

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
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DATE: September 3, 2008

SUBJECT: Appellate Procedure: Service and Filing (amend Cal. Rules of Court, rule 8.25; adopt rule 8.817; approve forms APP-009, APP-009-INFO, APP-109, and APP-109-INFO; and revise forms APP-102, APP-103, APP-104, APP-106, CR-135, CR-143, APP-150-INFO, and APP-151)¹ (Action Required)

Issue Statement

Rules on Service and Filing

Rule 8.25 of the California Rules of Court addresses service and filing of documents in the Supreme Court and Court of Appeal. Rule 8.25(b)(2) provides that, with specified exceptions, a filing is not considered timely unless the clerk receives the document before the time to file it expires. There are, however, some limited exceptions to this general rule. For example, the rules currently provide that if the superior court clerk receives a notice of appeal in a criminal, juvenile, or conservatorship case or notice of intent in a juvenile dependency case by mail from a custodial institution after the deadline for filing the notice has expired but the envelope shows that the notice was mailed or delivered to custodial officials for mailing before the deadline expired, the notice is deemed timely (see rules 8.308(e), 8.400(f), 8.450(e), 8.480(a), and 8.853(e)²). These provisions reflect the “prison delivery” exception articulated by the California Supreme Court in *In re Jordan* (1992) 4 Cal.4th 116. Rule 8.25 does not currently reflect this “prison delivery” exception. This may create confusion about when these documents are considered filed on time.

¹ Forms APP-102, APP-103, APP-104, APP-106, CR-135, CRP-143, APP-150-INFO, and APP-151 were adopted by the council in February as part of the new appellate division rules and forms and will take effect on January 1, 2009. The report to the council concerning these rules and forms is available at www.courtinfo.ca.gov/jc/documents/reports/022208item7.pdf.

² Rule 8.853 was adopted by the Judicial Council on February 22, 2008, and will take effect on January 1, 2009. It can be accessed at www.courtinfo.ca.gov/rules/amendments/jan2009.pdf.

Currently, there is no rule similar to rule 8.25 that addresses service and filing of documents in the superior court appellate division, leaving litigants in appellate division matters without direction in this area.

Proof of Service Forms

Rule 8.25 provides that before filing any document, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule. The party must also attach to the document presented for filing a proof of service showing the required service. Currently, there are no Judicial Council forms that litigants can use to provide this required proof of service in appellate proceedings.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2009:

1. Amend rule 8.25 to indicate that the rules of court or other law may establish exceptions to the general rule that a filing is not timely unless the clerk receives the document before the time to file it expires;
2. Adopt new rule 8.817 to address service and filing in the superior court appellate division;
3. Approve *Proof of Service (Court of Appeal)* (form APP-009); *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO); *Proof of Service (Appellate Division)* (form APP-109); and *What Is Proof of Service?* (form APP-109-INFO); and
4. Revise forms APP-102, APP-103, APP-104, APP-106, CR-135, CR-143, APP-150-INFO, and APP-151 to include references to new forms APP-009 and APP-009-INFO and to make other minor technical changes.³

³ The technical changes to these forms include changes to conform to current Judicial Council form format and: (1) on APP-102, APP-103, and APP-104, eliminating the reference to “the People of the State of California v.” in space for the trial court case name in the third box on the first page, as these are forms used for limited civil cases, not misdemeanor or infraction cases; (2) on APP-103, clarifying a statement about local rules authorizing the use of the original court file instead of a clerk’s transcript in item 3a; (3) on APP-106, changing “the party who is filing” to “the party who filed” in item 1a; (4) on CR-135 and CR-136, revising items 1a–1c, to consolidate previous items 1a (name) and 1b (address) into one item 1a, and then to renumber previous item 1c to 1b and to add boxes for indicating if a lawyer filing out the form was the defendant’s lawyer in the trial court or the defendant’s lawyer for the appeal; (5) on APP-150, revising the first paragraph in item 1 to use the same plain language phrases to describe the content of the form as are used on forms APP-101-INFO, CR-131-INFO, and CR-141-INFO and moving the first two sentences in item 12c to right below the heading; and (6) on APP-151, revising items 1a–1c, to consolidate previous items 1a (name) and 1b (address) into one item 1a, and then to renumber previous item 1c to 1b, replace the reference to “appellant” with “petitioner” in item 1c, and replace instructions to “provide the requested information” with “fill in” in items 9, 10 and 12.

The text of the proposed amendments to the rules is attached at pages 6–8. The proposed new and revised forms are attached at pages 9–67.

Rationale for Recommendation

Rules on Service and Filing

As noted above, the general rule is that a document is considered timely filed only if it is received by the clerk before the time to file it has expired. Amending rule 8.25 and its accompanying advisory committee comment to recognize that there are exceptions to this general rule will eliminate confusion about whether a document is considered timely filed when such an exception applies. The proposed amendment to rule 8.25 and similar language in proposed new rule 8.817 are intentionally drafted broadly to encompass both current and potential future exceptions. The rules cited in the advisory committee comment that currently recognize the prison-delivery exception in certain situations are given only as examples of such exceptions and are not intended to suggest that these are the exclusive situations in which exceptions might be applied.

Adopting new rule 8.817 addressing service and filing in the superior court appellate division will fill a gap in the appellate division rules and assist litigants in appellate division proceedings. Service of documents is an area where litigants, particularly self-represented litigants, often make procedural errors. The new rule, which is modeled on rule 8.25, will provide litigants with guidance about when service is required, and the accompanying advisory committee comment will indicate where litigants can look for additional information about how to serve documents.

Proof of Service Forms

The proposed new proof of service forms and information sheets about how to complete these proof of service forms will assist parties in providing required proof of service in appellate proceedings. The committee believes that these forms will be particularly helpful to self-represented litigants, who often have difficulty fulfilling service requirements.

Forms APP-102, APP-103, APP-104, APP-106, CR-135, CRP-143, APP-150-INFO, and APP-151, which were adopted by the council in February as part of the new appellate division rules and forms and will take effect on January 1, 2009, all currently include provisions addressing service of documents and proof of service. These forms would be revised to include references to *Proof of Service* (APP-109) and *What is Proof of Service?* (form APP-109-INFO) and to make other minor, technical changes.

Alternative Actions Considered

Based on a suggestion from one of the commentators, the committee considered postponing any recommendation to amend rule 8.25 until after the California Supreme Court issues its decision in *Silverbrand v. County of Los Angeles* (Supreme Court case number S143929). That case involves the question of whether the prison-delivery exception applies in civil cases. Because the proposed amendment to rule 8.25 is drafted

expansively to encompass potential future exceptions to the general rule on timeliness of filings, the committee ultimately decided it was not necessary to wait for the court's decision before recommending this amendment.

Comments From Interested Parties

These proposed rule amendments and new forms were circulated as part of the spring 2008 comment cycle. Nine individuals or organizations submitted comments on this proposal. Six commentators agreed with the proposal, and three agreed with the proposal if amended. The major substantive comments are discussed below. The full text of all the comments received and the committee's responses is attached on pages 68–75.

Rules on Service and Filing

One commentator expressed concern about the potential impact of the proposal on the *Silverbrand* case. This commentator was particularly concerned that the proposed advisory committee comment to rule 8.25, which cites to the current rules applying the prison-delivery exception in criminal and juvenile cases, might be read as the Judicial Council evidencing an affirmative intent to preclude the exception's application in civil appeals.

The committee's intent in proposing the amendment to rule 8.25 is not to suggest that the council take any position on the issue raised in the *Silverbrand* case nor to preclude future exceptions to the general rule that documents are timely only if received by the clerk by the date they are due, including any future applications of the prison-delivery exception. The intent is simply to recognize that there are exceptions to the general rule. The rules cited in the proposed advisory committee comment are intended only as examples of current exceptions to this general rule, not as an exclusive list of situations in which an exception might be applied. To further clarify this with regard to proposed new rule 8.817 for the appellate division, the committee has modified its proposal to eliminate the specific reference to the prison-delivery exception in the rule text and replace it with the more general language proposed in the amendment to rule 8.25.

This same commentator suggested that sections (b)(1) in both rule 8.25 and proposed rule 8.817 should also be modified to reflect the prison-delivery exception. These sections provide that a document is deemed filed on the date it is received by the clerk. The commentator suggested that these provisions should indicate that there are exceptions to this general rule, as well. The committee considered recommending this suggested amendment but ultimately decided not to do so. The rules that currently embody the prison-delivery exception provide that the document sent from a custodial institution is deemed timely even if it is received after the date it was due if the envelope shows that it was mailed or delivered to custodial officials for mailing by the date it was due. These rules do not provide that a document is deemed filed on the date it is delivered to custodial officials for mailing. Revising 8.25 to include the language suggested by the commentators would therefore not be consistent with the way that the prison-delivery provisions in these other rules are structured. Furthermore, in 1991, the council amended the predecessor to rule 8.25 to eliminate a provision that deemed documents to be filed on

the date they were deposited for mailing. That earlier change was made to address concerns expressed by appellate clerks that defining the date of filing as the date of mailing required clerks to backdate the file stamp on documents to reflect their mailing date, rather than simply stamping them with the date they are received by the clerk. The committee believes that the concerns that motivated the 1991 amendment are still valid and therefore the provision deeming a document filed on the date it is received should not be amended.

Proof of Service Forms

One commentator noted that in appellate proceedings multiple individuals typically must be served with documents. This commentator suggested that the proposed proof of service form should therefore have space for more than one person to be listed as being served. The committee agreed with this suggestion and has modified proposed form APP-009, which had space to list only one recipient, to include spaces to list additional recipients of service. Since APP-109 as circulated already had space to list multiple recipients, no change was needed on that form.

