If no objection or motion was made, the appellant may have waived (given up) the error. Tell the court in your brief if you believe there was a waiver. If the Court of Appeal believes the appellant has waived the issue, it may decide to not even

consider the issue the appellant has raised. (But ordinarily you should also argue why it was not error, even if it looks like the appellant waived it. The Court of Appeal may decide the issue was not waived, after all. Better safe than sorry.)

There may be additional issues not mentioned in the appellant's brief—for example, concerning the statute of limitations or other defenses—that may result in a decision in your favor. You should discuss these issues in your respondent's brief even though the appellant did not bring them up.

Appellant's Reply Brief (tan)

Because the appellant has the burden of showing the Court of Appeal that the trial court erred, the appellant is given the opportunity to answer arguments in the respondent's brief. The appellant's reply brief is optional, however.

Time Limits

The reply brief is due 20 days after the respondent's brief is filed. (CRC rule 8.212(a).)

Contents

No new issues may be raised in the reply brief, because the respondent will not have any opportunity to respond to the reply brief. 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. The cover for an appellant's reply brief should be tan.

Some Important Things to Remember When Writing Your Briefs

1. *Table of contents and table of authorities* – When you have finished your brief, copy each heading and subheading into a table of contents (which will be page i of your brief.) (See Sample Form K.) The person reading your brief should be able to get a good overview of the case by skimming the table of contents. Then 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. (See Sample Form K.)

(CRC 8.204(a).) 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.

2. *Certificate of compliance with length limitations* – 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. (CRC rule 8.204(c).) You may rely on the word count of the computer program used to prepare the brief. (Sample Form K.)

3. *Attachments to briefs* – You should be very careful about including attachments to your brief. Improper attachments can cause your brief not to be filed, or to be stricken or returned to you for corrections. (CRC rule 8.204(e).) Before including attachments, you should carefully consult CRC rule 8.204(d).

You may attach to your brief copies of exhibits or other materials already contained in the existing record on appeal. The attachments must not exceed 10 pages, unless you get permission from the court. (CRC rule 8.204(d).)

If you include any attachments to your brief, you must file a declaration stating whether the material is part of the record and, if not, why each attachment is permissible under the rules.

4. *General format requirements* – CRC rule 8.204 describes the format requirements for briefs. Briefs should be:

   - Typed or prepared on a word processor or computer;
   - On 8-1/2-by-11 inch recycled, plain white paper of at least 20-pound weight (except for the cardstock front and back covers) -- do not use legal or pleading paper with numbered lines;
   - One-and-a-half or double spaced, with single-spaced headings and footnotes; both sides of paper may be used unless you prepared the brief on a typewriter;
   - Bound on the left side of the pages; if stapled, the staples must be covered by tape (most briefs, however, are Velobound);
   - Printed with a type size of at least 13 points or prepared on a standard pica typewriter (not elite) with type size no smaller than 10 characters per inch; and

- Side margins of 1-1/2 inches, and upper and lower margins of 1 inch.
- Pages must be consecutively numbered.

The cover colors are standardized, per CRC rule 8.40(b), as follows:

Appellant's opening brief – green

Respondent's brief – yellow

Appellant's reply brief – tan

Appellants Appendix – green

Respondents Appendix – yellow

Joint appendix – cream or white

Petition for rehearing (discussed later) – orange

Answer to Petition for Rehearing – blue

Petition for review (discussed later) – white

Answer to Petition for Review – blue

The pages should be bound in pamphlet or book style. On the cover you should put the title of the case, the superior court and Court of Appeal case numbers, the name of the superior court judge and county, the type of brief (for example, "Appellant's Opening Brief," "Respondent's Brief," or "Appellant's Reply Brief" (see Sample Form K), and your name, address, and daytime telephone number. (CRC rule 8.204(b).) The court heading should be centered at the top of the brief cover.

5. *Service* – The original and four copies of the brief must be filed with the Court of Appeal, showing services on all the parties, the Clerk of the superior court (for delivery to the judge in the case), and the California Supreme Court (four copies). (CRC rules 8.212(a), (c), 8.40(b)(2)(A).) (See Sample Form C; for court addresses, see Appendix 2). You must also serve any public officer or agency required to be served by CRC rule 8.29.

6. *Extensions of time* – If you need more time to file the appellant's opening brief, the respondent's brief and/or the appellant's reply brief, you and opposing counsel can stipulate (agree in writing to allow extra time, see Chapter 2, footnote 4) up to a maximum of 60 days for each brief. Stipulations to extend time (see Sample Form Q) must be filed in the Court of Appeal before the date the brief is due. If you need more time and have already stipulated to 60 days or if you are unable to get opposing counsel to agree to a stipulated extension, you must file a motion or application for extension of time with the Court of Appeal. (CRC rules 8.212(b), 8.50, 8.60, 8.63) (See Sample Form R.) Do not

delay when requesting an extension of time to file a brief. It is wise to do so as early as possible and before any deadlines. For a more detailed description of applications/stipulations for extension of time, see Chapter 5.

If the appellant's opening brief or a respondent's brief is late, a notice (under CRC rule 8.220) will be sent that gives the party 15 more days to file the brief. If the appellant's opening brief is not filed within the 15-day grace period, the appeal will be dismissed. If the respondent's brief is not filed on time, a notice (CRC rule 8.220) will be sent. If the brief is not filed within the 15 day grace period, the court will decide the case on the appellant's opening brief, the record, and any oral argument by the appellant. (The respondent will not be allowed to make an oral argument to the court either.) Within the 15-day period, a party may apply for an extension of that time for good cause. If a brief is not filed after the extension is granted, the court may dismiss the appeal. (CRC rule 8.220(d).)

7. *Exhibits* – In some superior courts, exhibits are **lodged** with the court. Since they were lodged, the superior court returns the exhibits to the parties at the end of the case. A party who wishes to have the Court of Appeal consider an original exhibit must file a notice (which designates the exhibits to be sent) in superior court within 10 days after the respondent's brief is filed. A copy of the notice must be sent to the Court of Appeal. Ten days after the notice is filed in superior court, any other party wishing to have the Court of Appeal consider additional exhibits may also file a notice in the Superior court. Under CRC rule 8.224(b), the superior court and the party requesting that exhibits be lodged with the Court of Appeal must each put the designated exhibits in their possession into numerical or alphabetical order. The exhibits are sent to the Court of Appeal along with two copies of the list of exhibits being sent. Since exhibits are lodged with the Court of Appeal, they will be returned at the end of the case.

8. *Non-compliant briefs* – If the brief is not done properly— for example has no table of authorities or no citations to the record—the Court may decline to file it. Or at the request of the opposing party or on its own motion, the court may strike the brief and return it to the party for corrections and changes. In making these corrections, generally it is necessary to prepare a new document, which must be served on all the parties and filed with the court. If the incorrect or omitted items have been redone properly, the court files the corrected document. If the items have not been redone properly, the court may dismiss the case if it is an appellant's opening brief, or let the appeal proceed on the record and the appellant's opening brief if it is the respondent's brief. (CRC rule 8.204(e).)

CHAPTER 5

MOTIONS, APPLICATIONS, STIPULATIONS, ABANDONMENT, AND ONLINE CASE INFORMATION

There are a few other types of actions that might take place during the course of an appeal. At some point during your case, you may need to request something from the Court. Typically, these requests take one of three forms:

1. a motion
2. an application
3. a stipulation

This chapter introduces you to motions, applications and stipulations and guides you through when and how to use them. Additionally, this chapter describes how to properly abandon, settle or dismiss an appeal, as well as how to receive the most current information about the status of your appeal.

Motions

In all instances except those outlined in CRC rule 8.50, requests to the Court of Appeal are made by motion.[8] CRC rule 8.54 covers "motions in the reviewing court." Motions are the formal means for asking the court to cure a problem or take some sort of action in a case. If there are problems with the record, a desire for preference or priority in getting the court to handle the case or any problem other than the failure to file a timely Notice of Appeal, you can file a motion or application asking the court to take care of the problem. (See CRC rules 8.240, 8.54, 8.50.) A motion can also be used to vacate a dismissal that has been entered against you, to consolidate two cases, and so forth.

A motion should be typewritten, with Proof of Service (see Sample Form C) on all counsel and self-represented parties, and an original and three copies must be filed with the Court of Appeal. (CRC rules 8.54(a), 8.40(b).)

[8] CRC rule 8.50 discusses applications to the Court for routine matters, namely extensions of time to file briefs.

You need to tell the Court of Appeal why you are making the request (show "good cause"), provide additional information that might be relevant, and let the Court of Appeal know what it is you want it to do (such as grant preference in the processing of your case based on a terminal illness, add to the record, take judicial notice of some fact, etc.).

Along with the motion you should provide points and authorities to justify the request and documentary evidence (declarations and exhibits) if it is needed to support your request. Points and authorities are just that: the points set out the argument you wish to make, and the authorities give the legal reasons that the motion should be granted or denied (see Sample Form L).

At least one declaration should, under penalty of perjury, give the facts surrounding the request, what you have done or attempted to do to take care of the problem, what you want the court to do, and why it is necessary (see Sample Form M). If your motion is incomplete, the court may deny the motion "without prejudice," which means you may correct whatever problems there are and re-file the motion.

Any opposition to the motion should be filed within 15 days from the date of service. Most motions are not ruled on until the time to file the opposition has passed. If no opposition is filed, the motion is usually granted. Generally there are no hearings on a motion, but on very rare occasions there may be. (CRC rule 8.54(b).)

Motion to Augment the Record

A motion to augment the record is used when items are missing from the record on appeal (the clerk's or reporter's transcript) or if new items need to be added. (See Sample Forms L, M, N, O, P.)

If the superior court clerk or reporter failed to include something that was designated in your designation of record, you do not need to file a motion to augment. Instead, serve and file a notice to correct the record in the superior court. (See Chapter 2, p. 17.) However, **if you already have a copy of the document** that the superior court clerk omitted, it may be faster and cheaper to file a motion to augment to which you just attach the document instead of filing a notice to correct the record.

If new documents need to be added to the record, a motion to augment must be filed with the Court of Appeal. Each item requested must be a part of the superior court file, such as a document that was filed in the superior court, received in evidence, or lodged with the court or is a transcript of oral proceedings. An item that was "lodged" with the court (rather than being filed) is returned to the parties and thus is not physically in the superior court file or in the custody of the court.

Any document or transcript that you want to add to the record should be attached to the motion. If the court grants the motion, it then augments the record with the documents or transcripts included with the motion. A Motion to Augment Record on Appeal with documents attached is included as Sample Form N.

If you do not have copies of the documents to be added, the items must be identified as they are in a designation of record so that, if the motion is granted, the superior court can prepare a **"supplemental" clerk's and/or reporter's transcripts**.[9] (CRC rule 8.155.)

If the motion for a supplemental clerk's and/or reporter's transcript is granted, the superior court will prepare an estimate of the cost of preparing the supplements. After the estimate is paid, the superior court is usually given 30 days to prepare the materials. If your brief is due within this time, your motion to augment should include a request to extend the deadline for filing the brief to 30 days after the supplemental transcript is filed (see applications for extension of time later in this chapter.) The title of your document should be "Motion to Augment the Record and Application to Extend Time to File [Appellant's Opening, or Respondent's or Appellant's Reply] Brief."

Applications and Stipulations

For more routine matters, mainly the extension of time to file briefs, the parties can request permission from the court using an application. An application is less formal than a motion. Generally, the Court of Appeal does not hold an application for opposition and rules on it immediately. The rules for applications are defined in CRC rule 8.50.

In addition to motions and applications, the two parties in a case can stipulate that an action take place or a problem be remedied. Stipulations can be used in place of any action for which a single party might otherwise use a motion or an application.

Applications/Stipulations for Extension of Time to File Brief

The parties may stipulate to extend the briefing time up to 60 days for each type of brief by filing one or more stipulations in the Court of Appeal before the brief is due. (CRC Rule 8.212(b)(1).) The stipulation must be signed by and served on all parties. (See Sample Form Q.)

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[9] A Motion to Augment that requires the documents to be copied by the superior court to prepare a supplemental clerk's transcript is included as Sample Form O. A Motion to Augment Record on Appeal with reporter's transcript is included as Sample Form P.

If a party needs more than the 60 days already stipulated to, or if the opposing party refuses to stipulate to an extension, the party needing the extension must file an application for extension of time. (See Sample Form R.) The party seeking additional time must give reasons, also known as "**good cause**," why that extension is needed. In addition, the party applying for an extension of time should explain either that (1) the applicant was unable to get the agreement of the other party to a stipulated extension or (2) the parties have already stipulated to the maximum 60 days and the applicant now is seeking permission of the court for a further extension. (CRC Rule 8.212(b)(2).)

An Application for Extension of Time to File Brief (see Sample Form R) should include the current deadline for the brief or item, the length of the requested extension, any previous applications that have been granted or denied, and any notices that have been issued under CRC rule 8.220, in addition to a statement of good cause (the reason). (CRC rules 8.50, 8.60(c), 8.63.)

You need to file with the court an original Proof of Service of the application on all parties (see Sample Form C), and extra copies with a self-addressed, postage prepaid envelopes for mailing the order that grants or denies the application to all counsel and self-represented parties. A request for an extension of time must be served on the party represented by the attorney requesting the extension. Evidence of this need not include the client's address. (CRC rule 8.50, 8.60(f).)

Most often, applications for extension of time are ruled on without waiting for opposition. Thus, if you wish to oppose an application for extension of time, you must file the opposition (or call the clerk's office and let them know you will be filing an opposition) right away.

Abandonment, Settlement, and Dismissal

At some point in the appellate process, the appellant may decide to abandon the appeal. If this happens before the record has been filed, the appellant should file and serve a written abandonment or stipulation for abandonment at the appeals section of the superior court. The filing effects a dismissal of the appeal. (See Sample Form T.) (CRC rule 8.244(b).) If the clerk's transcript has not been completed, the portion of the deposit that has not been used should be refunded. (CRC rule 8.120(d).) If the record has been filed, the appellant should file and serve a written request or stipulation to dismiss in the Court of Appeal. (Form APP-007 [see Sample Form U].) At this stage, the court has the discretion to accept or deny the request. (CRC rule 8.244(c).)

If the parties are able to agree on a settlement of their differences, the appellant should immediately notify the court in writing that the matter has settled and file an abandonment of the appeal or request a dismissal of the appeal. (CRC rule 8.244(a)-(c).)

If at any time the respondent believes the appeal should be dismissed, the respondent should file and serve a motion to dismiss. If the Notice of Appeal is late, or "untimely," the court has no power to hear the appeal, and the case will be dismissed. If the ruling is not appealable, the court may dismiss or it may elect to hear the case as a writ. The court will exercise its discretion in considering other dismissal motions and may deny such motions if the issues raised in the appeal involve the public interest and not just the parties to the appeal.

Online Case Information & E-mail Notification

You may see online information about your individual case at the website for the Second Appellate District at www.courtinfo.ca.gov/2dca, click on Case Information. Once you reach the website, you may access information about your own case by searching for the:

- Court of Appeal case number
- the trial court case number
- party name
- attorney name or
- case caption.

The best method is to use the Court of Appeal case number. Once you get to the case information summary screen for your case, you may get additional information by clicking on one of the choices under "Detailed Information." You may view all of the:

- docket entries for your case
- a summary of future scheduled actions
- a briefing summary
- the disposition (if the opinion has been issued)
- party and attorney information (including attorney addresses)
- and trial court information (including name of trial judge and date of judgment)

You may also request automatic e-mail notifications about future actions taken in your case by clicking on "E-mail Notification" on the case summary page. If you provide your e-mail address, you can ask to be automatically notified of certain events that occur in the case. You may choose to be notified when the record on appeal is filed, when a brief is filed, when the court sends a calendar (oral argument) notice, when the court finally disposes of the appeal, and when the remittitur is issued.[10] Whether or not you sign up for e-mail notification, you will still be notified of all of these events by a mailed notice from the court.

[10] The remittitur is the final document the Court of Appeal files. It returns the case to the trial court and tells that court what to do as a result of what the Court of Appeal decided. (See Chapter 7, for a further discussion of remittiturs.)

