CALIFORNIA COURT OF APPEAL
THIRD APPELLATE DISTRICT

SELF-HELP MANUAL

Civil Appellate Practices and Procedures
for Self-Represented Litigants in
the California Court of Appeal,
Third Appellate District

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FOREWORD

This Self-Help Manual is intended to assist persons representing themselves without assistance of an attorney. The scope of the Manual is limited to the rules and procedures governing appeals of judgments or appealable orders entered in unlimited civil cases within the territorial jurisdiction of the California Court of Appeal, Third Appellate District (Third District). The Third District's jurisdiction extends over the superior (or trial) courts of 23 counties in California: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, and Yuba.

Parties seeking reversal of a superior court judgment or appealable order are called appellants; parties defending the judgment or appealable order are called respondents. (California Rules of Court, rule 8.10.) For the most part, this Manual assumes that the reader is an appellant, but effort has been made to include information that will assist self-represented respondents.

This Manual confines its discussion to appeals taken from civil judgments or appealable orders in what are called "**unlimited** civil cases." As a general rule, an *unlimited* civil case is a case in which the plaintiff in the superior court asked for more than $25,000 in damages. California statutes define an "unlimited" civil case indirectly. Thus, an *unlimited* civil case is any case that is not statutorily defined as a *limited* civil case. (Code Civ. Proc., § 88.) And, in general, a *limited* civil case is one in which the plaintiff in the superior court asks for *$25,000 or less* in damages. (Code Civ. Proc., § 86.) Other specific examples of *limited* civil cases are set out in Code of Civil Procedure sections 85, 86, and 86.1. For example, an unlawful detainer action in which the plaintiff seeks $25,000 or less in damages is a limited civil case. (Code Civ. Proc., § 86, subd. (a)(4).) IF your case is a **limited** civil case, your appeal goes to the appellate division of the superior court, NOT to this Court of Appeal. For help with an appeal in a

limited civil case, see Judicial Council form APP-101-INFO, Information on Appeal Procedures for Limited Civil Cases.

If your case is an *unlimited* civil case, that is, you sought more than $25,000 in damages, or sought other relief such as declaratory or permanent injunctive relief, your appeal does go to this Court of Appeal.

This Manual is not intended to offer guidance on cases other than appeals of civil judgments and orders in unlimited civil cases originating in the superior courts of the counties within the territorial jurisdiction of the Third District. Other types of cases within the jurisdiction of the Third District, such as appeals in criminal or juvenile cases, or extraordinary writ petitions in civil, criminal, or juvenile cases, are beyond the scope of this Manual.

Be aware that this Manual is intended to provide only a very *generalized* description of each of the stages of the process of litigating a civil appeal. The information contained in the Manual is not detailed or thorough enough to substitute for the advice of legal counsel. You may want to seriously consider retaining an attorney with experience and expertise in pursuing appeals. If you proceed as a self-represented litigant you will be held to the same standard as is an attorney licensed by the State Bar to practice law in California. (*City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 819.) If you fail to comply with the applicable rules and procedures of court, your appeal may be dismissed. If you are not familiar with any of the terms used in this Manual, a helpful glossary of terms can be accessed at the California Courts' Self-Help Glossary.

This Manual is organized chronologically step-by-step through the civil appellate process, beginning with the determination of what is an appealable judgment or order, and ending with issuance of the remittitur, which signals the return of the case to the superior court upon completion of the appellate process.

As you proceed through the appeal, information that may be useful can be found on this Court's website [www.courts.ca.gov/3dca], including directions to the Court and

its mediation center, parking information, answers to frequently asked questions ("FAQs"), and this Court's local rules and miscellaneous orders. Also, you can access online information about your own appeal by "clicking" on "Search Case Information." If you have questions, you may call this Court's clerk's office at (916) 654-0209. The staff will be happy to assist you as much as they can, but they cannot give you legal advice. You may not talk to any justice of the Court or any member of a justice's staff.

This Manual contains helpful references to governing legal authority. Many references are to the California Rules of Court, which are designated by the citation CRC. For example, rule 8.100 of the California Rules of Court is referred to as CRC 8.100. Statutes are referred to by section number of the Code in which they are located. For example, section 904.1 of the California Code of Civil Procedure is referred to as Code of Civil Procedure section 904.1. Published decisions of the California appellate courts are referred to by volume and page number of the edition of the reporter in which they can be located and by the year of publication of the decision. For example, the 1979 case of *Modica v. Merin* is found at page 1072 of volume 234 of the third edition of California Appellate Reports, or at *Modica v. Merin* (1979) 234 Cal.App.3d 1072. For ease of reference, the electronic version of this Manual includes "clickable" hyperlinks to the underlying authority. The electronic version may be found at this court's website at http://www.courts.ca.gov/3dca/16673.htm.

This Manual also makes reference to forms that you may use. The electronic version of the Manual also includes hyperlinks to sample forms that are available on-line in Adobe Acrobat PDF format. The forms may be filled out electronically and then printed. Before attempting to electronically file anything in the Third District, please review the current Local Rules and Miscellaneous orders carefully to determine whether it is permitted. As of the date of publication of this update, Local Rule 5 (as amended eff. Sep. 26, 2016), is applicable, but that is always subject to change. Note that the Third District does not allow fax filing of requests, motions or briefs.

The appellate process commences with determining whether a decision of the superior court can be appealed to the Court of Appeal, the topic addressed by Chapter One of this Manual.

CHAPTER ONE

CAN YOU APPEAL?

Initially, you must determine if the superior court decision you seek to challenge can be appealed by you. If a decision is not appealable, any effort to appeal will be dismissed by order of this Court, either on motion by a party or this Court's own motion. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126-127.) On the other hand, if a decision is an appealable judgment or order, an appeal must be taken within the time allowed by CRC 8.104 (see Chapter Three).

To pursue an appeal, you must be "aggrieved" by the judgment or order you seek to appeal. That is, you, as the appellant, must have "lost" in the superior court by sustaining an adverse decision which affected your legal rights (for example, by ordering you to pay money to someone you were found to have injured, or by ordering that your case against another be dismissed with no recovery by you). (Code Civ. Proc., § 902.) Generally, to be aggrieved by a judgment or order, you must be a party in the superior court case. You may not appeal on the behalf of another person such as a spouse, domestic partner, child (unless you are the minor's guardian), or friend.

You cannot appeal from any and all orders by which you are aggrieved. Appeal can only be taken from a judgment or an appealable order, which is typically the final decision in the case that resolved all claims at least as to one party. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 740-741, 743.) In California, what is appealable is established by statute. In most civil cases, the governing statute is Code of Civil Procedure section 904.1, which sets out a list of appealable orders and judgments. Determining whether a superior court decision is appealable can be difficult. The most common judgments or orders appealed to this Court are:

- Judgment entered after trial by jury. The jury verdict itself is not appealable. (*Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 307, fn. 10.) Rather, appeal can be taken from the judgment entered by the judge upon that verdict.
- Judgment entered after a court trial (i.e., trial by a judge without a jury). Sometimes, a judge will announce the decision by written findings of fact or statement of decision. Appeal is not taken from that document but from a judgment which is entered later, based upon the findings of fact or statement of decision. (*Gosney v. State of California* (1970) 10 Cal.App.3d 921, 928.)
- Judgment of dismissal. A superior court case may be dismissed on various grounds. An order dismissing the case constitutes an appealable judgment if it is signed by the judge and filed; an unsigned entry in the clerk's minutes does not constitute a judgment of dismissal. (Code Civ. Proc., § 581d.) An *order* sustaining a demurrer with or without leave to amend is not an appealable order but is just a preliminary step to entry of a judgment of dismissal. (*Forsyth v. Jones* (1997) 57 Cal.App.4th 776, 780; *Sousa v. Capital Co.* (1962) 202 Cal.App.2d 221, 223.) A single document may contain both an order sustaining a demurrer without leave to amend and judgment of dismissal, and appeal can be taken from such a judgment.
- Judgment entered upon granting of motion for judgment on the pleadings. An **order** granting a motion for judgment on the pleadings is not appealable but is just a preliminary step to entry of judgment upon granting of motion for judgment on the pleadings. (*Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 207.) A single document may contain both an order granting motion for judgment on the pleadings and a judgment, and appeal can be taken from such a judgment.
- Judgment entered upon granting of motion for summary judgment. An **order** granting a motion for summary judgment is not an appealable order but is just a

preliminary step to entry of a judgment upon granting of motion for summary judgment. (*Modica v. Merin* (1991) 234 Cal.App.3d 1072.) A single document may contain both an order granting a motion for summary judgment and a judgment, and an appeal can be taken from such a judgment.

