

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair
Heather Anderson, Senior Attorney, 415-865-7691,
heather.anderson@jud.ca.gov

DATE: September 8, 2009

SUBJECT: Appellate Procedure: Time for Filing Briefs (amend Cal. Rules of Court, rules 8.212 and 8.882; renumber form APP-106 as form APP-107; approve form APP-106; and revise forms APP-006 and APP-101-INFO) (Action Required)

Issue Statement

Under rule 8.212, in civil appeals in the Court of Appeal, the appellant currently has 30 days from the time the record is filed in the Court of Appeal to file the appellant's opening brief. If there is a delay in the appellant receiving the record after it has been filed in the Court of Appeal or if the record is very long, the appellant may not have sufficient time to prepare the opening brief.

Parties in civil appeals in the Court of Appeal can also ask the court to extend the deadline for filing a brief under rule 8.212 and can use *Application for Extension of Time to File Brief (Civil Case)* (form APP-006) for this purpose. In considering such an application, it is helpful for the presiding justice to know whether the trial court proceedings have been stayed pending the appeal. Currently, however, form APP-006 does not provide any spaces where a party can provide this information. In addition, the appellate division rules do not specifically provide that a party can apply to the appellate division for an extension of time to file a brief and there is no form for this purpose in the appellate division.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council:

1. Effective January 1, 2010:

- a. Amend rule 8.212 to increase the time appellants in civil cases in the Court of Appeal have to file an opening brief from 30 to 40 days after the record is filed in the Court of Appeal; and
 - b. Amend rule 8.882 to specifically provide that the parties in civil appeals in the superior court appellate division may apply to the court for an extension of time to file a brief;
2. Effective July 1, 2010:
- a. Revise *Application for Extension of Time to File Brief (Civil Case)* (form APP-006) to include space for an applicant to indicate whether the trial court proceedings have been stayed;
 - b. Approve new optional *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) that parties can use to apply to the court for an extension of time to file a brief in the appellate division and renumber current form APP-106, *Abandonment of Appeal (Limited Civil Case)*, as APP-107 to make space for new form APP-106; and
 - c. Revise *Information on Appeal Procedures for Limited Civil Cases* (APP-101-INFO) to reflect the proposed amendments to rule 8.882 and the approval of new form APP-106.

The text of the amended rules and the new and revised forms are attached at pages 6–26.

Rationale for Recommendation

Time for filing appellant's opening brief

Sometimes there is a delay between the time the appellant receives notice that the record has been filed in the Court of Appeal and when the appellant receives his or her copy of the record. Under rule 8.212, the 30-day period for filing the appellant's opening brief runs from the time the record is filed in the Court of Appeal. When delivery of the record to the appellant is delayed, the time the appellant has to prepare the opening brief is effectively shortened. In addition, the committee understands from the California Appellate Court Clerks Association that, over time, the average size of the record on appeal has grown. This makes it more difficult for appellants to fully review the record and prepare an opening brief within the 30-day period provided under rule 8.212.

This proposal would amend rule 8.212 to increase the time for filing the appellant's opening brief in civil appeals in the Court of Appeal to 40 days following the filing of the record in the Court of Appeal. This would give appellants in these appeals additional time to prepare their opening briefs and make the time for filing appellants' opening briefs in these civil cases the same as it is currently for felony appeals under rule 8.360.

Extension of time to file briefs

Rule 8.212 allows parties to apply to the Court of Appeal for an extension of time to file a brief. As noted above, in considering an application to extend the deadline for filing a brief, it is helpful for the presiding justice to know whether the trial court proceedings have been stayed pending the appeal. This helps the presiding justice to more fully understand the impact of any delay in the appellate proceedings. Currently, *Application for Extension of Time to File Brief (Civil Case)* (form APP-006) does not provide any spaces where a party can provide this information. Last year, the Appellate Advisory Committee circulated a proposal to revise form APP-006 to add spaces where a party would have been required to indicate whether the appeal was from an interlocutory order and, if so, whether the trial court proceedings were stayed. Based on comments received on that earlier proposal, the committee has revised the proposed addition to form APP-006 so that a party would only check and complete new item 8 on the form if the trial court proceedings in the case were stayed pending the outcome of the appeal.