CHAPTER 6
ORAL ARGUMENT

Oral argument is an opportunity for one or both of the parties to appear before the Court of Appeal and argue the merits of their case. At oral argument, each party has the opportunity to clarify the points made in their brief, reemphasize what they think is most important about their arguments, and answer questions from the panel of three justices who ultimately decide the case. Oral argument is not a time to restate the facts of the case or repeat parts of the brief. The justices know what you said in your brief. They frown on arguments that merely repeat what they read in the briefs. Oral argument is the time to make sure that the Court understands the key issues of the case.

Requesting oral argument

Once the briefing process is complete, the Court begins reading the briefs and considering the issues on appeal. When the Court feels that it understands those issues, it sets a case for oral argument. The court writes the parties to notify them that their case has been placed on an oral argument calendar for a specific date and asks the parties if they wish to argue the case orally. On this calendar notice, some divisions in the Second District may ask for an initial estimate of the time you need for argument. (CRC rule 8.256(b).) Others wait until you are in the courtroom to ask for your time estimate. You should let the court know right away if you cannot attend court on the assigned date. In order to formally request oral argument, you must return this calendar notice promptly to the Court of Appeal by mail or in person. Some Divisions in the Second District require Proof of Service (Sample Form C) on the other parties in the case when you return the calendar notice. Read the notice carefully to determine if you must serve the calendar notice, indicating whether you want oral argument.

Preparing for oral argument

The best way to prepare for oral argument is to review your case as thoroughly as possible. You should look at the record again and the arguments in the briefs so that you are very familiar with your case in the event one or more of the justices asks you questions about the facts or the legal argument. Make an outline of the points you wish to emphasize and the responses you would make to

possible questions the court might raise or arguments that opposing counsel might raise. Review your opponents brief and prepare responses to the points in their argument that are the strongest. You should not prepare a written statement to read because the justices may interrupt you with questions. Be prepared to be flexible.

You need to review all of the items you have cited in your brief to make sure nothing has been overruled by the California Supreme Court and that there are no new court decisions or new statutes that might affect your case. If you do have new authority, you should let the court and opposing counsel know what it is in writing before the argument. This is most important if you intend to mention the new material in your oral argument. If you learn of the new case or other authority well in advance of oral argument, you may wish to ask the court for leave so that you and opposing counsel can file supplemental letter briefs concerning the new authorities before the matter is heard. You may make such a request with an informal letter to the court as long as you send a copy to opposing counsel.

If at all possible you should take the time to come to the court and observe at least some oral argument, a month or two before your argument date. Oral argument is held most weekdays. You can check the oral argument calendar online at Microsoft Word or Adobe Acrobat. If you cannot access the internet or need more information, you should call the clerk's office to confirm the date you wish to come since you may have selected a morning or afternoon when no calendar is scheduled. Argument is open to the public so you don’t need special permission to attend.

Oral argument

Argument is held before a panel of three justices. Oral argument in Divisions 1-5 or 7-8 is held at the Court of Appeal, 300 South Spring Street, Los Angeles. The courtroom is located on the third floor. Oral argument before Division 6 is held at 200 East Santa Clara Street, Ventura. When you arrive for oral argument you will go through security, enter the courtroom, and check in with the court clerk, giving your name and a time estimate. The maximum time for argument in the Court of Appeal is 30 minutes for each side (CRC rule 8.256(c)(2), although in complex cases it may be longer.

Once in the courtroom, sit in the audience until your case is called. When the justices enter the courtroom all persons rise. The presiding justice or the most senior justice sits in the middle and calls the calendar. Generally, but not always, the cases are heard in order with the cases taking the shortest time going first.

The Second District sits on the bench in Divisions that are comprised of four justices. Of the four, however, only three sit on the panel for any one case. Those

three justices write the opinion that decides the outcome of the appeal. The names of the three justices on the panel for your case are available in the printed court calendar that is distributed at the Court on the day of oral argument. You can see the names of all the justices on nameplates that sit on the front of the bench.

When your case is called, walk to the podium area. The appellant sits at the table to the left of the podium and the respondent sits at the table to the right of the podium. The appellant argues first. If you are the appellant and wish to save part of your argument time to answer the respondent's argument, tell the justices that before you start your argument and tell them how long you want for that purpose. Be aware the justices generally will stop you when you have used up the time you told them you wanted for argument. When that occurs you should do no more than complete the sentence you are speaking. If you are the appellant and have requested time for rebuttal you are limited in the rebuttal to talking about only those arguments that the respondent has used. You may not present any new arguments at that time.

Often counsel will begin with the words "may it please the court." Whether you start with that or not, you should identify yourself saying that you are self-represented. By the time of oral argument, the three justices on the panel who hear your case are familiar with the facts of your case, the arguments you have raised and the law involved. Thus, there is no need for you to repeat anything that you have already told the court in your briefs. If you do not have anything to present other than what is in your briefs you should seriously consider not presenting any oral argument.

If, however, you have decided to argue orally, you should proceed in a conversational tone, limit your comments to things which happened during the trial that you believe were in error and are part of your appeal. You may not bring up any brand new argument or fact that was not included in the record or in your brief. But you can attempt to clarify any points that might have been unclear in your brief or so complicated that they might be difficult to understand. As in the briefs, your oral argument should refer back to legal authority for justification. Be as clear and to the point as possible. During your remarks one or more of the justices may ask you questions. If so, stop what you are saying and answer the question. If you do not know the answer to the question, just say so.

Refer to the justices as “Justice [Last Name]” if you feel comfortable identifying them by name, or simply as “Your honor” if that seems easier. Be respectful to the justices; do not raise your voice, pound on the lectern, or use inappropriate language. Being respectful of the Court can only help your case.

After all the briefs have been filed and oral argument, if requested, has been held, the case is “submitted.” If you do not request oral argument, your case will be

submitted at the same time as the cases that were argued on the same oral argument calendar. After the case is submitted, the court does not accept any further information about the case. (CRC rule 8.256(d).) The justices on the panel discuss the case, and decide what they think is the correct disposition. A decision is then filed within 90 days after the end of the month in which the case is submitted.

CHAPTER 7
WHAT YOU CAN DO AFTER THE COURT FILES ITS OPINION

After an opinion has been issued, there are a number of steps you can take asking the Court of Appeal and/or the Supreme Court to reexamine the case. This chapter discusses some of those, including, how to file a *Petition for Rehearing* at the Court of Appeal and a *Petition for Review* in the Supreme Court of California. In addition, this chapter explains how the issuance of a remittitur marks the end of an appeal.

Petition for Rehearing

After the opinion in the appeal is filed, a party may file a *Petition for Rehearing* (Sample Form S) in the Court of Appeal. The petition for rehearing provides the party that has "lost" at the Court of Appeal with an opportunity to point out any factual errors, misstatements, or omissions that the Court of Appeal may have made in their opinion. There is an automatic right to rehearing if the Court of Appeal makes a decision based on an issue that was not proposed or briefed by any party. (Government Code section 68081.) One does not need to petition for rehearing in the Court of Appeal before seeking review in the Supreme Court. However, as a policy, the Supreme Court accepts the statement of facts and issues as set out in the Court of Appeal opinion unless any alleged omission or misstatement of fact was brought to the Court of Appeal's attention by a petition for rehearing. (CRC rule 8.500(c).)

The *Petition for Rehearing* must be served and filed within 15 days of the filing of the opinion, the order for publication, or the modification of the opinion if it changes the judgment. No opposition to the petition may be filed unless requested by the court. If the Court does not rule on a petition for rehearing it will be deemed denied "by operation of law" (that is, automatically without any order of any kind from the court). (CRC rule 8.268(b) and 8.268(c).)

The petition should not merely repeat information and argument that was covered by the appeal. Instead, it should focus on specific errors or contradictions in the opinion.

Normally the court does not consider points or issues being raised for the first time on rehearing, with two exceptions: when you are arguing the superior

court or the Court of Appeal did not have the power (jurisdiction) to handle the case, or when the Court of Appeal, in an exercise of its discretion, agrees to consider new materials (such as a new case) that were not included earlier.

Generally, the petition for rehearing should be directed at errors in the opinion: a major misstatement of fact, an error of law, major law or facts that were left out, and/or an important argument that was not included.

The petition for rehearing must be bound with orange covers. The original and four copies should be filed with the Court of Appeal along with Proof of Service (Sample Form C) on all parties; one copy should go to the superior court, and four copies to the Supreme Court. (CRC rules 8.212(c) & 8.40(b)(2)(A).) The Court of Appeal has jurisdiction (power to make rulings in the case) for 30 days from the date the opinion was filed or a request for publication was granted or an opinion was modified that changed the judgment. (CRC rule 8.264(b), 8.268(b).)

Review in the California Supreme Court

The Court of Appeal's decision becomes final 30 days after the filing of its opinion or the grant of publication or modification of the opinion with a change in judgment. A modification stating it does not change the judgment does not add time to the usual 30 days from filing of the opinion. A petition for review in the California Supreme Court must be filed within 10 calendar days after the decision becomes final. The first day starts with the 31st day. Thus, if the Court of Appeal's decision becomes final on a Friday, then Saturday and Sunday are days 1 and 2 of this 10-day period during which the petition for review must be filed. (CRC rules 8.264(b), 8.500(e).)

At the beginning of the petition you should start with a brief statement of the issues to be presented, with an explanation why this case is one the Supreme Court should take for review. (CRC rule 8.504(b).) If produced on a computer, the petition may not exceed 8,400 words or 30 pages if typewritten and must contain a certificate of compliance. The maximum length does not include exhibits and the copy of the Court of Appeal opinion that must be included. (CRC rule 8.504(b)(e).) Petitions for Review should have white covers, while Answer to Petitions for Review should have blue covers. An original and 13 copies must be filed in the Supreme Court. (CRC rule 8.40(b).) A proof of service must be attached to the original and all copies showing service on the division of the Court of Appeal which decided the case, all parties, and the trial judge.

An answer is not required unless the party opposing review wants to add an issue. An answer should be filed within 20 days after the petition is filed. (CRC rules 8.500(a)(2), (e)(4), (f).)

If the Supreme Court grants review, it may put off action while awaiting disposition of another case, or specify issues that are to be briefed. (CRC rules 8.512(c), 8.516(a).) Within 30 days the petitioner must file an opening brief or the same brief it filed in the Court of Appeal. The opposing party then has 30 days to file an answer or a copy of the brief filed in the Court of Appeal. A reply brief, if filed, is due within 20 days. (CRC rule 8.520(a).)

The Second District Court of Appeal does not accept Supreme Court filings. However, the Supreme Court has a clerk's office in the same building as the Court of Appeal in Los Angeles at 300 S. Spring St. Also, filings can be made directly with the Supreme Court at 350 McAllister St., San Francisco, CA, 94102. For further information concerning the Supreme Court, call (213) 830-7570 (Los Angeles) or (415) 865-7000 (San Francisco).

Review by the California Supreme Court is extremely rare. Unlike the Court of Appeal, the Supreme Court is not required to hear all cases filed before it. The review process allows the Supreme Court to choose the cases it wants to hear. Generally, the granting of review is limited to cases that present issues that have never come before the courts before (issues of first impression), or that have an effect on large portion of the California population, or that have conflicting opinions in the various Courts of Appeal throughout the state. While it is possible that the Supreme Court will choose to review your case if you apply for review, you should not expect that they will hear it. In past years, only about 3% of petitions for review have been granted.[11]

The Remittitur

The remittitur signals the end of the case. It is a document that says the review of the case is final and transfers the power of the reviewing courts (Court of Appeal and Supreme Court) back to the superior court so the superior court can follow up on what, if anything, still needs to be done to carry out the decision or decisions made by the reviewing courts. (CRC rule 8.272.)

If no petition for review is filed in the Supreme Court, the remittitur is issued 61 days after the filing of the opinion in the Court of Appeal (unless a request for publication was granted or there was a modification of the opinion resulting in a change in the judgment, in which cases the time is more than 61 days). At that time, the case becomes "final" in the reviewing courts. (CRC rules 8.264(b), 8.272(b), 8.512(c).)

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[11] The Supreme Court of California, "Internal Operating Practices and Procedures of the California Supreme Court," 2003.

If the opinion said you were entitled to costs on appeal, you must file a memorandum of costs in the superior court within 40 days of the mailing of a copy of the remittitur. (CRC rule 8.276(d).) Among other things, this memorandum lists all the costs you are asking the court reimburse.

Appendices

TIMELINE

This timeline should be used as a guide to assist in calculating the proper time for meeting appellate court filing deadlines. The timeline is only a guide; if at any time you are unsure about approaching deadlines or scheduled court actions, call the Court of Appeal at 213-830-7000 or check the Court's website at www.courtinfo.ca.gov.

Filed in Superior court

- Judgment or Appealable Order, Notice of Appeal, filing fee ($655) and clerk's deposit ($100) due when counting from date the judgment/order was file stamped or the notice of entry served:

  If notice of entry served → 60 calendar days after service or mailing

  If notice of entry not served → 180 calendar days after judgment entered.

  Time may be extended up to 180 days by a timely motion to vacate, motion for new trial, motion for judgment notwithstanding the verdict, or motion for reconsideration

- After the filing of the *Notice of Appeal* (can be filed at the same time as the *Notice of Appeal)*:

  Designation of the record and deposit of money →10 calendar days after the *Notice of Appeal* is filed.

  Respondent's designation of additional items →10 days after appellant's designation

  Motion to contest Rule 8.124 election →10 calendar days after election filed

Filed in the Court of Appeal

Civil Case Information Statement → 10 calendar days after the clerk mails you a notice that the form must be filed.

- After getting notice that record is filed with the Court of Appeal:

Appellant's Opening Brief → 30 calendar days OR 70 days after the filing of a rule 8.124 election, if the appeal proceeds without a reporter's transcript.

Respondent's Brief → 30 calendar days after Appellant's Opening Brief is filed.

Appellant's Reply Brief → 20 calendar days after Respondent's Brief is filed.

Petition for Rehearing → 15 calendar days after the filing of the opinion, the order of publication or the modification of opinion if it changes the judgment.

Answer to Petition for Rehearing → 8 calendar days after the filing of the Petition for Rehearing.

COURTS AND PUBLIC LAW LIBRARIES

COURTS

Superior Courts in the Second District

You must file all *Notices of Appeal* and Designations of the Record accompanied by appropriate *Proofs of Service* at any filing window at any branch in the county in which your superior court case occurred. For a listing of the superior court locations in your county, please refer to the court's website at www.courtinfo.ca.gov. It is highly recommended that you file these documents at the appeals section of the superior court in your county. Those locations are as follows.

Los Angeles County:
Clerk, Appeals Section
Los Angeles Superior Court
Stanley Mosk Courthouse
111 North Hill St., Room #111
Los Angeles, CA 90013
(213) 974-5238

Ventura County:
Clerk, Appeals Division
Ventura Superior Court
800 S. Victoria Ave., Room #210 (Window 13)
(If mailing filing, P.O. Box 6489)
Venura, CA 93006
(805) 654-2269

San Luis Obispo County:
Clerk, Appeals Division
1050 Monterey St., Room #220
San Luis Obispo, CA 93408
(805) 781-5677

Santa Barbara County:
1100 Anacapa, 2nd Floor
Santa Barbara, CA 93010
(805) 568-2220

California Court of Appeal
For filing motions and briefs in the Court of Appeal, the address is:

Clerk, Court of Appeal
300 South Spring St., Room # 2217
Los Angeles, CA 90013

California Supreme Court
For filing copies of briefs and petitions for review in the California Supreme Court the address is:

California Supreme Court Second Floor 300 South Spring Street Los Angeles, CA 90013 (213) 830-7570	OR	California Supreme Court 350 McAllister Street San Francisco, CA 94102 (415) 865-7000

PUBLIC LAW LIBRARIES
All four counties in Division Two have County public law libraries. Some, like Los Angeles County, have multiple branch locations. Below is a listing of the main locations for the law libraries, along with their websites from which other locations can be identified. Many of the libraries' websites contain links to other helpful legal research sites.

