



Judicial Council of California . Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courtinfo.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 23, 2010

Title	Agenda Item Type
Rules and Forms: Miscellaneous Technical Changes	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 5.565, 8.216, 8.835, 8.868, 8.917, and 10.856; and revise forms APP-001, APP-002, APP-016/FW-016, APP-150-INFO, APP-151, FL-350, JV-810, and TR-INST; adopt SC-100-INFO; and revoke SC-150	July 1, 2010
	Date of Report
	March 5, 2010
	Contact
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Recommended by	
Administrative Office of the Courts	
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Executive Summary

Various Judicial Council advisory committee members, court personnel, members of the public, and Administrative Office of the Courts (AOC) staff have identified errors in rules and forms resulting from inadvertent omissions, typographical errors, language inconsistencies, or changes in the rules and forms name and numbering systems. It is therefore necessary to make technical changes to the rules and forms noted below.

Recommendation

The AOC recommends that the Judicial Council make the following changes to the California Rules of Court and Judicial Council forms, effective July 1, 2010:

1. Amend rule 5.565 to correct three references from renumbered chapter 13 to chapter 12;
2. Amend the advisory committee comment to rule 8.216 to correct an internal reference from “(b)(2)” to “(b)(3)”;
3. Amend rule 8.835(c) to correct an internal subdivision reference from “8.837(d)” to “8.837(d)(6)”;
4. Amend rule 8.868(c) to correct a rule reference from “8.869(d)(5)” to “8.869(d)(6)”;
5. Amend rule 8.917(c) to correct a rule reference from “8.916(b)” to “8.916(d)(6)”;
6. Amend rule 10.856(h) to correct references to three renumbered forms;
7. Revise form APP-001 to reflect recent changes in the appellate rules and revised form titles, including revising the reference to the time to file a notice of appeal to reflect amendments to rule 8.104 and correcting the time for filing the appellant’s opening brief to reflect amendments to rule 8.212;
8. Revise form APP-002, item 1, eighth box, to correct “of” to “or”;
9. Revise form APP-016/FW-016 to include a box for the court name and address;
10. Revise forms APP-150-INFO and APP-151 to correct the time to file a petition to the appellate division of the superior court seeking a writ from 60 days to 30 days;
11. Revise form FL-350, item 17.b. to correct an internal item reference from “12” to “13”;
12. Revise form JV-810 to correct the proof of service. JV-810 is the optional form that trial counsel or a child’s CAPTA guardian ad litem can use to recommend appointment of counsel for a child in a dependency appeal. Rule 5.661(e) specifically requires that a copy of the recommendation filed in the Court of Appeal must be served on the district appellate project. Consistent with this rule, the instructions on the first page of JV-810 indicate that “A copy must be served on the local district appellate project.” However, the proof of service that is attached as page 3 of JV-810 includes not only the district appellate project, but also the respondent court, the child (if 10 years of age or older), and the child’s counsel (if counsel is not submitting the recommendation) on the list of potential recipients of form JV-810.

This inconsistency between the proof of service and the applicable rule and the instructions on form JV-810 has created problems. In at least one case, a Court of Appeal rejected a form JV-810 because it had not been served on all those listed on the proof of service page. Staff of the Family and Juvenile Law and Appellate Advisory Committees have reviewed the council report and other history regarding rule 5.611 and form JV-810 and found nothing addressing service of these recommendations on anyone other than the district appellate project. Staff is therefore recommending that form JV-810 be revised to make it consistent

with rule 5.661 by deleting the respondent court, the child, and the child's counsel from the list of potential recipients on the proof of service page;

13. Revoke current form SC-150, *Information for the Plaintiff (Small Claims)*, and adopt form SC-100-INFO, *Information for the Small Claims Plaintiff*. As part of an ongoing project to expand and improve Judicial Council forms for small claims cases, the Civil and Small Claims Advisory Committee has developed a plan for systematically numbering and renumbering new and existing forms to make them more accessible and intuitive to litigants. Consistent with this plan, effective July 1, 2010, the Judicial Council approved form SC-150, *Request to Postpone Trial*, and adopted form SC-200, *Notice of Entry of Judgment*, as an alternative mandatory form.

Staff recommends that the Judicial Council, effective July 1, 2010, revoke current form SC-150, and adopt form SC-100-INFO. The new form would have exactly the same text and formatting as the revoked form, other than the change in form numbers and dates and the addition of a reference to form SC-200 in the current parenthetical reference to form SC-130, *Notice of Entry of Judgment*, on page 2 of the form. These technical changes are necessary to avoid confusion that might otherwise result from having two forms numbered SC-150 and from referring to only one of the alternative mandatory *Notice of Entry of Judgment* form numbers. Staff does not anticipate that this change will cause any significant implementation issues or costs, because this information form is not filed with courts or generated by court case management systems; and

14. Revise form TR-INST to correct a rule reference from "8.020" to "7.020."

The text of the amended rules is attached at pages 5–7. The revised forms are attached at pages 8–45.

Previous Council Action

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor corrections not related to any prior action.

Rationale for Recommendation

The changes to these rules and forms are technical in nature and necessary to correct inadvertent omissions, typographical errors, and language inconsistencies and to implement legislation and changes in the rules name and numbering system.

Comments, Alternatives Considered, and Policy Implications

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Implementation Requirements, Costs, and Operational Impacts

The proposed revisions will result in standard reproduction costs.