Rule 8.882 addresses briefs in misdemeanors and limited civil cases. Currently, this rule allows parties to stipulate to extend briefing time, but it does not specifically provide that a party can apply to the appellate division for an extension of time.¹ This proposal would add a new paragraph to subdivision (b) of rule 8.882 providing for such applications. It would also provide a new form, *Application for Extension of Time to File Brief (Limited Civil Case)* that parties could use to request such an extension in the appellate division. The committee is recommending that this new form be numbered as form APP-106 so that the numbering of this form parallels the equivalent Court of Appeal form—form APP-006—and also so that the numbering of the appellate division forms generally follows the sequence in which these forms are likely to be used in an appellate division case. To do this, existing form APP-106, *Abandonment of Appeal (Limited Civil Case)*, needs to be renumbered as form APP-107. *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) would also be revised to include references to this new form.

Alternative Actions Considered

To address the concerns about delays in appellants' receipt of the record, the committee considered modifying the rules relating to the sending of the record to ensure that the reviewing court and the appellant received the record at the same time. Ultimately, the committee concluded that it would be simpler and more straightforward to modify the time for filing the appellant's opening brief.

Comments From Interested Parties

This proposal was circulated as part of the spring 2009 comment cycle. Thirteen individuals or organizations submitted comments on this proposal. Seven commentators agreed with the proposal, three agreed with the proposal if modified, one disagreed with

¹ The presiding judge could extend briefing time under rule 8.810, which generally permits the presiding judge of the appellate division, or his or her designee, to extend the time to do any act required or permitted under the appellate division rules.

the proposal, and two did not indicate their positions on the proposal as a whole but provided comments on specific aspects of the proposal. The full text of the comments received and the committee's responses is attached beginning on page 27.

The commentator who disagreed with the proposal expressed the view that 30 days from the filing of the record is sufficient time for an appellant to prepare and file the opening brief. He also noted that parties can sign up for e-mail notification of events in a case and suggested that this would obviate the need for the proposed rule amendment. The committee continues to believe that increasing the time for filing the appellant's opening brief is warranted, both because of committee members' personal experiences with delayed receipt of the record and, as pointed out by the California Appellate Court Clerks Association in its comments, because the average size of the record on appeal has grown since this 30-day period was first established. The committee does not believe that receiving e-mail notice that the record has been filed in the Court of Appeal would address the difficulties in trying to prepare a brief within the current 30-day period as the appellant cannot complete the review necessary to prepare a brief until the record is actually received.

In the invitation to comment, the committee specifically noted that renumbering current form APP-106 as form APP-107 could create confusion among form users and would require updating existing stockpiles of forms and any materials that refer to this form. The committee specifically sought comments on whether the benefits of renumbering form APP-106 outweighed these costs. Three commentators provided input on this issue. One, the Superior Court of San Diego County, indicated that the benefits of renumbering this form would not outweigh the costs and indicated it agreed with the proposal only if modified. The other two commentators, the Superior Courts of Los Angeles and Ventura Counties, agreed with the proposal and indicated that this renumbering would not be a burden because forms are printed on an as-needed basis in their courts and because form APP-106 has only been in effect since January of this year. Based on these comments, the committee is recommending that form APP-106 be renumbered as form APP-107, but, to give courts sufficient time to use up any stockpiles of existing forms, the committee is also recommending that the new and revised forms not take effect until July 1, 2010.

A commentator who agreed with the proposal if amended pointed out that, as circulated, the proposed amendment to rule 8.882 did not appropriately indicate that the provisions relating to stipulated extensions apply only in civil cases. As suggested by this commentator, the committee has amended its proposal to clarify this.

The final commentator who agreed with the proposal if amended suggested a change to the portion of rule 8.882 addressing notices of potential sanctions when a party fails to file a brief. Because the suggested amendment would be a substantive change that was not part of the proposal circulated for comment, the committee will consider this suggestion in an upcoming rules cycle.

Implementation Requirements and Costs

Extending the deadline for filing an appellant's opening brief in an unlimited civil case should reduce the need for appellants to file applications for extensions of time to file these briefs, thereby reducing the time and resources spent by both counsel and the courts on these applications. The changes to *Application for Extension of Time to File Brief (Civil Case)* (form APP-006) should make it easier and less time-consuming for presiding justices to rule on those applications that are filed. However, amending these rules and revising these forms, particularly renumbering existing form APP-106 as APP-107, will require updating materials that refer to these rules and forms and replacing any existing stockpiles of forms. To alleviate costs associated with these form changes, the committee is recommending that these form changes not take effect until July 1, 2010.