Implementation Requirements and Costs

The committee does not believe that there will be appreciable costs associated with implementing these amendments and new forms. Making additional information about service requirements available and adopting new forms to assist litigants in providing proof of service should reduce costs associated with mistakes made in complying with service requirements.

Attachments

1 For example, the rules currently provide that if the superior court clerk receives a notice of appeal in a
2 criminal, juvenile, or conservatorship case or notice of intent in a juvenile dependency case by mail from
3 a custodial institution after the deadline for filing the notice has expired but the envelope shows that the
4 notice was mailed or delivered to custodial officials for mailing before the deadline expired, the notice is
5 deemed timely (see rules 8.308(e), 8.400(f), 8.450(e)(5), 8.480(a)). These provisions reflect the “prison-
6 delivery” exception articulated by the California Supreme Court in *In re Jordan* (1992) 4 Cal.4th 116.
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9 **Division 2. Rules Relating to the Superior Court Appellate Division**

10 **Chapter 1. General Rules Applicable to Appellate Division** 11 **Proceedings**

12 **Rule 8.817. Service and filing**

13 **(a) Service**

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15 (1) Before filing any document, a party must serve, by any method permitted by
16 the Code of Civil Procedure, one copy of the document on the attorney for
17 each party separately represented, on each unrepresented party, and on any
18 other person or entity when required by statute or rule.

19 (2) The party must attach to the document presented for filing a proof of service
20 showing service on each person or entity required to be served under (1). The
21 proof must name each party represented by each attorney served.
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24 **(b) Filing**

25 (1) A document is deemed filed on the date the clerk receives it.

26 (2) Unless otherwise provided by these rules or other law, a filing is not timely
27 unless the clerk receives the document before the time to file it expires.

28 (3) A brief, a petition for rehearing, or an answer to a petition for rehearing, is
29 timely if the time to file it has not expired on the date of:

30 (A) Its mailing by priority or express mail as shown on the postmark or the
31 postal receipt; or

32 (B) Its delivery to a common carrier promising overnight delivery as shown
33 on the carrier’s receipt.

34 (4) The provisions of (3) do not apply to original proceedings.
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Advisory Committee Comment

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3 **Subdivision (a).** Subdivision (a)(1) requires service “by any method permitted by the Code of Civil
4 Procedure.” The reference is to the several permissible methods of service provided in Code of Civil
5 Procedure sections 1010–1020. *What Is Proof of Service?* (form APP-109-INFO) provides additional
6 information about how to serve documents and how to provide proof of service.

7
8 **Subdivision (b)(2).** In general, to be filed on time, a document must be received by the clerk before the
9 time for filing that document expires. There are, however, some limited exceptions to this general rule.
10 For example, rule 8.853(e) provides that in a misdemeanor appeal, if the superior court clerk receives a
11 notice of appeal by mail from a custodial institution after the deadline for filing the notice has expired but
12 the envelope shows that the notice was mailed or delivered to custodial officials for mailing before the
13 deadline expired, the notice is deemed timely. This provision reflects the “prison-delivery” exception
14 articulated by the California Supreme Court in *In re Jordan* (1992) 4 Cal.4th 116.
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PROOF OF SERVICE (Court of Appeal) <input type="checkbox"/> Mail <input type="checkbox"/> Personal Service	<i>FOR COURT USE ONLY</i>
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form.	
Case Name: Court of Appeal Case Number: Superior Court Case Number:	

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 business address is (*specify*):
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*):
 - a. **Mail.** I mailed a copy of the document identified above as follows:
 - (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
 - (a) **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope(s) 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 of 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 U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
 - (2) **Date mailed:**
 - (3) **The envelope was or envelopes were addressed as follows:**
 - (a) **Person served:**
 - (i) **Name:**
 - (ii) **Address:**
 - (b) **Person served:**
 - (i) **Name:**
 - (ii) **Address:**
 - (c) **Person served:**
 - (i) **Name:**
 - (ii) **Address:**

Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).

 - (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (*city and state*):

CASE NAME:

CASE NUMBER:

3. b. **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

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 OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)

INFORMATION SHEET FOR PROOF OF SERVICE (COURT OF APPEAL)

GENERAL INFORMATION ABOUT SERVICE AND PROOF OF SERVICE

This information sheet provides instructions for completing *Proof of Service (Court of Appeal)* (form APP-009). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

Rule 8.25 of the California Rules of Court provides that before filing any document in court in a case in the Court of Appeal, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule. Other rules specifically require that certain documents be served, including the notice of appeal and notice designating the record on appeal in civil appeals and briefs in both civil and criminal appeals.

To “serve” a document on a person means to have that document delivered to the person. The general requirements concerning service are set out in Code of Civil Procedure sections 1011–1013a. There are two main ways to serve documents: (1) by mail and (2) by personal delivery. Regardless of what method of service is used, the Code of Civil Procedure provides that a document in a court case can only be served by a person who is:

- Over 18 years of age; and
- Not a party in the court case.

If you are a party to the case, you must therefore have someone else who is over 18 and who is not a party to the case serve any documents in your case. You will need to give the person doing the serving (the server) the names and addresses of all those who must be served. You will also need to give the server one copy of each document that needs to be served for each person or entity that is being served.

Rule 8.25 also requires the party filing a document in the court to attach to the document presented for filing a proof of service showing the required service. *Proof of Service (Court of Appeal)* (form APP-009) may be used to provide this required proof of service in any proceeding in the Court of Appeal. Tell the server to follow the instructions below for completing the *Proof of Service (Court of Appeal)* (form APP-009) and to give you the original form when it is completed. You will need to attach this original proof of service to the document you are filing.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS)

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. You can use *Proof of Service (Court of Appeal)* (form APP-009) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. If you have Internet access, a fillable version of form APP-009 is available at www.courtinfo.ca.gov/forms. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Service (Court of Appeal)* (form APP-009) as follows:

1. *First box, left side*: Check whether the document is being served by mail or by personal delivery.
2. *Third box, left side*: Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
3. *Box, top of form, right side*: Leave this box blank for the court's use.

Complete items 1–3 as follows:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Check one of the boxes and provide your home or business address.
3. Fill in the name of the document that you are serving.
 - a. If you are serving the document by mail, check box a. and BEFORE YOU SEAL AND MAIL THE ENVELOPE, fill in the following information:
 - (1) Check box (1)(a) if you will personally deposit the document with the U.S. Postal Service such as at a U.S. Postal Service Office or U.S. Postal Service mailbox; Check box (1)(b) if you will put the document in the mail at your place of business.
 - (2) Provide the date the documents are being mailed.

INFORMATION SHEET FOR PROOF OF SERVICE (COURT OF APPEAL)

- (3) Provide the name and address of each person to whom you are mailing the document. If you need more space to list additional names and addresses, check the box after item (3)(c) and attach a page listing them. At the top of the page, write "APP-009, Item 3a."
- (4) You are stating that you live or work in the county in which the document is being mailed. Provide the city and state from which the document is being mailed.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Court of Appeal)* (form APP-009) with this information filled in for each person you are serving by mail and put this copy in the envelope with the document you are serving. Seal the envelope and mail the document as you have indicated on the proof of service.

- b. If you personally delivered the document, check box 3b. For a party represented by an attorney, delivery needs to be made by giving the document directly to the party's attorney or by leaving the document in an envelope or package clearly labeled to identify the attorney being served with a receptionist at the attorney's office or an individual in charge of the office. For a party who is not represented by an attorney, delivery needs to be made by giving the document directly to the party or by leaving the document at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening. Under b, for each person to whom you delivered the document, you need to provide:
- (1) The name of the person;
 - (2) The address at which you delivered the document;
 - (3) The date on which you delivered the document; and
 - (4) The time at which you delivered the document.

If you need more space to list additional names, addresses, and delivery dates and times, check the box under item 3b and attach a page listing this information. At the top of the page, write "APP-009, Item 3b."

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Service (Court of Appeal)* is true and correct.**

Give the original completed *Proof of Service* to the party for whom you served the document.

Clerk stamps date here when form is filed.

Instructions

- This form is only for providing proof that a document has been served (delivered) in a proceeding in the superior court appellate division.
- The person who serves (delivers) a document in this case and who fills out this form:
 - Must be at least 18 years old
 - Must NOT be a party in this case
- Before you fill out this form, read *What Is Proof of Service?* (form APP-109-INFO) to understand your responsibilities.

① At the time I served the documents listed in ④, I was at least 18 years old.

② I am not a party in the case identified in the box on the right side of this page.

③ My home business address is:

Street City State Zip

④ I mailed or personally delivered the following document, as indicated below (*check or fill in the name of the document you are serving and check and complete either a or b*).

- Notice of Appeal/Cross Appeal (Limited Civil Case)
 - Notice Designating Record on Appeal (Limited Civil Case)
 - Proposed Statement on Appeal (Limited Civil Case Misdemeanor Infraction)
 - Appellant's Opening Brief
 - Respondent's Brief
 - Appellant's Reply Brief
 - Abandonment of Appeal (Limited Civil Case)
 - Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)
 - Other (*write in the name of the document*):
- _____
- _____

a. Service by Mail

- (1) I put one copy of the document identified in ④ in an envelope addressed to each person listed in (2), sealed the envelope, and put first-class postage on the envelope.

You fill in the name and street address of the court that issued the decision that is being challenged in this case:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the decision being challenged was issued:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:



Appellate Division Case Name: _____

(2) The envelope or envelopes were addressed as follows:

(a) Name of person served: _____

Address on envelope: _____
Street City State Zip

(b) Name of person served: _____

Address on envelope: _____
Street City State Zip

Check here if you mailed copies of the document identified in (4) to more people. Attach a separate page listing the names and addresses on each additional envelope you mailed. Write "APP-109, Item 4a" on the top of the page.