Los Angeles County:
301 West First Street
Los Angeles, CA 90012
(213) 629-3531
http://lalaw.lib.ca.us/

Ventura County:
800 S. Victoria Ave.
Ventura, CA. 93009
(805) 642-8982
http://www.infopeople.org/ventura/vclaw/

San Luis Obispo County:

County Government Center, Room 125
1050 Montgomery St.
San Luis Obispo, CA 93405
(805) 781-5855
http://www.rain.org/~slolawli/

Santa Barbara County:

Santa Barbara County Courthouse
1100 Anacapa
Santa Barbara, California 93101
(805) 568-2296
http://www.countylawlibrary.org/info.htm

CITING YOUR SOURCES OF INFORMATION

Every statement of law in your brief must be supported by a citation to a case, statute, rule, constitutional provision, treatise, law review article or other source that supports the statement you are making. The citation is usually contained in parentheses at the end of the sentence. (See Sample Form K.) For example, your brief might state: "The elements of a cause of action for negligence are: duty, breach of duty, legal cause, and damages. (*Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463.)"

The California Style Manual is the manual followed by California courts for citation form. You can find the California Style Manual in any law library. However, if you follow the general guidelines in this Appendix, you will probably not need to consult the California Style Manual. The court is mainly interested in finding out where you got the information you have included in the brief. Your brief will be accepted as long as the citations are clear enough to identify your reference sources.

Here are some simple guidelines for proper citation form:

CASES:

You should include the name of the case you are citing, the year it was decided, the volume and page number of the official reporter where the case appears, and the page number in the case that specifically supports the proposition of law you are stating. For example, a California Supreme Court case would be cited as follows: *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1351. The "30 Cal.4th" refers to volume 30 of the fourth series of Official California Reports, which is the official reporter for California Supreme Court opinions. The "1342" refers to the page in volume 30 where the case starts. The "1351" is the page number of the case you are referring to in your brief. Similarly, a California Court of Appeal case would be cited as follows: *Albertson's, Inc. v. Young* (2003) 107 Cal.App.4th 106, 113. The "107 Cal.App.4th" refers to volume 107 of the fourth series of Official California Appellate Reports, which is the official reporter for California Court of Appeal opinions.

Federal court citations follow the same general format. United States Supreme Court cases can be found in three separate reporters: the United States Supreme Court Reporter (abbreviated U.S.), the Supreme Court Reporter (abbreviated S.Ct.), or the Lawyer's Edition Reporter (abbreviated L.Ed.). You may cite to any of these reporters. For example: *Montana v.*

United States (1981) 450 U.S. 544, 551. For other federal courts, your citation should identify which federal circuit or district court decided the case. Federal circuit court cases are cited as follows: *Clicks Billiards, Inc. v. Sixshooters, Inc.* (9th Cir. 2001) 251 F.3d 1252, 1257. "9th Cir." indicates that the case was decided by the Ninth Circuit Court of Appeals, and "F.3d" refers to the third series of the Federal Reporter. Federal district court cases are cited as follows: *Plute v. Roadway Package System, Inc.* (N.D. Cal. 2001) 141 F.Supp.2d 1005, 1010. "N.D.Cal." indicates that the case was decided by the United States District Court for the Northern District of California, and "F.Supp.2d" refers to the second series of the Federal Supplement Reporter.

For cases from other states, you will need to cite to the National Reporter System regional reporter or the state's official reporter. Identify which state court decided the case in your citation. Here is an example: *In re Gatti* (Ore. 2000) 8 P.3d 966, 972-973. "P.3d" refers to the third series of the Pacific regional reporter. Here is another example: *Fischer v. Governor* (N.H. 2000) 749 A.2d 321, 326. "A.2d" refers to the second series of the Atlantic regional reporter.

STATUTES:

For a California statute, give the name of the code and the section number. For example, "Code of Civil Procedure, section 1011" or "Family Code, section 3461." For a federal statute, cite to the United States Code (abbreviated U.S.C.). For example, "28 U.S.C. section 351."

RULES:

For rules, identify the body of rules you are citing and the specific rule number. For example, "Cal. Rules of Professional Conduct, rule 3-500" or "Cal. Rules of Court, rule 8.220(a)."

CONSTITUTIONS:

For constitutions, identify whether you are referring to California or United States Constitution and refer to the specific constitutional provision you are relying on. For example, "California Constitution, article IX, section 2" or "United States Constitution, Fourteenth Amendment."

TREATISES:

For legal treatises, you should indicate the volume number of the treatise you are citing (if it has more than one volume), the author of the treatise, the title, edition and year, and the section and page number that

supports the proposition of law you are stating. For example, "5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706." This is a citation to volume 5 of a treatise by author Witkin entitled Summary of California Law, and the specific portion of the treatise cited is section 607 of the Torts chapter on page 706.

LAW REVIEWS AND JOURNALS:

For law review or journal articles, you should identify the author, title of the article, year it was printed, name of the law review or journal, volume and page number, and the specific page number of the article you are citing to. For example: Volokh, *The Mechanics of the Slippery Slope* (2003) 116 Harv. L.Rev. 1026, 1033. The abbreviation "Harv. L.Rev." stands for Harvard Law Review, and this article appears in volume 116 of the Harvard Law Review at page 1026. If you do not know the proper abbreviation, you may spell out the entire journal name in your citation.

OTHER SOURCES:

If you are citing any other source, do your best to identify the source as accurately as possible, so that someone reading your brief could easily find it and look it up. As a general rule, you should identify the author, title, year, volume,

GLOSSARY (DEFINITIONS OF TERMS)

(Definitions of Terms)

appeal A review by the Court of Appeal of what happened in the superior court to determine whether any mistakes of law occurred and, if so, whether the party who filed the appeal is entitled to have the judgment or order of the court below reversed, vacated, remanded, or otherwise changed. If the ruling was by a judge having power to rule on cases involving $25,000 or less, the appeal is to the appellate division of the superior court; if the ruling was made in the unlimited jurisdiction of the superior court having power to rule on matters involving more than $25,000, the appeal is to the Court of Appeal. If something is "on appeal," it means a *Notice of Appeal* has been filed and the case is in the appeal process at the Court of Appeal.

appellant The person filing the *Notice of Appeal*; the person who did not win at the trial or hearing in the superior court (or other agency having power to make rulings).

appellant's opening brief (abbreviated AOB). The document filed by the appellant that sets out his or her story, the error that occurred and why that error is so important that the rulings of the trial court should be reversed. (See Sample Form K.)

appellant's reply brief (abbreviated ARB). The document filed in response to the respondent's brief. It is limited to issues already raised in the appellant's opening brief (AOB) or added in the respondent's brief.

appellate court In California there are two levels of appellate court: the Court of Appeal and the Supreme Court. The Court of Appeal is the intermediate appellate court—intermediate between the superior court (trial court) and the Supreme Court. Appeals from the unlimited jurisdiction of the superior court with power to rule in cases involving more than $25,000 are generally taken to the intermediate appellate court, which must review each and every appeal filed with it. Review of intermediate appellate court decisions is by petition for review in the Supreme Court, the highest state court in California. The Supreme Court selects which cases it will hear—less than 5 percent of petitions filed. (*See*, **appeal**.)

appendix An "appellant's appendix" (abbreviated AA) is a document prepared by the appellant in place of the clerk's transcript, which is prepared by the superior court. It includes the items that would have been designated had a clerk's transcript been prepared. If respondent and appellant agree to prepare a single appendix together, it is called a "joint appendix" (abbreviated JA). Otherwise the respondent may prepare a "respondent's appendix" (abbreviated RA) if there are additional documents that the respondent thinks should be included in the appellate record but which are not in the AA.

application. See **motion or application**.

brief A written summary of the relevant facts and procedural history of the case, the points and authorities concerning the law, and the argument of the party. (See Sample Form K.) A brief presents the issues you want to address and provides argument about why the superior court's order or judgment should be changed or should be upheld. If your brief does not comply with the rules, it may be returned to you for correction.

California Rules of Court (abbreviated CRC). Rules put out by the Judicial Council, the California Judicial branch's administrative body, for statewide use. They present the procedural requirements and time limits on handling cases in court. (These rules supplement the Code of Civil Procedure.)

cause of action The facts and legal theory supporting a particular claim in a lawsuit, such as a malpractice or contract cause of action.

citation (often shortened to "cite"). A reference to legal authority (such as a case, statute, or treatise) or a reference to the record (such as the clerk's or reporter's transcript).

Civil Case Information Statement A questionnaire that assists the court in determining whether a *Notice of Appeal* is timely and is from an appealable judgment or order. (See Sample Form J.) The form is filled out by each appellant or cross-appellant and filed with the Court of Appeal within 10 days after the clerk mails you a notice that the form must be filed.

clerk's transcript (abbreviated CT). Includes papers that are designated by the parties and that were filed or lodged with the clerk at the trial, all minutes, all written instructions to the jury (given or refused), and all exhibits (admitted or refused). (CRC rule 8.120.) The clerk's transcript provides the Court of Appeal with a picture of the procedural history of the case in the superior court.

codes A systematic collection of laws (statutes) dealing with a particular subject passed by the Legislature, for example the Code of Civil Procedure, Penal Code, etc.

counsel An attorney or attorneys representing an individual or business entity in a lawsuit or giving them legal advice.

CRC See California Rules of Court.

cross-appeal Sometimes, when each party in a case wins on some issues but loses on others, both sides may wish to appeal. The first party to file a *Notice of Appeal* becomes the appellant, and the other party becomes the respondent. When the respondent appeals from the same order or judgment, the second appeal is called a cross-appeal, and the party bringing it is called a cross-appellant. The deadline for bringing a cross-appeal is 20 days after the superior court clerk mails notification of the first appeal. (CRC rule 8.108(e)(1).)

declaration A written statement of facts known to the declarant and sworn to under oath or penalty of perjury. (See Sample Form M.)

default When a party misses a deadline to pay a fee or file papers. The party is told of their default through a Notice of Default sent to the party in the mail. Typically, the Notice of Default allows the party a period of time to remedy the problem (usually 15 days).

defendant The person(s) the suit is being brought against in the Superior court.

demurrer A motion brought by the defendant saying that even if everything in the complaint is considered to be true, it is not sufficient to state a cause of action—that is that anything legally wrong has occurred. See Appendix 2.

discovery The process of finding out facts and developing evidence before trial in order to prove one's case. This occurs at the Superior court. The primary types of discovery are interrogatories, depositions, requests for admission, and requests for production.

discretion The freedom to make decisions within a broad range of reason, so long as they are not arbitrary or capricious.

exhibit A document or object formally presented to the Superior court as evidence. Exhibits can be lodged with the Court of Appeal, but only if they had previously been accepted or denied as evidence at the Superior court.

file-stamped A "file-stamped" document has the court's stamp with the date of filing in the upper right-hand corner making the document an official court document.

findings of fact When there is disagreement about what the facts of a case are, the judge or jury determines what the facts are by making findings of fact. The findings of fact -- for example, that the light was red, not green as the plaintiff alleges -- must be supported by evidence in the record.

frivolous appeal An appeal that is undertaken to harass the respondent or for delay *or* an appeal that is totally without merit.

good cause The reason the applicant should be permitted to do what he is asking to do.

judgment The final ruling of the trial court. Usually this is the end of the case in the trial court. Sometimes if there are many defendants, some of the defendants may get out of the case early, and there may be more than one judgment.

judicial notice Items the court accepts without proof, including well-known and indisputable facts, rules of court, rules of professional conduct, decisional and public statutory law of California, and the definitions of English words and legal expressions.

jurisdiction The authority or the power of the court to act. Generally there are certain things that must be done in order for the court to have jurisdiction. If a court does not have jurisdiction over your case, the case will be dismissed.

motion or application The procedure by which one asks the Court of Appeal to do something or to permit one of the parties to do something. In the appellate court, motions are most commonly used to augment (add to) the record, ask for extensions of time, and take judicial notice. The opposing parties may file an opposition to the motion, which is usually ruled on by a single judge. The motion is held for opposition 10 days from the date of service if personally served, or 15 days if served by mail. Applications are used for more routine matters, most commonly requests for extension of time to file a brief. (CRC rules 8.50, 8.63.) However, the Second District does not differentiate between motions and applications.

Notice of Appeal (abbreviated NOA) A notice that must be filed in a timely manner to begin the process of appeal. The notice is filed by the aggrieved party (the person who "lost") in the Superior court case and expresses that party's desire to have the Court of Appeal reexamine all or part of the Superior court case for errors in law. (See Sample Form A.)

opinion The final written decision of the Court of Appeal, including the reasons for that decision, the facts on which it is based, and instructions for any further actions.

order A court ruling on a motion or application or other matter.

party One who brings a lawsuit or has a lawsuit brought against him. One who takes part in a legal transaction.

plaintiff The party bringing the lawsuit in the trial court.

points and authorities A document that sets out each legal proposition, issue, or argument (the point) the party wishes to make, supported by citations to cases, statutes, or other sources (the authorities). Points and authorities (or "Ps & As") accompany motions, giving legal reasons why the motion should be granted or denied. (See Sample Form L.)

Proof of Service (abbreviated POS). When papers are served (see definition of "service" below), the *Proof of Service* is attached to the papers and tells what papers were served, to whom they were sent or delivered, the date of service, and who served the papers. (See Sample Form C.) If service is in person, the *Proof of Service* also states who actually got the papers and when. Whenever a paper is to be served on a party, the service should be made on the person's attorney if he or she has one.

pro per, pro se, in propria persona Self-represented.

remittitur A document, issued by the Court of Appeal to the superior court that returns jurisdiction to the superior court after an appeal and shows the final judgment of the Court of Appeal.

reporter's transcript (abbreviated RT). A transcript of everything that is said in the courtroom while court is in session, which the court reporter takes down and types.

respondent The person responding to the opening brief; the person who won in the trial court.

respondent's brief (abbreviated RB) A brief filed by the party who "won" in the superior court that responds to the issues raised in the appellant's opening brief with arguments why the rulings the trial court made were correct or, if they were in error, why the error was harmless.

serve and file All papers filed in the superior court or the Court of Appeal, unless otherwise noted, are to be accompanied by proof of prior service of a copy of the paper on the attorney for each party who is represented by a separate attorney or on the individual person if he or she is self-represented. Whenever the paper is required to be given or served on a party, the service should be made on the party's attorney if he or she has one.

service The process of providing exact copies of the documents filed in court to the other parties involved in the case. It may be done in person, in which case the notice must be handed to the person himself or to a person designated to receive service, or it may be done by mail. Service must be done by someone over the age of 18 who is not a party to the case. The original signed Proof of Service is attached to the back of the original document being filed and tells who got the notice, what date it was served

and who served it. If service is in person, it will also give the name of the person taking the documents and the time and place of service. The court does not serve papers for you. **Everything filed with the Court of Appeal, unless otherwise noted, must be accompanied by a Proof of Service. (See Sample Form C.)**

standard of review The rules or guidelines used by the Court of Appeal to determine whether the Superior court erred in making a particular ruling. (See Chapter 5)

statutes Laws enacted by the state Legislature or by Congress.

stipulation A written agreement between the parties. (See Chapter 2, footnote 1.)

submit When all of the briefing is completed and oral argument, if requested, has been heard the case is submitted to the court which means it is ready for decision. The next thing that will happen is the issuance of an opinion within 90 days of the last day of the month in which the case was submitted. After the case is submitted the court will not accept any further information or argument on the case.

superior court The trial court. The court of limited jurisdiction handles civil cases seeking $25,000 or less; the court of unlimited jurisdiction handles all other civil cases. The appellate division of the superior court handles appeals from decisions made in the court of limited jurisdiction.

summary judgment When there is no issue of material fact the applicant may bring a motion for summary judgment on the basis he or she can prevail as a matter of law without the need for a trial.

table of authorities A listing of all of the legal cases, statutes and secondary authority used in the brief with the page on which each was used.

treatise A legal textbook setting out the principles of a given subject, such as a treatise on contracts.

BIBLIOGRAPHY

California Civil Appellate Practice (Cont.Ed.Bar 3rd ed. 1996)

California Civil Writ Practice (Cont.Ed.Bar 3rd ed. 1996)

4-5 Cal.Jur. 3d (1998) Appellate Review

California Rules of Court: Appellate Rules, Rules 1-49.5, primarily 1-29.9; 40-49.5.

California Style Manual (4th ed. 2000).

Code of Civil Procedure, section 904 et seq.

Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2002)

Matthew Bender, Calif. Forms of Pleading and Practice, Vol. 5 "Appeal"

San Diego County Bar Association, Appellate Court Committee, California Appellate Practice Handbook, (7th ed. 2001)

West's California Rules of Court: State, Local Rules of the Second Appellate District and Internal Operating Practices and Procedures of the Second Appellate District.