Attachments

Rules 8.212 and 8.882 of the California Rules of Court are amended, effective January 1, 2010, to read:

1 Rule 8.212. Service and filing of briefs

2
3 (a) Time to file

4
5 (1) An appellant must serve and file its opening brief within:

6
7 (A) ~~30~~ 40 days after the record—or the reporter’s transcript, after a rule
8 8.124 election—is filed in the reviewing court; or

9
10 (B) 70 days after the filing of a rule 8.124 election, if the appeal proceeds
11 without a reporter’s transcript.

12
13 (2)–(3) * * *

14
15 (b)–(c) * * *

16
17
18 Rule 8.882. Briefs by parties and amici curiae

19
20 (a) * * *

21
22 (b) Extensions of time

23
24 (1)–(2) * * *

25
26 (3) Before the brief is due, a party may apply to the presiding judge of the
27 appellate division for an extension of the time period for filing a brief under
28 (a). The application must show that there is good cause to grant an extension
29 under rule 8.811(b). In civil appeals, the application must also show that:

30
31 (A) The applicant was unable to obtain—or it would have been futile to
32 seek—the extension by stipulation; or

33
34 (B) The parties have stipulated to the maximum extension permitted under
35 (1) and the applicant seeks a further extension.

36
37 (4) A party need not apply for an extension or relief from default if it can file its
38 brief within the time prescribed by (c). The clerk must file a brief submitted
39 within that time if it otherwise complies with these rules.

40
41 (c)–(e) * * *

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:
APPELLANT: RESPONDENT:	FOR COURT USE ONLY
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)	

Notice: Please read Judicial Council form APP-001 before completing this form.

- 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):
- I have have not received a rule 8.220 notice.
- 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):
- 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):
- 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):
- The last brief filed by any party was: AOB RB filed on (date):
- The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Appendix/Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/other:	_____	_____	_____
- The trial court has ordered the proceedings in this case stayed until this appeal is decided.
- For attorneys filing application on behalf of client: I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

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

EXTENSION OF TIME IS:

ORDER

- Granted to _____
- Denied

Date: _____ (SIGNATURE OF PRESIDING JUSTICE)

CASE NAME:	CASE NUMBER:
------------	--------------

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

Mail **Personal Service**

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence or business address is (*specify*):
3. I mailed or personally delivered a copy of the *Application for Extension of Time to File Brief (Civil Case)* as follows (*complete either a or b*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope **and**
 - (a) **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

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

Date:

(TYPE OR PRINT NAME)

 _____

(SIGNATURE OF DECLARANT)

GENERAL INFORMATION**1 What does this information sheet cover?**

This information sheet tells you about appeals in limited civil cases. These are civil cases in which the amount of money claimed is \$25,000 or less.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read Information for the Appellant, starting on page 2. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read Information for the Respondent, starting on page 11.

This information sheet does not cover everything you may need to know about appeals in limited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.800–8.843 and 8.880–8.891 of the California Rules of Court, which set out the procedures for limited civil appeals. You can get these rules at any courthouse or county law library or online at www.courtinfo.ca.gov/rules.

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In a limited civil case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the “trial court” in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made:

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.

- **Prejudicial error:** The appellant (the party who is appealing) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called “prejudicial error”).

Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.



3 Do I need a lawyer to represent me in an appeal?

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you decide not to use a lawyer, you must let the court know if your address, telephone number, or other contact information changes so that the court can contact you if needed.

4 Where can I find a lawyer to help me with my appeal?

You have to hire your own attorney if you want one. You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court’s decision. It explains some of the rules and procedures relating to appealing a decision in a limited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 11 of this information sheet.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person’s guardian or conservator).

6 Can I appeal *any* decision the trial court made?

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.2 lists a few types of orders in a limited civil case that can be appealed right away. These include orders that:

- Change or refuse to change the place of trial (venue)
- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum
- Grant a new trial or deny a motion for judgment notwithstanding the verdict
- Discharge or refuse to discharge an attachment or grant a right to attach
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction
- Appoint a receiver
- Are made after final judgment in the case

(You can get a copy of Code of Civil Procedure section 904.2 at www.leginfo.ca.gov/calaw.html.)

7 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court’s decision. You may use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to prepare a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.



8 How do I “serve and file” the notice of appeal?

“Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the notice of appeal to the other party or parties in the way required by law.
- Make a record that the notice of appeal has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail or in person), and the date the notice of appeal was served.
- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.