(3) I mailed the envelope or envelopes on (date): _____ from (city, state): _____
by depositing the envelope or envelopes (check one):

(a) With the U.S. Postal Service or

(b) At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service.

b. Service by Personal Delivery

I personally gave one copy of the document identified in (4) to each of the following people:

(1) (a) Name of person served: _____

(b) Address where you gave the documents to this person: _____
Street
City State Zip

(c) Date when you gave the documents to this person: _____

(d) Time when you gave the documents to this person: _____

(2) (a) Name of person served: _____

(b) Address where you gave the documents to this person: _____
Street
City State Zip

(c) Date when you gave the documents to this person: _____

(d) Time when you gave the documents to this person: _____

Check here if you gave copies of the document identified in (4) to more people. Attach a separate page listing the names of each of these people, the address where you gave each of them the document, and the date and time you gave them the document. Write "APP-109, Item 4b" on the top of the page.

(5) I declare under penalty of perjury under California state law that the information above is true and correct.

Date: _____

Type or print server's name

Server signs here after serving

GENERAL INFORMATION

What does this information sheet cover?

This information sheet tells you how to fill out *Proof of Service (Appellate Division)* (form APP-109). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

1 What is “serving” a document?

“Serving” a document on a person means having the document delivered to that person. The general requirements for serving documents are set out in California Code of Civil Procedure sections 1011–1013a (you can get a copy of these laws at any county law library or online at www.leginfo.ca.gov/calaw.html). There are two main ways to serve documents: (1) by mail and (2) by personal delivery.

When a document is served by mail, it must be put in a sealed envelope or package that is addressed to the person who is being served and that has the postage fully prepaid. The envelope then has to be deposited with the U.S. Postal Service by leaving it at a U.S. Postal Service office or mail drop or at an office or business mail drop where the person serving the document knows the mail is picked up every day and deposited with the U.S. Postal Service.

When a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the attorney representing that party or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney’s office or with a person who is in charge of the attorney’s office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party’s residence between the hours of eight in the morning and six in the evening.

2 What documents have to be served?

Rule 8.817 of the California Rules of Court requires that before you file any document with the court in a case in the appellate division of the superior court, you must

serve one copy of the document on each of the other parties in the case and on anyone else when required by law (statute or rule of court). Other rules require that certain documents in cases in the appellate division be served, including the notice of appeal and the notice designating the record on appeal in appeals in limited civil cases and briefs in all appeals. (For more information about appeals in general and about these documents, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO), and *Information on Appeal Procedures for Infractions* (form CR-141-INFO).)

3 Who can serve a document?

State law (the Code of Civil Procedure) says that a document in a court case can only be served by a person who is:

- Over 18 years old; and
- Not a party in the court case

If you are a party in a case, **you must have someone else who is over 18 and who is not a party in your case serve any documents in your case for you.** You will need to give the person who is serving the document for you (the server) the names and addresses of all the people who need to be served with that document. You will also need to give the server one copy of each document that needs to be served for each person who is being served.

4 What is proof of service?

A “proof of service” shows the court that a document was served as required by the law. Rule 8.817 also requires a party who is filing a document with the court in a case in the appellate division to attach a proof of service to the document he or she wants to file. You can use *Proof of Service (Appellate Division)* (form APP-109) to give the court this proof of service in any case in the appellate division of the superior court. Tell the server to follow the instructions below for completing the *Proof of Service (Appellate Division)* (form APP-109) and to give you the original form when it is filled out and signed. You will need to attach this original proof of service to the document you want to file.



INFORMATION FOR THE SERVER**5 Who fills out the *Proof of Service*?**

If you are the server (the person who serves a document for a party in a court case), you must prepare and sign the proof of service. You can use *Proof of Service (Appellate Division)* (form APP-109) to prepare this proof of service in any case in the appellate division.

6 How do I fill out the *Proof of Service*?

You can fill out most of the information on *Proof of Service (Appellate Division)* (form APP-109) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109, you are swearing, under penalty of perjury, that the information that you put in the form is true and correct.**

When you fill out the *Proof of Service (Appellate Division)* (form APP-109), you should print neatly or use a typewriter. If you have Internet access, you can fill out the form online at www.courtinfo.ca.gov/forms (use the “fillable” version of the form).

Filling in the top section of form APP-109:

First box, right side of form: Leave this box blank for the court’s use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the second box on the right-hand side of the form.

Third box, right side of form: Fill in the trial court case name and number. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of the form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this number will be in the fourth box on the right-hand side of the form.

Filling in items 1–5:

Items ① and ②: You are stating, under penalty of perjury, that you are over the age of 18 and that you are not a party in this court case.

Item ③: Check one of the boxes and provide your home or business address. This information is important because, if you serve the document by mail, you must live or work in the county from which the document was mailed.

Item ④: Check or fill in the name of the document that you are serving. If the document you are serving is another Judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

- a. Check box 4a. if you are serving the document by mail. **BEFORE YOU SEAL AND MAIL THE ENVELOPE WITH THE DOCUMENT YOU ARE SERVING, fill in the following parts of the form.**
 - (1) You are stating, under penalty of perjury, that you are putting one copy of the document you identified in item 4 in an envelope addressed to each person listed in 4a.(2), sealing the envelope, and putting first-class postage on the envelope.
 - (2) Fill in the name and address of each person to whom you are mailing the document. You can copy this information from the list of people to be served or the envelopes provided by the party for whom you are serving the document. If you need more space to list names and addresses, check the box under item 4a.(2) and attach a page listing them. At the top of the page, write “APP-109, Item 4a.”



(3) Fill in the date you are mailing the document and the city and state from which you are mailing it. **REMEMBER:** You must live or work in the county from which the document is mailed.

(a) Check box 4a.(3)(a) if you are personally depositing the document with the U.S. Postal Service, such as at a U.S. Post Office or U.S. Postal Service mailbox.

(b) Check box 4a.(3)(b) if you are putting the document in the mail at your place of business.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Appellate Division)* (form APP-109) with this information filled in for each person you are serving by mail. Put this copy of *Proof of Service (Appellate Division)* (form APP-109) in the envelope with the document you are serving. Seal the envelope and mail it as you have indicated on the *Proof of Service*.

b. Check box 4b. If you personally delivered the documents. Remember, when a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the party's attorney or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney's office or with a person who is in charge of the attorney's office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party's residence between the hours of eight in the morning and six in the evening.

For each person to whom you personally delivered the document, fill in:

(a) The person's name.

(b) The address at which you delivered the document to this person.

(c) The date on which you delivered the document to this person.

(d) The time at which you delivered the document.

If you need space to list more names, addresses, and delivery dates and times, check the box under 4b. and attach a page listing this information. At the top of the page, write "APP-109, Item 4b."

Item ⑤: At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on *Proof of Service (Appellate Division)* (form APP-109) is true and correct.**

After you have finished serving the document and filled in, signed, and dated *Proof of Service (Appellate Division)* (form APP-109), give the original completed form to the party for whom you served the document.

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in a **limited civil case**. You can get other forms for appealing in criminal cases at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.
- 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.
- You must serve and file this form **no later than 30 days** after the trial court mails or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- 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 original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. 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 you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:**Trial Court Case Name:**

The clerk will fill in the number below:

Appellate Division Case Number:**1 Your Information**

- a. Name of appellant (the party who is filing this appeal):

- b. Appellant's contact information (
- skip this if the appellant has a lawyer for this appeal*
-):

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street City State ZipPhone: () _____ E-mail (*optional*): _____

- c. Appellant's lawyer (
- skip this if the appellant does not have a lawyer for this appeal*
-):

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street City State ZipPhone: () _____ E-mail (*optional*): _____Fax (*optional*): () _____

Trial Court Case Name: _____

2 This is (check a or b):

- a. The first appeal in this case.
- b. A cross-appeal (an appeal filed after the first appeal in this case (complete (1), (2), and (3))).
 - (1) The notice of appeal in the first appeal was filed on (fill in the date that the other party filed its notice of appeal in this case): _____
 - (2) The trial court clerk mailed notice of the first appeal on (fill in the date that the clerk mailed the notice of the other party's appeal in this case): _____
 - (3) The appellate division case number for the first appeal is (fill in the appellate division case number of the other party's appeal, if you know it): _____

3 Judgment or Order You Are Appealing

I am /My client is appealing (check a or b):

- a. The final judgment in the trial court case identified in the box on page 1 of this form.
The date the trial court entered this judgment was (fill in the date): _____
- b. Other:
 - (1) An order made after final judgment in the case.
The date the trial court entered this order was (fill in the date): _____
 - (2) An order changing or refusing to change the place of trial (venue).
The date the trial court entered this order was (fill in the date): _____
 - (3) An order granting a motion to quash service of summons.
The date the trial court entered this order was (fill in the date): _____
 - (4) An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.
The date the trial court entered this order was (fill in the date): _____
 - (5) An order granting a new trial.
The date the trial court entered this order was (fill in the date): _____
 - (6) An order denying a motion for judgment notwithstanding the verdict.
The date the trial court entered this order was (fill in the date): _____
 - (7) An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.
The date the trial court entered this order was (fill in the date): _____

Trial Court Case Name: _____

3 (continued)

(8) An order appointing a receiver.
The date the trial court entered this order was (fill in the date): _____

(9) Other action (please describe and indicate the date the trial court took the action you are appealing):

4 Record Preparation Election

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.

Check a or b if you are filing the first appeal in this case:

- a. I have/My client has completed *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) and attached it to this notice of appeal.
- b. I/My client will complete *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal.

REMINDER: Except in the very limited circumstances listed in rule 8.823, you must serve and file this form no later than (1) 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 (2) within 90 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.