- An order granting or denying a request for an injunction, or granting or denying a request to dissolve an injunction. (Code Civ. Proc., § 904.1, subd. (a)(6).)
- An order directing payment of monetary sanctions of more than $5000. (Code Civ. Proc., § 904.1, subd. (a)(12).)
- An order granting or denying a special motion to strike a SLAPP suit (Strategic Lawsuit Against Public Participation) brought under California Code of Civil Procedure section 425.16. (Code Civ. Proc., § 904.1(a)(13).)
- An order granting a motion to quash service of summons. (Code Civ. Proc., § 904.1, subd. (a)(3).)
- An order granting a motion to stay or dismiss for inconvenient forum. (Code Civ. Proc., § 904.1, subd. (a)(3).)

This list is not intended to be all-inclusive. Whenever an order is issued in your case, you should research and determine whether the order is an appealable judgment or order. Initially, you should consult Code of Civil Procedure section 904.1. More complete and detailed information may be found in the fifth edition of a publication authored by B. E. Witkin and members of the Witkin Legal Institute, entitled *California Procedure*, at Volume 9, Chapter XIII, at sections 85 through 220. This treatise is often available at local law libraries.

Special care should be taken in probate and family law cases, where many orders may be appealable while the case is still active in the trial court. (*Jordan v. Malone* (1992) 5 Cal.App.4th 18, 21.) Appeals in probate cases are governed by Probate Code sections 1300 through 1304. The Witkin publication discusses appeals in probate cases at Volume 9, Chapter XIII, sections 202 through 220. After entry of the interlocutory

judgment of dissolution of marriage, most orders entered in family law cases can be appealed, other than nonappealable interim orders. (*In re Marriage of Zimmerman* (2010) 183 Cal.App.4th 900, 906; *In re Marriage of Cooper* (2008) 160 Cal.App.4th 574, 576, fn. 2; *Enrique M. v. Angelina V.* (2004) 121 Cal.App.4th 1371, 1377-1378; *Banning v. Newdow* (2004) 119 Cal.App.4th 438, 444-445, 456-457; *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 556-565.)

CHAPTER TWO

SHOULD YOU APPEAL?

Just because you can appeal does not mean you should appeal. The role of an appellate court is not to retry the facts of the case, to take additional evidence, or to reweigh the credibility of witnesses. Rather, this Court reviews the record created in the superior court to determine if a **legal** error occurred in the superior court. The superior court's decision is presumed correct, and will be reversed only if you can overcome that presumption by demonstrating that (1) legal error was committed **and** (2) the error has likely made a difference in the outcome of the case (so-called "prejudicial error"). In other words, you must demonstrate that a decision was not just legally wrong but that the error caused the proceedings to be unfair to you. As a general rule, an erroneous ruling in the superior court must also have been subject to a timely objection. This means that you or your attorney must have made a specific objection during the superior court proceedings to preserve the issue for appeal. These and other factors mean that in recent years only approximately 16 to 18 percent of civil appeals have resulted in a reversal, whether filed by an attorney or an unrepresented appellant.

In deciding whether to appeal, you should also consider the cost. You will probably be required to pay the costs of preparation of the record at the outset of the appeal (see Chapter Four). If you lose the appeal, you may be ordered to pay the other side's court costs for responding to your appeal. (See CRC 8.278.) If provided by statute or other law, you may have to pay the other side's attorney fees incurred in the appeal. These may add up to a significant amount of money, quite often thousands of dollars. You should weigh these potential costs against the likelihood of winning on appeal.

If you decide that you should appeal, the first step is filing a notice of appeal, which is discussed in the next chapter, Chapter Three.

CHAPTER THREE

HOW TO FILE THE NOTICE OF APPEAL

You begin your appeal by filing a notice of appeal **in the superior court** (not in this Court, the Court of Appeal). (CRC 8.100(a).) Please read this chapter completely before you prepare to file a notice of appeal.

You may appeal from the final judgment or from an appealable order. (See Chapter One for a discussion of common appealable orders.) If your case is an "unlimited civil case" your appeal goes to the California Court of Appeal, i.e., to this Court if you are in one of our 23 counties. In general, an "unlimited civil case" is a civil case in which the amount of money claimed is more than $25,000, or a family law case, or a probate case.

California statutes define an "unlimited" civil case indirectly. Thus, an *unlimited* civil case is any case that is not statutorily defined as a *limited* civil case. (Code Civ. Proc., § 88.) And, in general, a *limited* civil case is one in which the plaintiff in the trial court asks for *$25,000 or less* in damages. (Code Civ. Proc., § 86.) Other specific examples of *limited* civil cases are set out in Code of Civil Procedure sections 85, 86, and 86.1.

To appeal to this Court of Appeal in an **unlimited** civil case, you may use Judicial Council form APP-002, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)*. Instructions on completing the form, and on appellate procedures in general, can be found in Judicial Council form APP-001, *Information on Appeal Procedures for Unlimited Civil Cases*.

Time to File the Notice of Appeal

You may appeal when the superior court has "entered" a judgment or appealable order. A **judgment** is entered when the superior court clerk file-endorses it (or in some

counties, when the superior court clerk enters the judgment in the clerk's "judgment book"). An **order** is entered either when the superior court clerk enters it in the clerk's "minutes," or when it is signed by the superior court judge and file-endorsed by the superior court clerk. (CRC 8.104(c).) The rules about "entry" of a judgment and timely filing of a notice of appeal are very specific, so you are advised to read carefully the rules of court described in this chapter.

If you appeal before the judgment or appealable order has been entered, your appeal may be dismissed as premature. (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 960-961.) However, if the trial court has "rendered" the judgment but just has not entered it yet, the notice of appeal will be treated as properly filed after entry of judgment. (CRC 8.104(d)(1).)

If you file your notice of appeal late, after the time limit for filing an appeal, your appeal will be dismissed as untimely. **You MUST file the notice of appeal on time**. If you are even one day late, your appeal will be dismissed. (CRC 8.104(b).) This is because the time limit to file a notice of appeal is "jurisdictional," which means the appellate court cannot hear the appeal if the notice of appeal is filed late. (CRC 8.104(b); *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 674.)

As a general rule, you must file your notice of appeal no later than 60 days after the superior court clerk or another party serves you with either (a) a document entitled "Notice of Entry" of judgment or (b) a file-endorsed copy of the judgment. The clerk or another party may serve you personally or by mail (or electronically, if the superior court rules allow it). The clerk's service must show the date the notice of entry or the file-endorsed judgment was mailed to you. The other party's service must include a proof of service. (CRC 8.104(a).) Note that the same rules about an appeal from a judgment apply to an appeal from an appealable order, as the rules of court dealing with appeals define "judgment" as including an order that may be appealed. (CRC 8.10(4).) You begin counting days on the day of mailing of the notice of entry, or file-endorsed copy, of

the judgment or appealable order, **NOT** on the day you receive the notice of entry or file-endorsed copy. (Code Civ. Proc., § 1013, subd. (a) [service of a mailed document is complete at the time of deposit in the mail]; CRC 1.10.)

Sometimes, neither the clerk nor another party serves a notice of entry of judgment or a copy of the file-endorsed judgment or appealable order. In these cases, the appellant must file a notice of appeal no more than 180 days after entry of the judgment or appealable order. (CRC 8.104(a)(1)(c).)

The 60-day time limit to file a notice of appeal is extended if you or another party timely files a valid motion for new trial, motion to vacate the judgment, motion for judgment notwithstanding the verdict, or motion to reconsider an appealable order. If this happens in your case, you will need to read CRC 8.108 carefully to determine your extended time limit to file a notice of appeal.

Note, though, that the strict 60-day time limit for you to file your notice of appeal is **NOT** extended by five additional days if you are served by mail with notice of entry of judgment (or appealable order) or a file-endorsed copy of the judgment or appealable order. That is, the 60-day time limit is **not** extended by Code of Civil Procedure section 1013, which extends some time limits but not the time limit to file a notice of appeal. (Code Civ. Proc., § 1013, subd. (a).)

Filling Out the Notice of Appeal Form

You may type your information directly onto the Judicial Council Notice of Appeal/Cross-Appeal (Unlimited Civil Case) form APP-002, and then print the form for your use. Fill out the notice of appeal form completely. Put your superior court case number in the box labeled, "CASE NUMBER." Be sure to include the date, your name, and your signature at the bottom of page one.

Page two of the form is a proof of service. **Copies** of the notice of appeal and proof of service must be served on all of the other parties in the case. The notice of appeal may be served by mail. You yourself are not allowed to serve the notice of

appeal. Instead, you must get another person to do so, who is 18 or older and not a party to your case. (Code Civ. Proc., § 1013a.) Be sure that person fully completes and signs the proof of service portion of the form.

You must file the original notice of appeal form and proof of service **in the superior court**, with a filing fee or a request to waive filing fees.

Notice of Appeal Filing Fees

At the time that you file the original notice of appeal (and proof of service) in the superior court, you must also pay a filing fee of $775 by check made out to "Clerk, Court of Appeal," **and** a $100 deposit by check made out to "Clerk of the Superior Court." (CRC 8.100(b).) If you are using the court's electronic filing portal, TrueFiling, the filing fee will be collected by TrueFiling, via credit card. (See Local Rule 5(m).)