Attachments

1. Cal. Rules of Court, rules 5.565, 8.216, 8.835, 8.868, 8.917, and 10.856, at pages 5–7
2. Forms APP-001, APP-002, APP-016/FW-016, APP-150-INFO, APP-151, FL-350; JV-810; SC-100-INFO; SC-150, and TR-INST, at pages 8–45

Rules 5.565, 8.216, 8.835, 8.868, 8.917, and 10.856 of the California Rules of Court are amended effective July 1, 2010, to read:

1 **Rule 5.565. Hearing on subsequent and supplemental petitions (§§ 342, 364, 386,**
2 **387)**

3
4 **(a)–(c) * * ***

5
6 **(d) Initial hearing (§ 387)**

7
8 Chapter ~~4312~~, article 1 of these rules applies to the case of a child who is the
9 subject of a supplemental or subsequent petition.

10
11 **(e) Requirement for bifurcated hearing**

12
13 The hearing on a subsequent or supplemental petition must be conducted as
14 follows:

15
16 (1) The procedures relating to jurisdiction hearings prescribed in chapter ~~4312~~,
17 article 2 apply to the determination of the allegations of a subsequent or
18 supplemental petition. At the conclusion of the hearing on a subsequent
19 petition the court must make a finding that the allegations of the petition are
20 or are not true. At the conclusion of the hearing on a supplemental petition
21 the court must make findings that:

22
23 (A)–(B) * * *

24
25 (2) The procedures relating to disposition hearings prescribed in chapter ~~4312~~,
26 article 3 apply to the determination of disposition on a subsequent or
27 supplemental petition. If the court finds under a subsequent petition that the
28 child is described by section 300(a), (d), or (e), the court must remove the
29 child from the physical custody of the parent or guardian, if removal was not
30 ordered under the previous disposition.

31
32 **(f) *****

33
34 **Rule 8.216. Appeals in which a party is both appellant and respondent**

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36 **(a)–(b) * * ***

37
38 **Advisory Committee Comment**

39 * * *

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41 **Subdivision (b).** The purpose of subdivision (b)(~~2~~)(3) is to ensure that in its reply brief a party
42 addresses only issues germane to its own appeal. For example, a cross-appellant may not use its
43 *cross-appellant's* reply brief to answer points raised in the *appellant's* reply brief.

1
2 **Rule 8.835. Record when trial proceedings were officially electronically recorded**

3
4 (a)–(b) * * *

5
6 (c) **Use of official recording as record of oral proceedings**

7
8 If the court has a local rule for the appellate division permitting this, on stipulation
9 of the parties or on order of the trial court under rule 8.837(d)(6), the original of an
10 official electronic recording of the trial court proceedings, or a copy made by the
11 court, may be transmitted as the record of these oral proceedings without being
12 transcribed. Such an official electronic recording satisfies any requirement in these
13 rules or in any statute for a reporter’s transcript of these proceedings.

14
15 (d) * * *

16
17 **Rule 8.868. Record when trial proceedings were officially electronically recorded**

18
19 (a)–(b) * * *

20
21 (c) **Use of official recording as record of oral proceedings**

22
23 If the court has a local rule for the appellate division permitting this, on stipulation
24 of the parties or on order of the trial court under rule 8.869(d)(~~5~~)(6), the original of
25 an official electronic recording of the trial court proceedings, or a copy made by the
26 court, may be transmitted as the record of these oral proceedings without being
27 transcribed. Such an electronic recording satisfies any requirement in these rules or
28 in any statute for a reporter's transcript of these proceedings.

29
30 (d) * * *

31
32 **Rule 8.917. Record when trial proceedings were officially electronically recorded**

33
34 (a)–(b) * * *

35
36 (c) **Use of official recording as record of oral proceedings**

37
38 If the court has a local rule for the appellate division permitting this, on stipulation
39 of the parties or on order of the trial court under rule 8.916(~~b~~)(d)(6), the original of
40 an official electronic recording of the trial court proceedings, or a copy made by the
41 court, may be transmitted as the record of these oral proceedings without being
42 transcribed. This official electronic recording satisfies any requirement in these
43 rules or in any statute for a reporter's transcript of these proceedings.

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(d) * * *

Rule 10.856. Notice of superior court records destruction

(a)–(g) * * *

(h) Forms

The court must use the following forms to implement the requirements of this rule:

- (1) *Notice of Intent to Destroy Superior Court Records; Offer to Transfer Possession* (form ~~982.8(1)(N)~~ REC-001(N)), with a form on the reverse titled *Request for Transfer or Extension of Time for Retention of Superior Court Records* (form ~~982.8(1)(R)~~ REC-001(R)), for optional use by the recipient of the notice; and
- (2) *Notice of Hearing on Request for Transfer or Extension of Time for Retention of Superior Court Records; Court Order; Release and Receipt of Superior Court Records* (form ~~982.8(2)(N)~~ REC-002(N)).

INFORMATION ON APPEAL PROCEDURES FOR UNLIMITED CIVIL CASES

The following is general information about the procedures for appeals of unlimited civil cases (“unlimited civil case” generally means a civil case in which the amount in controversy is more than \$25,000; see Code of Civil Procedure sections 85 and 88). This information is not intended to be comprehensive, but to provide an overview to help guide you through the appeal process. **You should thoroughly read rules 8.100–8.276 of the California Rules of Court. If you have questions about the appellate process, you should consult an attorney of your own choosing.**

1. NATURE OF AN APPEAL

An appeal is a review of a court’s decision by another court. A party may appeal an unfavorable judgment and certain orders in an unlimited civil case made in the superior court to the Court of Appeal for the district in which the superior court is located. Generally, the appeal must be based on an argument that a **legal error** was made by the superior court. An appeal is not a retrial. You will not be permitted to introduce new evidence, and the appellate court will not reassess conflicting evidence. You may not appeal on behalf of a friend, a spouse, a child, or other relative (unless you are a legally appointed guardian).