Date: _____

Type or print your name



Signature of appellant/cross-appellant or attorney

Clerk stamps date here when form is filed.

Empty box for clerk stamping date.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:
Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

Instructions

- This form is only for choosing (“designating”) the record on 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.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- 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 site at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. 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.

1 Your Information

a. Name of appellant (the party who is filing this appeal):

b. Appellant’s contact information (skip this if the appellant 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. Appellant’s lawyer (skip this if the appellant 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): () _____

Trial Court Case Name: _____

Information About Your Appeal

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.

Record of the Documents Filed in the Trial Court

③ I elect (choose)/My client elects to use the following record of the documents filed in the trial court (check a or b and fill in any required information):

a. **Clerk’s Transcript.** (Fill out (1)–(4).) Note that, if the court has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk’s transcript.

(1) **Required documents.** The clerk will automatically include the following items in the clerk’s transcript but you must provide the date each document was filed:

Document Title and Description	Date of Filing
(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 any item included under 5	
(7) Register of actions or docket	
(8) Any transcript furnished to the jury or tendered to the court under rule 2.1040.	

(2) **Additional documents.** If you want any documents in addition to the required documents listed above to be included in the clerk’s transcript, you must identify those documents here.

I would like the clerk to include in the transcript the following documents that were filed in the trial court. (Identify each document you want included by its title and provide the date it was filed, if you know it.)

Document Title and Description	Date of Filing
(1)	
(2)	
(3)	
(4)	
(5)	

Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-103, item 3a(2).”



Trial Court Case Name: _____

3 a. (continued)

(3) Exhibits.

- I would like the clerk to include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. (*For each exhibit, give the exhibit number (such as Plaintiff's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.*)

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."

(4) Payment for clerk's transcript. (Check a or b.)

- (a) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (b) I am asking that the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (i) or (ii) and attach the checked document*):
- (i) An order granting a waiver of the cost under rules 3.50–3.63
 - (ii) An application for a waiver of court fees and costs under rules 3.50–3.63 (use *Application for Waiver of Court Fees and Costs* (form FW-001)).

OR

- b. **Agreed statement.** (*You must complete item 5d below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in 3a(1) above and in rule 8.832 of the California Rules of Court.*)

Record of Oral Proceedings in the Trial Court

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

4 I elect (choose)/My client elects to proceed (*check a or b*):

- a. WITHOUT a record of the oral proceedings in the trial court (*skip 5*); *sign and date this form*). I understand that if I elect to proceed without a record of the oral proceedings in the trial court the appellate division will not be able to consider what was said during those proceedings in determining whether a legal error was made.

(*Write initials here*): _____



Trial Court Case Name: _____

4 (continued)

- b. WITH a record of the oral proceedings in the trial court (*complete item 5 below*). I understand that, if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure that this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

5 I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one of the following below—a, b, c, d, or e*):

- a. **Reporter’s Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Complete (1) and (2)):*

- (1) **Designation of proceedings to be included in reporter’s transcript.** I would like the following proceedings in the trial court to be included in the reporter’s transcript. (*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], and, if you know it, the name of the court reporter who recorded the proceedings.*)

Date	Department	Description	Court Reporter’s Name
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			
(7)			

- Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-103, item 5a.”

- (2) **Payment for reporter’s transcript.** I will pay the trial court clerk’s office for this transcript myself when I receive the court reporter’s estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(Write initials here): _____

OR



Trial Court Case Name: _____

5 (continued)

- b. **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check and complete (1) or (2)):*
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.63
- (b) An application for a waiver of court fees and costs under rules 3.50–3.63 (*use Application for Waiver of Court Fees and Costs (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- c. **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division authorizing parties to use the official electronic recording itself as the record of the court proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2)):*
- (1) I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.
- (2) I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.63
- (b) An application for a waiver of court fees and costs under rules 3.50–3.63 (*use Application for Waiver of Court Fees and Costs (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- d. **Agreed Statement.** I want to use an agreed statement (a summary of the trial court proceedings agreed to by the parties) as the record of what was said in my case. (*Check (1) or (2)*):
- (1) I have attached an agreed statement to this notice.
- (2) All the parties have agreed in writing (stipulated) to try to agree on a statement (*you must attach a copy of this agreement (stipulation) to this notice*). I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.



Trial Court Case Name: _____

5 (continued)

OR

e. **Statement on Appeal.** I want to use a statement on appeal (a summary of the trial court proceedings approved by the trial court) as the record of what was said in my case. (*Check (1) or (2)*):

(1) I have attached my proposed statement on appeal to this notice of appeal. (*If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Limited Civil Case) (form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.*)

(2) I have NOT attached my proposed statement. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

Type or print your name

▶ _____
Signature of appellant or attorney

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on 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.
- This form can be attached to your *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- 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 original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. 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 you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

b. Appellant’s contact information (*skip this if the appellant 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. Appellant’s lawyer (*skip this if the appellant 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*): () _____

Trial Court Case Name: _____

Information About Your Appeal

- 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 On (fill in the date): _____ I/My client filed a notice designating the record on appeal, electing to use a statement on appeal.

Proposed Statement

④ The Dispute

- a. In the trial court, I/my client was the (check one):
 - plaintiff (the party who filed the complaint in the case).
 - defendant (the party against whom the complaint was filed).
 - b. The plaintiff’s complaint in this case was about (briefly describe what was claimed in the complaint filed with the trial court): _____

 - c. The defendant’s response to this complaint was (briefly describe how the defendant responded to the complaint filed with the trial court): _____

- Check here if you need more space to describe the dispute and attach a separate page or pages describing it. At the top of each page, write “APP-104, Item 4.”

⑤ Summary of Any Motions

- a. Were any motions (requests for the trial court to issue an order) filed in this case?
 - Yes (fill out b)
 - No (skip to ⑥).
- b. In the spaces below, please describe the motions (requests for orders) that were made in the trial court. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.
 - (1) Describe the first motion: _____



Trial Court Case Name: _____

5 b.(1) (continued)

The motion was filed by the plaintiff. defendant.

There was was not a hearing on this motion.

(If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing): _____

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, Item 5b(1)."

(2) Describe the second motion: _____

The motion was filed by the plaintiff. defendant.

There was was not a hearing on this motion.

(If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing): _____

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, Item 5b(2)."

Check here if any other motions were filed and attach a separate page or pages describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "APP-104, Item 5b(3)."



Trial Court Case Name: _____

6 Summary of Testimony

a. Was there a trial in your case?

No (skip items b, c, and d and go to item **7**)

Yes (check (1) or (2) and complete items b, c, and d)

(1) Jury trial

(2) Trial by judge only

b. Did you/your client testify at the trial?

No

Yes (Write a complete and accurate summary of the testimony you/your client gave. Include only what you actually said; do not comment or give your opinion about what was said):

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-104, Item 6b."

c. Did anyone else testify at the trial?

No

Yes (complete items (1), (2), and (3)):

(1) The witness's name is (fill in the witness's name): _____

(2) The witness testified on behalf of the (check one): plaintiff. defendant.

(3) This witness testified that (write a complete and accurate summary of the witness's testimony. Include only what the witness actually said; do not comment on or give your opinion about what the witness said):

Check here if you need more space to summarize this witness's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-104, Item 6c."

Check here if any other witnesses testified at the trial and attach a separate page or pages identifying each witness, who the witness testified for, and summarizing what that witness said in his or her testimony. At the top of each page, write "APP-104, Item 6d."



Trial Court Case Name: _____

7 The Trial Court's Findings

Did the trial court make findings in the case?

No

Yes (describe the findings made by the trial court):

Check here if you need more space to describe the trial court's findings and attach a separate page or pages describing these findings. At the top of each page, write "APP-104, Item 7."

8 The Trial Court's Judgment or Order

The trial court issued the following judgment or order (check all that apply and fill in any required information):

a. I/My client was required to:

pay the other party damages of (fill in the amount of the damages): \$ _____

do the following (describe what you were ordered to do): _____

b. The other party was required to:

pay me/my client damages of (fill in the amount of the damages): \$ _____

do the following (describe what the other party was ordered to do): _____

c. Other (describe): _____

Check here if you need more space to describe the trial court's judgment or order and attach a separate page or pages describing this judgment or order. At the top of each page, write "APP-104, Item 8."

9 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made (read form APP-101-INFO to learn about these legal errors):

- There was not "substantial evidence" supporting the judgment, order, or other decision you are appealing
- A "prejudicial error" was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence
- Cannot consider whether witnesses were telling the truth or lying
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision.



Trial Court Case Name: _____

9 (continued)

(Check all that apply and describe in detail the legal error or errors you believe were made that are the reason for this appeal.)

- a. [] There was not substantial evidence that supported the judgment, order, or other decision I am appealing in this case (explain why you think the decision was not supported by substantial evidence):

- b. [] The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (describe each error and how you/your client were harmed by that error):

(1) Describe the error: _____

Describe how you were/your client was harmed by the error: _____

(2) Describe the error: _____

Describe how you were/your client was harmed by the error: _____

(3) Describe the error: _____

Describe how you were/your client was harmed by the error: _____

- [] Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "APP-104, item 9."

Date: _____

Type or print your name

Signature of appellant or attorney

Clerk stamps date here when form is filed.

Instructions

- This form is only for abandoning (giving up) 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 you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:**Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:**1 Your Information**

- a. Name of appellant (the party who filed this appeal):

- b. Appellant's contact information (
- skip this if the appellant has a lawyer for this appeal*
-):

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street City State ZipPhone: () _____ E-mail (*optional*): _____

- c. Appellant's lawyer (
- skip this if the appellant does not have a lawyer for this appeal*
-):

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (*if different*): _____
Street City State ZipPhone: () _____ E-mail (*optional*): _____Fax (*optional*): () _____

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

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on appeal in a **misdemeanor**.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.
- This form can be attached to your *Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- 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 original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. 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 you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
 v. _____

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State Zip

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

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

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1) was the appellant’s lawyer in the trial court. (2) is the appellant’s lawyer for this appeal.