If you cannot afford to pay the fees, you may submit to the superior court, with the notice of appeal, a request to waive court fees on appeal, using Judicial Council form FW-001, *Request to Waive Court Fees*. Submit two copies, each with an original signature, because the superior court clerk will send one of the copies to this Court. For help in preparing the request, and to determine whether you qualify to have your fees waived, see Judicial Council form APP-015-INFO, *Information Sheet on Waiver of Appellate Court Fees*. A request to waive court fees is not a public record and remains confidential.

Note that even if your fees were already waived in the superior court, you must still file a new request to waive your appellate fees. The clerk of the superior court may also require you to file an additional request to waive the $100 deposit and to waive the costs of preparation of a clerk's transcript.

Cross-Appeal

If another party to your superior court case files a notice of appeal, and if you are also aggrieved in some way by the judgment, your time to file your own appeal (sometimes called a "cross-appeal") may be extended. Your time to file a cross-appeal is

extended until 20 days after the superior court clerk serves you with notice of the first appeal. (CRC 8.108(g)(1).) Even if another party has filed a notice of appeal, you must file your own notice of appeal if you wish to ask this court to correct or set aside any ruling made by the superior court in your case.

Respondent's Filing Fees in Civil Cases

A respondent must pay a filing fee of $390 when respondent files "its first document in a civil case appealed to a court of appeal." (Gov. Code, § 68926, subd. (b)(1).) In this Court, a respondent does **not** have to pay the $390 fee to file a Civil Appeal Mediation Statement or any other document related to mediation. (See Chapter Four for more information about mediation and the mediation statements.)

CHAPTER FOUR

EXEMPTION FROM ELECTRONIC FILING FOR SELF-REPRESENTED LITIGANTS

A self-represented litigant who is not an attorney does not have to register for or use the court's electronic filing system (EFS). (Local Rule 5(n)(1).) Use of EFS "is voluntary for all non-attorney self-represented litigants." (Local Rule 5(b).) EFS is implemented through the "TrueFiling" website described below.

Be aware that using TrueFiling will not confer any special advantage to you. A self-represented litigant who does not use TrueFiling is entitled to receive all relevant correspondence from the court and the opposing party or parties via mail. Use of TrueFiling simply affects how you send and receive documents by providing a platform for documents to be transmitted between the parties and the court electronically, rather than by mail.

This Manual provides a detailed guide to how your appeal will proceed, including the relevant time limitations, forms, and processes for resolving an appeal in this court and for requesting review by the Supreme Court following resolution of the appeal. Except as otherwise noted, it is assumed you will not be using EFS to litigate your appeal.

Self-Represented Litigants who Voluntarily Choose to Use Electronic Filing

If you nevertheless choose to use "TrueFiling," you must carefully review the Third District's rule of court concerning filing requirements as any user of the system must comply with the current local rule. (Local Rule 5(n)(1).) You will be held to the same standard as an attorney who uses the system. The court will reject any document that does not comply with the electronic filing requirements. (Local Rule 5(o).) As of the time of publication, the current standards for EFS in the Third District are described

in Local Rule 5, as amended effective September 26, 2016. The following section provides a brief description of some of the pertinent requirements.

A self-represented litigant who wishes to use EFS must first register with the system by accessing <http://www.truefiling.com>. (Local Rule 5(c)(1).) TrueFiling assesses fees for electronic filing according to a schedule posted at its website, as approved by the court, and TrueFiling is designated as the court's agent for collection of court-imposed fees, including associated credit card, bank, or convenience fees. A self-represented litigant with a fee waiver is exempt from the fees and costs associated with electronic filing. (Local Rule 5(m).) Following registration, an individual must maintain current and accurate information and is responsible for any document filed under that person's username and password. (Local Rule 5(c)(2).)

The type of documents that must be filed and the time limitations for filing them are discussed in a step-by-step manner in the remainder of this Manual and are the same whether or not you choose to use TrueFiling. (See Local Rule 5(j).) For example, if you are using TrueFiling, you will transmit electronically any briefs, motions, requests for extensions of time, and forms that must be completed during your appeal. Documents that must be submitted electronically may also include portions of the record, such as the record of administrative proceedings and any appendix filed pursuant to the California Rules of Court. (Local Rule 5(g).) If you order a reporter's transcript pursuant to CRC 8.130, you must also request a copy of the transcript in electronic format and submit an electronic copy to the court. (Local Rule 5(g)(3); CRC 8.130(f)(4).)

Any electronic document that is filed must be submitted in an electronic text-searchable PDF (portable document format) file or other searchable format as approved by the court, and the document must maintain original document formatting. (Local Rule 5(e).) A user who only has a paper copy of a document must scan the document and convert it into a text-searchable PDF file, but if it is not feasible to do so, may file the document in paper format with a declaration explaining why electronic filing is not

feasible. (Local Rule 5(e)(1) & (n)(2).) The page numbering for an electronic document, including a brief, must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., "1," "2," "3," etc.) throughout the document. (Local Rule 5(e)(2).) No electronic document shall have any color cover, signature, or other color component; disregard those provisions in the remainder of this Self-Help Manual that refer to the color of a document if you are using TrueFiling. (Local Rule 5(e)(7).)

Electronic documents, such as briefs, must contain electronic bookmarks to each heading, subheading, and component of the document, including any: (1) table of contents, (2) table of authorities, (3) verification, (4) points and authorities, (5) supporting declaration, (6) certificate of word count, (7) certificate of interested entities or persons, and (8) proof of service. An electronic bookmark should also include the first page of each tab, exhibit, or attachment, if any. An electronic bookmark is a text link that appears in the bookmarks panel of Adobe Reader and Acrobat. (Local Rule 5(e)(5).)

Document file size in the current TrueFiling system is limited. Any file is limited to 25 megabytes, and electronic documents larger than 25 megabytes must be filed in multiple files that each do not exceed that amount. (Local Rule 5(d)(1) & (2).) Any electronic document consisting of more than five files shall not be transmitted with TrueFiling but must instead be filed with the court in another electronic format as described in Local Rule 5(d)(3).

An electronic filing not completely received by the court by 11:59 p.m. is deemed to have been filed on the next court day, and users are cautioned that telephone or online assistance may not be available outside of normal court business hours. (Local Rule 5(j).) Please also be aware that technical issues can arise with TrueFiling, and that the court is not responsible for malfunctions or errors that occur in transmission of documents. The initial point of contact for anyone having difficulty with an electronic filing should be the toll-free number provided at the TrueFiling website. (Local Rule 5(k).)

CHAPTER FIVE

WHAT TO DO BEFORE YOU FILE YOUR BRIEF

After you file a notice of appeal, the Third District Court of Appeal considers whether to refer your case to mediation

After you file a notice of appeal in a civil case that is not exempt from the Mediation Program, preparation of the appellate record does not immediately begin. Instead, in the Third District, work on preparing the record is automatically suspended until this Court either determines that the appeal is not suitable for mediation or a mediation has failed to fully resolve the case. (Ct. App., Third Dist., Local Rules, rule 1(d)(1).)

How to File the Civil Case Information Statement

When this Court receives the notice of appeal from the superior court, this Court's clerk will mail you confirmation that a notice of appeal has been filed along with a blank Civil Case Information Statement (CCIS). You are required to promptly fill out and return the CCIS to this Court. Remember to attach to the CCIS (1) a copy of the judgment or order that is being challenged on appeal, and (2) Proof of Service on all parties to the appeal. (CRC 8.100(g).)

If this Court's clerk's office does not receive your completed CCIS within 15 days after the date it was mailed to you, this Court will issue a notice of default. If you do not cure the default within 15 days (generally by correctly filing the CCIS), the court may impose monetary sanctions against you or dismiss the appeal. (CRC 8.100(g)(2).) If you are the respondent, you do not have to fill out a CCIS unless you file a cross-appeal.

Consider Mediating Your Appeal

Civil appeals can be expensive and take substantial time to yield a decision by the Court. In contrast, negotiated settlements by the parties can often be quickly, creatively,

and inexpensively achieved through mediation. Consequently, the Court has an appellate mediation program for selected civil appeals. All civil appeals are eligible for referral to court-ordered mediation, with the exception of conservatorship, guardianship, and sterilization proceedings. (Local rule 1(c).) Every civil case is eligible for mediation upon stipulation (written agreement) of all parties. (Local rule (1)(f)(1).) This Court has discretion to accept or reject the stipulation. You should consider seeking a stipulation to mediate if the case is amenable to negotiation. Local rule (1)(f) governs stipulations to mediate.

The Third District orders approximately 15 to 20 percent of civil appeals to mediation. The majority of cases ordered to mediation result in a negotiated settlement.