9 Is there a deadline to file my notice of appeal?

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk mails or a party serves either a document called a “Notice of Entry” of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier. **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look at Government Code section 70621. (You can get a copy of this law at www.leginfo.ca.gov/calaw.html.) If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms. You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

11 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at www.leginfo.ca.gov/calaw.html). These kinds of judgments or orders will be postponed, or “stayed,” only if you request a stay and the court grants your request. In most cases, other than unlawful detainer cases in which the trial court’s judgment gives a party possession of the property, if the trial court denies your request for a stay, you can apply to the appellate division for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

12 What do I need to do after I file my notice of appeal?

You must ask the clerk of the trial court to prepare and send the official record of what happened in the trial court in your case to the appellate division.

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Notice*



Designating Record on Appeal (Limited Civil Case) (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.

You must serve and file this notice designating the record on appeal within 10 days after you file your notice of appeal. “Serving and filing” this notice means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the notice to the other party or parties in the way required by law.
- Make a record that the notice has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail or in person), and the date the notice was served.
- Bring or mail the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving

13 What is the official record of the trial court proceedings?

There are three parts of the official record:

- a. A record of the documents filed in the trial court (other than exhibits)
- b. A record of what was said in the trial court (this is called the “oral proceedings”)

- c. Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

Read below for more information about these parts of the record.

a. Record of the documents filed in the trial court

The first part of the official record of the trial court proceedings is a record of the documents that were filed in the trial court. There are three ways in which a record of the documents filed in the trial court can be prepared for the appellate division:

- (1) A *clerk’s transcript*
- (2) The original *trial court file* or
- (3) An *agreed statement*

Read below for more information about these options.

(1) Clerk’s transcript

Description: A clerk’s transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court.

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk’s transcript. These documents are listed in rule 8.832(a) of the California Rules of Court and in *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

If you want any documents other than those listed in rule 8.832(a) to be included in the clerk’s transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk’s transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.



If you—the appellant—request a clerk’s transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk’s transcript. If this happens, you will be served with a notice saying what other documents the respondent wants included in the clerk’s transcript.

Cost: The appellant is responsible for paying for preparing a clerk’s transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk’s transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk’s transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and forward the original clerk’s transcript to the appellate division for filing. The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

(2) Trial court file

When available: If the court has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk’s transcript (see rule 8.833 of the California Rules of Court).

Cost: As with a clerk’s transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

Description: An agreed statement is a summary of the trial court proceedings agreed to by the parties (see rule 8.836 of the California Rules of Court).

When available: If you and the respondent agree to this, you can use an agreed statement instead of a clerk’s transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk’s transcript. If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a “stipulation”), stating that you are trying to



agree on a statement. Within the next 30 days, you must then file the agreed statement or tell the court that you were unable to agree on a statement and file a new notice designating the record.

b. Record of what was said in the trial court (the “oral proceedings”)

The second part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the “oral proceedings”). You do not *have* to send the appellate division a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of those oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. **If the appellate division does not receive this record, it will not be able to review any issues that are based on what was said in the trial court.**

In a limited civil case, you can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.

There are four ways in which a record of the oral proceedings can be prepared for the appellate division:

- (1) If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a “reporter’s transcript.”
- (2) If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree (“stipulate”) to this, you can use the *official electronic recording* itself instead of a transcript.
- (3) You can use an *agreed statement*.
- (4) You can use a *statement on appeal*.

Read below for more information about these options.

(1) Reporter’s transcript

Description: A reporter’s transcript is a written record (sometimes called a “verbatim” record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.834 of the California Rules of Court establishes the requirements relating to reporter’s transcripts.

When available: If a court reporter was there in the trial court and made a record of the oral proceedings, you can choose (“elect”) to have the court reporter prepare a reporter’s transcript for the appellate division. In most limited civil cases, however, a court reporter will not have been there unless you or another party in your case made specific arrangements to have a court reporter there. Check with the court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter’s transcript, you must identify by date (this is called “designating”) what proceedings you want to be included in the reporter’s transcript. You can use the same form you used to tell the court you wanted to use a reporter’s transcript—*Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

If you elect to use a reporter’s transcript, the respondent also has the right to designate additional proceedings to be included in the reporter’s transcript. If you elect to proceed without a reporter’s transcript, however, the



respondent may not designate a reporter's transcript without first getting an order from the appellate division.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost with the trial court clerk within 10 days after this notice is sent.