2. PARTIES

The party filing the appeal is called the APPELLANT. The party against whom the appeal is brought is called the RESPONDENT.

STEPS IN THE APPEAL PROCESS AT THE SUPERIOR COURT

3. NOTICE OF APPEAL

To appeal from a superior court decision in an unlimited civil case, the appellant must file a notice of appeal **in the superior court** (Cal. Rules of Court, rule 8.100). A notice of appeal tells the other party or parties in the case and the superior court that you are appealing the decision of the superior court. You may use Judicial Council form APP-002, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)*, to file a notice of appeal in an unlimited civil case.

The notice of appeal must be served on the other party or parties in the case and filed with the clerk of the superior court. Generally, this service and filing must be completed within **60 calendar days** after the clerk or a party serves either a notice of entry of judgment or a file-stamped copy of the judgment. If neither of these documents is served, the notice of appeal must be filed within **180 calendar days** after entry of judgment (generally the date the judgment is file-stamped). **If your notice of appeal is filed late, your appeal will be dismissed** (Cal. Rules of Court, rules 8.104 and 8.108).

If a notice of appeal has been filed in a case, any other party to the case may file its own appeal from the same judgment or order. This is called a cross-appeal. To cross-appeal, a party must file a notice of appeal within either the regular time for filing a notice of appeal or within 20 days after the clerk of the superior court mails notice of the first appeal, whichever is later (Cal. Rules of Court, rule 8.108). You may use Judicial Council form APP-002, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)*, to file this notice in an unlimited civil case.

4. FEE ON APPEAL

The notice of appeal must be accompanied by a \$655 filing fee (Gov. Code, §§ 68926 and 68926.1) made payable to “Clerk, Court of Appeal” and a \$100 deposit (Gov. Code, § 68926.1) made payable to “Clerk of the Superior Court.” If you do not have the money for the fees, you may submit an application for waiver of court fees and costs on appeal under rule 3.50–3.63 of the California Rules of Court (Cal. Rules of Court, rule 8.100).

5. DESIGNATION OF RECORD

See rules 8.130–8.163 of the California Rules of Court, which govern the preparation of the record on appeal.

Since the appellate court was not present at the trial or other proceedings in the superior court, there must be an official record of the proceedings from the superior court for the appellate court to review in assessing the appeal. Within 10 days of filing the notice of appeal, the appellant must tell the superior court in writing (“designate”) what documents and oral proceedings, if any, to include in the record that will be sent to the Court of Appeal. **You will need to designate all the parts of the record that the Court of Appeal will need to decide the issues you raise in the appeal.** You can use Judicial Council form APP-003, *Notice Designating Record on Appeal (Unlimited Civil Case)* to designate the record in an unlimited civil case.

Reporter’s Transcript

A court reporter’s transcript is a written record (often called the “verbatim” record) of the oral proceedings in the superior court. A reporter’s transcript is not required but is usually necessary.

Within 10 days of filing the notice of appeal, the appellant must serve and file with the superior court clerk either a notice designating a reporter’s transcript or a notice of intent to proceed without a reporter’s transcript (Cal. Rules of Court, rule 8.130). You can use Judicial Council form APP-003, *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* to file this notice in an unlimited civil case.

If the appellant chooses to designate a reporter’s transcript, the notice designating this transcript must specify the date of each proceeding to be included in the transcript and must be served on each known court reporter (Cal. Rules of Court, rule 8.130). The names of the court reporters who reported the proceedings are found in the superior court clerk’s minute orders, which are prepared for each day of the proceedings and then placed in the superior court file.

With the notice designating the reporter’s transcript, the appellant must deposit the approximate cost of transcribing the proceedings designated (Cal. Rules of Court, rule 8.130). The cost may be obtained from the reporter’s written estimate or calculated at \$650 per day (more than three hours of court time) or \$325 per fraction of a day (less than three hours of court time) (Cal. Rules of Court, rule 8.130).

Within 10 days after service of the appellant’s designation of the reporter’s transcript, the respondent may serve and file a notice designating additional proceedings to be included in the reporter’s transcript (Cal. Rules of Court, rule 8.130). Respondent must pay for the cost of transcribing any additional proceedings designated.

If the appellant chooses to proceed without a reporter’s transcript, the respondent may not designate a reporter’s transcript without first obtaining an order from the reviewing court (Cal. Rules of Court, rule 8.130).

Clerk’s Transcript or Appendix

The clerk’s transcript is a compilation of the documents filed in the superior court. Within 10 days of filing the notice of appeal, the appellant must serve and file with the superior court clerk a notice either designating the documents from the court file that the appellant wants the superior court to include in the clerk’s transcript (Cal. Rules of Court, rule 8.122) or a notice of intent to prepare his or her own compilation of these documents, called an appendix (Cal. Rules of Court, rule 8.124). You can use Judicial Council form APP-003, *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* to file this notice in an unlimited civil case.

If the appellant chooses to designate a clerk’s transcript, each document designated for inclusion in the clerk’s transcript must be identified by its title and filing date. If the filing date is not known, the date the document was signed may be used instead (Cal. Rules of Court, rule 8.122).

Within 10 days after service of a notice designating the documents to be included in the clerk’s transcript, respondent may serve and file a notice designating additional documents to be included in the clerk’s transcript (Cal. Rules of Court, rule 8.122).

The superior court clerk will send the appellant a bill for the cost of preparing an original and one copy of the transcript (Cal. Rules of Court, rule 8.122). This must be paid within 10 days or the appeal may be dismissed by the Court of Appeal.