To aid this Court's assessment of whether a civil appeal should be ordered to participate in the appellate mediation program, you are required to fill out a Civil Appeal Mediation Statement. The clerk's office will mail you this mandatory form. If you would like a fillable, electronic version, you may find it here for appellants and here for respondents.

One of this Court's justices will review the mediation forms, so you should not disclose confidential or privileged information. Instead, the form offers you an opportunity to provide the Court with a brief summary of the appellate arguments you expect to raise. Final selection of a case for mediation is confirmed by this Court's mediation program administrator. The program administrator may contact you to discuss the suitability of the case for mediation. (Local rule 1(e)(2).)

How to Prepare for Mediation

Mediation is mandatory for appeals that are selected. Mediations are hosted at the Appellate Mediation Program office at 2890 Gateway Oaks Drive, Suite 210, Sacramento, California 95833. The mediation program telephone number is 916-643-7084.

The mediation sessions are conducted by volunteer attorneys with court-sponsored mediation training. Mediators are required to provide four hours of mediation at no charge to the parties. If you agree prior to the start of mediation, the mediator may charge a fee to continue the mediation beyond four hours. (Local rule 1(h).)

If your case is selected for mediation, you are required to attend the mediation session. Moreover, unless excused by the mediator in writing for good cause, all parties must attend with full authority to settle the case. (Local rule 1(h)(4).) Parties also have a duty to inform any insurance carriers of the mediation. Both "a party on appeal, and the party's counsel" have a duty "to notify insurance carriers with potential insurance coverage that appellate mediation has been ordered and that the carrier must have a representative attend all mediation sessions in person, with full settlement authority." (*Campagnone v. Enjoyable Pools & Spas Service & Repairs, Inc.* (2008) 163 Cal.App.4th 566, 574.) Failure to comply with this duty may result in the imposition of sanctions by the court. (*Ibid.*)

If Mediation Succeeds

If the mediation is successful, you must immediately give this Court notice that a settlement has been reached. (CRC 8.244(a).) You then have 45 days to file an abandonment of appeal in the superior court. (CRC 8.244(a)(3).) To abandon an appeal, you may use Judicial Council form APP-105, Abandonment of Appeal.

If You Decide Not to Continue With the Appeal

If you decide against pursuing further litigation, you can abandon your appeal at any time prior to the filing of the record in this Court. (CRC 8.244(b).) To abandon an appeal, you may use Judicial Council form APP-105, Abandonment of Appeal. Please note that the abandonment is filed in the superior court. (CRC 8.244(b).)

If you wish to end your appeal after the record has been filed in this Court, you must file a request for dismissal in this Court. (CRC 8.244(c).)

How to Designate the Appellate Record

This Court's local rule suspends the requirement that an appellant designate the record on appeal within 10 days of the filing of the notice of appeal in a civil case that is not exempt from the Mediation Program. (Local rule 1(d)(1).) In the Third District, an appellant starts the appeal with a timely notice of appeal but does not designate the record until either (1) the appeal has been deemed not suitable for mediation, or (2) the court-ordered mediation proves unsuccessful. Upon the occurrence of either event, this Court issues an order lifting the stay on appellate record preparation. (Local rule 1(g)(2), (h)(7).)

Within 10 days of this Court's order lifting the stay, the appellant must file in the superior court a notice designating the record on appeal. (CRC 8.121(a); local rule 1(g)(2), (h)(7).) Most appellate records consist of three parts: (1) documents filed or lodged in the superior court that are relevant to the issues on appeal, (2) a reporter's transcript of the oral proceedings relevant to the issues on appeal, and (3) any exhibits or portions of an administrative record that are relevant to the issues on appeal. (CRC 8.121(b), 8.122(b).)

1. The clerk's transcript, appendix, or original superior court file.

Documents filed in the trial court may be brought before the Court of Appeal in a transcript prepared by the superior court clerk (a "clerk's transcript"), by appendices prepared by the parties themselves, or by transmission of the original superior court file to the Court of Appeal.

An appellant who proceeds by having the superior court clerk prepare a transcript of documents contained in the trial court's record must designate the transcript under CRC 8.121(b). Appellant may use Judicial Council form APP-003, Appellant's Notice Designating Record on Appeal. If the appellant already filed a notice designating the record at the same time as the notice of appeal, appellant does not need to file another

notice designating the record. Rather, when this Court issues an order lifting the stay on appellate record preparation, record preparation will begin.

Appellants who choose to forego a clerk's transcript by preparing their own appendices should carefully review CRC 8.124(a) & (b), which specifies how to give notice of election to proceed by appendix and lists the required contents of an appellant's appendix. The Third District also allows parties to stipulate to using the original superior court file in lieu of preparation of a clerk's transcript. (See CRC 8.128(a); local rule 2.)

The cost of preparing a clerk's transcript can be quite substantial, and this cost is one of the things an appellant should consider in deciding whether to pursue an appeal. That cost can be reduced, though, if the appellant chooses to prepare an appendix instead of a clerk's transcript, or if the parties stipulate to use the original superior court file. Also, if you have a low income, you may file a request to waive the costs of preparation of a clerk's transcript, using Judicial Council form FW-001, *Request to Waive Court Fees*. Information on filing the request, and on whether you qualify to have your fees waived, can be found in Judicial Council form APP-015-INFO, *Information Sheet on Waiver of Appellate Court Fees*.

The respondent has 10 days to designate additional materials for inclusion in the clerk's transcript after the appellant files his or her notice designating the clerk's transcript. (CRC 8.122(a)(2).) Respondent may use Judicial Council form APP-010, Respondent's Notice Designating Record on Appeal. If the appellant has elected to proceed by appendix, parties are encouraged to confer and agree upon the contents of a joint appendix. (CRC 8.124(a)(3).) In the absence of an agreement, the respondent may provide a respondent's appendix, which may contain "any document that could have been included in the appellant's appendix or a joint appendix." (CRC 8.124(b)(5).)

2. The reporter's transcript.

A record of the pertinent oral proceedings is ordinarily presented in a court reporter's transcript. The cost of a reporter's transcript can also be quite substantial, and this cost should also be taken into account by the appellant in deciding whether to appeal.

Self-represented appellants sometimes decide to proceed on appeal without a reporter's transcript. An appeal that proceeds without a reporter's transcript is commonly called a "judgment roll appeal." It can be a real disadvantage for the appellant to proceed on a judgment roll appeal because in such an appeal this Court will "presume the trial court's findings of fact and conclusions of law are supported by substantial evidence." (*People v. Roscoe* (2008) 169 Cal.App.4th 829, 839.) This means that arguments about the strength of the evidence introduced by a party rarely succeed. An appellant should strongly consider arranging for the preparation of a reporter's transcript.

The procedure for requesting a reporter's transcript and the costs of the transcript are specified in CRC 8.130. If you request a reporter's transcript, the request must be accompanied by both a deposit for the transcript and a fee in the amount of $50 for the superior court to hold that deposit in trust. (CRC 8.130(b).) The deposit may be estimated by the court reporter or may be calculated based on how many days and partial days the proceeding took. For proceedings that have not been previously transcribed, the deposit can be calculated at $650 per day or $325 for each half day (defined as a hearing lasting fewer than three hours) of transcripts requested. (CRC 8.130(b).) For proceedings that have been previously transcribed, the deposit can be calculated at $160 per day or $80 for each half day (defined as a hearing lasting fewer than three hours) of transcripts requested. (CRC 8.130(b).)

Low-income litigants may apply to the Court Reporters Board for payment of the costs of a reporter's transcript. If you file an application with the Court Reporters Board, you must serve and file a copy of that application with your notice designating record on appeal. (CRC 8.130(c).) Information on applying to the Court Reporters Board is

located here. Please note that requests for waiver of appellate filing fees requires a different application. (See App-015/FW-015-INFO.) The Court Reporters Board has very limited funds, and even meritorious applications may be denied for lack of resources.

3. Exhibits.

Exhibits offered at trial are deemed to be part of the clerk's transcript but are not automatically copied into the record or sent to this Court. Thus, if you wish to have exhibits included in the clerk's transcript, you must specify the exhibits according to their assigned numbers or letters in your notice designating the record. (CRC 8.122(a)(3).) If a designated exhibit was released to the parties after proceedings ended in the superior court, the party who received the exhibit must promptly deliver it to the superior court clerk who will, in turn, transmit it to this Court. (CRC 8.122(a)(3).)

If you have not received your record on appeal within 120 days of filing the notice designating the record on appeal, please contact the superior court clerk. You may view the docket of the case (which lists actions in your appeal by the court and the parties) by clicking on the "Search Case Information" link on this Court's website.

How to Augment the Record After the Record Has Been Filed in this Court

If you forgot to designate relevant documents in the notice designating the record, you may file in this Court a motion to "augment" the record with the missing documents. Only documents that were filed or lodged in the case in the superior court may be augmented to the appellate record. (CRC 8.155(a)(1)(A).) Remember to include a proper Proof of Service with any motion or request filed in this Court.