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. If you are represented by a lawyer in your appeal, a special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. However, there is no financial help available for parties who are not represented by lawyers. If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

Completion and delivery: After the cost of preparing the reporter's transcript has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. The trial court clerk will submit the original transcript to the appellate division and send you a copy of the transcript. If the respondent has purchased it, a copy of the reporter's transcript will also be mailed to the respondent.

(2) Official electronic recording or transcript

When available: In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you

choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

Cost: The appellant is responsible for paying for preparing this transcript or making a copy of the official electronic recording. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms. The court will review this application to determine if you are eligible for a fee waiver.

Completion and delivery: After the estimated cost of the transcript or official electronic recording has been paid or waived, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send it to the appellate division.

(3) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties.

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use an agreed statement as the record of the oral proceedings (please note that it may take more of your time to prepare an agreed statement than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal. The statement should include only those facts that you and the other parties think are needed to decide the appeal.



Preparation: If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a “stipulation”) stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 days you must either file the agreed statement or tell the court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

(4) Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term “judge” includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose (“elect”) to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter’s transcript or official electronic recording, if they are available).

Contents: A statement on appeal must include a summary of the oral proceedings that the appellant believes necessary for the appeal and a summary of the trial court’s decision. It must also include a statement of the points the appellant is raising on appeal (see rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at www.courtinfo.ca.gov/rules).

Preparing a proposed statement: If you elect to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) to prepare your proposed statement. You can get

form APP-104 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.

Serving and filing a proposed statement: You must serve and file the proposed statement with the trial court within 20 days after you file your notice designating the record. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the proposed statement to the respondent in the way required by law.
- Make a record that the proposed statement has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and about proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.

Review and modifications: The respondent has 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the respondent and makes any corrections or modifications to the statement that are needed to make sure that the statement provides a complete and accurate summary of the trial court proceedings.



Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review. If you disagree with anything in the judge’s statement, you have 10 days from the date the statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the trial court proceedings.

Sending statement to the appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with any record of the documents filed in the trial court.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk’s transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for that exhibit to be included in the clerk’s transcript or sent to the appellate division, the party who has the exhibit must deliver that exhibit to the trial court clerk as soon as possible.

14 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives the record, it will send you a notice telling you when you must file your brief in the appellate division.

15 What is a brief?

Description: A “brief” is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at www.courtinfo.ca.gov/rules.

Contents: If you are the appellant, your brief, called an “appellant’s opening brief,” must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk’s transcript and the reporter’s transcript (or the other forms of the record you are using) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the brief to the other parties in the way required by law.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show



who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.

- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and about proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

17 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the appellate division will notify you of the date for oral argument in your case.

18 What is "oral argument?"

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

19 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

20 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You can get form APP-107 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.



INFORMATION FOR THE RESPONDENT

This section of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in a limited civil case. The information may also be helpful to the appellant.

21 I have received a notice of appeal from another party. Do I need to do anything?

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court’s decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/.

22 If the other party appealed, can I appeal too?

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a “cross-appeal.” To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to file this notice in a limited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

23 Is there a deadline to file a cross-appeal?

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 30 days after mailing or service of Notice of Entry of the judgment or a file-stamped copy of the

judgment) or within 10 days after the clerk of the trial court mails notice of the first appeal, whichever is later.

24 I have received a notice designating the record on appeal from another party. Do I need to do anything?

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

- Add to what is included in the record
- Participate in preparing the record *or*
- Ask for a copy of the record

Look at the appellant’s notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question 13 above. Then read below for what your options are when the appellant has chosen that form of the record.

(a) Clerk’s transcript

If the appellant is using a clerk’s transcript, you have the option of asking the clerk to include additional documents in the clerk’s transcript. To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk’s transcript.

Whether or not you ask for additional documents to be included in the clerk’s transcript, you must pay a fee if you want a copy of the clerk’s transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk’s transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk’s notice was sent. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at



www.courtinfo.ca.gov/forms. The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

(b) Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this amount with the court within 10 days after the clerk's notice was sent. The reporter will not prepare a copy of the reporter's transcript for you unless you pay this deposit.

If the appellant elects not to use a reporter's transcript, you may not designate a reporter's transcript without first getting an order from the appellate division.