If the appellant chooses to prepare an appendix of the documents filed in the superior court, rather than designating a clerk's transcript, that appendix must include all of the documents and be prepared in the form required by California Rules of Court, rule 8.124. The parties may prepare separate appendixes but are encouraged to stipulate (agree) to a joint appendix. If separate appendixes are prepared, each party must pay for its own appendix. If a joint appendix is prepared, the parties can agree on how the cost of preparing the appendix will be paid or the cost will be paid by the appellant(s) (Cal. Rules of Court, rule 8.124).

6. FILING OF CLERK'S AND REPORTER'S TRANSCRIPTS (IF ANY)

If the appellant chooses to designate a clerk's transcript, after all the fees have been paid, the superior court clerk will compile the requested documents into a transcript format and forward the original clerk's transcript, together with the original reporter's transcript, if any, to the Court of Appeal for filing. A copy of the transcript(s) will be sent to the appellant. If the respondent has purchased a copy, the clerk's transcript will also be mailed to the respondent (Cal. Rules of Court, rules 8.122, 8.130, and 8.150).

7. ABANDONMENT OF APPEAL

If the appellant decides not to proceed with the appeal and the record has not yet been filed in the Court of Appeal, the appellant must file an abandonment of appeal in the superior court (Cal. Rules of Court, rule 8.244). You can use Judicial Council form APP-005, *Abandonment of Appeal (Unlimited Civil Case)*, for this purpose.

STEPS IN THE APPEAL PROCESS AT THE COURT OF APPEAL

8. CIVIL CASE INFORMATION STATEMENT

When the Court of Appeal is notified that a notice of appeal has been filed in an unlimited civil case, the clerk of the Court of Appeal will mail the appellant a copy of Judicial Council form APP-004, the *Civil Case Information Statement*, along with a notice that this form must be filed within 10 days. Within 10 days after the clerk mails this notice, the appellant must serve and file in the Court of Appeal a completed *Civil Case Information Statement*, attaching a copy of the judgment or appealed order that shows the date it was entered (Cal. Rules of Court, rules 8.100 and 8.104).

9. SERVING AND FILING APPENDIX IN LIEU OF CLERK'S TRANSCRIPT

If a party chooses to prepare an appendix of the documents filed in the superior court under rule 8.124 rather than designating a clerk's transcript, the party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the Court of Appeal has ordered otherwise) and file the appendix in the Court of Appeal. A joint appendix or an appellant's appendix must be served and filed with the appellant's opening brief. A respondent's appendix, if any, must be served and filed with the respondent's brief. An appellant's reply appendix, if any, must be served and filed with the appellant's brief (Cal. Rules of Court, rule 8.124).

10. BRIEFS

A brief is a party's written description of the facts in the case, the relevant law, and the party's argument. The preparation and filing of briefs is governed by rules 8.200–8.224 of the California Rules of Court. Parties are encouraged to read these rules thoroughly and comply accordingly.

Contents and Format of Briefs

See rule 8.204 of the California Rules of Court.

The brief must clearly explain, using references to the clerk's and reporter's transcripts (or other form of the record being used), the claimed legal errors in the superior court proceedings. Each brief must be no longer than 14,000 words if produced on a computer (you can rely on the word count provided by your computer in meeting this requirement) or up to 50 pages if produced on a typewriter. The brief must contain a table of contents and a table of authorities.

Service and Filing of Briefs

See rule 8.212 of the California Rules of Court.

The appellant's opening brief must be served and filed within 40 days after the record is filed in the Court of Appeal or 70 days from the date the appellant elects to proceed under rule 8.124 with no reporter's transcript. The cover of the appellant's opening brief must be green (Cal. Rules of Court, rules 8.212 and rule 8.40).

The respondent's brief must be served and filed within 30 days after the appellant's opening brief is filed. The cover of the respondent's brief must be yellow.

The appellant's reply brief, if any, must be served and filed within 20 days after the respondent's brief is filed. The cover of the appellant's reply brief must be tan.

An original and four copies of each brief, along with proof of service, must be filed with the Court of Appeal. A copy of each brief must be served on all counsel and self-represented parties and on the superior court clerk for delivery to the trial judge. Four copies must also be served on the California Supreme Court (Cal. Rules of Court, rule 8.212). The addresses of the California Supreme Court, Courts of Appeal, and superior courts can be found on the Internet at www.courtinfo.ca.gov/courts.

In some instances a copy of each brief must be served on the Attorney General or the local district attorney. See rule 8.29 of the California Rules of Court and the *Civil Case Information Statement* (Judicial Council form APP-004).

Cover:	Appellant's opening brief—green Respondent's brief—yellow Appellant's reply brief—tan
File:	Original plus 4 copies along with proof of service in the Court of Appeal
Serve:	California Supreme Court—4 copies Superior court—1 copy All counsel All self-represented parties

Extension of Time to File Brief

The parties may extend the time to file a brief for up to 60 days by filing a stipulation (agreement) in the Court of Appeal (Cal. Rules of Court, rule 8.212).

An application for extension of time must be filed with the Court of Appeal before the brief is due when:

The parties cannot agree to a stipulation; or

The parties have stipulated to the maximum automatic extension permitted under rule 8.212 of the California Rules of Court, and the applicant seeks a further extension.

Judicial Council form APP-006, *Application for Extension of Time to File Brief (Civil Case)*, can be used to apply to the Court of Appeal for an extension of time to file a brief.

11. DISMISSAL OF APPEAL

If the appellant decides not to proceed with the appeal after the record has been filed in the Court of Appeal, the appellant must file a request for dismissal in the Court of Appeal (Cal. Rules of Court, rule 8.244). You can use Judicial Council form APP-007, *Request for Dismissal of Appeal (Civil Case)* for this purpose (Cal. Rules of Court, rule 8.244).