9 Witkin, Cal. Procedure (4th ed. 1996) Appeal

PREPARING AN APPENDIX

Make copies of the documents that are related to the appeal. You cannot include any documents that were not part of the superior court proceedings. Photocopy on one side only, on recycled paper.

The appendix must include the following items:

- A chronological index of all of the items in the appendix (Sample Form H).
- An alphabetical index of all of the items in the appendix (Sample Form I).
- All documents necessary for the consideration of issues in the appeal.
- The judgment or order being appealed and any notice of its entry, any notice of intention to move for a new trial; any motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration and the rulings thereon; and any order on such motion and any notice of its entry.
- The *Notice of Appeal*
- The notice to prepare the clerk's and reporter's transcripts, or the settled statement, or *Notice Designating Record on Appeal* form
- Any notice of election to proceed by an appendix under CRC rule 8.124 and, for a joint appendix, the stipulation designating its contents
- Any stipulation to proceed by agreed statement under CRC rule 8.134, along with the agreed statement; and any settled statement approved by the court under CRC rule 8.137.

Arrange the documents in the order in which they were filed in the superior court (chronologically), and number the pages one after the other, beginning with page 1.

Make a chronological index of all documents by listing them in the order filed, with the first page number for each document and, if there is more than one volume, the volume number. (Sample Form H.)

Make an alphabetical index of all the documents by listing them in alphabetical order, with the first page number of each document and, if there is more than one volume, the volume number. (Sample Form I.)

Prepare a cover (Sample Form G). The cover should state the case title and superior court case number, the Court of Appeal number, the name of each of the participating Superior court judges, the names and addresses of appellate counsel for each party or any self-represented party, the volume number, and the inclusive page numbers (for example, 1-246) of that volume.

The cover should be the appropriate color:

Appellant's Appendix – Green
Respondent's Appendix – Yellow
Appellant's Reply Appendix - Tan
Joint Appendix – Cream (CRC rules 8.124(c), 8.144(a), (b), (c).)

Put the materials together: cover, chronological index, alphabetical index, and documents in chronological order.

Make the necessary number of copies (one for each party, the original for the court, and one for yourself), and bind the original and each of the copies into transcript (book) form. The appendix should be bound on the left side, in volumes of 300 pages or less. (CRC rules 8.124(c), 8.144(c)(1).) The appendix may not be bound with the brief.

SUMMARY JUDGMENT AND DEMURRER

Demurrers and summary judgments represent special circumstances that necessitate slightly different procedural requirements throughout the appellate process. The three most important differences occur in determining the appealability of your appeal, identifying the order or judgment from which you can appeal, and in identifying the facts in the process of writing the brief. Those differences are discussed below.

Appealability

Demurrer If a plaintiff files a case in superior court and the facts in the complaint do not state a cause of action (that is, they give no legal basis for the defendant to be held responsible), the defendant may bring a **demurrer** asking that the case be dismissed. If a cause of action has been stated, the superior court overrules the demurrer and the case continues on. If no cause of action has been stated but the court believes there may be more facts that will enable the plaintiff to state a cause of action, the court sustains the demurrer "with leave to amend," in which case the plaintiff can restate his or her case. If the court believes there is no cause of action, the court sustains the demurrer without leave to amend, and the case is dismissed. This ruling is an order but, by statute, may be appealed. (Code of Civil Procedure, section 581d.) In order for the order to be appealable, the order must say the case is dismissed (for more information, refer back to Chapter 1.) On appeal, the Court of Appeal looks only at the complaint and assumes all of the factual allegations are true in order to rule on whether the complaint states a cause of action. Thus, the Statement of Facts in the opening brief should be based on the facts as alleged in the complaint.

Summary judgment In a **summary judgment**, one party may contend there are no facts that need to be decided, or the parties may agree on what the facts are. Either side (and sometimes both sides) may bring a motion for summary judgment arguing that they are entitled to a judgment in their favor without a trial. Unless the parties agree that there is no genuine dispute about material facts in the case, the court must determine whether there are any such disputed facts. Unlike a demurrer, the court is not limited to the allegations of the complaint, and it will review sworn statements or other evidence submitted by the parties in writing. The court will then decide if there is conflicting evidence in the record as to the material facts. If so, the summary judgment motion should be denied because the evidentiary conflict must be resolved in a trial. If not, the court can grant summary judgment in

favor of either of the parties. For example, if all the evidence shows that the light was green, the court does not need to hold a trial to determine whether the light was red or green.

A trial court's ruling granting summary judgment is an order. A party seeking to appeal the ruling must first get a judgment based on that ruling (again, for more information, refer back to Chapter 1.) In looking at the facts on appeal, the question is exactly the same as the issue before the trial court: Is there a genuine dispute as to material facts that must be resolved at a trial? If there is such a factual dispute, summary judgment should not have been granted, the judgment should be reversed, and the case should go back to the trial court for a trial. Thus, if you are the appealing party, your Statement of Facts should emphasize the evidence in the record that you believe conflicts with the trial court's ruling. With appropriate page number citations to the record, you should point out the evidence which demonstrates there is a factual conflict that must be resolved in a trial. If there are no factual disputes, you should argue that the trial court incorrectly applied the law in granting summary judgment to the opposing side.

Statement of the facts in the brief

Your statement of facts will be different if the case was dismissed without a trial. In such a case, the facts have not yet been established by the trial court. Demurrers and summary judgments are two types of pretrial motions that may cause a case to be dismissed without a full trial. Because cases are commonly dismissed on demurrer or summary judgment, we shall explain a little about how to write the statement of facts when appealing from such a dismissal.

Demurrer *If a plaintiff files a case in superior court and the facts in the complaint do not state a cause of action (that is, they give no legal basis for the defendant to be held responsible), the defendant may bring a demurrer asking that the case be dismissed. If a cause of action has been stated, the superior court overrules the demurrer and the case continues on. If no cause of action has been stated but the court believes there may be more facts that will enable the plaintiff to state a cause of action, the court sustains the demurrer "with leave to amend," in which case the plaintiff can restate his or her case. If the court believes there is no cause of action, the court sustains the demurrer without leave to amend, and the case is dismissed. This ruling is an order but, by statute, may be appealed. (Code of Civil Procedure, section 581d.) In order for the order to be appealable, the order must say the case is dismissed (for more information, refer back to*

Chapter 1.) On appeal, the Court of Appeal looks only at the complaint and assumes all of the factual allegations are true in order to rule on whether the complaint states a cause of action. Thus, the Statement of Facts in the opening brief should be based on the facts as alleged in the complaint.

Summary judgment *In a summary judgment, one party may contend there are no facts that need to be decided, or the parties may agree on what the facts are. Either side (and sometimes both sides) may bring a motion for summary judgment arguing that they are entitled to a judgment in their favor without a trial. Unless the parties agree that there is no genuine dispute about material facts in the case, the court must determine whether there are any such disputed facts. Unlike a demurrer, the court is not limited to the allegations of the complaint, and it will review sworn statements or other evidence submitted by the parties in writing. The court will then decide if there is conflicting evidence in the record as to the material facts. If so, the summary judgment motion should be denied because the evidentiary conflict must be resolved in a trial. If not, the court can grant summary judgment in favor of either of the parties. For example, if all the evidence shows that the light was green, the court does not need to hold a trial to determine whether the light was red or green.*

A trial court's ruling granting summary judgment is an order. A party seeking to appeal the ruling must first get a *judgment* based on that ruling (again, for more information, refer back to Chapter 1.) In looking at the facts on appeal, the question is exactly the same as the issue before the trial court: Is there a genuine dispute as to material facts that must be resolved at a trial? If there is such a factual dispute, summary judgment should not have been granted, the judgment should be reversed, and the case should go back to the trial court for a trial. Thus, if you are the appealing party, your Statement of Facts should emphasize the evidence in the record that you believe conflicts with the trial court's ruling. With appropriate page number citations to the record, you should point out the evidence which demonstrates there is a factual conflict that must be resolved in a trial. If there are no factual disputes, you should argue that the trial court incorrectly applied the law in granting summary judgment to the opposing side.

Sample Forms

Sample Forms and Instructions

A - Notice of Appeal
B - Notice of Entry of Judgment
C - Proof of Service by Mail
D - Application for Waiver of Court Fees and Costs
E - Order on Application for Waiver of Court Fees and Costs
F - Notice Designating Record on Appeal
G - Cover for Rule 8.124 Appendix
H - Chronological Index for Rule 8.124 Appendix
I - Alphabetical Index for Rule 8.124 Appendix
J - Civil Case Information Statement
K - Sample Brief
L - Memorandum of Points and Authorities for Motion to Augment
M - Declaration in Support of Motion to Augment
N - Motion to Augment Record on Appeal (Documents Attached)
O - Motion to Augment Record on Appeal (Documents Requested)
P - Motion to Augment Record on Appeal with Reporter's Transcript
Q - Stipulation to Extend Time to File Brief
R - Application for Extension of Time to File Brief
S - Petition for Rehearing
T - Abandonment of Appeal (Unlimited Civil Case)
U - Request for Dismissal of Appeal (Civil Case)
V - Certificate of Interested Entities or Persons

Sample Form A

NOTICE OF APPEAL - INSTRUCTIONS

In order to appeal you must be "aggrieved". To be "aggrieved" the lower court or administrative agency must have entered a judgment or order that affects your legal rights or costs you money. Usually you must have been a party in the case in the lower court. You may not appeal on behalf of a spouse, child or other relative (unless you are a legally appointed guardian), or a friend. The notice of appeal is filed in the superior court and should be accompanied by a check, money order or cash of $655.00, which is the filing fee. Checks or money orders should be made payable to "Clerk, Court of Appeal". A second check or money order for $100.00 made payable to "Clerk of the Superior Court" is a deposit for the clerk's transcript. This second check need not be included if you, as appellant, plan to prepare an appendix under rule 8.124. If you do not have the money for the filing fee, an application for waiver of court fees and costs must accompany the notice of appeal. (See Sample Form D, for Application for Waiver of Court Fees and Costs.)

The Notice of Appeal form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at http://www.courtinfo.ca.gov/cgi-bin/forms.cgi. Select "Appellate" forms, then click on Form APP-002.

Filling out the Notice of Appeal form:

Caption

(1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.

(2) In the "Superior Court of California, County of" area of the form, specify the county, address, and branch name of the superior court that made the order or judgment you are appealing.

(3) In the next box on the form marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the superior court case caption.

(4) Check the appropriate box for "Notice of Appeal" or "Notice of Cross-Appeal."

(5) In the "CASE NUMBER:" box immediately to the right, write the superior court case number.

Page 1

Entry 1. State the date of the judgment or order you are appealing and check the appropriate box to describe the order or judgment. If it is not listed, check the "Other" box, describe the order you are appealing, and specify the code section that authorizes the appeal.

Entry 2. Provide the requested information only if you are filing a cross-appeal.

Sample Form A

Execution of Form. Write the date you are signing the Notice of Appeal, type or print your name legibly on the line at the bottom left of the page, and sign your name at the bottom right.

Page 2 - Proof of Service

Have someone over the age of 18 who is not a party to the action serve the Notice of Appeal and fill out the Proof of Service on page 2 of the form. See instructions accompanying Sample Form C.

File:	Original plus fees in Superior Court Bring an extra copy to be file-stamped for your file
Serve:	All counsel All self-represented parties

Sample Form A

APP-002

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional)*: E-MAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
☐ **NOTICE OF APPEAL** ☐ **CROSS-APPEAL** **(UNLIMITED CIVIL CASE)**	CASE NUMBER:

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (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 of 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)

Form Approved for Optional Use
Judicial Council of California
APP-002 [Rev. January 1, 2007]

NOTICE OF APPEAL/CROSS-APPEAL (UNLIMITED CIVIL CASE)
(Appellate)

Cal. Rules of Court, rule 8.100
www.courtinfo.ca.gov

Sample Form A

Sample Form A

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)

Sample Form B

NOTICE OF ENTRY OF JUDGMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF [Name of County]

[Name of Plaintiff from Superior Court case title], Plaintiff, v. [Name of Defendant from Superior Court case title], Defendant.	Superior Court No. [Number from Superior Court case] NOTICE OF ENTRY OF JUDGMENT

On [date judgment filed in superior court], judgment was entered on behalf of [name of prevailing party from the Superior Court action]. Attached hereto is a true and accurate copy of that judgment.

DATED:

By:_____

Note: Attach a copy of judgment or order and Proof of Service

File: Original in Superior Court with Proof of Service.

Serve: All counsel
All self-represented parties

The above form is a sample only, the actual document must comply with CRC rules 2.100-2.119

.

Sample Form C

PROOF OF SERVICE BY MAIL
INSTRUCTIONS FOR SUPERIOR COURT
OR COURT OF APPEAL

Each document you prepare must be served on all counsel and self-represented parties in your case. The document must be served by mail or hand-delivered by someone who is over the age of 18, not a party to the appeal, and a resident of the county where the mailing or delivery occurred.

This sample form is for service by mail, which is the easiest and most common method of service. If you wish to have the document delivered in person instead of mailed, you may adapt this sample form by replacing line 3 with language indicating the name of the person(s) to whom the document was delivered, the date and time of delivery, and the address where the delivery occurred. (For sample language for a hand-delivery, see page 4, line 3b of Sample Form F.)

All documents must be served on all attorneys of record and any self-represented parties. **If the document is a brief, you must also serve one copy on the Superior Court and five copies on the California Supreme Court. If the document is a brief or petition, you must serve one copy on any public officer or agency required to be served by CRC rule 8.29.**

How to serve a document:

Make a copy of your document for each person or entity you must serve and enough copies for filing with the Court of Appeal. The person doing the mailing must complete the Proof of Service and attach an unsigned copy to each copy of the document being served. The person doing the service should mail a copy of the document to each person listed in the Proof of Service by depositing it in the United States mail with postage fully prepaid. The envelopes may be deposited in a United States post office or mailbox. The original document cannot be filed with the court until service has been completed by mailing the copies. After the envelopes have been deposited into the mail, the original Proof of Service should be signed and attached to the original document for filing.

Filling out the Proof of Service form:

Fill out the case name, Court of Appeal case number, and Superior Court case number. If you are filing the document in the Superior Court, use the Superior Court case name. If you are filing in the Court of Appeal, use the Court of Appeal case name.

Fill out the name of the non-party over the age of 18 who will be doing the mailing.

On line 2, specify the residential or business address of the person doing the mailing, and check the appropriate line for residence or business.

On line 3, specify the date of the mailing, the name of the document being served (for example, "Appellant's Opening Brief"), and the place where the mailing took place. List the full names and addresses of all the parties or their attorneys to whom the documents are being mailed. If the

Sample Form C

document is a brief, you must also serve the Superior Court, the California Supreme Court (5 copies). If the document is a brief or petition, you must serve any public officer or agency who must be served under CRC rule 8.29. These addresses must also be listed on the Proof of Service.

Date the Proof of Service, type or print the name of the person doing the mailing, and include the signature of the person doing the mailing.

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties.

Sample Form C

PROOF OF SERVICE BY MAIL

CASE NAME: _____
COURT OF APPEAL CASE NUMBER: _____
SUPERIOR COURT CASE NUMBER: _____

I, _____ *(specify name of person doing service)*, declare as follows:

1. At the time of service, I was at least 18 years of age and not a party to this legal action. I am a resident or employed in the county where the within-mentioned service occurred.

2. My residence or business address is *(specify)*:

_____
_____
_____ ___ residence ___ business

3. On _____ *(specify date)*, I served the _____ *(specify document)* by United States mail as follows: I enclosed a copy in separate envelopes, with postage fully prepaid, addressed to each individual addressee named below, and I deposited each sealed envelope with the United States Postal Service in _____, California, for delivery as follows:

_____
_____
_____
(List addresses and send 1 copy to each party)

California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(5 copies of briefs only)

_____ Superior Court
_____
_____
(List address of Superior Court and serve 1 copy of briefs only)

_____
_____
_____
(List address of any public officer or agency required to be served by CRC rule 8.29 and serve 1 copy of briefs only.)