Name: _____

Street address: _____
Street City State Zip

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

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

Fax (optional): () _____



Trial Court Case Number: _____

Trial Court Case Name: _____

Information About Your Appeal

- 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 On (fill in the date): _____, I/my client filed a *Notice Regarding Record of Oral Proceedings*, choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

4 The Charges Against Me/My Client

a. The charges against me/my client were (list all of the charges indicated on the complaint or citation filed with the court by the prosecutor): _____

b. I/My client (check (1), (2), or (3)):

- (1) pleaded not guilty to all the charges.
- (2) pleaded guilty to only the following charges: _____
- (3) pleaded guilty to all of these charges.

5 Summary of Any Motions

a. Were any motions (requests for the trial court to issue an order) filed in this case?

- Yes (fill out b)
- No (skip to 6).

b. In the spaces below, please describe any motions (requests for orders) that were made in the trial court. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1) Describe the first motion: _____

The motion was filed by the prosecutor. defendant.

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing:



Trial Court Case Name: _____

5 b. (continued)

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-135, item 5b(1)."

(2) Describe the second motion: _____

The motion was filed by the prosecutor. defendant.

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-135, item 5b(2)."

Check here if any other motions were filed, and attach a separate page or pages describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "CR-135, item 5b(3)."



Trial Court Case Name: _____

6 Summary of Testimony

a. Was there a trial in your case?

- No (skip items b, c, and d and go to item 7)
- Yes (check (1) or (2) and complete items b, c, and d)
 - (1) Jury trial
 - (2) Trial by judge only

b. Did you/your client testify at the trial?

- No
- Yes (write a complete and accurate summary of the testimony you/your client gave. Include only what you actually said; do not comment on or give your opinion about what you said):

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, item 6b."

c. Did an officer from the police department, sheriff's office, or other government agency that charged you/your client testify at the trial? (check one):

- No
- Yes (complete (1) and (2)):

(1) The name of the officer who testified is (fill in the officer's name): _____

(2) This officer testified that (write a complete and accurate summary of the officer's testimony. Include only what the officer actually said; do not comment on or give your opinion about what the officer said):

Check here if you need more space to summarize the officer's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, item 6c."

d. Were there any other witnesses at the trial?

- No
- Yes (fill out (1)-(4)):

(1) The witness's name is (fill in the witness's name): _____

(2) This witness was was not an officer from the police department, sheriff's office, or other government agency that charged me/my client.

(3) This witness testified on behalf of me/my client. the prosecution.



Trial Court Case Name: _____

6 d. (continued)

(4) This witness testified that (write a complete and accurate summary of the witness's testimony. Include only what the witness actually said; do not comment on or give your opinion about what the witness said):

Check here if you need more space to summarize this witness's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, item 6d."

Check here if any other witnesses testified at the trial. Attach a separate page or pages identifying each witness, whether the witness testified on your/your client's behalf or the prosecution's behalf, and summarizing what that witness said in his or her testimony. At the top of each page, write "CR-135, item 6e"

7 The Trial Court's Findings

a. I/My client was found guilty of the following offenses (list all of the offenses for which you were/your client was found guilty): _____

b. I/My client was found not guilty of the following offenses (list all of the offenses for which you were/your client was found not guilty): _____

8 The Sentence

The trial court ordered the following punishment for me/my client in this case (check all that apply and fill in any required information):

a. Jail time (fill in the amount of time you are/your client is required to spend in jail): _____

b. A fine (including penalty and other assessments) (fill in the amount of the fine): \$ _____

c. Restitution (fill in the amount of the restitution): \$ _____

d. Probation (fill in the amount of time you are/your client is required to be on probation): _____

e. Other punishment (describe any other punishment that the trial court imposed in this case):



Trial Court Case Name: _____

9 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-131-INFO to learn about these legal errors):

- *There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing*
- *A “prejudicial error” was made during the trial court proceedings.*

The appellate division:

- *Cannot retry your case or take new evidence*
- *Cannot consider whether witnesses were telling the truth or lying*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision*

(Check all that apply and describe in detail the legal error or errors you believe were made that are the reason for this appeal.)

- a. There was not substantial evidence that supported the judgment, order, or other decision I am/my client is appealing in this case. *(Explain why you think the judgment, order, or other decision was not supported by substantial evidence):*

- b. The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. *(Describe each error and how you were/your client was harmed by that error):*

(1) *Describe the error:* _____

Describe how this error harmed you/your client: _____



Trial Court Case Number:

Trial Court Case Name: _____

9 b. (continued)

(2) Describe the error: _____

Describe how this error harmed you/your client: _____

(3) Describe the error: _____

Describe how this error harmed you/your client: _____

Check here if you need more space to describe these or other errors, and attach a separate page or pages describing the errors. At the top of each page, write "CR-135, item 9."

REMINDER: You must serve and file this form no later than 20 days after you file your notice regarding the oral proceedings. If you do not file this form on time, the court may dismiss your appeal.

Date: _____

Type or print name

▲

Signature of appellant or attorney

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a statement on appeal in an **infraction** case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.
- This form can be filed at the same time as your notice of appeal. If it is not filed with your notice of appeal, this form must be filed **no later than 20 days after you file your notice of appeal. If you have chosen to use a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- You must serve a copy of the completed form on each of the other parties in the case 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 each of the other parties to the clerk’s office for the same trial court that issued the judgment or order you are appealing. 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 you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v.

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State Zip

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

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

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

- (1) was the appellant’s lawyer in the trial court. (2) is the appellant’s 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): () _____

Trial Court Case Name: _____

Information About Your Appeal

2 On (fill in the date): _____, I/my client filed a *Notice of Appeal and Record of Oral Proceedings (Infraction)*, choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

3 **The Charges Against Me/My Client**

- a. If the charges against you/your client are based on a citation (ticket) you received, provide the citation number (fill in the citation number from your ticket): _____
- b. The charges against me/my client were (list all of the charges indicated on the citation or complaint filed by the prosecutor with the court): _____

- c. I/My client (check (1), (2), or (3))
 - (1) pleaded not guilty to all of the charges.
 - (2) pleaded guilty to only the following charges: _____

 - (3) pleaded guilty to all of the charges.

4 **Summary of Any Motions**

- a. Were any motions (requests for the trial court to issue an order) made in this case?
 Yes (fill out b) No (go to item 5)
- b. In the spaces below, describe any motions (requests for orders) made in the trial court. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:
 - (1) I/My client made the following requests (motions) in the trial court (check all that apply):
 - (a) To submit a photograph or photographs as evidence (describe the photographs):

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept the photographs.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(a)."



Trial Court Case Name: _____

4 b(1) (continued)

(b) To submit a map or maps as evidence (*describe the maps*):

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept the maps.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(b)."

(c) To submit other material as evidence (*describe what you asked to submit as evidence in the trial court*): _____

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept this material.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(c)."

(d) Other (*describe any other request you made in the trial court and whether the court granted or denied this request*): _____

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(d)."

(2) The prosecutor made the following request (motion) in the trial court (*describe any request the prosecutor made in the trial court and whether the court granted or denied this request*):



Trial Court Case Name: _____

4 b(2) (continued)

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-143, item 4b(2)."

Check here if other motions were filed, and attach a separate page or pages describing these other motions, identifying who made them and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-143, item 4b(3).

5 Summary of Testimony

a. Was there a trial in your case?

No (skip items b, c, and d and go to item **6**)

Yes (complete items b, c, and d)

b. Did you/your client testify at the trial?

No

Yes (write a complete and accurate summary of the testimony you/your client gave. Include only what you actually said; do not comment on or give your opinion about what you said):

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 5b."

c. Did an officer from the police department, sheriff's office, or other government agency that charged you/your client testify at the trial? (Check one):

No

Yes (complete (1) and (2)):

(1) The name of the officer who testified is (fill in the officer's name): _____

Trial Court Case Name: _____

5 c. (continued)

(2) This officer testified that *(write a complete and accurate summary of the officer's testimony. Include only what the officer actually said; do not comment on or give your opinion about what the officer said):*

Check here if you need more space to summarize the officer's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 5c."

d. Were there any other witnesses at the trial?

No

Yes *(fill out (1)-(4)):*

(1) The witness's name is *(fill in the witness's name):*

(2) The witness was was not an officer from the government agency that charged me/my client.

(3) The witness testified on behalf of me/my client. the prosecution.

(4) This witness testified that *(write a complete and accurate summary of the witness's testimony. Include only what the witness actually said; do not comment on or give your opinion about what the witness said):* _____

Check here if other witnesses testified at the trial. Attach a separate page or pages identifying each other witness that testified at your trial, stating whether that witness testified on your/your client's behalf or the prosecution's behalf, and summarizing what that witness said in his or her testimony. At the top of each page, write "CR-143, item 5e."

The Trial Court's Findings

6 a. I/My client was found guilty of the following offenses *(list all of the offenses for which you were/your client was found guilty):* _____

b. I/My client was found not guilty of the following offenses *(list all of the offenses for which you were/your client was found not guilty):* _____

Trial Court Case Name: _____

6 (continued)

c. The following charges were dismissed after proof of correction was shown to the judge (list all of the charges that were dismissed):

7 The Sentence

The trial court imposed the following fine or other punishment on me/my client (check all that apply and fill in any required information):

- a. A fine of (fill in the amount of the fine): \$ _____
- b. Traffic school
- c. Community service (fill in the number of hours): _____
- d. Other punishment (describe any other punishment that the court imposed on you):

8 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-141-INFO to learn about these legal errors):

- There was not "substantial evidence" supporting the judgment, order, or other decision you are appealing
- A "prejudicial error" was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence
- Cannot consider whether witnesses were telling the truth or lying
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision

(Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.)