(c) Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 30 days after the appellant files its notice designating the record.

(d) Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings

that is approved by the trial court), the appellant will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to serve and file suggested changes (called "amendments") that you think are needed to make sure that the statement provides a complete and accurate summary of the trial court proceedings. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the proposed amendments to the appellant in the way required by law.
- Make a record that the proposed amendments have been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail or in person), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.

25 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When



the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at www.courtinfo.ca.gov/rules.

The appellant serves and files the first brief, called an “appellant’s opening brief.” You may, but are not required to, respond by serving and filing a respondent’s brief within 30 days after the appellant’s opening brief is filed. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the brief to the other parties in the way required by law.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file a respondent’s brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant’s brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

If you file a respondent’s brief, the appellant then has an opportunity to serve and file another brief within 20 days replying to your brief.

26 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date for oral argument in your case.

“Oral argument” is the parties’ chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in the



appeal or ask the judges if they have any questions you could answer.

After oral argument is held (or the scheduled date passes if all parties waive argument), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.



Clerk stamps date here when form is filed.

Instructions

- This form is only for requesting an extension of time to file a brief in an appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk’s office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the judgment or order is being appealed:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number:

Appellate Division Case Number:

1 Your Information

a. Name of party requesting extension of time to file brief:

b. Party’s contact information (*skip this if the party has a lawyer for this appeal*):

Street address: _____
Street City State Zip

Mailing address (*if different*): _____
Street City State Zip

Phone: () _____ E-mail (*optional*): _____

c. Party’s lawyer (*skip this if the party does not have a lawyer for this appeal*):

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

Mailing address (*if different*): _____
Street City State Zip

Phone: () _____ E-mail (*optional*): _____

Fax (*optional*): () _____



Appellate Division Case Name: _____

- 2 I am requesting an extension on the time to file:
 - Appellant’s opening brief, which is now due on (date): _____
 - Respondent’s brief, which is now due on (date): _____
 - Appellant’s reply brief, which is now due on (date): _____
- 3 I am requesting that the time to file the brief identified in 2 be extended to (date): _____
- 4 I have have not received a notice under rule 8.882(c) from the clerk that this brief must be filed in 15 days.
- 5 The time to file the brief: (check all that apply):
 - Has not been extended before
 - Has been extended before by the stipulation of the parties. The parties stipulated to (number of extensions) _____ totaling (number of days) _____
 - Has been extended before by the court. The court granted (number of extensions) _____ totaling (number of days) _____
- 6 I am not able to stipulate to an extension to file this brief because (check one):
 - The other party is not willing to stipulate to an extension.
 - Other reason (please describe the reason): _____
- 7 The reason I need an extension to file this brief is (describe the reason you need an extension; see rule 8.811(b), for the factors the court will consider in deciding whether there is good cause to grant an extension): _____
- 8 The last brief filed by any party in this case was:
 - The appellant’s opening brief, filed on (date): _____
 - The respondent’s brief, filed on (date): _____
- 9 If this extension is being requested by a lawyer on behalf of a client, the lawyer must complete this item.
 - I certify that I have delivered a copy of this application to my client (rule 8.810(e)). 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 your name

Signature of party or attorney

Appellate Division Case Number:

Appellate Division Case Name: _____

2 On (fill in the date) _____, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

Type or print your name

▲ _____
Signature of appellant or attorney

SPR09-06

Appellate Procedure: Time for Filing Briefs (amend rules 8.212 and 8.882; approve form APP-106; revise forms APP-006 and APP-101-INFO; and renumber form APP-106 as form APP-107)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Committee Response
1.	Appellate Court Committee San Diego County Bar Association by Matthew C. Mulford Chair	A	<p>As part of the Appellate Advisory Committee's ongoing efforts to refine and develop optional Judicial Council forms to assist practitioners and bring greater efficiency to the appellate process, we support the proposed changes to the <i>Application for Extension of Time to File Brief (Civil Case)</i>, APP-006, which now incorporates the status of the trial court proceedings.</p> <p>On a related note, we suggest that the Council consider a new separate form to present either a stipulation for an extension of time as provided in rule 8.212(b)(1) or an unopposed application for extension. We concur with the policy of encouraging parties to stipulate to such extensions in the first instance and believe providing a form for such stipulations would facilitate this process.</p>	<p>No response required.</p> <p>The committee will consider this suggestion in a later rules cycle.</p>
2.	California Appellate Court Clerks Association	NI	We disagree with the rationale given extending the time but do not oppose the change. We believe a more viable reason for enlarging the time is the fact that record size has more than doubled since the original 30 day time period was put into the Rules of Court over sixty years ago. Our information shows that more parties receive their copy of the record before the courts of appeal than receive it later.	The committee appreciates the California Appellate Court Clerks Association identifying another reason for the proposed change to rule 8.212.
3.	Committee on Appellate Courts The State Bar of California by Saul Bercovitch, Legislative Counsel	A	The Committee supports this proposal.	No response required.