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)*

Sample Form D

APPLICATION FOR WAIVER OF COURT FEES AND COSTS - INSTRUCTIONS

When you file your notice of appeal, there is a filing fee of $655.00 which is due at the time of filing. A deposit of $100.00 needs to be paid to the Superior Court if you want it to prepare a clerk's transcript for you. If you feel you cannot afford these fees, you may fill out an Application for Waiver of Court Fees and Costs. Generally, you would file the application in the Superior Court when you file your notice of appeal. If you did not file the application in Superior Court you may file it in the Court of Appeal. Submit the application to the court along with the Order on Application for Waiver of Court Fees and Costs (Sample Form E).

The Application for Waiver of Court Fees and Costs form and the Information Sheet on Waiver of Court Fees and Costs are available online in Adobe Acrobat PDF format and the form may be filled out electronically for free at http://www.courtinfo.ca.gov/cgi-bin/forms.cgi. Select "General Legal" forms, then click on Form FW-001 for the form or Form FW-001-INFO for the information sheet.

Filling out the Application for Waiver of Court Fees and Costs form:

Caption

(1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.

(2) In the next box down, specify the Superior Court, address, and branch name of the court that made the order or judgment you are appealing.

(3) In the "CASE NUMBER:" next box on the form marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the Superior Court case caption.

(4) In the box immediately to the right of the preprinted caption "APPLICATION FOR WAIVER OF COURT FEES AND COSTS", write the Superior Court case number for your case, and the Court of Appeal number if you have one.

Entries

Entry 1. Check box "a" if you can't pay any of the court fees or costs. Check box "b" if you can pay part of the court fees or costs, and then write down what you can pay.

Entry 2. Write your street address, city, state, zip code and telephone number where you can be reached during the day.

Entry 3. Write your occupation, employer and employer's address. If you do not have a job, write "unemployed". If you have a spouse and your spouse has a job, write your spouse's occupation, employer and employer's address. If your spouse does not have a job, write "unemployed".

Sample Form D

Entry 4. Check the box if you are receiving financial assistance, then check the box or boxes next to the type of assistance you are receiving.

Entry 5. If you checked box 4 you have to fill out one of three boxes in entry 5. Check only one box. If you check box "a" you must write your Medi-Cal number. If you check box "b" you must write your Social Security number and your birth date. If you check box "c" you need to attach verification documents which are listed on the Information Sheet on Waiver of Court Fees and Costs. After you have checked one of these boxes, you are done. Go to the bottom of the form and date and sign it, you do not need to fill out anything else.

Entry 6. If you did not check box 4, you must complete entry 6. Check the box next to question 6 if your gross monthly income is less than the amount shown on the Information Sheet on Waiver of Court Fees and Costs accompanying the form. If you check this box, skip entry 7, fill out entries 8, 9a, 9d, 9f, and 9g on page two of the form, then date the form and fill out your name and signature on the bottom of page one.

Entry 7. If you did not check box 4 or box 6, you must complete entry 7. Check this box if your income is not enough to pay for the common necessaries of life for yourself and your family and still pay court fees and costs. If you check this box, you have to complete page two of the form in its entirety, then date and sign the bottom.

At the bottom of page 1, write the current date, type or print your name legibly, and sign the form.

Sample Form D

INFORMATION SHEET ON WAIVER OF COURT FEES AND COSTS

FW-001-INFO

(California Rules of Court, rules 3.50–3.63)

If you have been sued or if you wish to sue someone, and if you cannot afford to pay court fees and costs, you may not have to pay them if:

1. You are receiving **financial assistance** under one or more of the following programs:
   - SSI and SSP (Supplemental Security Income and State Supplemental Payments Programs)
   - CalWORKs (California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families, formerly AFDC, Aid to Families with Dependent Children Program)
   - The Food Stamp Program
   - County Relief, General Relief (G.R.), or General Assistance (G.A.)

   If you are claiming eligibility for a waiver of court fees and costs because you receive financial assistance under one or more of these programs, and you did not provide your Medi-Cal number or your social security number and birthdate, you must produce documentation confirming benefits from a public assistance agency or one of the following documents, unless you are a defendant in an unlawful detainer action:

PROGRAM	VERIFICATION
SSI/SSP	Medi-Cal Card or Notice of Planned Action or SSI Computer-Generated Printout or Bank Statement Showing SSI Deposit or "Passport to Services"
CalWORKs/TANF (formerly known as AFDC)	Medi-Cal Card or Notice of Action or Income and Eligibility Verification Form or Monthly Reporting Form or Electronic Benefit Transfer Card or "Passport to Services"
Food Stamp Program	Notice of Action or Food Stamp ID Card or "Passport to Services"
General Relief/General Assistance	Notice of Action or Copy of Check Stub or County Voucher

–OR –

2. Your total gross **monthly household income** is less than the following amounts:

NUMBER IN FAMILY	FAMILY INCOME
1	$ 1,020.83
2	1,375.00
3	1,729.16
4	2,083.33
5	2,437.50

NUMBER IN FAMILY	FAMILY INCOME
6	$ 2,791.66
7	3,145.83
8	3,500.00
Each additional	354.16

–OR–

3. Your income is not enough to pay for the common **necessaries** of life for yourself and the people you support and also pay court fees and costs.

To apply, fill out the* Application for Waiver of Court Fees and Costs *(form FW-001) available from the clerk's office. If you claim no income, you may be required to file a declaration under penalty of perjury. Prison and jail inmates may be required to pay up to the full amount of the filing fee.

If you have any questions and cannot afford an attorney, you may wish to consult the legal aid office, legal services office, or lawyer referral service in your county (listed in the Yellow Pages under "Attorneys").

If you are asking for review of the decision of an administrative body under Code of Civil Procedure section 1094.5 (administrative mandate), you may ask for a transcript of the administrative proceedings at the expense of the administrative body.

American LegalNet, Inc.
www.USCourtForms.com

Sample Form D

Sample Form D

— THIS FORM MUST BE KEPT CONFIDENTIAL —

FW-001

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:	***FOR COURT USE ONLY***
TELEPHONE NO.: FAX NO. *(Optional)*: E-MAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	
APPLICATION FOR WAIVER OF COURT FEES AND COSTS	CASE NUMBER:

I request a court order so that I do not have to pay court fees and costs.

1. a. ☐ I am ***not*** able to pay any of the court fees and costs.
   b. ☐ I am able to pay ***only*** the following court fees and costs *(specify)*:

2. My current street or mailing address is *(if applicable, include city or town, apartment no., if any, and zip code)*:

3. a. My occupation, employer, and employees address are *(specify)*:

   b. My spouse's occupation, employer, and employees address are *(specify)*:

4. ☐ I am receiving financial assistance under one or more of the following programs:
   a. ☐ **SSI and SSP:** Supplemental Security Income and State Supplemental Payments Programs
   b. ☐ **CalWORKs:** California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families (formerly AFDC)
   c. ☐ **Food Stamps:** The Food Stamp Program
   d. ☐ **County Relief, General Relief (G.R.), or General Assistance (G.A.)**

5. *If you checked box 4, you must check and complete* ***one of the three boxes below, unless you area defendant in an unlawful detainer action. Do not check more than one box.***
   a. ☐ *(Optional)* My Medi-Cal number is *(specify)*:
   b. ☐ *(Optional)* My social security number is *(specify)*:
   ☐☐☐ - ☐☐ - ☐☐☐☐ and my date of birth is *(specify)*:
   [*Federal law does not require that you give your social security number. However, if you don't give your social security number, you must check box c and attach documents to verify the benefits checked in item 4.*]
   c. ☐ I am attaching documents to verify receipt of the benefits checked in item 4, if requested by the court.
   [*See Form FW-001-INFO,* Information Sheet on Waiver of Court Fees and Costs, *available from the clerk's office, for a list of acceptable documents.*]

[*If you checked box 4 above, skip items 6 and 7, and sign at the bottom of this side.*]

6. ☐ My total gross monthly household income is less than the amount shown on the *Information Sheet on Waiver of Court Fees and Costs* available from the clerk's office.

[*if you checked box 6 above, skip item 7, complete items 8, 9a, 9d, 9f, and 9g on the back of this form, and sign at the bottom of this side.*]

7. ☐ My income is not enough to pay for the common necessaries of life for me and the people in my family whom I support and also pay court fees and costs. **[*If you check this box, you must complete the back of this form.*]**

WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.

I declare under penalty of perjury under the laws of the State of California that the information on both sides of this form and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

(Financial information on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
FW-001 [Rev. January 1, 2007]

APPLICATION FOR WAIVER OF COURT FEES AND COSTS
(Fee Waiver)

Government Code, § 68511.3
www.courtinfo.ca.gov

Sample Form D

American LegalNet, Inc.
www.USCourtForms.com

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

FINANCIAL INFORMATION

8. ☐ My pay changes considerably from month to month. **[*If you check this box, each of the amounts reported in item 9 should be your average for the past 12 months.*]**

9. **MY MONTHLY INCOME**
   a. My gross monthly pay is: . . . . . $ _____
   b. **My payroll** deductions **are *(specify purpose and amount)*:**
      (1) _____ $ _____
      (2) _____ $ _____
      (3) _____ $ _____
      (4) _____ $ _____
      My TOTAL payroll deduction amount is: $ _____
   c. My monthly take-home pay is
      (a. minus b.): . . . . . $ _____
   d. Other money I get each month is *(specify **source** and **amount;** include spousal support, child support, parental support, support from outside the home, scholarships, retirement or pensions, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest or royalty, trust income, annuities, net business income, net rental income, reimbursement of job-related expenses, and net gambling or lottery winnings)*:
      (1) _____ $ _____
      (2) _____ $ _____
      (3) _____ $ _____
      (4) _____ $ _____
      The TOTAL amount of other money is: $ _____
      (If more space is needed, attach page labeled Attachment 9d.)
   e. **MY TOTAL MONTHLY INCOME IS**
      (c. plus d.): . . . . . $ _____
   f. Number of persons living in my home: _____
      Below list all the persons living in your home, including your spouse, who depend in whole or in part on you for support, or on whom you depend in whole or in part for support:

	Name	Age	Relationship	Gross Monthly Income
(1)				$
(2)				$
(3)				$
(4)				$
(5)				$

      The TOTAL amount of other money is: $ _____
      (If more space is needed, attach page labeled Attachment 9f.)
   g. **MY TOTAL GROSS MONTHLY HOUSEHOLD INCOME IS**
      (a. plus d. plus f): . . . . . $ _____

10. **I own or have an interest in the following property:**
   a. Cash . . . . . $ _____
   b. Checking, savings, and credit union accounts (list *banks)*:
      (1) _____ $ _____
      (2) _____ $ _____
      (3) _____ $ _____
      (4) _____ $ _____
   c. Cars, other vehicles, and boats *(list make, year, fair market value (FMV), and loan balance of each)*:

	Property	FMV	Loan Balance
(1)		$	$
(2)		$	$
(3)		$	$

   d. Real estate *(list address, estimated fair market value (FMV), and loan balance of each property)*:

	Property	FMV	Loan Balance
(1)		$	$
(2)		$	$
(3)		$	$

   e. Other personal property — jewelry, furniture, furs, stocks, bonds, etc. *(list separately)*:
      $ _____

11. **My monthly expenses not already listed in item 9b above are the following:**
   a. Rent or house payment & maintenance $ _____
   b. Food and household supplies . . . . . $ _____
   c. Utilities and telephone . . . . . $ _____
   d. Clothing . . . . . $ _____
   e. Laundry and cleaning . . . . . $ _____
   f. Medical and dental payments . . . . . $ _____
   g. Insurance (life, health, accident, etc.) $ _____
   h. School, child care . . . . . $ _____
   i. Child, spousal support (prior marriage) $ _____
   j. Transportation and auto expenses (insurance, gas, repair) . . . . . $ _____
   k. Installment payments *(specify **purpose** and **amount**)*:
      (1) _____ $ _____
      (2) _____ $ _____
      (3) _____ $ _____
      The TOTAL amount of monthly installment payments is: . . . . . $ _____
   l. Amounts deducted due to wage assignments and earnings withholding orders: $ _____
   m. Other expenses *(specify)*:
      (1) _____ $ _____
      (2) _____ $ _____
      (3) _____ $ _____
      (4) _____ $ _____
      (5) _____ $ _____
      The TOTAL amount of other monthly expenses is: . . . . . $ _____
   n. **MY TOTAL MONTHLY EXPENSES ARE**
      (add a. through m.): . . . . . $ _____

12. Other facts that support this application are *(describe unusual medical needs, expenses for recent family emergencies, or other unusual circumstances or expenses to help the court understand your budget; if more space is needed, attach page labeled Attachment 12)*:

WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.

Sample Form E

ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS - INSTRUCTIONS

This form is the order from the court either granting or denying your request to waive fees. The court fills out most of this form. The only parts you will fill out are the caption and entries 1-3. **[Note: The Court of Appeal can only waive the Court of Appeal filing fee of $655.00.]** Submit this form to the court along with your Application for Waiver of Court Fees and Costs.

The form is also available online in Adobe Acrobat PDF format and may be filled out electronically for free at http://www.courtinfo.ca.gov/cgi-bin/forms.cgi. Select "General Legal" forms, then click on Form FW-003.

Filling out the Order on Application for Waiver of Court Fees and Costs form:

Caption

(1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.

(2) In the next box down, specify the Superior Court, address, and branch name of the court that made the order or judgment you are appealing.

(3) In the next box down marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the Superior Court case caption.

(4) In the "CASE NUMBER:" box immediately to the right of the preprinted caption "ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS", write the Superior Court case number for your case, and the Court of Appeal number if you have one.

Entries 1-3

Entry 1. Indicate the date that your Application for Waiver of Court Fees and Costs was filed with the court. Check the box if there was a previous fee waiver order, and indicate the date it was issued.

Entry 2. Print your name.

Entry 3. Check the box next to entry 3 and the box indicating the application is granted "in whole." If you cannot afford to pay any court fees and costs, check box 3a. Otherwise, check box 3b and indicate what fees and costs you are asking to have waived. If you are asking that the reporter's transcript fees be waived, check box (9) "Other" and write in "Reporter's transcript fees". [Please note: Number (7) "Reporter's Fees (valid for 60 days)" covers only that portion of the fees for taking the notes in the courtroom. This will not get you a waiver of the reporter's transcript fees.]

Sample Form E

FW-003

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	CASE NUMBER:
ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS	

1. The application was filed on *(date):* ☐ A previous order was issued on *(date):*
2. The application was filed by *(name):*
3. ☐ IT IS ORDERED that the application is **granted** ☐ in whole ☐ in part *(complete item 4 below).*
   a. ☐ **No payments.** Payment of all the fees and costs listed in California Rules of Court, rule 3.61, **is waived.**
   b. ☐ **The applicant shall pay** all the fees and costs listed in California Rules of Court, rule 3.61, EXCEPT the following:
      (1) ☐ Filing papers.
      (2) ☐ Certification and copying.
      (3) ☐ Issuing process and certification.
      (4) ☐ Transmittal of papers.
      (5) ☐ Court-appointed interpreter.
      (6) ☐ Sheriff and marshal fees.
      (7) ☐ Reporter's fees* *(valid for 60 days).*
      (8) ☐ Telephone appearance (Gov. Code, § 68070.1 (c))
      (9) ☐ Other *(specify code section):*

      Reporter's fees are per diem pursuant to Code Civ. Proc., §§ 269, 274c, and Gov. Code, §§ 69947, 69948, and 72195.
   c. **Method of payment.** The applicant shall pay all the fees and costs when charged, EXCEPT as follows:
      (1) ☐ Pay *(specify):* percent. (2) ☐ Pay: $ per month or more until the balance is paid.
   d. The clerk of the court, county financial officer, or appropriate county officer is authorized to require the applicant to appear before and be examined by the court no sooner than four months from the date of this order, and not more than once in any four-month period. ☐ The applicant is ordered to appear in this court as follows for review of his or her financial status:

Date:	Time:	Dept.:	Div.:	Room:
   e. ☐ The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.
   f. **All unpaid fees and costs shall be deemed to be taxable costs if the applicant is entitled to costs and shall be a lien on any judgment recovered by the applicant and shall be paid directly to the clerk by the judgment debtor upon such recovery.**
4. ☐ IT IS ORDERED that the application is **denied** ☐ in whole ☐ in part for the following reasons *(see Cal. Rules of Court, rules 3.50–3.63):*
   a. ☐ Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form FW-001-INFO).
   b. ☐ Other *(Complete line 4b on page 2).*
   c. The applicant shall pay any fees and costs due in this action within 10 days from the date of service of this order or any paper filed by the applicant with the clerk will be of no effect.
   d. The clerk is directed to mail a copy of this order to all parties who have appeared in this action.
5. ☐ IT IS ORDERED that a **hearing** be held.
   a. The substantial evidentiary conflict to be resolved by the hearing is *(specify):*
   b. The applicant should appear in this court at the following hearing to help resolve the conflict:

Date:	Time:	Dept.:	Div.:	Room:
   c. The address of the court is *(specify):*
      ☐ Same as above
   d. The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.