- a. There was not substantial evidence that supported the judgment, order, or other decision I am/my client is appealing in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence): _____



Trial Court Case Number:

Trial Court Case Name: _____

8 (continued)

b. The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: _____

Describe how this error harmed you/your client: _____

(2) Describe the error: _____

Describe how this error harmed you/your client: _____

(3) Describe the error: _____

Describe how this error harmed you/your client: _____

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-143, item 8."

REMINDER: You must serve and file this form no later than 20 days after you file your notice of appeal. If you do not file this form on time, the court may dismiss your appeal.

Date: _____

Type or print name

▶ _____
Signature of appellant or attorney

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in misdemeanor, infraction, and limited civil cases. Please read this information sheet before you fill out *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or online at www.courtinfo.ca.gov/rules.

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus.

- For information about appeals, please see the box on the top of this page.
- For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court and *Petition for Writ of Habeas Corpus* (form MC-275).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court.

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

2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged.

For information about appeal procedures, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

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

In this information sheet, we call the lower court the “trial court.”

3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called “mandamus”), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called “certiorari”), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html.

4 Is a writ proceeding the same as an appeal?

No. In an **appeal**, the appellate division *must* consider the parties’ arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court’s decision should be overturned



based on that error (this is called a “decision on the merits”). In a **writ proceeding**, the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a “summary denial”). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for “extraordinary” relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court’s final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

5 Is a writ proceeding a new trial?

No. A **writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews a record of what happened in the trial court and the trial court’s ruling to see if the trial court made the legal error claimed by the person asking for the writ. When it conducts its review, the appellate division presumes that the trial court’s ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

6 Can a writ be used to address any errors made by a trial court?

No.

Writs can only address certain legal errors: Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:

- Refuses to act
- Has not done what the law says it must do
- Has acted in a way the law says it does not have the power to act

- The trial court has performed or says it is going to perform a judicial function (like deciding a person’s rights under law in a particular case) in a way that the court does not have the legal power to do.

There must be no other adequate remedy: The trial court’s error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court’s error other than with the writ (this is called having “no adequate remedy at law”). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court’s ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an “adequate remedy”) unless the person asking for the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called “irreparable” injury or harm).

Statutory writs: There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called “statutory writs.” Here is a list of some of the most common rulings that a statute says can or must be challenged using a writ:

- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))
- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))
- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))
- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)
- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)



You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html. You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

Common law writs: Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called “common law” writs.

7 Can the appellate division consider a request for a writ in *any* case?

No. Different courts have the power (called “jurisdiction”) to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases. A limited civil case is a civil case in which the amount claimed is \$25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.) You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html.

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than \$25,000) or felony cases (cases in which a person has been charged with or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have the jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read “Information for the Petitioner,” beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.

Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read “Information for a Real Party in Interest,” beginning on page 9.

9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost.



INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 9 of this information sheet.

10 Who can ask for a writ?

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a “beneficial interest” in the trial court’s ruling. A “beneficial interest” means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to “serve and file” a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the trial court, what legal error you (the petitioner) believe the trial court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

12 How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms. This form asks

you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the trial court’s ruling

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what “beneficial interest” you have in the trial court’s ruling. A “beneficial interest” means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the trial court made

Your petition will need to tell the appellate division what legal error you believe the trial court made. Not every mistake a trial court might make can be addressed by a writ. You must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but:
 - Refuses to act
 - Has not done what the law says it must do
 - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person’s rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to:

- Show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal



authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court’s legal duty or power to act or not act in that way.

- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ.

Your petition needs to show that a writ is the only way to fix the trial court’s error. To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the trial court’s error other than through a writ (this is called having “no adequate remedy at law”).

This will be hard if the trial court’s ruling can be appealed. If the ruling you are challenging can be appealed, either immediately or as part of an appeal of the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court’s ruling (an “adequate remedy”). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge can be appealed, either immediately or as part of an appeal of the final judgment.

Here are some trial court rulings that can be appealed. There are laws (statutes) that say that certain kinds of trial court rulings (“orders”) can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)
- Granting a motion to quash service of summons
- Granting a motion to stay or dismiss the action on the ground of inconvenient forum
- Granting a new trial
- Denying a motion for judgment notwithstanding the verdict
- Granting or dissolving an injunction or refusing to grant or dissolve an injunction
- Appointing a receiver
- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).

In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html. You should also check to see if there are published court decisions that indicate whether you can or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

If the ruling can be appealed, you will need to show that an appeal will not fix the trial court’s error. If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court’s error. To do that, you will need to show the appellate division how you will be harmed by the trial court’s error in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called “irreparable” injury or harm). For example, because of the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.



d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel (“vacate”) its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a “stay.” If you want a stay, you should first ask the trial court for a stay. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask the appellate division for a stay, make sure you also fill out the “Stay requested” box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

e. Verifying the petition

Petitions for writs must be “verified.” This means that either the petitioner or the petitioner’s attorney must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called “supporting documents.”

What needs to be in the supporting documents: The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the “oral proceedings”) and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

Record of the oral proceedings: There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the “verbatim” record) of the oral proceedings in the trial court. If a court reporter was in the trial court and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a “reporter’s transcript,” for the appellate division. If a reporter was not there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.
- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this recording to be used as the record of the oral proceedings, and all the parties agree (“stipulate”), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.
- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
 - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings,



- including the petitioner’s arguments and any statement by the court supporting its ruling or
 - o Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

Copies of documents from the trial court: Copies of the following documents from the trial court must also be included in the supporting documents:

- The trial court ruling being challenged in the petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner’s position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the trial court because of an emergency? Rule 8.931 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

Format of the supporting documents: Supporting documents must be put in the format required by rule 8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or online at www.courtinfo.ca.gov/rules.

14 Is there a deadline to ask for a writ?

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 60 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the trial court’s error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court’s error be fixed and the appellate division may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

15 How do I “serve” my petition?

Rule 8.931(d) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. “Serving” a petition on a party 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 petition to the real party in interest and the respondent court in the way required by law.



- Make a record that the petition 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 petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

You can get more information about how to serve court documents 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.

16 How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition. You should make a copy of all the documents 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 petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

17 Do I have to pay to file a petition?

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out an *Application for Waiver of Court Fees and Costs* (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 petition or with your petition. The court will review this application and decide whether to waive the filing fee.

18 What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for a writ, however. Without waiting, the appellate division can:

- a. Issue a stay
- b. Summarily deny the petition
- c. Issue an alternative writ or order to show cause
- d. Notify the parties that it is considering issuing a preemptory writ in the first instance

Read below for more information about these options.

a. Stay of trial court proceedings

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.

b. Summary denial

A “summary denial” means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

c. Alternative writ or order to show cause

An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner



requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed.

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division’s order (called a “return”) that explains why the trial court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

d. Peremptory writ in the first instance

A “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so without first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division’s notice (called an “opposition”) that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

19 What should I do if the court denies my petition?

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide 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 A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

20 I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:



- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance

Read the response to question **18** for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would also be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. In a limited civil case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost.

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may need to be fixed. However, the appellate division will not grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. A preliminary opposition is therefore typically used to explain to the appellate division why you believe it should not grant an alternative writ or order to show cause.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving and filing” an opposition 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 preliminary opposition to the other parties in the way required by law.
- Make a record that the preliminary opposition 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 preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition 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 preliminary opposition 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 documents 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.

21 I have received a copy of an alternative writ or an order to show cause issued by the appellate division. Do I need to do anything?

Yes. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a “return.”

As explained above, the appellate division will issue an alternative writ or an order to show cause only if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that



needs to be fixed. An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division’s order, called a “return.”

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ.

Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. “Serving and filing” the return 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 return to the other parties in the way required by law.
- Make a record that the return 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 return, who was served with the return, how the return was served (by mail or in person), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return 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 return 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 documents 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.

22 I have received a copy of a notice from the appellate division indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an “opposition.”

As explained in the answer to question **18**, a “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or



some modified form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html.

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. “Serving and filing” the opposition 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 opposition to the other parties in the way required by law.
- Make a record that the opposition 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 opposition, who was served with the opposition, how the opposition was served (by mail or in person), and the date the opposition was served.

- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition 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 opposition 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 documents 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.

23 What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

*Clerk stamps date here when form is filed.***Petitioner***(fill in the name of the person asking for the writ)***v.****Superior Court of California, County of _____****Respondent***(fill in the name of the court whose action or ruling you are challenging)***Real Party in Interest***(fill in the name of any other parties in the trial court case)**Clerk will fill in the number below:***Appellate Division Case Number:** **Stay requested**
*(see item 12 c. on page 6)***Instructions**

- This form is only for requesting a **writ** in a misdemeanor, infraction, or limited civil case. You can get forms for other writs and for appeals at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.
- Before you fill out this form, read *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) to know your rights and responsibilities. You can get form APP-150-INFO at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.
- Unless a special statute sets an earlier deadline, you should file this form no later than **60 days** after the date the superior court took the action or issued the ruling you are challenging in this petition (see form APP-150-INFO, page 7, for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
- Fill out this form and make a copy of the completed form for your records and for the respondent (the trial court whose action or ruling you are challenging) and each of the real parties in interest (the other party or parties in the trial court case).
- Serve a copy of the completed form on the respondent and on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. 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 your proof of service on the respondent and each real party in interest to the clerk's office for the appellate division of the superior court that took the action or issued the ruling you are challenging.