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, state bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<input type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER:
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. NOTICE IS HEREBY GIVEN that (*name*):
 appeals from the following judgment or order in this case, which was entered on (*date*):
- Judgment after jury trial
 - Judgment after court trial
 - Default judgment
 - Judgment after an order granting a summary judgment motion
 - Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
 - Judgment of dismissal after an order sustaining a demurrer
 - An order after judgment under Code of Civil Procedure section 904.1(a)(2)
 - An order **or** judgment under Code of Civil Procedure section 904.1(a)(3)-(13)
 - Other (*describe and specify code section that authorizes this appeal*):

2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal:
 - b. Date superior court clerk mailed notice of original appeal:
 - c. Court of Appeal case number (*if known*):

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

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

PROOF OF SERVICE

Mail **Personal Service**

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

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

3. I mailed or personally delivered a copy of the *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* as follows (*complete either a or b*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope **and**
 - (a) **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:

 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:

 - (3) Date delivered:
 - (4) Time delivered:

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

Date:

_____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF DECLARANT)
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Clerk stamps date here when form is filed.

1 Person who asked the court to waive court fees:
 Name: _____
 Street address: _____
 City: _____ State: _____ Zip: _____
 Phone number: _____

2 Lawyer, if person in 1 has one: (Name, address, phone number, e-mail, and State Bar number): _____

3 On (date): _____ you filed a *Request to Waive Court Fees* (form FW-001).

4 The court reviewed your request and makes the following order:

Fill in court name and street address:

Court of Appeal or Supreme Court Case Number:

a. The court **grants** your request and waives your court fees and costs listed below. You do not have to pay fees for the following:

- Filing notice of appeal, petition for writ, or petition for review

Other (*specify*): _____

b. The court **denies** your request for the following reasons:

(1) Your request is incomplete. You have **10 days** from the date this notice was sent to:

- Pay your fees and costs, or
- File a new revised request that includes the items listed below (*specify incomplete items*):

(2) The information you provided on the request shows that you are not eligible for the fee waiver you requested (*specify reasons*): _____

You have **10 days** from the date this notice was sent to:

- Pay your fees and costs, or
- File more information that shows you are eligible.

(3) The court finds there is substantial question regarding your eligibility (*describe issue regarding eligibility*): _____

You have **10 days** from the date this notice was sent to:

- Pay your fees and costs, or
 - File the following additional documents to support your request:
- _____
- _____
- _____

Warning! If you miss the deadline for paying your fees and costs or providing the additional items required by the court and you are the appellant, your appeal may be dismissed.

Court of Appeal/
Supreme Court Case Name: _____

**Court of Appeal/Supreme Court
Case Number:**

④ c. The court needs more information. **You must go to court** on the date below.

**Hearing
Date**

➤ Date: _____ Time: _____ Dept.: _____

Name and address of the court if different from page 1:

Bring the following proof to support your request, if it is reasonably available:

Warning! If item ④ c. is checked and you do not go to court on your hearing date, the court will deny your request to waive court fees and you will have **10 days** to pay your fees. If you are the appellant and you do not pay your filing fees, your appeal may be dismissed.

Date: _____

Signature of (check one): *Judicial Officer* *Clerk, Deputy*

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 30 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 **30 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): _____



Appellate Division Case Name: _____

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.



ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY DRAFT 2 xyz 1/05/10 Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
STIPULATION TO ESTABLISH OR MODIFY CHILD SUPPORT AND ORDER	CASE NUMBER: _____

1. a. Mother's net monthly disposable income: \$ _____
 Father's net monthly disposable income: \$ _____
-OR-
 b. A printout of a computer calculation of the parents' financial circumstances is attached.
 2. Percentage of time each parent has primary responsibility for the children: Mother: _____ % Father: _____ %
 3. a. A hardship is being experienced by the mother \$ _____ per month because of *(specify):* _____
 The hardship will last until *(date):* _____
 - b. A hardship is being experienced by the father \$ _____ per month because of *(specify):* _____
 The hardship will last until *(date):* _____
 4. The amount of child support payable by *(name):* _____, referred to as "the parent ordered to pay support," as calculated under the guideline is: \$ _____ per month.
 5. We agree to guideline support.
 6. The guideline amount should be rebutted because of the following:
 - a. We agree to child support in the amount of \$ _____ per month; the agreement is in the best interest of the children; the needs of the children will be adequately met by the agreed amount; and application of the guideline would be unjust or inappropriate in this case.
 - b. Other rebutting factors *(specify):* _____
 7. The parent ordered to pay support must pay child support as follows beginning *(date):* _____

a. BASIC CHILD SUPPORT		
<u>Child's name</u>	<u>Monthly amount</u>	<u>Payable to (name):</u>
- Total: \$ _____ payable on the first of the month other *(specify):* _____
- b. In addition, the parent ordered to pay support must pay the following:
 - (1) \$ _____ per month for child care costs to *(name):* _____ on *(date):* _____
 - (2) \$ _____ per month for health-care costs not deducted from gross income to *(name):* _____ on *(date):* _____
 - (3) \$ _____ per month for special educational or other needs of the children to *(name):* _____ on *(date):* _____
 - (4) other *(specify):* _____
- c. **Total monthly child support** payable by the parent ordered to pay support will be: \$ _____ payable on the first of the month other *(specify):* _____

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	CASE NUMBER:
--	--------------