NOTICE: If item 3d or item 5b is filled in and the applicant does not attend the hearing, the court may revoke or change the order or deny the application without considering information the applicant wants the court to consider.

WARNING: The applicant must immediately tell the court if he or she becomes able to pay court fees or costs during this action. The applicant may be ordered to appear in court and answer questions about his or her ability to pay fees or costs.

Date:

☐ _____ ☐ Clerk, by _____, Deputy

JUDICIAL OFFICER *(Clerk may GRANT in full a nondiscretionary fee waiver; see Cal. Rule of Court, rules 3.56.)*

Form Adopted for Mandatory Use
Judicial Council of California
FW-003 [Rev. January 1, 2007]

ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS (Fee Waiver)

Government Code, § 68511.3;
Cal. Rules of Court, rules 3.50–3.63
www.courtinfo.ca.gov

Sample Form E

American LegalNet, Inc.
www.USCourtForms.com

PLAINTIFF/PETITIONER *(Name):* DEFENDANT/RESPONDENT *(Name):*	CASE NUMBER:

4b ☐ Application is denied in whole or in part *(specify reasons):*

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the foregoing was mailed first class, postage prepaid, in a sealed envelope addressed as shown below, and that the mailing of the foregoing and execution of this certificate occurred at *(place):* , California, on *(date):*

Clerk, by _____ , Deputy

(SEAL)

CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date: Clerk, by _____ , Deputy

Sample Form F

NOTICE DESIGNATING RECORD ON APPEAL - INSTRUCTIONS

After filing your notice of appeal you have 10 days to tell the Superior Court what you want in the record that will be sent to the Court of Appeal; this is called the Notice Designating Record on Appeal. On the next few pages is a form to assist you in designating the record. What you choose to include in your record depends on the issues you wish to raise on appeal. This notice is filed in the Superior Court.

The Notice Designating Record on Appeal is available online in Adobe Acrobat PDF format and may be filled out electronically for free at http://www.courtinfo.ca.gov/cgi-bin/forms.cgi. Select "Appellate" forms, then click on Form APP-003.

Filling out the Notice Designating Record on Appeal:

Caption

(1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.

(2) In the "Superior Court of California, County of" area of the form, specify the county, address, and branch name of the superior court that made the order or judgment you are appealing.

(3) In the next box on the form marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the superior court case caption.

(4) In the "Superior Court Case Number" box to the right, write the superior court case number.

(5) In the "RE: Appeal filed on *(date)*" box, write the date the Notice of Appeal was filed.

(6) In the "Court of Appeal Case Number *(if known)*" box immediately to the right, write the Court of Appeal case number, if you have it.

(7) Specify the name of the county after the entry "TO: Clerk of the Superior Court of California County of *(name of county)*"

(8) After the line marked "NOTICE IS HEREBY GIVEN", check the appropriate box to indicate whether you are the appellant (the appealing party) or respondent (the responding party).

Page 1, Entries 1-4

Check only one of the four boxes in entries 1-4.

Sample Form F

Check box "1" if you plan to prepare your own transcript (appendix) under California Rules of Court, rule 8.124 instead of having the Superior Court prepare a clerk's transcript and you don't want a reporter's transcript. If you check this box, there is no need to fill out pages two or three. Date and sign the bottom of this form and you are done.

Check box "2" if you plan to prepare your own transcript (appendix) under California Rules of Court, rule 8.124 instead of having the Superior Court prepare a clerk's transcript and you also want a reporter's transcript. If you check this box be sure to fill out the reporter's transcript section on page three; you do not have to fill out page two.

Check box "3" if you want the Superior Court to prepare a clerk's transcript but you don't want a reporter's transcript. If you check this box be sure to fill out the clerk's transcript section on page two; you do not have to fill out page three.

Check box "4" if you want the Superior Court to prepare both the clerk's transcript and the reporter's transcript. If you check this box be sure to fill out the clerk's transcript section on page two and the reporter's transcript section on page three.

At the bottom of page 1, write the current date on the form, type or print your name legibly, and sign the form.

Page Two (Notice Designating Clerk's Transcript):

Fill out this page only if you checked box "3" or "4" on page one; if you checked box "1" or "2" you do not need to fill out this page. The first seven documents are filled in for you. You may designate anything that was in the Superior Court file as part of your record on appeal, choosing as few or as many documents as you wish. What you choose to include in your record depends on the issues you wish to raise on appeal. You will need to make a $100.00 deposit with the Superior Court if you select this option.

Page Three (Notice Designating Reporter's Transcript):

Fill out this page only if you checked box "2" or "4" on page one; if you checked box "1" or "3" you do not need to fill out this page. A reporter's transcript is a word for word typewritten record of everything that was said in court during a trial or hearing. For each day you want transcribed, write the reporter's name, the department of the Superior Court you were in, the date and the nature of the proceeding. The reporter's transcript costs money. You can ask the reporter to give you an estimate of what it will cost in advance or you can pay $650 per day for days where there were more than three hours to be transcribed or $350 per day where there were less than three hours to be transcribed.

Sample Form F

Page Four (Proof of Service)

Have someone over the age of 18 who is not a party to the action serve the Notice Designating Record on Appeal and fill out the Proof of Service on page 4 of the form. See instructions accompanying Sample Form C.

Due: 10 days after filing Notice of Appeal

File: Original with Superior Court
(Bring an extra copy to be file-stamped
for your file.)

Serve: Court Reporter (if reporter's transcript requested)
All counsel
All self-represented parties

Sample Form F

APP-003

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	Superior Court Case Number:
RE: Appeal filed on *(date):*	Court of Appeal Case Number *(if known):*

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

TO: Clerk of the Superior Court of California, County of *(name of county):*

NOTICE IS HEREBY GIVEN that *(name):*

The ☐ Appellant ☐ Respondent in the above case elects to proceed with the following record on appeal:

(check only one)

1. ☐ (Appendix Only; no Reporter's Transcript)
   a. elects under rule 8.124 of the California Rules of Court to prepare own transcript in lieu of a court-prepared clerk's transcript.
   AND
   b. elects to have no reporter's transcript. *(Date and sign only.)*

2. ☐ (Appendix and Reporter's Transcript)
   a. elects under rule 8.124 of the California Rules of Court to prepare own transcript in lieu of a court-prepared clerk's transcript.
   AND
   b. elects a reporter's transcript as designated on page 3. *(Fill out the reporter's transcript section on page 3.)*

3. ☐ (Clerk's Transcript Only; no Reporter's Transcript)
   a. elects under rule 8.120 of the California Rules of Court to proceed with a clerk's transcript as designated on page 2. *(Fill out the clerk's transcript section on page 2.)*
   AND
   b. elects to have no reporter's transcript.

4. ☐ (Clerk's and Reporter's Transcripts)
   a. elects under rule 8.120 of the California Rules of Court to proceed with a clerk's transcript as designated on page 2. *(Fill out the clerk's transcript section on page 2*
   AND
   b. elects a reporter's transcript as designated on page 3. *(Fill out the reporter's transcript section on page 3.)*

Date:

▶

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-003 [Rev. January 1, 2007]

Cal. Rules of Court, rules 8.120, 8.124, 8.128, 8.130
www.courtinfo.ca.gov

Sample Form F

CASE NAME:	CASE NUMBER:

NOTICE DESIGNATING CLERK'S TRANSCRIPT

(Cal. Rules of Court, rule 8.120)

A. It is requested that the following documents in the superior court file be included in the clerk's transcript *(give the specific title of each document, an accurate description, and the date of filing):*

Document Title and Description — Date of Filing

(NOTE: Items 1–7 are required to be a part of the clerk's transcript and will automatically be included.)

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 item 5
7. Register of actions *(if any)*
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.

B. It is requested that the following EXHIBITS admitted into evidence or marked for identification be copied into clerk's transcript on appeal *(check only one box):*

1. ☐ All Exhibits
2. ☐ Specific Exhibits *(give the exhibit number [for example, Plaintiff's #1, Defendant's B, Respondent's A), a brief description, and admission status.):*

☐ See additional pages.

Sample Form F

CASE NAME:	CASE NUMBER:

NOTICE DESIGNATING REPORTER'S TRANSCRIPT
(Cal. Rules of Court, rule 8.130)

	Reporter's Name	Dept.	Date	Nature of Proceedings
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				

☐ See additional pages.

Sample Form F

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 Designating Record on 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)

Sample Form G

COVER FOR RULE 8.124 APPENDIX
(APPELLANT'S OR RESPONDENT'S)

No. [Appellate number]

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION [Appropriate division]

[Name of Plaintiff from Superior Court case title and that party's appellate designation], Plaintiff and [Appellant or Respondent], v. [Name of Defendant from Superior Court case title and that party's appellate designation], Defendant and [Appellant or Respondent].	Court of Appeal No. [Appellate number] (Superior Court No. [Number from Superior Court case])

Appeal From a Judgment of
The Superior Court of California, County of [Insert county]
The Honorable [Name of Superior Court Judge], Judge

APPELLANT'S (or RESPONDENT'S) APPENDIX
IN LIEU OF CLERK'S TRANSCRIPT

[Names and addresses of counsel for other parties and of self-represented parties]	Your Name Your Address Your Phone Number During the Day Self-represented

Sample Form H

CHRONOLOGICAL INDEX FOR RULE 8.124 APPENDIX

Chronological Index

ENTRY	DATE	PAGE
Complaint	1/01/01	01
Minute Order	2/15/01	07
Motion for Summary Judgment	4/15/01	08
Separate Statement of Undisputed Facts	4/15/01	20
Opposition to Motion for Summary Judgment	4/28/01	35
Minute Order Denying Summary Judgment	5/15/01	42
Judgment Appealed From	5/30/01	43
Notice of Entry of Judgment	6/02/01	44
Notice of Appeal	6/30/01	45

Sample Form I

ALPHABETICAL INDEX FOR RULE 8.124 APPENDIX

Alphabetical Index

ENTRY	DATE	PAGE
Complaint	1/01/01	01
Judgment Appealed From	5/30/01	43
Minute Order	2/15/01	07
Minute Order Denying Summary Judgment	5/15/01	42
Motion for Summary Judgment	4/15/01	08
Notice of Appeal	6/30/01	45
Notice of Entry of Judgment	6/02/01	44
Opposition to Motion for Summary Judgment	4/28/01	35
Separate Statement of Undisputed Facts	4/15/01	20

Sample Form J

CIVIL CASE INFORMATION STATEMENT - INSTRUCTIONS

The Civil Case Information Statement must be filed in the Court of Appeal within 10 days after the clerk mails you a notice that the form must be filed. Attach a copy of the order or judgment which you are appealing to the Civil Case Information Statement. The court recommends that the order or judgment be file-stamped and signed by the lower court judge. You also need to attach a Proof of Service to the Civil Case Information Statement showing you served a copy of the Civil Case Information Statement with its attachment on all counsel and self-represented parties. (See Sample Form C.) The Civil Case Information Statement is filed in the Court of Appeal.

This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at http://www.courtinfo.ca.gov/cgi-bin/forms.cgi. Select "Appellate" forms, then click on Form APP-004.

Filling out the Civil Case Information Statement form:

Caption:

(1) Fill out the top box of the form, inserting the appropriate appellate district and division. Indicate the Court of Appeal case number in the box to the right.

(2) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.

(3) In the next box down, indicate your name next to "APPELLANT" and the responding party's name next to "RESPONDENT."

(4) In the next box down, specify the Superior Court, address, and branch name of the court that made the order or judgment you are appealing.

(5) In the "JUDGES" box, list all of the Superior Court judges who had anything to do with your case. In the box to the right, write the Superior Court case number.

Part I - Appeal Information

A.1. Mark the box that best describes what you are appealing.

A.2. If your appeal disposes of all causes of action including all cross-actions between the parties check "yes". If not, check "no".

B.1. The date of entry of judgment or order appealed from.

B.2. The date notice of entry of the judgment or order was served or mailed. If none was served or mailed, leave this space blank.

Sample Form J

B.3. Check "yes" if you made a motion for (a) new trial, (b) judgment notwithstanding the verdict, (c) reconsideration of an appealable order or (d) vacating the judgment, and that motion was denied. Check the "no" box if you did not make any of the above motions. If you checked yes, write in the type of motion you filed, the date the motion was filed, the date the motion was denied and the date the denial was served.

B.4. The date you filed your notice of appeal or cross-appeal in Superior Court.

C. Check if there is a bankruptcy case or any court issued stay which would have an affect on your appeal in the Court of Appeal. If you check this box you must attach to this form a file-stamped copy of the bankruptcy petition and any documentation related to the stay. Leave blank if there is no bankruptcy case or other court issued stay which would have an affect on your appeal in the Court of Appeal.

D. Check "yes" if you have any related appeals, writs or any other proceeding before this or any other California appellate court. Check "no" if you do not have any other appeals, writs or proceedings before this or any other California appellate court. If you checked "yes", write the name of the court in which you have or had a case, the appellate court case number, the title of the case, name of trial court and trial court case number. If you have or had multiple cases, attach the list of cases to this form on a separate sheet of paper.

E. Some types of cases require service of briefs or petitions on the Attorney General. Check the list on the form to see if yours is one of these types of cases. In addition, Rule 8.29(a) requires service on the Attorney General for the following types of cases: (1) those questioning the constitutionality of a state statute; (2) those in which the state or a state officer in his or her official capacity is a party; and (3) those in which a county is a party. Check the "yes" box if service on the Attorney General is required, and check the "no" box if it is not.

PART II -NATURE OF ACTION

A. Check the box or boxes that best describe the nature of the action of your case. If it is not listed, check "Other action" and describe the nature of the case.

B. Check this box if your case is entitled to calendar preference or priority on appeal. Write the rule of court or statute that entitles you to calendar preference or priority. Leave blank if your case is not entitled to calendar preference or priority.

PART III - PARTY AND ATTORNEY INFORMATION

On a separate sheet of paper, write or type all the parties and their attorneys of record who will participate in the appeal. For each party, list the party's name and designation in the trial court proceeding (plaintiff, defendant, etc.). For the attorneys, list the party the attorney represents, the name of the attorney, state bar number, mailing address, telephone number, fax number and e-mail address. If the party is self-represented, list the name, designation in the trial court proceeding (plaintiff, defendant, etc.), mailing address, telephone number, fax number and e-mail address. List only parties who will be participating in the appeal and no one else.

Sample Form J

At the bottom of page 2, write or type your name legibly, and date and sign the form. Serve a copy of the form on all parties. (See Sample Form C.)

Due: 10 days after the Court of Appeal clerk notifies you the form must be filed

File: Original of Civil Case Information Statement, judgment or order and Proof of Service on all parties. File with Court of Appeal.

Provide an extra copy to be file-stamped for your file.

Serve: All counsel
All self-represented parties

TO BE FILED IN THE COURT OF APPEAL

APP-004

CIVIL CASE INFORMATION STATEMENT COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	Court of Appeal Case Number *(if known)*: **Sample Form J**
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*: TELEPHONE NO.: E-MAIL ADDRESS *(Optional)*: FAX NO. *(Optional)*: ATTORNEY FOR *(Name)*:	***FOR COURT USE ONLY***
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:

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]).