Appellate Division Case Name: _____

1 Your Information

a. Petitioner (the party who is asking for the writ):

Name: _____

Street address: _____
Street City State Zip

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

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

b. Petitioner's lawyer (skip this if the petitioner does not have a lawyer for this petition):

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

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

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

Fax (optional): () _____

The Trial Court Action or Ruling You Are Challenging

2 I am/My client is filing this petition to challenge an action taken or ruling made by the trial court in the following case:

a. Case name (fill in the trial court case name): _____

b. Case number (fill in the trial court case number): _____

3 The trial court action or ruling I am/my client is challenging is (describe the action taken or ruling made by the trial court): _____

4 The trial court took this action or made this ruling on the following date (fill in the date): _____

5 If you are filing this petition more than 60 days after the date that you listed in **4**, explain the extraordinary circumstances that caused the delay in filing this petition:

Appellate Division Case Name: _____

The Parties in the Trial Court Case

- 6 I/My client (check and fill in a or b):
 - a. was a party in the case identified in 2.
 - b. was not a party in the case identified in 2 but will be directly and negatively affected in the following way by the action taken or ruling made by the trial court (describe how you/your client will be directly and negatively affected by the trial court's action or ruling):

- 7 The other party or parties in the case identified in 2 was/were (fill in the names of the parties):

Appeals or Other Petitions for Writs in This Case

- 8 Did you or anyone else file an appeal about the same trial court action or ruling you are challenging in this petition? (Check and fill in a or b):

- a. No
- b. Yes (fill in the appellate division case number of the appeal): _____

- 9 Have you filed a previous petition for a writ challenging this trial court action or ruling? (Check and fill in a or b):

- a. No
- b. Yes (Please provide the following information about this previous petition).

- (1) Petition title (fill in the title of the petition): _____
- (2) Date petition filed (fill in the date you filed this petition): _____
- (3) Case number (fill in the case number of the petition): _____

If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write "APP-151, item 9."

Reasons for This Petition

- 10 The trial court made the following legal error or errors when it took the action or made the ruling described in 3 (check and fill in at least one):

- a. The trial court has not done or has refused to do something that the law says it must do.

- (1) Describe what you believe the law says the trial court must do: _____

- (2) Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court must do this: _____



Appellate Division Case Name: _____

10 (continued)

(3) Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did not do or refused to do this:

Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10a."

b. The trial court has done something that the law says the court cannot or must not do.

(1) Describe what the trial court did: _____

(2) Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did this: _____

(3) Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court cannot or must not do this: _____

Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10b."

c. The trial court has performed or said it is going to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) Describe what the trial court did or said it is going to do: _____

(2) Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did or said it was going to do this: _____



Appellate Division Case Name: _____

10 (continued)

(3) Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court does not have the power to do this:

Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10c."

Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write "APP-151, item 10d."

11 This petition will be granted only if there is no other adequate way to address the trial court's action or ruling other than by issuing the requested writ.

a. Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:

b. Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting:

Order You Are Asking the Appellate Division to Make

12 I request that this court (check and fill in all that apply):

a. order the trial court to do the following (describe what, if anything, you want the trial court to be ordered to do):

b. order the trial court not to do the following (describe what, if anything, you want the trial court to be ordered NOT to do):



12 (continued)

- c. issue a stay ordering the trial court not to take any further action in this case until this court decides whether to grant or deny this petition (*describe below why it is urgent that the trial court not take any further action and check the Stay requested box on page 1 of this form*):

I/My client:

- (1) asked the trial court to stay these proceedings, but the trial court denied this request (*include in your supporting documents a copy of the trial court's order denying your request for a stay*).
- (2) did not ask the trial court to stay these proceedings for the following reasons (*describe below why you did not ask the trial court to stay these proceedings*):

- d. take other action (*describe*): _____
-
-
-
-

- e. grant any additional relief that the appellate division decides is fair and appropriate.

Supporting Documents

13 Is a record of what was said in the trial court about the action or ruling you are challenging attached as required by rule 8.931(b)(1)(D) of the California Rules of Court?

- a. Yes, a transcript or an official electronic recording of what was said in the trial court is attached.
- b. No, a transcript or official electronic recording is not attached, but I have attached a declaration (a statement signed under penalty of perjury) (*Check (1) or (2)*):
 - (1) stating the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed
 - (2) explaining why the transcript or official electronic recording is not available and providing a fair summary of what was said in the trial court, including the petitioner's arguments and any statement by the trial court supporting its ruling.



SPR08-09

Appellate Procedure: Service and Filing (adopt Cal. Rules of Court, rule 8.817, amend rule 8.25, approve forms APP-009 and APP-109)

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

	Commentator	Position	Comment	Committee Response
1.	Dennis A. Fischer Law Offices of Dennis A. Fischer Santa Monica	AM	<p>These are appropriate revisions to make clear the same rules apply to appellate divisions. Two concerns:</p> <p>One is trivial. The proof of service form in upper right hand corner should use bold for the clerk’s filing stamp box to avoid confusion by pro pers.</p> <p>The second is a question: why shouldn’t applications for certification and petitions for transfer be included in 8.25(b)(3)?</p>	<p>The committee is not recommending changing the format of the clerk’s stamp box on these proposed forms, as it follows the standard format for these boxes on other appellate forms.</p> <p>This proposal would not change the types of documents that are deemed to be timely if sent by priority or express mail or by overnight delivery service before the date they are due. Adding these new documents to the current list would be an important substantive change in the current rules and would need to be circulated for public comment before it is considered for adoption. The committee will consider this suggestion for possible circulation in a future rule cycle.</p>
2.	Horvitz & Levy, LLP David S. Ettinger John A. Taylor, Jr. Appellate Attorneys Encino	AM	<p>We are Supreme Court counsel for appellant Peter Silverbrand in <i>Silverbrand v. County of Los Angeles</i>, Supreme Court case number S143929. We write because that case—which is fully briefed and awaiting oral argument—raises an issue about the “prison-delivery rule” that is related to part of the rule proposal in SPR08-09.</p> <p>1. The Judicial Council should make clear that it is</p>	<p>The committee’s intent in proposing the</p>

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Appellate Procedure: Service and Filing (adopt Cal. Rules of Court, rule 8.817, amend rule 8.25, approve forms APP-009 and APP-109)

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

	Commentator	Position	Comment	Committee Response
			<p>not taking a position on the issue before the Supreme Court in <i>Silverbrand v. Superior Court</i>.</p> <p>In <i>In re Jordan</i> (1992) 4 Cal.4th 116, the California Supreme Court held that, in a criminal case, “a prisoner’s notice of appeal is deemed to have been filed in the office of the appropriate county clerk on the date, within the filing period [for criminal appeals], on which it was delivered to the prison authorities.” (Id. at p.130.) In <i>Silverbrand v. Superior Court</i>, the court will likely decide whether this principle—the prison-delivery rule—applies in civil cases, too.</p> <p>The Court of Appeal in <i>Silverbrand</i> held that the prison-delivery rule does <i>not</i> apply to civil notices of appeal. That court did not dispute that it would be good policy to apply the prison-delivery rule in civil cases, but concluded that the Judicial Council had prohibited that result. The court said it discerned that “the Judicial Council’s intent” in enacting the Rules of Court was to make the prison-delivery rule inapplicable to civil appeals, even though the court might have so applied the rule if it were “writing on a clean slate.”</p> <p>One of the Judicial Council actions that the Court of Appeal felt tied its hands was the Advisory Committee comment to the 2002 revision of former rule 2 (now rule 8.104) that, “In criminal cases, the time for filing a notice of appeal is governed by [former] rule 31 [now rule 8.408] and by the case law</p>	<p>amendment to rule 8.25 is not to suggest that the council take any position on the issue raised in the <i>Silverbrand</i> case nor to preclude future exceptions to the general rule that documents are timely only if received by the clerk by the date they are due, including any future applications of the prison-delivery exception. The intent is simply to recognize that there are exceptions to the general rule. The rules cited in the proposed advisory committee comment are intended only as examples of current exceptions to the general rule, not as an exclusive list of situations in which an exception might be applied. The committee has also explained this in the body of its report to the Judicial Council.</p>

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Appellate Procedure: Service and Filing (adopt Cal. Rules of Court, rule 8.817, amend rule 8.25, approve forms APP-009 and APP-109)

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	Commentator	Position	Comment	Committee Response
			<p>of ‘constructive filing.’ (See, e.g., <i>In re Jordan</i> (1992) 4 Ca1.4th 116; <i>In re Benoit</i> (1973) 10 Ca1.3d 72.)” (Advisory Com. com., 23 pt. 1 West’s Ann. Codes, Rules (2005 ed.) foll. rule 2, p.59.) The court stated, “The comments of the Advisory Committee make clear the Council was well aware of the ‘prison-delivery’ doctrine but chose to apply it solely to criminal appeals.” The court therefore held that “[t]he principle of <i>expressio unius est exclusio alterius</i> (the expression of one thing is the exclusion of another) precludes our interpreting [former] rule 2” as applying the prison-delivery rule to civil appeals.</p> <p>A prime issue before the Supreme Court in <i>Silverbrand</i> is thus whether the Judicial Council intended to restrict the prison-delivery rule to criminal appeals, as the Court of Appeal concluded.</p> <p>Against this background, if, as the Advisory Committee comment to the SPR08-09 proposed rule change does, the council further recognizes the prison-delivery rule in criminal cases without mentioning the potential application of that rule to civil cases, the council might be seen as validating the Court of Appeal’s opinion in <i>Silverbrand</i> that such actions evidence an affirmative intent to preclude the rule’s application in civil appeals. Therefore, at a minimum, the Advisory Committee comments to the proposed amendment of rule 8.25(b)(2) and to the proposed new rule 8.817(b) should be revised to explain that such is not the intent</p>	