SPR09-06

Appellate Procedure: Time for Filing Briefs (amend rules 8.212 and 8.882; approve form APP-106; revise forms APP-006 and APP-101-INFO; and renumber form APP-106 as form APP-107)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Committee Response
4.	Katherine Lynn Managing Attorney Court of Appeal, Second Appellate District Los Angeles	A	I agree with the proposed changes in the following: SPR09-06	No response required.
5.	Orange County Bar Association by Michael G. Yoder, President	A	No additional comment.	No response required.
6.	Public Counsel Law Center by Lisa Jaskol, Directing Attorney Appellate Law Program	NI	<p>A. Extension of Time to File Briefs Public Counsel supports the proposals to add a new subdivision to rule 8.882 specifically authorizing applications for extensions of time to file briefs in the appellate division and to create a new form, <i>Application for Extension of Time to File Brief (Limited Civil Case)</i>, that parties can use to request an extension in the appellate division. These changes will help indigent and unrepresented litigants obtain needed extensions of time, helping ensure their cases are heard on the merits.</p> <p>B. Information on Appeal Procedures for Limited Civil Cases (APP-IOI-INFO) Public Counsel also supports the proposal to include language in item 15 of this form (“What is a brief?”) explaining that parties can obtain extensions of time by stipulation or by applying to the court. Including this information will provide valuable guidance to indigent and unrepresented litigants, who are often unaware of the stipulation option.</p>	<p>No response required.</p> <p>No response required.</p>

SPR09-06

Appellate Procedure: Time for Filing Briefs (amend rules 8.212 and 8.882; approve form APP-106; revise forms APP-006 and APP-101-INFO; and renumber form APP-106 as form APP-107)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Committee Response
			<p>C. Application for Extension of Time to File Brief (Limited Civil Case) (APP-106)</p> <p>1. At the very top of the first page, consider printing “TO BE FILED IN THE APPELLATE DIVISION.” This would be similar to form APP-006, which states at the top of the first page: “TO BE FILED IN THE COURT OF APPEAL.” Although APP-106’s Instructions tell the litigant (in the fifth bullet point) to take or mail the form “to the appellate division clerk’s office,” a litigant may overlook this instruction and instead file the application in the trial court.</p> <p>2. In item 4, consider replacing “in 15 days” with “within 15 days from the date of the notice.” This language avoids the possibility that a litigant could think the 15 days begin to run on some other day.</p> <p>3. Signature line: replace “appellant” with “party.”</p>	<p>The committee appreciates this suggestion. The committee plans to undertake a general review of the new appellate division rules and forms in the near future and will consider this suggestion as part of that process.</p> <p>The committee considered this suggestion but ultimately declined to make this change. The reference to the 15-day period on proposed form APP-106 is meant simply to help users of this proposed form identify whether they have received a notice under rule 8.882; it is not meant to serve as the rule 8.882 notice itself. The committee does not believe that this will create confusion about when the 15-day period begins to run because the rule 8.882 notice should clearly explain this.</p> <p>The committee agrees with this suggestion and has incorporated this change into its proposal.</p>
7.	Mark Schaeffer Attorney at Law Sherman Oaks	N	30 days is already enough time. Signing up for automatic e-mail notification, which is easy and anybody can do, undermines need for any change to the rule.	The committee does not believe that receiving e-mail notice that the record has been filed in the Court of Appeal would address the concerns regarding effectively reducing the briefing time of parties who have not yet received their copies of