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.)*

Form Adopted for Mandatory Use
Judicial Council of California
APP-004 [Rev. January 1, 2007]

Sample Form J

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
- ☐ Bus. & Prof. Code, § 17209 (Unfair Competition Act)
- ☐ Bus. & Prof. Code, § 17536.5 (False advertising)
- ☐ 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)
- ☐ Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing)
- ☐ Gov. Code, § 4461 (Disabled access to public buildings)
- ☐ Gov. Code, § 12656(a) (False Claims Act)
- ☐ Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)
- ☐ Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations)
- ☐ 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)

Sample Form K

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION [Insert division#]

THE THREE BEARS, Plaintiffs and Respondents, v. GOLDILOCKS, Defendant and Appellant.	Court of Appeal No. _____ (Super. Ct. No. _____)

Appeal From a Judgment **[or Order]**
Of The Superior Court, County of _____
Hon. _____, Judge
[Superior Court Judge]

APPELLANT'S OPENING BRIEF

Your name
Your Address
Your Phone Number During the Day

Appellant [or Respondent]
Self-Represented

If Appellant's Opening Brief, this cover page is green.

If Respondent's Brief, this cover page is yellow.

If Appellant's Reply Brief, this cover page is tan.

Sample Form K

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Sample Form K

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Williams v. Wraxall (1995) 33 Cal.App.4th 120.	2

STATUTES (if any)

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Restatement 2nd of Torts, section 167.	3
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Sample Form K

STATEMENT OF THE CASE

The Three Bears filed a complaint in August 2001 alleging Goldilocks had trespassed on their property by entering their home when they were not at home, consuming a meal and falling asleep in a bed. The complaint alleged that Baby Bear had suffered physical and mental damages as a result of being frightened upon discovering Goldilocks. (CT 1-4.) After a civil trial on the matter over a period of two days, the court found that Goldilocks had committed trespass. (CT 25.) The court entered a final judgment in favor of the Three Bears in the amount of $50,000. (CT 27.)

STATEMENT OF APPEALABILITY

This appeal is from the judgment of the San Diego County Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1).

STATEMENT OF FACTS

Papa Bear lives in Los Angeles, California with his wife, Mama Bear and son, Baby Bear. (RT 1.) Appellant Goldilocks lives a few miles away on the other side of the forest. (RT 25.) The Bears' neighbor, Gloria Gardner, watched what happened from her garden next door. (RT 15.)

Gardner testified she saw the Bear family leave their house without shutting the front door about 8:00 a.m. and saw Goldilocks enter the house at about 8:30. At about 9:30 a.m. she heard screams and saw Goldilocks run from the Bears' house. (RT 17.)

The Bears testified that when they returned from the walk, they saw they had left the front door open. (RT 3.) Food was missing from the dining room table. (RT 4.) Baby Bear found Goldilocks asleep in his bed. (RT 6.) Terrified, Baby Bear screamed and woke up Goldilocks. (RT 9.) Startled and confused, Goldilocks ran from the Bears' house. (RT 30.)

Sample Form K

An expert bear cub psychologist, Dr. Dramatic, who has done extensive research in the phobias of young bears, testified to the traumatic effects when a bear cub comes in contact with a human child. Baby Bear had physical symptoms of blackouts stemming from his encounter with Goldilocks as well as mental anguish requiring therapy. (RT 21-24.)

Goldilocks testified she was looking for a boarding facility to take a rest, the Bears' house was very large, there was no fence to indicate this was private property, the door of the house was left open and there was a mat at the front door that said "WELCOME". (RT 25-26.) She thought this was a commercial boarding establishment, as large amounts of food were set out as if for guests; she looked for someone to ask about spending the night and saw several sets of chairs and beds all in different sizes. (RT 27-28.) She sat down on a bed and fell asleep. (RT 29.)

ARGUMENT

I. GOLDILOCKS WAS GIVEN IMPLIED CONSENT TO ENTER THE HOUSE AND THUS HER ENTRY WAS NOT "WRONGFUL"

A. The Standard of Review. The trial court erred in finding that Goldilocks trespassed on the Bears' property as there is no substantial evidence to support that finding. On review, the appellate court looks to the record to see if there are facts to support the trial court or jury's findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict in favor of the party who won in the trial court. (*Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 132.)

B. The Elements of the Action. A trespass occurs when a person intentionally, recklessly or negligently enters land in the possession of another. (*Gallin v. Poulou* (1956) 140 Cal.App.2d 638, 645.) The intent to enter is the only intent needed. (*Miller v. National*

Broadcasting Co. (1986) 187 Cal.App.3d 1463, 1480.) However, consent or permission to enter upon the property is a defense. (*Williams v. General Elec. Credit Corp.* (1946) 159 Cal.App.2d 527, 532; 5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706; Rest.2d Torts, § 167.)

C. No Evidence of Wrongful Entry. Here, Goldilocks did not intend to enter on private property. She thought the Bears' house was a public, commercial boarding house. Although her actual intent is not a legal defense, her actual intent reinforces her argument that she had consent to enter the building. The door was open, the WELCOME mat was out, the food was on the table, and there were many beds and chairs about. All of this points to the conclusion the Bears were prepared for and awaiting the arrival of numerous persons and supports Goldilocks' belief this was a boarding house and there was no reason for her not to enter. At a minimum the house was prepared and open for an "open house". No evidence points to any indication the house was closed, off-limits to outsiders, or limited in the types of persons who would be admitted. There is no evidence to support a finding Goldilocks' entry was wrongful. The judgment must be reversed.

Sample Form K

CONCLUSION

Goldilocks submits the Three Bears have failed to meet their burden of proving that her entry into their house was wrongful and, thus, a trespass. All of the evidence supports a finding that the Bears by their conduct consented to Goldilocks' entry. Goldilocks respectfully asks that this Court reverse the decision of the trial court and vacate the award of damages.

Respectfully submitted,

DATED:

By _____
(Signature)

_____
(Your name-printed or typed)

Sample Form K

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains _____ words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By _____
(Your Signature)

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties. (See Sample Form C.)

Sample Form L

MEMORANDUM OF POINTS AND AUTHORITIES FOR MOTION TO AUGMENT - INSTRUCTIONS

A Memorandum of Points and Authorities in support of your motion to augment must be attached to the motion to augment. **[NOTE: This memorandum is only a sample. You should give your own reason in paragraph 2 and your own circumstances in paragraph 3 as to why you need to augment the record and why there is no prejudice.]**

You should attach your memorandum and a supporting declaration (Sample Form M) to one of the three forms of motions to augment set forth in this manual. (Sample Forms N, O, P.) You must also attach a proof of service of all these documents. (Sample Form C.) These should all be stapled together in one document, with the caption page of the motion to augment in front.

Filling out the Memorandum of Points and Authorities Form:

(1) Today's date.

(2) Your signature.

(3) Type or legibly print your name.

File: Original plus 3 copies of:

Motion to Augment (Sample Form N, O, or P)
Memorandum of Points and Authorities (Sample Form L)
Declaration (Sample Form M)
Proof of Service (Sample Form C)

Provide an extra copy to be file-stamped for your file.

Serve: Superior Court
All counsel
All self-represented parties

Sample Form L

MEMORANDUM OF POINTS AND AUTHORITIES

AUGMENTATION SHOULD BE ORDERED
TO ALLOW APPELLANT TO RECEIVE
FULL AND FAIR APPELLATE REVIEW

Rule 8.155(a) of California Rules of Court permits the augmentation of the appellate record and specifically under Rule 8.155(a)(1) allows a certified transcript or document not designated under Rule 8.130 to be augmented and permitted. It is well established that this rule is to be construed liberally. (*People* v. *Brooks* (1980) 26 Cal.3d 471, 484.)

The need for augmentation here is compelling. Appellant believes the trial court erred in granting summary judgment based on its own determination of the credibility of conflicting declarations. The issue can only be reviewed on appeal if the reporter's transcript of the court's comments before ruling is part of the appellate record.

Not only is augmentation necessary, it will not prejudice any party. The augmentation request concerns documents which were all part of the record. Additionally, the augmentation will not cause a substantial delay in this appeal.

CONCLUSION

For the above reasons, this Court should order the record to be augmented on appeal by including the reporter's transcript or document(s) requested in this motion.

Dated: (1)

Respectfully Submitted,

(2)
Signature
(3)
Type or Print Name

Sample Form M

DECLARATION IN SUPPORT OF MOTION TO AUGMENT - INSTRUCTIONS

A declaration in support of your motion to augment must be attached to the motion. **[NOTE: This declaration is only a sample. You should insert you own reasons in paragraphs 3 and 4 and add your own support for paragraph 6.]**

Filling out the Declaration in Support of Motion to Augment form:

(1) Your name.

(2) The date of the hearing you want to augment.

(3) The name of the Superior Court judge who presided at the hearing you want transcribed.

(4) The date of the hearing you want to augment.

(5) Today's date.

(6) Month and year.

(7) City where you signed the declaration.

(8) Your signature.

(9) Type or legibly print your name.

File: Original plus 3 copies of:

Motion to Augment (Sample Form N, O, or P)
Memorandum of Points and Authorities (Sample Form L)
Declaration (Sample Form M)
Proof of Service (Sample Form C)

Provide an extra copy to be file-stamped for your file.

Serve: Superior Court
All counsel
All self-represented parties

Sample Form M

DECLARATION IN SUPPORT OF MOTION TO AUGMENT

I, (1) _____, declare and state as follows:

1. I am a self-represented litigant.

2. On (2) _____, I argued the matter before the Honorable (3) _____. The court reporter reported the matter.

3. I did not order the reporter's transcript of (4) _____, thinking it was unnecessary.

4. I believe the court used the incorrect standard of review. The court's comments before announcing its ruling are material to this issue. The transcript of that hearing is therefore a necessary element of the record on appeal.

If documents attached use 5 below:

5. Because the document(s) requested is attached to this motion, there will be no significant delay, and possibly no delay at all with this appeal.

6. I know of no prejudice to any party as a result of the granting of this motion.

7. This motion is made in good faith for the reasons set forth above and not for the purposes of delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this (5) _____ day of (6) _____, at (7) _____, California.

(8) _____
Signature
(9) _____
Type or Print Name

Sample Form N

MOTION TO AUGMENT RECORD ON APPEAL (DOCUMENTS ATTACHED) - INSTRUCTIONS

After the record on appeal is filed, you might discover there is something missing from the record that you think the court should consider when deciding your case. You may make a Motion to Augment Record on Appeal (Documents Attached). Attach the documents to your motion to augment that you want added to the record on appeal. The motion is filed in the Court of Appeal. You must file an original plus three copies of the motion with points and authorities and your declaration (Sample Forms L & M, adapted to fit your specific request). You must serve your motion on all parties. (Sample Form C.) The motion, memorandum, declaration, attached documents, and proof of service may be stapled together in one document, with the caption page of the motion in front.

Filling out the Motion to Augment Record on Appeal (Documents Attached):

(1) Your name.

(2) Your mailing address.

(3) Your city, state and zip code.

(4) Your telephone number where you can be reached during the day.

(5) The plaintiff's name as it appears on your Superior Court caption.

(6) Whether plaintiff is "appellant" or "respondent".

(7) The defendant's name as it appears on your Superior Court caption.

(8) Whether defendant is "appellant" or "respondent".

(9) The Court of Appeal case number.

(10) The Superior Court number from your Superior Court case.

(11) Your name.

(12) List the documents you are attaching, for example:

1. Order dated August 20, 2004.

2. Declaration of John Doe dated August 30, 2004.

(13) State why you are requesting the item(s) be added. For example, forgot to list it in Notice Designating Record, just learned I need the item to support argument, etc.

Sample Form N

(14) The city and state in which the motion is being filed.

(15) Today's date.

(16) Month and year.

(17) Your signature.

(18) Type or legibly print your name
.

File: Original plus 3 copies of:

Motion to Augment (Sample Form N, O, or P)
Memorandum of Points and Authorities (Sample Form L)
Declaration (Sample Form M)
Attached documents
Proof of Service (Sample Form C)

Provide an extra copy to be file-stamped for your file.

Serve: Superior Court
All counsel

Sample Form N

(1)
(2)
(3)
(4)
Self-represented

COURT OF APPEAL, SECOND APPELLATE DISTRICT
DIVISION [Insert division #]
STATE OF CALIFORNIA

(5) , Plaintiff and (6) , v. (7) , Defendant and (8) .	(9) . (Superior Court No. (10)) MOTION TO AUGMENT RECORD ON APPEAL (DOCUMENTS ATTACHED)

Pursuant to Rule 8.155(a) of the California Rules of Court, I, (11) , request augmentation of the record on appeal to include documents in this case that were not included in the Clerk's Transcript. Copies of the documents to be added to the record are attached to this motion. Those documents are:

(12)

I am requesting that these documents be added to the record because:
(13)

I declare under penalty of perjury that the foregoing is true and correct.

Executed at [city, state] this (14) day of (15) .

(16)
Signature
(17)
Type or Print Name

Sample Form O

MOTION TO AUGMENT RECORD ON APPEAL (DOCUMENTS REQUESTED) - INSTRUCTIONS

After the record on appeal is filed, you might discover there is something missing from the record that you think the court should consider when deciding your case. If you do not have copies of the documents you want to include, you may make a Motion to Augment Record on Appeal (Documents Requested). The motion with points and authorities and your declaration (Sample Forms L & M, adapted to fit your specific request) is filed in the Court of Appeal. You must file an original plus three copies. You must serve your motion on the Superior Court, all counsel and all self-represented parties, and you must file a proof of service. (Sample Form C.) The motion, memorandum, declaration, and proof of service may be stapled together in one document, with the caption page of the motion in front. If the court grants your motion, the Superior Court clerk will give you an estimate of how much it will cost to copy the documents you list to be included in the record. If you do not pay it, you will be placed in default.

Filling out the Motion to Augment Record on Appeal (Documents Requested):

(1) Your name.

(2) Your mailing address.

(3) Your city, state and zip code.

(4) Your telephone number where you can be reached during the day.

(5) The plaintiff's name as it appears on your Superior Court caption.

(6) Whether plaintiff is "appellant" or "respondent".

(7) The defendant's name as it appears on your Superior Court caption.

(8) Whether defendant is "appellant" or "respondent".

(9) The Court of Appeal case number.

(10) The Superior Court number from your Superior Court case.

(11) Your name.

Sample Form O

(12) List the documents you are requesting, for example:

1. Order dated August 20, 2004.

2. Declaration of John Doe dated August 30, 2004.

(13) State why you are requesting the item(s) be added. For example, forgot to include it in Notice Designating Record, etc.

(14) The city and state in which the motion is being made.

(15) Today's date.

(16) Month and year.

(17) Your signature.

(18) Type or legibly print your name.

File: Original plus 3 copies of:

Motion to Augment (Sample Form N, O, or P)
Memorandum of Points and Authorities (Sample Form L)
Declaration (Sample Form M)
Proof of Service (Sample Form C)

Provide an extra copy to be file-stamped for your file.

Serve: Superior Court
All counsel
All self-represented parties

Sample Form O

(1)
(2)
(3)
(4)
Self-represented

COURT OF APPEAL, SECOND APPELLATE DISTRICT
DIVISION [Insert division #]
STATE OF CALIFORNIA

(5) , Plaintiff and (6) , v. (7) , Defendant and (8) .	(9) . (Superior Court No. (10)) MOTION TO AUGMENT RECORD ON APPEAL (DOCUMENTS REQUESTED)

Pursuant to Rule 8.155(a) of the California Rules of Court, I, (11) , request augmentation of the record on appeal to include documents in this case that were not included in the Clerk's Transcript. Those documents are:

(12)

The reason I am requesting the items(s) is:
(13)

I declare under penalty of perjury that the foregoing is true and correct.

Executed at (14) , this (15) day of (16) .

(17)
Signature
(18)
Type or Print Name

Sample Form P

MOTION TO AUGMENT RECORD ON APPEAL WITH REPORTER'S TRANSCRIPT - INSTRUCTIONS

After the record on appeal is filed, you might discover there is a transcript of a proceeding missing from the record that you think the court should consider when deciding your case. You may make a Motion to Augment Record on Appeal With Reporter's Transcript. You must specify the date and approximate time of each proceeding you want transcribed. If you have the name of the court reporter, it would be helpful to include it. The motion with points and authorities and your declaration (Sample Forms L & M, adapted to fit your specific request) are filed in the Court of Appeal. You must file an original plus three copies. You must serve your motion on the Superior Court, all counsel and all self-represented parties, and you must file a proof of service. (Sample Form C.) The motion, memorandum, declaration, and proof of service may be stapled together in one document, with the caption page of the motion in front. If the court grants your motion, you will have to pay for the reporter's transcript. (See CRC rule 4(b).) The Superior Court clerk or court reporter will give you an estimate of how much the transcript you are requesting will cost. If you do not pay, you will be placed in default.