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Appellate Procedure: Service and Filing (adopt Cal. Rules of Court, rule 8.817, amend rule 8.25, approve forms APP-009 and APP-109)

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

	Commentator	Position	Comment	Committee Response
			<p>behind this rule change. In other words, the comments should say that these rule changes do not reflect a council determination about whether the prison-delivery rule applies in civil cases.</p> <p>Alternatively, the council might consider waiting to amend the rules concerning the prison-delivery rule until after the Supreme Court decides <i>Silverbrand</i>. The council’s first rule-making activity concerning the prison-delivery rule occurred in 1994, not long after the Supreme Court’s <i>In re Jordan</i> opinion. A council report at the time said the rule was to “implement the ‘prison-delivery’ rule reaffirmed in...<i>Jordan</i>... .” Perhaps it would be better now for the council to wait for the Supreme Court’s <i>Silverbrand</i> opinion and thereafter follow the court’s lead, just as it followed the Supreme Court’s <i>Jordan</i> opinion. The council could then adopt a clearer version of the rule, rather than one that is written generically to anticipate whatever the Supreme Court’s holding in <i>Silverbrand</i> may be, as is the current proposal, but which does not provide much guidance to attorneys and litigants who are not aware of the prison-delivery rule’s potential application.</p> <p>2. If the council does enact amendments concerning the prison-delivery rule, it should make changes in the proposal.</p> <p>a. Rule 8.25(b)(1), as well as (b)(2), should be amended.</p> <p>Rule 8.25(b) concerns the filing of appellate</p>	<p>The committee considered but ultimately decided not to make this change. The rules that currently implement the prison-delivery rule—8.308(e), 8.400(f), and 8.450(e)—</p>

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Appellate Procedure: Service and Filing (adopt Cal. Rules of Court, rule 8.817, amend rule 8.25, approve forms APP-009 and APP-109)

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	Commentator	Position	Comment	Committee Response
			<p>documents. Subdivision (b)(1) states that “[a] document is deemed filed on the date the clerk receives it.” Subdivision (b)(2) states the general rule that “a filing is not timely unless the clerk receives the document before the time to file it expires.”</p> <p>SPR08-09 proposes amending subdivision (b)(2) to add a qualification that the general rule applies “[u]nless otherwise provided by these rules or other law.” The report on SPR08-09 says the purpose of the proposal is “to encompass” the prison-delivery rule. However, to accomplish that purpose, subdivision (b)(1) should also be amended.</p> <p>As noted, the essence of the prison-delivery rule as stated by the Supreme Court is that “a prisoner’s notice of appeal is deemed to have been filed in the office of the appropriate county clerk on the date...on which it was delivered to the prison authorities.” (<i>In re Jordan, supra</i>, 4 Cal.4th at p.130.) Subdivision (b)(1) seemingly contradicts that statement because it provides unequivocally that “[a] document is deemed filed on the date the clerk receives it.” If the rule requires receipt by the clerk for filing, delivery to prison authorities appears to be insufficient. Thus, subdivision (b)(1), like subdivision (b)(2), should contain a qualification.</p> <p>As a matter of drafting, adding a qualification to both subdivisions (b)(1) and (b)(2) could be accomplished by combining the two subdivisions and beginning the new combined subdivision with the proposed qualifying language. New subdivision (b)(1) could</p>	<p>provide that a document is deemed timely if deposited with prison authorities before the date it is due, even if it is received after the due date. These rules do not provide that a document is deemed filed on the date it is delivered to custodial officials for mailing. Revising rule 8.25 to include the language suggested by the commentators would therefore not be consistent with the way that the prison-delivery provisions in these other rules are structured. Furthermore, in 1991, the council amended the predecessor to rule 8.25 to eliminate a provision that deemed documents filed on the date they were deposited for mailing. That earlier change was made to address concerns expressed by appellate clerks that defining the date of filing as the date of mailing required clerks to backdate the file stamp on documents to reflect their mailing date, rather than simply stamping them with the date they are received by the clerk. The committee believes that the concerns that motivated the 1991 amendment are still valid and therefore that the provision deeming a document filed on the date it is received should not be amended.</p>

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Appellate Procedure: Service and Filing (adopt Cal. Rules of Court, rule 8.817, amend rule 8.25, approve forms APP-009 and APP-109)

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

	Commentator	Position	Comment	Committee Response
			<p>read: “Unless otherwise provided by these rules or other law, a document is deemed filed on the date the clerk receives it and a filing is not timely unless the clerk receives the document before the time to file it expires.”</p> <p>b. The Appellate Division filing rule should not preclude application of the prison-delivery rule in civil cases.</p> <p>SPR08-09 proposes adding rule 8.817 concerning service and filing of documents in the Appellate Division of the Superior Court. Subdivision (b)(1) would provide that “[a] document is deemed filed on the date the clerk receives it.” Subdivision (b)(2) would provide that, “[e]xcept as provided in (3) and (5), a filing is not timely unless the clerk receives the document before the time to file it expires.”</p> <p>Proposed rule 8.817 as it now reads would likely prohibit applicability of the prison-delivery rule in civil cases in the Appellate Division. The proposed rule states the general rule that documents must be received by the clerk before a deadline to be considered timely filed. The only stated exceptions to the general rule are the rules “provided in (3) and (5).” Neither subdivision (b)(3) nor subdivision (b)(5) seem to allow room for applying the prison-delivery rule in civil appeals, however. Subdivision (b)(3) provides a limited file-by-express-mail-or-overnight-delivery rule for certain documents, not including notices of appeal. Subdivision (b)(5)</p>	<p>As noted above, the intent of this proposal is not to preclude future exceptions to the general rule that documents are timely only if received by the clerk by the date they are due, including any future applications of the prison-delivery rule. To avoid any contrary implications, the committee has revised its proposal to use the same language in rule 8.817 and its accompanying advisory committee comment concerning timeliness of filings as in the proposed amendment to rule 8.25 and its comment.</p>

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Appellate Procedure: Service and Filing (adopt Cal. Rules of Court, rule 8.817, amend rule 8.25, approve forms APP-009 and APP-109)

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

	Commentator	Position	Comment	Committee Response
			<p>provides for a prison-delivery rule, but only in misdemeanor cases. (Proposed rule 8.817 (b)(5) [“A notice of appeal in a misdemeanor case received by a superior court clerk by mail from a custodial institution is timely if the envelope shows that the notice was mailed or delivered to custodial officials for mailing before the time for filing the notice expired”].)</p> <p>Proposed rule 8.817 should be revised to be consistent with rule 8.25.</p> <p>First, similar to our drafting suggestion for rule 8.25, subdivisions (b)(1) and (b)(2) of rule 8.817 could be combined and provide: “Unless otherwise provided by these rules or other law, a document is deemed filed on the date the clerk receives it and a filing is not timely unless the clerk receives the document before the time to file it expires.”</p> <p>Second, subdivision (b)(5) of rule 8.817 should be deleted altogether. Subdivision (b)(5) concerns only misdemeanor cases, but rule 8.817 is a general rule concerning all appellate division proceedings. The presence of a misdemeanor-only prison-delivery provision in a general rule could be construed as prohibiting the application of the prison-delivery rule to civil appeals, contrary to the Advisory Committee’s presumed intent to leave that issue open for determination by the Supreme Court in its <i>Silverbrand</i> decision. Also, the substance of subdivision (b)(5) is already in rule 8.853(e), which</p>	

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Appellate Procedure: Service and Filing (adopt Cal. Rules of Court, rule 8.817, amend rule 8.25, approve forms APP-009 and APP-109)

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	Commentator	Position	Comment	Committee Response
			<p>will take effect January 1, 2009.</p> <p>Finally, as with rule 8.25, the comment to proposed new rule 8.817(b) should explain that the rule is not intended to evidence any affirmative intent to preclude the application of the prison-delivery rule in civil appeals.</p>	
3.	Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal Fourth Appellate District, Division One	A		No response required.
4.	Orange County Bar Association Cathrine Castaldi, President Newport Beach	A		No response required.
5.	San Diego County Bar Association Appellate Court Committee Edward I. Silverman, Chair	A	We support proposed rule 8.817, which would clarify the service and filing requirements in the Superior Court Appellate Division. As we commented above, we support any attempt to provide consistency in the rules applicable to the Superior Court Appellate Division and the Court of Appeal.	No response required.
6.	San Diego County District Attorney Craig Fisher Deputy District Attorney	AM	We asked our clerical staff who prepare the proofs of service in appellate matters to review the proposed form. They pointed out that there are almost always multiple persons to serve beyond just opposing counsel (i.e., the trial judge, the Attorney General's Office). Instead of checking a box and then typing up another piece of paper for the additional persons serviced, their suggestion was to provide space on the form (perhaps on the back or on a second page)	The committee agrees with this suggestion and has modified proposed form APP-009 to provide spaces to indicate service on additional persons.

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Appellate Procedure: Service and Filing (adopt Cal. Rules of Court, rule 8.817, amend rule 8.25, approve forms APP-009 and APP-109)

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

	Commentator	Position	Comment	Committee Response
			for such additional service.	
7.	State Bar of California, Committee on Appellate Courts Saul Bercovitch San Francisco	A	The proposed amendment to rule 8.25 and its accompanying Advisory Committee Comment recognize that there are limited exceptions to the general rule that documents are deemed filed when received by the clerk. Proposed new rule 8.817 creates a sensible rule for service and filing of documents in the superior court appellate division. Finally, the new proof of service forms and information sheets will be helpful, particularly for self-represented litigants.	No response required.
8.	Superior Court of Los Angeles County	A		No response required.
9.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A		No response required.