How to Correct the Record

If the completed clerk's transcript or reporter's transcript lacks anything that was designated in the notice designating the record on appeal, you may correct the record by filing a notice in the superior court specifying the omitted portion of the record and

requesting it be prepared, certified, and sent to this Court. Remember to serve copies of your notice on the other parties to the appeal and this Court. (CRC 8.155(b).)

Using Agreed and Settled Statements to Complete the Appellate Record

If an important portion of the oral proceedings in the trial court was not recorded, the parties may complete the record by a settled statement. (CRC 8.137(a)(2)(B).) Parties may also resort to settled statements in lieu of a reporter's transcript, if it results in a "substantial cost saving" and if "the statement can be settled without significantly burdening opposing parties or the court." (CRC 8.137(a)(2)(A).) To use a settled statement on appeal, the appellant must make a motion in the superior court under CRC 8.137(a)(1).

Parties may also use an agreed statement to constitute part or all of the record on appeal. CRC 8.134(a)(1) requires that an agreed statement "must explain the nature of the action, the basis of the reviewing court's jurisdiction, and how the superior court decided the points to be raised on appeal. The statement should recite only those facts needed to decide the appeal and must be signed by the parties." The court must frequently evaluate the claims you make based on the record on appeal to decide whether any claim would make a difference in the outcome of the case, thereby warranting reversal of the judgment or order on appeal. (See *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 579-580.) Consequently, appellants who rely exclusively on an agreed or settled statement to constitute all or even substantial portions of the appellate record should be aware that an insufficiently complete record precludes reversal of the judgment or appealed order.

How to Request Judicial Notice

Judicial notice is an efficient means of having a court recognize facts or evidence that are not reasonably subject to dispute. However, as a general rule, this Court will not take judicial notice of matters that were not presented to the trial court. (*People v. Preslie* (1977) 70 Cal.App.3d 486, 493.) One significant exception to this general rule applies to

certain legislative history documents, when otherwise relevant. (See *Souza v. Lauppe* (1997) 59 Cal.App.4th 865, 871-873.)

If you want this Court to take judicial notice of something, you must file a separate motion for judicial notice. Requests for judicial notice may not be made in a brief. (See CRC 8.252(a)(1).) Your motion must explain why the matter to be noticed is relevant to the issues on appeal, whether the matter was presented to the trial court and whether the trial court took judicial notice of it, and whether the matter relates to proceedings occurring after the order or judgment that is the subject of the appeal. If the matter to be noticed is not in the record, you must also attach a copy of it (or explain why it is not practicable to do so). (CRC 8.252(a)(3).) Remember to include a proper Proof of Service with any motion or request filed in this Court. This Court may rule on the request for judicial notice immediately or may defer the ruling until it decides the merits of the appeal.

If you want this Court to take judicial notice of legislative history documents, you must identify each document as a separate exhibit and provide legal authority supporting the consideration of each document. For guidance on judicial notice of legislative history materials, please read this Court's opinion in *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26. (See also local rule 4.) For information in general about judicial notice, see Evidence Code sections 450 to 459, and 1 Witkin, California Evidence (4th ed. 2000) Judicial Notice.

How to Request Additional Time for Briefing

The deadline to file a brief may be extended by stipulation (written agreement) or court order. You can extend the time to file a brief by a maximum of 60 days by securing a stipulation from opposing counsel, or if the opposing party is unrepresented, from that party. You must file your stipulation in this Court before the brief is due. The stipulation becomes effective on filing. (CRC 8.212(b).)

In the absence of a stipulation, or if more time is required beyond the stipulation, you may request that this Court grant an extension of time to file a brief. (CRC 8.212(b).) Judicial Council form APP-006, Application for Extension of Time to File Brief, is available for use in making extension requests.

When making a request for an extension of time to file a brief, you must show good cause for the extension. Thus, you should explain when the brief is due, how long an extension you seek, the length of the record (by number of pages), and whether any prior extensions have been granted, their length and whether granted by stipulation or by the court. (CRC 8.60(c), 8.63(b).) You should also indicate the opposing party's or counsel's position on the extension request when you requested a stipulation for extension of time. Remember to include a proper Proof of Service. (CRC 8.60(f).)

In ruling on your request for an extension of time, this Court considers the degree of prejudice to any party; the position of the parties; the length of the record; the number and complexity of the issues raised; whether the case is entitled to priority; and specific obligations of counsel in other cases, among other factors. (CRC 8.63.)

How to Request Relief from Default

After a procedural default – such as the failure to pay a filing fee, designate the appellate record, or timely file a brief – this court will notify you of the default and give you an opportunity to cure the default – by paying the filing fee, designating the record, or filing a brief. If you are an appellant, the notice of default will tell you that if you do not cure the default within 15 days the appeal will be dismissed. (CRC 8.100(c), 8.140(a), 8.220(a).) If you are a respondent, the notice of default will tell you that if you do not designate the record on appeal, the appeal will proceed on the record designated by the appellant or that, if you do not file your respondent's brief, this Court will decide the appeal on the record, the appellant's opening brief, and any oral argument by the appellant. (CRC 8.140(a), 8.220(a).)

If a respondent fails to cure the default within 15 days, the respondent may file a motion for relief from default, demonstrating good cause for the relief. (CRC 8.60(d), 8.63.) Remember to include a proper Proof of Service with any motion or request filed in this Court.

If the appellant fails to cure the default within 15 days, the appeal will be dismissed. The appellant may obtain relief from the decision dismissing the appeal by promptly (and no later than 15 days after the appeal was dismissed) filing a petition for rehearing. (CRC 8.268(b).) The petition for rehearing should request that the dismissal be vacated, and that relief from default be granted. The petition must show good cause for relief from default. (CRC 8.60(d), 8.63.) The petition for rehearing must include a proper Proof of Service. See Chapter Seven for more information about filing a petition for rehearing.

If this Court grants the petition for rehearing, the appeal will be reinstated and appellant will be allowed to cure the procedural default and to continue to pursue the appeal.

If this Court denies the petition for rehearing, this Court will issue a remittitur, establishing finality of the decision and returning the case to the superior court. (CRC 8.272.) In rare instances, the appeal can be reinstated upon granting of a motion to recall the remittitur. (CRC 8.272(c)(2); *In re Gray* (2009) 179 Cal.App.4th 1189, 1195-1199.)

Respondent's Filing Fees in Civil Cases

A respondent must pay a filing fee of $390 when respondent files "its first document in a civil case appealed to a court of appeal." (Gov. Code, § 68926, subd. (b)(1).) In this Court, a respondent does **not** have to pay the $390 fee to file a Civil Appeal Mediation Statement or other document related to mediation. However, a respondent must pay this one-time $390 filing fee if respondent files in this Court any other document, such as a motion to augment the record or a motion for judicial notice.

CHAPTER SIX

HOW TO BRIEF THE APPEAL

The most important part of your appeal is the written briefing filed in this Court. Appeals are won or lost on the briefs, so you should devote enough time to write a compelling and concise legal argument. This Court considers only legal mistakes made by the trial court. An appeal is not a retrial of the facts. The job of the appellant is to identify a legal error made by the trial court (also called an "issue") and to show how that legal error so harmed the appellant that a reversal or correction of the judgment is required. The job of the respondent is to demonstrate either that the trial court did not in fact make a legal error or that the legal error did not actually harm the appellant.

In the course of an appeal, there are usually three briefs. The appellant begins by filing the appellant's opening brief (AOB), which identifies and argues the legal issues. The respondent files the respondent's brief (RB) which responds to the legal issues raised in the AOB. And the appellant then has the option to file an appellant's reply brief (ARB) which responds to the arguments made in the RB. These three briefs, and the time limits for filing them, will be discussed separately below, after a discussion of general requirements that apply to all three briefs.

Note: If the party adverse to you files a cross-appeal (or if you file a cross-appeal) then the briefing and briefing schedule are different. You must try to agree with the opposing party regarding a briefing schedule, and either submit a joint briefing schedule or a separate briefing schedule to this Court. See CRC 8.216 for the procedures for submitting such a briefing schedule.

REQUIREMENTS FOR ALL BRIEFS

Format Requirements

Briefs must meet all of the following requirements for formatting (CRC 8.204(b)):

- Typed or computer word-processed;

- White, recycled paper, 8-1/2” by 11”, and at least 20-pound weight -- do not use legal size paper or pleading paper with numbers;
- Roman style typeface, but case names cited in the brief must be underlined or italicized; headings may be in uppercase letters;
- Type size must be 13-point or larger (but if typewritten, no smaller than standard pica, 10 characters per inch);
- Both sides of the paper may be used (if typewritten, use only one side of the paper);
- Lines of text must be one-and-a-half spaced or double-spaced; headings and footnotes may be single-spaced;
- Margins of at least 1-1/2 inches on the left and right, and 1 inch on the top and bottom;
- Unbound (pages should not be bound together but should be submitted in order and loose-leaf);
- Pages must be consecutively numbered, beginning with the cover page as page 1. Page numbers must use Arabic numerals (“1,” “2,” “3,” etc.). The page number itself does not have to appear on the cover page, but the cover page is counted as page “1.”