Filling out the Motion to Augment Record on Appeal With Reporter's Transcript:

(1) Your name.

(2) Your mailing address.

(3) Your city, state and zip code.

(4) Your telephone number where you can be reached during the day.

(5) The plaintiff's name as it appears on your Superior Court caption.

(6) Whether plaintiff is "appellant" or "respondent".

(7) The defendant's name as it appears on your Superior Court caption.

(8) Whether defendant is "appellant" or "respondent".

(9) The Court of Appeal case number.

(10) The Superior Court number from your Superior Court case.

(11) Your name.

Sample Form P

(12) List the proceedings, date, and time, and court reporters name, for example:

1. Hearing on June 15, 2004 from 9:00 a.m. to 11:30 a.m. Court reporter is John Doe.

2. Hearing on June 16, 2004, all day beginning at 9:00 a.m. Court reporter is Jane Doe.

(13) Write the reason you need to augment the record.

(14) The city and state in which the motion is being filed.

(15) Today's date.

(16) Month and year.

(17) Your signature.

(18) Type or legibly print your name.

File: Original plus 3 copies of:

Motion to Augment (Sample Form N, O, or P)
Memorandum of Points and Authorities (Sample Form L)
Declaration (Sample Form M)
Proof of Service (Sample Form C)

Provide an extra copy to be file-stamped for your file.

Serve: Superior Court
All counsel
All self-represented parties

Sample Form P

(1)
(2)
(3)
(4)
Self-represented

COURT OF APPEAL, SECOND APPELLATE DISTRICT
DIVISION [Insert division #]
STATE OF CALIFORNIA

(5) , Plaintiff and (6) , v. (7) , Defendant and (8) .	(9) . (Superior Court No. (10)) MOTION TO AUGMENT RECORD ON APPEAL WITH REPORTER'S TRANSCRIPT

Pursuant to Rule 8.155(a) of the California Rules of Court, I, (11) , request augmentation of the record on appeal to include the reporter's transcript(s) listed below.

(12)

The reason I am requesting to augment the record is:
(13)

I declare under penalty of perjury that the foregoing is true and correct.

Executed at (14) , this (15) day of (16) .

(17)
Signature
(18)
Type or Print Name

Sample Form Q

STIPULATION TO EXTEND TIME TO FILE BRIEF - INSTRUCTIONS

The parties may stipulate to extend the briefing time for up to 60 days for each type of brief by filing one or more stipulations in the Court of Appeal **before** the brief is due. (CRC rule 8.212(b).) The stipulation must be signed by and served on all parties.

Filling out the Stipulation to Extend Time form:

(1) Your name.

(2) Your mailing address.

(3) Your city, state and zip code.

(4) Your telephone number where you can be reached during the day.

(5) The plaintiff's name as it appears on your Superior Court caption.

(6) Whether plaintiff is "appellant" or "respondent".

(7) The defendant's name as it appears on your Superior Court caption.

(8) Whether defendant is "appellant" or "respondent".

(9) The Court of Appeal case number.

(10) The Superior Court number from your Superior Court case.

(11) Name of the brief for which you are requesting an extension: appellant's opening, respondent's or appellant's reply.

(12) The date which will be the *new* due for the brief.

(13) Name of person or counsel *agreeing* to grant the extension.

(14) Name of person or counsel *requesting* the extension.

(15) Number of days you are requesting the time to be extended.

(16) Name of the brief for which you are requesting an extension: appellant's opening, respondent's or appellant reply.

Sample Form Q

(17) Name of the brief for which you are requesting an extension: appellant's opening, respondent's or appellant reply.

(18) New due date of your brief.

(19) Today's date.

(20) Signature of the party filing the stipulation.

(21) Date opposing party signed stipulation.

(22) Signature of opposing party.

File: Original and one copy with Proof of Service on all counsel and self-represented parties

Serve: All counsel
All self-represented parties
(If you are an attorney, serve your client.)

Sample Form Q

(1)
(2)
(3)
(4)
Self-represented

COURT OF APPEAL, SECOND APPELLATE DISTRICT
DIVISION [Insert division #]
STATE OF CALIFORNIA

(5) ,	D (9) .
Plaintiff and (6) ,	(Superior Court No. (10))
v.	STIPULATION TO EXTEND TIME TO FILE (11) , BRIEF TO (12) .
(7) ,	
Defendant and (8) .	

The undersigned counsel of record of the respective parties in the above-entitled action hereby stipulate as follows:

1. (13) has agreed to grant (14) a (15) -day extension for filing its (16) brief.

2. The parties agree that there will be no prejudice to either party as a result of this extension.

3. The parties agree that (17) brief will now be due on (18) .

Dated: (19) .

(20)
Signature of Party Filing Stipulation
(or counsel if represented)

Dated: (21) .

(22)
Signature of Opposing Party
(or counsel if represented)

Sample Form R

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF - INSTRUCTIONS

If a party needs more than the 60 days already stipulated to, or if the opposing party refuses to stipulate to an extension, the party needing the extension must file an application for extension of time. The party seeking additional time must give reasons, also known as **"good cause,"** why that extension is needed. (CRC rule 8.63.) You must serve a copy of your extension request on all parties (or the attorneys for represented parties). You should file an original of your extension request in the Court of Appeal, along with a proof of service. (Sample Form C.) You must also provide the Clerk of the Court of Appeal with enough copies of the extension request for each party (including yourself) and stamped envelopes addressed to each party (including yourself). The Clerk will use these extra copies and envelopes to mail out the court's order granting or denying the extension request.

This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at http://www.courtinfo.ca.gov/cgi-bin/forms.cgi. Select "Appellate" forms, then click on Form APP-006.

Filling out the Application for Extension of Time to File Brief form:

Caption

(1) Fill out the top box of the form as follows: "Court of Appeal, Second Appellate District, Division [insert division #]." Indicate the Court of Appeal case number and the Superior Court case number in the boxes to the right.

(2) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.

(3) In the next box down, indicate your name next to "APPELLANT" and the responding party's name next to "RESPONDENT."

Page 1, entries 1-8

Entry 1. Check whether the extension is for appellant's opening brief, respondent's brief or appellant's reply brief and indicate the date the brief is due. Add the date you would like the brief to be due after the "be extended to *(date)*" language.

Entry 2. Check one of the two boxes to indicate whether or not CRC rule 8.220 notice has been received.

Entry 3. Check whether there have been previous extensions. If earlier extensions were received, indicate how many were granted by stipulation, how many by the court, and for each type of extension, the total number of days briefing has already been extended.

Entry 4. Check why you are unable to file a stipulation.

Sample Form R

Entry 5. Give **"good cause"** for the extension by explaining why the extension is needed. (See CRC rule 8.63(c) for a list of the relevant factors.)

Entry 6. If a brief has already been filed, check whether the most recent brief filed was the Appellant's Opening Brief ("AOB") or the Respondent's Brief ("RB"), and give the date it was filed. If no brief has yet been filed, leave this entry blank.

Entry 7. Fill out the requested information for the length of the appellate record and the date the record was filed.

Entry 8. Leave this box blank if you are representing yourself. If you are an attorney, serve a copy of the application on your client and check the box.

Date the form at the bottom of page 1, type or print your name legibly, and sign.

Page 2 - Proof of Service

Have someone over the age of 18 who is not a party to the action serve the application and fill out the Proof of Service on page 2 of the form. See instructions accompanying Sample Form C.

File: Original with a Proof of Service on all counsel and self-represented parties (if you are an attorney, serve your client), together with copies and preaddressed, stamped envelopes for each party.

Serve: All counsel
All self-represented parties
(If you are an attorney, serve your client.)

Sample Form R

TO BE FILED IN THE COURT OF APPEAL **APP-006**

COURT OF APPEAL, **APPELLATE DISTRICT, DIVISION**	Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):* TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	Superior Court Case Number: ***FOR COURT USE ONLY***
APPELLANT: RESPONDENT:	
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)	

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (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 *(total number of days):*
   (number of extensions): extensions from the court totaling *(total number of days):*

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:

	Volumes (#)	Pages (#)	Date filed
Appendix/Clerks Transcript:	_____	_____	_____
Reporters Transcript:	_____	_____	_____
Augmentation/other:	_____	_____	_____

8. 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)

Sample Form R

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)

Sample Form S

PETITION FOR REHEARING - INSTRUCTIONS

After the opinion has been filed in your case, or a request for publication granted or modification of opinion changing judgment, you have 15 days to ask the Court of Appeal for a rehearing. (CRC, rule 8.268(b)(1).) You ask for a rehearing if you feel that the opinion misstates the facts, has an error of law, has a significant omission in the facts or law or failed to consider an important argument. There is an automatic right to rehearing if the Court of Appeal makes a decision based on an issue that was not proposed or briefed by any party. (Government Code section 68081.) The petition for rehearing has an orange cover. An original plus four copies of the petition for rehearing must be filed in the Court of Appeal. A proof of service showing service on the Supreme Court, the Superior Court and all counsel and self-represented parties must accompany the petition for rehearing.

Filling out the Cover Page:

(1) The plaintiff's name as it appears on your Superior Court caption.

(2) Whether plaintiff is "appellant" or "respondent".

(3) The defendant's name as it appears on your Superior Court caption.

(4) Whether defendant is "appellant" or "respondent".

(5) The Court of Appeal case number.

(6) The Superior Court number from your Superior Court case.

(7) Write the county where the Superior Court case originated.

(8) The name of the Superior Court judge.

(9) Your name.

(10) Your mailing address.

(11) Your city, state and zip code.

(12) Your telephone number where you can be reached during the day.

Filling out the Petition for Rehearing:

(1) Your name.

(2) Your mailing address.

Sample Form S

(3) Your city, state and zip code.

(4) Your telephone number where you can be reached during the day.

(5) The plaintiff's name as it appears on your Superior Court caption.

(6) Whether plaintiff is "appellant" or "respondent".

(7) The defendant's name as it appears on your Superior Court caption.

(8) Whether defendant is "appellant" or "respondent".

(9) The Court of Appeal case number.

(10) The Superior Court number from your Superior Court case.

(11) Write whether you are "appellant" or "respondent".

(12) Your name.

(13) The date the opinion was filed.

(14) Why you think there should be a rehearing.

(15) The arguments in support of your reason why there should be a rehearing.

(16) Write "affirm", "reverse" or "modify", however you think the court should have ruled in its opinion.

(17) Current date.

(18) Your signature.

(19) Type or legibly print your name.

Due: 15 days after opinion filed, or request for publication granted or modification of opinion changing judgment.

Cover Color: Orange

File: Original plus 4 copies with Court of Appeal with Proof of Service

Provide an extra copy to be file-stamped for your file.

Serve: California Supreme Court - 5 copies
Superior Court - 1 copy
All counsel
All self-represented parties

Sample Form S

COURT OF APPEAL, SECOND APPELLATE DISTRICT

DIVISION [Insert division #]

STATE OF CALIFORNIA

(1) , Plaintiff and (2) , v. (3) , Defendant and (4) .	(5) . (Superior Court No. (6))

Appeal From the Superior Court of (7) .County
Honorable (8) , Judge

PETITION FOR REHEARING

(9)
(10)
(11)
(12)
Self-Represented

Sample Form S

(1)
(2)
(3)
(4)

COURT OF APPEAL, SECOND APPELLATE DISTRICT
DIVISION [Insert division #]
STATE OF CALIFORNIA

(5) , Plaintiff and (6) , v. (7) , Defendant and (8) .	(9) . (Superior Court No. (10))

PETITION FOR REHEARING

(11) , (12) , seeks rehearing of the court's opinion in the above case filed on (13) . The rehearing is necessary because (14) .

(15)

Sample Form S

CONCLUSION

Petitioner requests that rehearing be granted and that the court (16) , the judgment.

DATED: (17)

(18)
Signature

(19)
Type or Print Name

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties. (See Sample Form C.)

Sample Form T

ABANDONMENT OF APPEAL (UNLIMITED CIVIL CASE)
INSTRUCTIONS

If you wish to abandon your civil appeal **BEFORE** the record is filed, you should file a written Abandonment of Appeal (Unlimited Civil Case) form in the **Superior Court**.

This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at http://www.courtinfo.ca.gov/cgi-bin/forms.cgi. Select "Appellate" forms, then click on Form APP-005.

Filling out the Abandonment of Appeal (Unlimited Civil Case) form:

Caption

(1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.

(2) In the "Superior Court of California, County of" area of the form, specify the county, address, and branch name of the superior court that made the order or judgment you are appealing.

(3) In the next box on the form marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the superior court case caption.

(4) In the "Superior Court Case Number" box to the right, write the superior court case number.

(5) In the "Court of Appeal Case Number *(if known)*" box, write the Court of Appeal case number, if you know it.

Abandonment Statement

Fill in the date your Notice of Appeal was filed. At the bottom of the form, write the current date, type or print your name legibly, and sign the form.

Page Two (Proof of Service)

Have someone over the age of 18 who is not a party to the action serve the Abandonment of Appeal and fill out the Proof of Service on page 4 of the form. See instructions accompanying Sample Form C.

File:	Original with **Superior Court** Provide an extra copy to be file-stamped for your file.
Serve:	All counsel All self-represented parties

Sample Form T

TO BE FILED IN THE SUPERIOR COURT

APP-005

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):* TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	***FOR COURT USE ONLY***
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	Superior Court Case Number:
ABANDONMENT OF APPEAL (UNLIMITED CIVIL CASE)	Court of Appeal Case Number *(if known):*

The undersigned appellant hereby abandons the appeal filed on *(date):* in the above-entitled action.

Date:

▶

(TYPE OR PRINT NAME) (SIGNATURE OF APPELLANT OR ATTORNEY)

NOTE: File this form in the superior court if the record has not yet been filed in the Court of Appeal. If the record has already been filed in the Court of Appeal, you cannot use this form; you must file a request for dismissal in the Court of Appeal. You can use form APP-007 to file a request for dismissal in the Court of Appeal.

Sample Form T

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 *Abandonment of 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)

Sample Form U

REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE) INSTRUCTIONS

If you wish to abandon your civil appeal **AFTER** the record is filed, you should file a written Request for Dismissal of Appeal (Civil Case) form in the **Court of Appeal**. Dismissal of the appeal is discretionary with the Court of Appeal.

This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at http://www.courtinfo.ca.gov/cgi-bin/forms.cgi. Select "Appellate" forms, then click on Form APP-007.

Filling out the Request for Dismissal of Appeal (Civil Case) form:

Caption

(1) Fill out the top box of the form as follows: "Court of Appeal, Second Appellate District, Division [Insert divison #]." Indicate the Court of Appeal case number and the Superior Court case number in the boxes to the right.

(2) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.

(3) In the next box down, indicate your name next to "APPELLANT" and the responding party's name next to "RESPONDENT."

Dismissal Request

Write in the date your Notice of Appeal was filed. At the bottom of the form, write the current date, type or print your name legibly, and sign the form.

Page Two (Proof of Service)

Have someone over the age of 18 who is not a party to the action serve the Request for Dismissal and fill out the Proof of Service on page 4 of the form. See instructions accompanying Sample Form C.

File:	Original plus 3 copies with Court of Appeal Provide an extra copy to be file-stamped for your file.
Serve:	All counsel All self-represented parties

Sample Form U

TO BE FILED IN THE COURT OF APPEAL **APP-007**

COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	Court of Appeal Case Number *(if known)*: Superior Court Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*: TELEPHONE NO.: E-MAIL ADDRESS *(Optional)*: FAX NO. *(Optional)*: ATTORNEY FOR *(Name)*:	***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.

Sample Form U

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)

Sample Form V

Court of Appeal
State of California
Second Appellate District

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: _____

Case Name: _____

Please check the applicable box:

☐ There are no interested entities or parties to list in this Certificate per California Rules of Court, Rule 8.208(d)(3).

☐ Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest
1.	
2.	
3.	
4.	

Please attach additional sheets with Entity or Person Information if necessary.

_____
Signature of Attorney/Party Submitting Form

Printed Name:
Address:

State Bar No:
Party Represented:

SUBMIT PROOF OF SERVICE ON ALL PARTIES WITH YOUR CERTIFICATE