8. a. Health insurance will be maintained by *(specify name)*:
 The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.
- b. A health insurance coverage assignment will issue if health insurance is available through employment or other group plan or otherwise is available at reasonable cost. Both parents are ordered to cooperate in the presentation, collection, and reimbursement of any medical claims.
- c. Any health expenses not paid by insurance will be shared: Mother: % Father: %
9. a. An earnings assignment order is issued.
- b. We agree that service of the earnings assignment be stayed because we have made the following alternative arrangements to ensure payment *(specify)*:
10. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount in arrears nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
11. Travel expenses for visitation will be shared: Mother: % Father: %
12. We agree that we will promptly inform each other of any change of residence or employment, including the employer's name, address, and telephone number.
13. Other *(specify)*:
14. We agree that we are fully informed of our rights under the California child support guidelines.
15. We make this agreement freely without coercion or duress.
16. The right to support
- a. has not been assigned to any county, and no application for public assistance is pending.
- b. has been assigned or an application for public assistance is pending in *(county name)*:
If you checked b., an attorney for the local child support agency must sign below, joining in this agreement.

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

Notice: If the amount agreed to is less than the guideline amount, no change of circumstances need be shown to obtain a change in the support order to a higher amount. If the order is above the guideline, a change of circumstances will be required to modify this order. This form must be signed by the court to be effective.

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF RESPONDENT)

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR PETITIONER)

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR RESPONDENT)

THE COURT ORDERS

17. a. The guideline child support amount in item 4 is rebutted by the factors stated in item 6.
- b. Items 7 through 13 are ordered. All child support payments must continue until further order of the court, or until the child marries, dies, is emancipated, or reaches age 18. The duty of support continues as to an unmarried child who has attained the age of 18 years, is a full-time high school student, and resides with a parent, until the time the child completes the 12th grade or attains the age of 19 years, whichever first occurs. Except as modified by this stipulation, all provisions of any previous orders made in this action will remain in effect.

Date: _____

JUDGE OF THE SUPERIOR COURT

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent per year. This can be a large added amount.

TO BE FILED IN THE COURT OF APPEAL

JV-810

COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	Court of Appeal Case Number:
	Superior Court Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): _____ TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
APPELLANT: RESPONDENT:	
RECOMMENDATION FOR APPOINTMENT OF APPELLATE ATTORNEY FOR CHILD (California Rules of Court, Rule 5.661)	

INSTRUCTIONS—READ CAREFULLY

- Read the entire form *before* completing any items.
- This form must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and check the "Additional pages attached" box on page 2.
- If you are filing this form in the Court of Appeal, file the original and 4 copies.
- If you are filing this form in the California Supreme Court, file the original and 10 copies.
- A copy must be served on the local district appellate project.
- Notify the clerk of the court in writing if you change your address after filing your form.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

APPELLATE CASE TITLE: 	APPELLATE CASE NUMBER:
-------------------------------	--------------------------------

1. Trial counsel, court-appointed guardian ad litem for the child under rule 5.662, or the child in the above-captioned case:
 - a. Name:
 - b. I am the trial counsel guardian ad litem child
 - c. Address:

 - d. Telephone number:

2. I recommend that an appellate attorney be appointed for the child in this case.

3. The child's best interests cannot be protected without the appointment of counsel on appeal for the following reasons (*check all that apply*):
 - a. An actual or potential conflict exists between the interests of the child and the interests of any respondent.
 - b. The child did not have an attorney serving as his or her guardian ad litem in the trial court.
 - c. The child is of a sufficient age or development such that he or she is able to understand the nature of the proceedings, and
 - (1) The child expresses a desire to participate in the appeal; or
 - (2) The child's wishes differ from his or her trial counsel's position.
 - d. The child took a legal position in the trial court adverse to that of one of his or her siblings, and an issue has been raised in an appellant's opening brief regarding the siblings' adverse positions.
 - e. The appeal involves a legal issue regarding a determination of parentage, the child's inheritance rights, educational rights, privileges identified in division 8 of the Evidence Code, consent to treatment, or tribal membership.
 - f. Postjudgment evidence completely undermines the legal underpinnings of the juvenile court's judgment under review, and all parties recognize this and express a willingness to stipulate to reversal of the juvenile court's judgment.
 - g. The child's trial counsel or guardian ad litem, after reviewing the appellate briefs, believes that the legal arguments contained in the respondents' briefs do not adequately represent or protect the best interests of the child.
 - h. The existence of any other factors relevant to the child's best interests (*specify*):

4. State the facts that support your recommendation:

Additional pages attached

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF APPLICANT)

APPELLATE CASE TITLE: _____	APPELLATE CASE NUMBER:
--------------------------------	------------------------

PROOF OF SERVICE

I served a copy of the foregoing *Recommendation for Appointment of Appellate Attorney for Child* on the following by personally delivering a copy to the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the United States mail with postage prepaid or at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar:

1. District appellate project

a. Name and address:

b. Date of service:

c. Method of service:

2. Other

a. Name and address:

b. Date of service:

c. Method of service:

INFORMATION FOR THE SMALL CLAIMS PLAINTIFF

This information sheet is written for the person who sues in the small claims court. It explains some of the rules of and some general information about the small claims court. It may also be helpful for the person who is sued.

WHAT IS SMALL CLAIMS COURT?

Small claims court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is the **plaintiff**. The person who is sued is the **defendant**. In small claims court, you may ask a lawyer for advice before you go to court, but you cannot have a lawyer in court. Your claim cannot be for more than \$5,000 if you are a business or public entity or for more than \$7,500 if you are a natural person (including a sole proprietor). (*See below for an exception.) If you have a claim for more than this amount, you may sue in the civil division of the trial court or you may sue in the small claims court and give up your right to the amount over the limit. You cannot, however, file more than two cases in small claims court for more than \$2,500 each during a calendar year.