Your brief is ordinarily filed publicly, and publicly-filed documents should not disclose confidential or sealed material. If it necessary to refer to such material, please review carefully the procedure described in CRC 8.46(f).

Length of Briefs

Briefs must not exceed 14,000 words if computer processed or 50 pages if typed (including footnotes, but **not** including the cover, the certificate of interested entities or persons, the tables of contents and authorities, the certificate of word count, any signature block, and any attachments). The certificate of word count must state the exact number

of words counted by the word processing program. Upon application and a showing of good cause, the Presiding Justice may permit longer briefs. (CRC 8.204(c).)

Filing & Serving Briefs, and Number of Copies

Unless you file electronically, you must ordinarily file the original of your brief and four copies in this Court. (CRC 8.44(b)(1), (c).) A brief is filed in this Court on the day it is received by the clerk of this Court. (CRC 8.25(b)(1).) The time limits for filing briefs are set out in CRC 8.212(a), and are discussed in more detail below, under the separate discussions of the briefs.

You must also serve one copy of the brief on each additional party to the appeal, and one copy on the clerk of the superior court for delivery to the trial judge. Service can be made by mailing, with a Proof of Service completed and signed by an adult who is not a party to the appeal. (Code Civ. Proc., § 1013a.) Be sure to attach a copy of the proof of service as the last page of each copy of the brief, and attach the original proof of service as the last page of the original brief that you file in this Court. (See CRC 8.25(a), 8.212(c)(1), and "Information Sheet for Proof of Service.")

In addition, in a civil case, you must serve 4 copies of the brief on the California Supreme Court (and your proof of service must show service on the Supreme Court), but you may serve the Supreme Court either by mail or electronically. The simple procedure for electronic service on the Supreme Court is set out in CRC 8.212(c)(2)(A).

Finally, you may also be required to serve your brief on a nonparty public officer or agency, or on the California Attorney General. For example, if you argue that a California statute is unconstitutional, you must serve a copy of your brief on the Attorney General. (See CRC 8.29, 8.212(c)(3).)

Extending the Time to File the Brief

If you need additional time to file your brief, you and the opposing party may file a stipulation (written agreement) in this Court to extend the time period to file each brief by up to 60 days per brief. If the opposing party refuses to stipulate to extend the time

limits, you may file an "Application for Extension of Time to File Brief," requesting an extension of the time to file your brief. Be sure to file a stipulation or application prior to the brief's due date. (See CRC 8.212(b), and "How to Request Additional Time for Briefing" in Chapter Four, above.)

Late Briefs

If the appellant's opening brief (AOB) or the respondent's brief (RB) is not filed on the day it is due to be filed, the clerk of this Court will mail notice that the brief must be filed within 15 days, and that (a) if the AOB is not filed, the appeal will be dismissed, or (b) if the RB is not filed, the appeal will be decided without the benefit of a RB. Within that 15-day time period, you may either file your brief OR file an Application for Extension of Time to File Brief showing good cause for an additional extension of time beyond the 15 days in which to file your brief. (CRC 8.220.)

Be aware that if you obtain an extension of time to file your brief beyond that 15-day period, and then fail to submit your brief within the extended period of time, this Court will dismiss the appeal (if the AOB is late) or submit the appeal without an RB (if the RB is late) without additional notice.

Defective Briefs

If a brief fails in a substantial way to comply with the requirements of CRC 8.204 (which sets out the contents, form, and length of the brief), then the clerk of this Court may mark it "received but not filed" and return it for corrections. Alternatively, if the brief requires only minor corrections, the clerk may simply call you to obtain your permission for the clerk to make the minor corrections. If the brief is returned to you for corrections, be sure to make all of the necessary corrections to the brief and return it within the additional time granted. Remember that you must also serve the corrected brief on the parties, superior court, Supreme Court, and others, as described above. If you do not make the corrections, this Court may return or strike your brief. (CRC 8.204(e).)

Attachments to Briefs

The Rules of Court allow you to attach to the brief copies of exhibits or other materials contained in the appellate record, or copies of legal authorities. These attachments may not exceed 10 pages. (CRC 8.204(d).) However, it is rarely necessary to attach materials to your brief. You can simply cite to any exhibits that are included in the appellate record, and to legal authorities. Further, if you attach to your brief materials that are not in the appellate record, your brief will be stricken or returned to you for corrections. If not stricken, excessive or inappropriate materials may be disregarded.

Discussion of specific requirements for the three appellate briefs follows:

I. The Appellant's Opening Brief (green cover)

Drafting a winning appellant's opening brief (AOB) is not easy. An appeal is **not** a retrial. If you argue in the AOB that the jury or the trial judge (if there was no jury) misunderstood the evidence, failed to give sufficient weight to the evidence, or failed to consider all of the evidence, you are extremely unlikely to win, given that the Court of Appeal pays great deference to the fact-finding role of the trial court. Rather, the AOB must identify legal "issues" (legal errors made by the trial judge) **and** show that the error caused "prejudice," that is, caused such harm to your case that the trial was fundamentally unfair or a fundamental mistake occurred. The California Constitution precludes the Court of Appeal from reversing a judgment unless it determines that an error of jury instruction, evidence, pleading, or procedure "has resulted in a miscarriage of justice." (Cal. Const., art VI, § 13.)

Early on in the process, as part of your analysis of whether to appeal, you should carefully review the record of the trial proceedings for potential legal issues. The range of legal issues that might be raised by the appellant in the AOB is vast, so we do not try here to describe every possible potential legal issue. But, the following is a list of common legal issues raised on appeal:

- The trial judge erroneously admitted evidence over objection, and the inadmissible evidence prejudiced appellant's case;
- The trial judge erroneously refused to admit relevant evidence and thus prejudiced appellant's case;
- The jury instructions were legally incorrect;
- The trial judge misinterpreted the parties' contract that was in dispute;
- The trial judge misapplied or misinterpreted statutory, common law (case decisions), or constitutional law;
- The trial judge erred in sustaining a demurrer to the appellant's complaint because the complaint legally states a cause of action;
- The trial judge erred in granting summary judgment because there are material, disputed facts that require a trial;
- The trial judge or jury made a mathematical or other error in computing the amount of damages;
- The trial judge erred in awarding costs or attorney's fees;
- The findings of the trial judge do not support the judgment;
- The evidence is legally insufficient to support the findings or to support the judgment (note: this last argument is extremely difficult to win because of the "substantial evidence" standard of review, discussed below in the "Argument" portion of this discussion regarding the AOB).

Once you have identified a legal issue or issues that you intend to raise on appeal, you should make sure the AOB includes all of the contents required both by CRC 8.204(a) and by practice and custom in the Court of Appeal. The AOB should include the following, each of which is discussed in more detail below:

- ✓ Cover
- ✓ Certificate of Interested Entities or Persons
- ✓ Table of Contents

- ✓ Table of Authorities
- ✓ Statement of the Case
- ✓ Statement of Appealability
- ✓ Statement of Facts
- ✓ Argument
- ✓ Conclusion
- ✓ Certificate of Word Count
- ✓ Proof of Service

Time Limit to File the AOB

As a general rule, your AOB must be served and filed no later than 40 days after the record is filed in this Court. (CRC 8.212(a)(1)(A).) The record is considered filed in this Court either (a) when the reporter's transcript and clerk's transcript have both been received in this Court, or (b) when the reporter's transcript is received in this Court if you elected to use an appendix instead of a clerk's transcript. The exception to this rule is if you elect not to have a reporter's transcript prepared **and** you elect to prepare an appendix instead of a clerk's transcript, in which case you must serve and file your AOB and appendix no later than 70 days after you filed your election to prepare an appendix instead of a clerk's transcript. (CRC 8.212(a)(1)(B).)

In every case, the clerk of this Court will mail you notice that the record has been filed and indicating the due date of the AOB. If you are uncertain about the deadline to file your AOB, you may check this Court's website or call the clerk to obtain that information.

CONTENTS OF THE AOB

The following contents of an AOB are required by CRC 8.204(a) and by practice and custom in the Court of Appeal. In drafting your AOB, be sure to refer regularly to the sample AOB, Appendix A to this Manual, for an example of what your AOB should look like.

Cover

The cover of an AOB is green. (CRC 8.40(b).) You should print the cover on stiff paper called "card stock," preferably using recycled card stock. The back of the brief should be blank but should also consist of green card stock.