SPR09-06

Appellate Procedure: Time for Filing Briefs (amend rules 8.212 and 8.882; approve form APP-106; revise forms APP-006 and APP-101-INFO; and renumber form APP-106 as form APP-107)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Committee Response
				the record.
8.	Michael D. Schwartz Special Assistant District Attorney Office of the District Attorney County of Ventura	AM	<p>The proposed amendment to rule 8.882(b) is unclear as to extensions in criminal cases. Under proposed rule 8.882(b)(3), an application for extension requires a declaration that the applicant was unable to obtain, or it would have been futile to seek, an extension by stipulation, or that the parties have already stipulated to the maximum extension under (b)(1). But the provisions for stipulations ((b)(1) and (b)(2)) only apply in civil cases. In every criminal case, it logically would be futile to seek an extension by stipulation since the parties have no power to accomplish an extension in that manner. But it would not make sense and would be confusing to require parties seeking extensions in criminal cases to make a declaration regarding stipulations.</p> <p>The amendment could be clarified by amending 8.882(b)(3) to read:</p> <p>(3) Before the brief is due, a party may apply to the presiding judge of the appellate division for an extension of the time period for filing a brief under (a). The application must show that there is good cause to grant an extension under rule 8.811(b) and. In civil cases, the application must also show that:</p> <p>(A) The applicant was unable to obtain—or it would have been futile to seek—the extension by stipulation; or</p>	The committee appreciates these comments and has revised its proposal as suggested by the commentator to clarify that the requirements under proposed 8.882(b)(3)(A) and (B) only apply in civil cases.

SPR09-06

Appellate Procedure: Time for Filing Briefs (amend rules 8.212 and 8.882; approve form APP-106; revise forms APP-006 and APP-101-INFO; and renumber form APP-106 as form APP-107)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Committee Response
			(B) The parties have stipulated to the maximum extension permitted under (1) and the applicant seeks a further extension.	
9.	Superior Court of Kern County by Laura Rusk Supervising Court Clerk	A	On the items relating to the trial court, we have no objection to the proposed changes.	No response required.
10.	Superior Court of Los Angeles County	A	Time for Filing Briefs Agree with re-numbering form APP106, <i>Abandonment of Appeal</i> to APP107 to parallel the Court of Appeal forms. All forms are available on the Web on an “as needed” basis, so there should not be “stockpiles” of unused forms. Since its inception on 1/1/2009, we have seen minimal use of the APP106 form to date. Renumbering at this point should not create a problem.	The committee appreciates the court’s input concerning this renumbering. Based on this and other comments, the committee is recommending that current form APP-106 be renumbered at APP-107, but is also recommending that this change not take effect until July 1, 2010 in order to give any courts that do have stockpiles of forms sufficient time to use up these forms.
11.	Superior Court of San Diego County by Michael M. Roddy Executive Officer San Diego	AM	In response to the Committee’s request for comments on whether the benefits of renumbering APP-106 [<i>Abandonment of Appeal</i>] would outweigh the costs, this court does not believe they would. Giving forms that serve similar functions in the Court of Appeal and the Appellate Division parallel numbers and numbering forms in the sequence they are likely to be used is generally helpful. However, the renumbering of forms generally requires not only replacing existing stock of the renumbered forms and any that reference them, but also revising local rules, internal procedures, and web pages. As the Committee acknowledged,	Please see response to the comments of the Superior Court of Los Angeles County, above.

SPR09-06

Appellate Procedure: Time for Filing Briefs (amend rules 8.212 and 8.882; approve form APP-106; revise forms APP-006 and APP-101-INFO; and renumber form APP-106 as form APP-107)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Committee Response
			renumbering is also confusing to form users. Consequently, this court requests that forms be renumbered only when necessary.	
12.	Superior Court of Ventura County by Julie Camacho Court Program Manager	A	The proposal to renumber the <i>Abandonment of Appeal</i> form as APP-107 will not burden this court with any additional costs as forms are printed on an as needed basis by customers through court kiosks and at the public filing counters.	Please see response to the comments of the Superior Court of Los Angeles County, above.
13.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst	AM	Relating to cases in which the defendant appeals and the People fail to file a brief, the working group noted that there is no reciprocity in terms of sanctions available under the current rule proposal. The working group recommends that if the rule proposal is going to address brief filing the rule proposal should be more comprehensive and add a bilateral filing requirement.	This proposal does not make any change to rule 8.882(c), which addresses notice of the potential sanctions when a party fails to file a brief; that portion of rule 8.882 was only shown in the invitation to comment because it is cross-referenced in proposed new subdivision (b)(4). Adding a new requirement concerning notice to the People when they fail to file a respondent's brief is thus outside the scope of the proposal that was circulated for comment. The committee will therefore consider this suggestion in a later rules cycle.