WHO CAN FILE A CLAIM?

1. You must be at least *18 years old* to file a claim. If you are not yet 18, tell the clerk. You may ask the court to appoint a **guardian ad litem**. This is a person who will act for you in the case. The guardian ad litem is usually a parent, a relative, or an adult friend.
 2. A person who sues in small claims court must first make a **demand**, if possible. This means that you have asked the defendant to pay, and the defendant has refused. If your claim is for possession of property, you must ask the defendant to give you the property.
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- You must also appear at the small claims hearing yourself unless you filed the claim for a corporation or other entity that is not a natural person.**
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WHERE CAN YOU FILE YOUR CLAIM?

You must sue in the right court and location. This rule is called **venue**. Check the court's local rules if there is more than one court location in the county handling small claims cases.

If you file your claim in the wrong court, the court will dismiss the claim unless all defendants personally appear at the hearing and agree that the claim may be heard.

The right location may be any of these:

1. Where the defendant lives or where the business involved is located;
2. Where the damage or accident happened;
3. Where the contract was signed or carried out;
4. If the defendant is a corporation, where the contract was broken;
5. For a retail installment account or sales contract or a motor vehicle finance sale:
 - a. Where the buyer lives;
 - b. Where the buyer lived when the contract was entered into;
 - c. Where the buyer signed the contract; or
 - d. Where the goods or vehicle are permanently kept.

SOME RULES ABOUT THE DEFENDANT (including government agencies)

1. You must sue using the defendant's *exact legal name*. If the defendant is a business or a corporation and you do not know the exact legal name, check with the state or local licensing agency, the county clerk's office, or the Office of the Secretary of State, Corporate Status Unit at www.ss.ca.gov/business. Ask the clerk for help if you do not know how to find this information. If you do not use the defendant's exact legal name, the court may be able to correct the name on your claim at the hearing or after the judgment.
2. If you want to sue a government agency, you must first file a claim with the agency before you can file a lawsuit in court. Strict time limits apply. If you are in a Department of Corrections or Youth Authority facility, you must prove that the agency denied your claim. Please attach a copy of the denial to your claim.

HOW DOES THE DEFENDANT FIND OUT ABOUT THE CLAIM?

You must make sure the defendant finds out about your lawsuit. This has to be done according to the rules or your case may be dismissed or delayed. The correct way of telling the defendant about the lawsuit is called **service of process**. This means giving the defendant a copy of the claim. **YOU CANNOT DO THIS YOURSELF**. Here are four ways to serve the defendant:

1. **Service by a law officer** — You may ask the marshal or sheriff to serve the defendant. A fee will be charged.
2. **Process server** — You may ask anyone who is *not a party* in your case and who is at least *18 years* to serve the defendant. The person is called a **process server** and must personally give a copy of your claim to the defendant. The person must also sign a proof of service form showing when the defendant was served. Registered process servers will do this for you for a fee. You may also ask a friend or relative to do it.
3. **Certified mail** — You may ask the clerk of the court to serve the defendant by certified mail. The clerk will charge a fee. You should check back with the court prior to the hearing to see if the receipt for certified mail was returned to the court. **Service by certified mail must be done by the clerk's office except in motor vehicle accident cases involving out-of-state defendants.**
4. **Substituted service** — This method lets you serve another person instead of the defendant. You must follow the procedures carefully. You may also wish to use the marshal or sheriff or a registered process server.

*Except for an action against the Registrar of the Contractors State License Board, a \$4,000 limit applies if a "defendant guarantor . . . is required to respond based upon the default, actions, or omissions of another" (\$2,500 if the defendant guarantor does not charge a fee for the service).

4. **Substituted service** (*continued*)

A copy of your claim must be left

— at the defendant's business with the person in charge;

OR

— at the defendant's home with a competent person who is at least 18 years old. The person who receives the claim must be told about its contents. Another copy must be mailed, first class postage prepaid, to the defendant at the address where the paper was left. The service is not complete until *10 days* after the copy is mailed.

No matter which method of service you choose, the defendant must be served by a certain date or the trial will be postponed. If the defendant lives in the county, service must be completed at least *15 days* before the trial date. This period is at least *20 days* if the defendant lives outside the county.

The person who serves the defendant must sign a court paper showing when the defendant was served. This paper is called a *Proof of Service* (form SC-104). It must be signed and returned to the court clerk as soon as the defendant has been served.

WHAT IF THE DEFENDANT ALSO HAS A CLAIM?

Sometimes the person who was sued (the **defendant**) will also have a claim against the person who filed the lawsuit (the **plaintiff**). This claim is called the *Defendant's Claim*. The defendant may file this claim in the same lawsuit. This helps to resolve all of the disagreements between the parties at the same time.

If the defendant decides to file the claim in the small claims court, the claim may not be for more than \$5,000 or \$7,500 if the defendant is a natural person (**see reverse*). If the value of the claim is more than this amount, the defendant may either give up the amount over \$5,000 or \$7,500 and sue in the small claims court or file a motion to transfer the case to the appropriate court for the full value of the claim.

The defendant's claim must be served on the plaintiff at least *5 days* before the trial. If the defendant received the plaintiff's claim *10 days* or less before the trial, then the claim must be served at least *1 day* before the trial. Both claims will be heard by the court at the same time.

WHAT HAPPENS AT THE TRIAL?