The cover must state the title of the brief (Appellant's Opening Brief); the title, trial court number, and Court of Appeal number of the case; the names of the trial court and trial court judge; and your name, mailing address, telephone number, fax number (if available), e-mail address (if available), and the California State Bar number of each attorney joining in the brief (if applicable). (CRC 8.40(c), 8.204(b)(10).) Please be sure to check this Court's website to ensure the title on your brief matches exactly the title on the website. See also the sample AOB in Appendix A of this Manual for a sample cover.

Certificate of Interested Entities or Persons

In all civil appeals (**except** family, juvenile, guardianship and conservatorship cases), the first page of the AOB after the cover is the Certificate of Interested Entities or Persons. (CRC 8.208.)

Table of Contents & Table of Authorities

The Table of Contents lists the sections of the brief by page number. The Table of Authorities lists every legal authority (case decisions, statutes, rules of court, constitutional provisions, and legal treatises) you have cited in the body of the brief, and indicates the page number in the AOB where the authority can be found. These tables should be the last parts of the brief that you draft because you will not know the page numbers until the rest of the brief is written.

Statement of the Case

The Statement of the Case tells the procedural history of the case in chronological order from the filing of the complaint to judgment, i.e., the story of what happened in the courts so far. In other words, the Statement of the Case explains who sued whom for what; what relevant motions were filed in the trial court, and how the trial court ruled on

them; and, if there was a trial, who won and the amount of damages awarded or other relief granted. Include relevant dates, such as the date the complaint was filed, the date relevant motions were filed and rulings made, and the date of judgment, notice of entry of judgment, and notice of appeal.

Every fact set out in the Statement of the Case must be supported by a citation to the page in the appellate record where that fact can be found. (CRC 8.204(a)(1)(C).) If you fail to include record citations, your brief may be stricken or returned to you for corrections. (CRC 8.204(e).)

You can cite to the appellate record by using these acronyms: The clerk's transcript is cited as "CT"; the reporter's transcript as "RT"; a joint appendix as "JT"; an appellant's appendix as "AA"; a respondent's appendix as "RA"; an augmented clerk's transcript as "Aug CT"; and the original superior court file as "OSF." For example: "Appellant filed a civil complaint on January 3, 2011. (CT 1)"

If there is more than one volume of the clerk's transcript or reporter's transcript, indicate the volume, then CT or RT, and then the page number, e.g.: (1 CT 3), (2 RT 150). If there is more than one augmented clerk's transcript, indicate the transcript by date, e.g.: (1/3/11 Aug CT 2).

Statement of Appealability

The Statement of Appealability is a short (often one-sentence) explanation that the judgment appealed from is final, or why the order appealed from is appealable. (CRC 8.204(a)(2)(B).) (See Chapter One for a discussion of appealable orders and judgments.) For example:

"This appeal is from an order granting a new trial and is authorized by Code of Civil Procedure section 904.1, subdivision (a)(4)."

Statement of Facts

While the Statement of the Case discusses the procedural facts, the Statement of Facts discusses the "historical facts," that is, the evidence admitted in the trial court about the dispute between the parties and what happened before there was a lawsuit.

The Statement of Facts consists of "a summary of the significant facts limited to matters in the record." (CRC 8.204(a)(2)(C).) This rule of court is important because it emphasizes two limitations on your statement of facts. One, you should discuss only "significant facts," that is, facts that are relevant to the legal issue you will raise in your brief. And, two, **like the Statement of the Case, each fact must be supported by a citation to the appellate record, and you may cite only to those facts that are found in the appellate record** (consisting of the reporter's transcript, clerk's transcript, appendix, augmented transcript, or settled or agreed statement (if any)). Indeed, it is improper to refer in your AOB to facts or evidence that were not presented to the trial court. (Use the same style of citation to the record as discussed above in "Statement of the Case.")

It is generally best to set out the facts in a chronological order. Some appellate experts recommend that you "tell a story" in your Statement of Facts, that is, that you tell the facts in an interesting but honest way that is supportive of your view of the case. Of course, the story must be supported by, and cite to, the appellate record. A Statement of Facts does not have to be lengthy to be persuasive. It will be more persuasive if it hones in on the facts that are relevant to your legal arguments.

There is no advantage in "hiding bad facts," that is, in deliberately failing to refer in your brief to evidence admitted during trial that hurts your position. The respondent is likely to emphasize those facts in the respondent's brief, and this Court will review the record and find those facts anyway. You are better off mentioning "bad facts" and then discussing other evidence that explains or lessens the impact of the "bad fact."

Indeed, on appeal the facts are viewed, and reasonable inferences are drawn, in favor of the judgment. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.) This means that where the facts were contested, this Court assumes that the trier of fact believed the witnesses or documents that supported the judgment. Thus, even if you think the trier of fact accepted the weaker witness or evidence, you must nonetheless fairly summarize the facts in the light most favorable to the judgment. (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 739.)

Argument

This is the most important part of the brief. In the Argument section, you identify the legal issues (errors made by the trial judge), and argue why you think the trial judge erred and how the error caused harm ("prejudice") to you.

Organize the Argument section by your legal issues. That is, if you will raise more than one legal issue (more than one claim of legal error), you should set off each legal issue with a separate roman numeral (I, II, etc.) and by a separate heading, which can be centered on the page. (These headings should be included in your Table of Contents.) Every legal issue must have its own heading that, in a few words, summarizes the issue.

For each legal issue, it is best to start by describing the "**standard of review**" that applies to that issue. The standard of review refers to the amount of deference the Court of Appeal will pay to the trial court's decision. You may need help researching the standard of review that applies to your issue; the research librarian at your county law library may be your best help with this. In general, there are three standards of review:

1. "**De novo**" standard of review. *De novo* is Latin for "anew" or "a second time." This is the standard of review most favorable for an appellant because the Court of Appeal redecides issues subject to the de novo standard with no deference paid to the trial court. Examples of issues that are usually subject to the de novo standard are: questions of the proper interpretation of a written contract (*Parsons v. Bristol*

Development Co. (1965) 62 Cal.2d 861, 865-866), a statute (*Mamika v. Barca* (1998) 68 Cal.App.4th 487, 491) or a constitutional provision (*City of Santa Cruz v. Patel* (2007) 155 Cal.App.4th 234, 243); the legality of jury instructions (*People v. Posey* (2004) 32 Cal.4th 193, 218); the trial court's ruling on a demurrer or motion for judgment on the pleadings (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672); the trial court's ruling on a summary judgment motion (*Guz v. Bechtel National Inc.* (2000) 24 Cal.4th 317, 334); and any other issue which is purely legal and involves undisputed facts (*Shaoxing County Huayue Import & Export v. Bhaumik* (2011) 191 Cal.App.4th 1189, 1195).

2. "**Abuse of discretion**" standard of review. Issues that fall under this standard are much harder for an appellant to win because the Court of Appeal defers to the trial court's exercise of discretion. In the course of a trial, the trial judge uses his or her discretion to decide all manner of issues, e.g., whether to allow certain discovery, whether to admit evidence, whether to issue a restraining order or injunction, the amount of attorney's fees to award, whether to allow an amendment to the pleadings, whether to dismiss for lack of prosecution, and whether to allow a continuance of trial. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, §§ 362-363, pp. 418-420.) In family law, issues subject to the abuse of discretion standard include child custody and visitation (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32), and the amount of child or spousal support to order (*In re Marriage of Zimmerman* (2010) 183 Cal.App.4th 900, 906 [child support]; *In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 809 [spousal support]). The Court of Appeal will reverse such discretionary decisions only if the Court is persuaded that the trial judge's decision "exceed[ed] the bounds of reason." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)
3. "**Substantial evidence**" standard of review. Self-represented appellants often want to argue that the trial judge or jury did not consider all of the admitted

evidence, misunderstood the evidence, erred in assessing credibility, or failed to properly weigh the evidence. However, this type of argument will almost never win. This is because the Court of Appeal must give its greatest deference to the job of the trial judge or jury, which is to weigh the evidence and decide what evidence to believe. The Court of Appeal will reject these arguments, called "substantial evidence" arguments, if there is *any* substantial evidence, contradicted or not, which will support the finding of fact. (*Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 503.)

Once you have identified the standard of review that applies to your issue, you should set out the legal authority that applies to your issue. **You must support every statement of law with a citation to a legal authority**. This may be a statute or constitutional provision that you believe the trial court failed to apply or misinterpreted. It may also be one or more published appellate court opinions with facts similar to yours that resulted in a decision that shows the trial judge in your case erred. However, you may not cite an unpublished appellate court opinion. (CRC 8.1115.) Legal authority might also be a rule of court, a regulation, a legal treatise, or a law review article. Citations to legal authority should be placed in parentheses at the end of the sentence. For help in citing to legal authorities, see Appendix B to this Manual ("Citing Your Sources of Information"), and the sample AOB attached as Appendix A to this Manual.

