GLOSSARY (DEFINITIONS OF TERMS)

(Definitions of Terms)

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

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

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

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

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

appendix An "appellant's appendix" (abbreviated AA) is a document prepared by the appellant in place of the clerk's transcript, which is prepared by the superior court. It includes the items that would have been designated had a clerk's transcript been prepared. If respondent and appellant agree to prepare a single appendix together, it is called a "joint appendix" (abbreviated JA). Otherwise the respondent may prepare a "respondent's appendix" (abbreviated RA) if there are additional documents that the respondent thinks should be included in the

appellate record but which are not in the AA.

application. See **motion or application**.

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

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

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

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

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

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

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

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

CRC See California Rules of Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

plaintiff The party bringing the lawsuit in the trial court.

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

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

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

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

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

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

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

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

service The process of providing exact copies of the documents filed in court to the other parties involved in the case. It may be done in person, in which case the notice must be handed to the person himself or to a person designated to receive service, or it may be done by mail. Service must be done by someone over the age

of 18 who is not a party to the case. The original signed Proof of Service is attached to the back of the original document being filed and tells who got the notice, what date it was served and who served it. If service is in person, it will also give the name of the person taking the documents and the time and place of service. The court does not serve papers for you. **Everything filed with the Court of Appeal, unless otherwise noted, must be accompanied by a Proof of Service.** (See Proof of Service.)

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

statutes Laws enacted by the state Legislature or by Congress.

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

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

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

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

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

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