Be sure you are on time for the trial. The small claims trial is informal. You must bring with you all witnesses, books, receipts, and other papers or things to prove your case. You may ask the witnesses to come to court voluntarily. You may also ask the clerk of the court to issue a **subpoena**. A subpoena is a court order that *requires* the witness to go to trial. The witness has a right to charge a fee for going to the trial. If you do not have the records or papers to prove your case, you may also get a court order prior to the trial date requiring the papers to be brought to the trial. This order is called a *Small Claims Subpoena and Declaration* (form SC-107).

If you settle the case before the trial, you must file a **dismissal** form with the clerk.

The court's decision is usually mailed to you after the trial. It may also be hand delivered to you when the trial is over and after the judge has made a decision. The decision appears on a form called the *Notice of Entry of Judgment* (form SC-130 or SC-200).

WHAT HAPPENS AFTER JUDGMENT?

The court may have ordered one party to pay money to the other party. The party who wins the case and collects the money is called the **judgment creditor**. The party who loses the case and owes the money is called the **judgment debtor**. Enforcement of the judgment is **postponed** until the time for appeal ends or until the appeal is decided. This means that the judgment creditor cannot collect any money or take any action until this period is over. Generally both parties may be represented by lawyers after judgment. More information about your rights after judgment is available on the back of the *Notice of Entry of Judgment* form. The clerk may also have this information on a separate sheet.

HOW TO GET HELP WITH YOUR CASE

1. **Lawyers** — Both parties may ask a lawyer about the case, but a lawyer may not represent either party in court at the small claims trial. Generally, after judgment and on appeal, both parties may be represented by lawyers.
2. **Interpreters** — If you do not speak English well, bring an adult who is not a witness to interpret for you, or ask the court clerk for an interpreter at least five days before your court date. A court-provided interpreter may not be available or there may be a fee for using a court interpreter unless you qualify for a fee waiver. You may ask the court for a list of interpreters and also the *Application for Waiver of Court Fees and Costs* (form FW-001).
3. **Waiver of fees** — The court charges fees for some of its procedures. Fees are also charged for serving the defendant with the claim. The court may excuse you from paying these fees if you cannot afford them. Ask the clerk for the *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO) to find out if you meet the requirements so that you do not have to pay the fees.
4. **Night and Saturday court** — If you cannot go to court during working hours, ask the clerk if the court has trials at **night** or on **Saturdays**.
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INFORMATION FOR THE SMALL CLAIMS PLAINTIFF

This information sheet is written for the person who sues in the small claims court. It explains some of the rules of and some general information about the small claims court. It may also be helpful for the person who is sued.

WHAT IS SMALL CLAIMS COURT?

Small claims court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is the **plaintiff**. The person who is sued is the **defendant**. In small claims court, you may ask a lawyer for advice before you go to court, but you cannot have a lawyer in court. Your claim cannot be for more than \$5,000 if you are a business or public entity or for more than \$7,500 if you are a natural person (including a sole proprietor). (*See below for an exception.) If you have a claim for more than this amount, you may sue in the civil division of the trial court or you may sue in the small claims court and give up your right to the amount over the limit. You cannot, however, file more than two cases in small claims court for more than \$2,500 each during a calendar year.

WHO CAN FILE A CLAIM?

1. You must be at least *18 years old* to file a claim. If you are not yet 18, tell the clerk. You may ask the court to appoint a **guardian ad litem**. This is a person who will act for you in the case. The guardian ad litem is usually a parent, a relative, or an adult friend.
2. A person who sues in small claims court must first make a **demand**, if possible. This means that you have asked the defendant to pay, and the defendant has refused. If your claim is for possession of property, you must ask the defendant to give you the property.
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NOTICE TO APPEAR AND RELATED FORMS

Revised Effective **Law 3.4232**



JUDICIAL COUNCIL OF CALIFORNIA

**Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688**

6.071. Defendant's Class and Category of Driver's License

- a) The defendant's class of driver's license may be specified on the Notice to Appear.
- b) Notice to Appear forms TR-115 and TR-130 must specify whether the defendant's driver's license is a commercial driver's license.

6.080. Defendant's Age and Birth Date

- a) The defendant's age and birth date is required on the Notice to Appear. The sequence of the birth date must be: Mo./Day/Yr.
- b) The birth date data field is designed to accept a numerical entry.

6.090. Defendant's Physical Description

- a) The defendant's sex, hair, color of eyes, height, and weight are required on the Notice to Appear. See section 9.020 for the policy regarding the defendant's race/ethnicity.
- b) Data fields for the recording of the defendant's physical description are designed to accept the standard abbreviations of physical descriptors.

6.100. Commercial Vehicle

If the vehicle involved in an offense when a notice to appear is issued is a commercial vehicle,¹³ the citing officer must mark the check box within the data field, "COMMERCIAL VEHICLE (Veh. Code, § 15210(b))."

6.110. Hazardous Material

If the vehicle involved in an offense when a notice to appear is issued was transporting hazardous material, the citing officer must mark the check box within the data field, "HAZARDOUS MATERIAL (Veh. Code, § 353)".

6.120 Vehicle Description

The year, make, and body style of the vehicle operated by the defendant at the time of the offense must be indicated on the Notice to Appear.¹⁴

6.130. Financial Responsibility

The officer must write the driver's evidence of financial responsibility on the Notice to Appear.¹⁵ A person issued a Notice to Appear for a violation of this section may submit to the clerk of the court, in person or by mail, written evidence that the driver was in compliance with this section at the time of the citation.

¹³Commercial vehicle is defined in Veh. Code, § 15210(b). The requirement to indicate if offense involves a motor vehicle is per Veh. Code, § 40300.2.

¹⁴Per Veh. Code, § 40500(a).

¹⁵Per Veh. Code, § 16028.