Obviously, it may be a difficult task for a layperson, untrained in the law, to conduct legal research to find statutes, published appellate court opinions, and other legal authorities that support your position. However, self-represented litigants are held to the same standards as lawyers in the Court of Appeal. (*City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 819.) So, you have the same obligation as a lawyer to find legal authorities that support your legal issue. The best source of help to you, again, is the research librarian at your county law library. The research librarian can also help you find legal treatises in a particular area of law (e.g., Family Law, Torts Law, or Contracts

Law) that will be helpful to you both in identifying legal issues and identifying legal authorities that support your position.

Finally, after you have set out the standard of review and legal authorities for your issue, you should show how the legal authorities apply to the facts of your case. For example, you might argue that if a relevant statute is properly interpreted your facts fit within the requirements of the statute. Or, you might argue that your facts are just like the facts of a published appellate court opinion and accordingly the trial judge erred in reaching a conclusion that is different from that reached in the appellate opinion.

Remember that it is always necessary to show both that the trial judge erred and also that the error caused so much harm ("prejudice") to your case that a reversal or modification of the judgment, or a retrial, is required.

Conclusion

The conclusion of your brief should be very short (usually no more than a paragraph), and should tell this Court what relief you want, e.g., the order or judgment should be reversed, or a new trial should be granted. Do not use the Conclusion to repeat the arguments you have already made in the Argument section or to make new arguments.

Certificate of Word Count

If you produced your brief on a computer, you must include a certificate stating the exact number of words in the brief (but not including the cover, the certificate of interested entities or persons, the tables of contents and authorities, the certificate itself, and any attachments to the brief). You may rely on the word count of the computer program used to prepare the brief. (CRC 8.204(c).)

Proof of Service

The final page of the AOB is the Proof of Service. For detailed information on serving and filing the briefs, see "Filing & Serving Briefs, and Number of Copies," above.

II. The Respondent's Brief (yellow cover)

The purpose of the respondent's brief (RB) is to respond to the issues raised in the AOB by showing that the AOB is wrong in arguing the superior court erred, and/or that the error of the superior court did not cause appellant harm ("prejudice") sufficient to warrant reversal.

If a respondent has not already filed a document in this Court, the respondent is required to pay the one-time respondent's filing fee of $390 simultaneously with the filing of the RB. (Gov. Code, § 68926, subd. (b)(1).) If a respondent chooses not to participate in the appeal, and consequently files no document in this Court, the respondent does not have to pay the filing fee. Where a respondent chooses not to file an RB, this Court will decide the appeal based on the record, the AOB, and any oral argument by the appellant. (CRC 8.220(a)(2).)

In drafting an RB, it is usually easier for a respondent to find supportive law than it is for the appellant. A respondent can start by reading the ruling, decision or judgment of the trial judge, and then reading carefully the statutes, constitutional provisions, case decisions or other legal authorities cited by the trial judge. The respondent should also read the legal authorities cited in the AOB. If you cannot find these legal authorities on the Internet, go to your county law library. Also, ask the law librarian to help you find a legal treatise in the area of the law (e.g., Family Law, Torts Law, or Contracts Law) to become more familiar with that area of the law and to find additional legal authority not cited in the AOB. The respondent should not assume that the AOB has identified all of the relevant legal authority applicable to the issue raised in the AOB, or that the appellant has correctly characterized or cited that legal authority.

The general rules about formatting, length, numbers of copies, filing, service of briefs, and obtaining extensions of time are the same for the RB as for the AOB, and are discussed above at the start of this chapter. Moreover, much of the discussion about the

AOB, above, applies also to the RB, so you should read the discussion above about the AOB. The differences, that is, the rules that apply differently to an RB, are as follows:

Time Limit to File the RB

A respondent must serve and file the RB within 30 days after the appellant files the AOB. (CRC 8.212(a)(2).)

Contents of the RB

The contents of the RB are the same as the AOB, with the following exceptions or qualifications:

- The front and back **Cover** of the RB are yellow (CRC 8.40(b)(1)), and the cover should identify the title of the brief as "Respondent's Brief";
- The RB does **not** have to include a **Statement of Appealability**;
- The RB does **not** have to include a **Statement of the Case** or a **Statement of Facts**. If you are satisfied with the statements included in the AOB, you may simply adopt them. However, most respondents will include in the RB both a Statement of the Case and Statement of Facts in order to "tell the story" of the case in a way that supports the judgment or appealable order. Also, if the AOB has left out or misrepresented facts, it is essential for the RB to include a Statement of the Case and/or Statement of Facts to include the omitted facts or to state the facts as found in the appellate record.
- In the **Argument** section of the RB, it is usually best to follow the AOB's organization by responding to the issues raised in the AOB by a corresponding roman numeral and heading in the RB followed by your argument on that issue. Be sure to respond to all of the issues raised in the AOB. If you agree with the AOB's assertion regarding the standard of review, there is no need to include your own discussion about that standard. However, if you disagree about the applicable standard of review, or if the AOB fails to discuss the standard, then you should discuss it in the RB. Also, as to any issue raised in the AOB, check the appellate

record to make sure appellant raised the same issue or argument in the superior court (or raised an objection to an evidentiary ruling) -- otherwise, you might argue the issue was forfeited (or "waived") and for that reason should be rejected by the Court of Appeal. Finally, if you have a separate argument, not addressed in the AOB, as to why the judgment should be affirmed (e.g., the statute of limitations expired, or some other defense applies), you should include that as an additional contention in the argument section of the RB.

III. The Appellant's Reply Brief (tan cover)

The purpose of the appellant's reply brief (ARB) is very limited, that is, to respond to arguments in the RB. **DO NOT** repeat the arguments made in your AOB in the ARB. **DO NOT** raise new issues in the ARB. Any new issue will be ignored by this Court. (The Zumbrun Law Firm v. California Legislature (2008) 165 Cal.App.4th 1603, 1623, fn. 12.)

Instead, use the ARB to respond to the legal arguments made in the RB or to new legal authorities discussed in the RB. You do not have to file an ARB, and should not file an ARB if you believe that the RB raises nothing to which you need to reply.

Time Limit to File the ARB

The ARB is due within 20 days after the respondent files the RB. (CRC 8.212(a)(3).)

Contents of the ARB

The ARB consists only of **tan** covers, tables of contents and authorities, argument, conclusion, certificate of word count, and proof of service. Again, do not raise new issues in the ARB and do not simply repeat the arguments made in your AOB.

CHAPTER SEVEN

HOW TO PRESENT ORAL ARGUMENT

Requesting Oral Argument

Oral arguments are held after briefing is complete and this Court has had an opportunity to review the briefs and appellate record.

Many of the appeals decided by this Court do not involve oral argument. Oral argument cannot substitute for adequate presentation of argument in briefs filed by the parties. This Court rarely requires parties to appear at oral argument. More often, this Court indicates that it is prepared to issue a decision without the need for oral argument. The Court's indication that oral argument is not necessary does not indicate whether the appeal will be affirmed or reversed, or even whether the decision will be published or unpublished.

Oral argument is a very limited opportunity for you to address the Court directly. There is not enough time to allow you to cover all topics discussed in the briefs. You may not raise a new issue or argument for the first time at oral argument. Nor should oral argument be used merely to reiterate points already made in the briefs. By the time you are notified about the opportunity for oral argument, this Court has become familiar with the pertinent law and facts. Thus, you should consider carefully whether you really need to present oral argument.

If you decide not to request oral argument, you will not undermine your arguments, be seen as uninterested in the outcome, or forfeit any argument. Nonetheless, you may request that this Court hear oral argument. The request must be made in writing, and must be made within 10 days of notice from this Court that it is prepared to render a decision without oral argument.

With the presumptions in favor of the judgment, respondents generally choose not to request oral argument if the appellant has not requested oral argument.

If a party requests oral argument, or this Court sets argument on its own motion, the Court will notify you of the date, time and place of argument at least 20 days in advance. (CRC 8.256(b).) Oral argument is usually held in the Third District's courtroom, located at 914 Capitol Mall, Sacramento.

Time Limit

At oral argument, your time is strictly limited to 15 minutes. (Ct. App., Third Dist., Local Rules, rule 3.) If you are the appellant, you may reserve some of your time for rebuttal after the respondent has argued. If you wish to reserve time, you should ask to do so at the outset of your argument. If you are the respondent, you cannot split your time.

Presenting Argument

- ✓ Prior to argument, review the briefs and record to reacquaint yourself with the case and to be able to respond to questions from the justices.
- ✓ If you have new authority to discuss at oral argument not cited in briefing, you should provide this Court and opposing counsel with the legal citations, without legal argument or discussion, in writing as many days before argument as possible. Remember to include proof of service on opposing counsel, or the other party if unrepresented.
- ✓ Arrive at least a half hour prior to the scheduled start of oral argument.
- ✓ Check in with the clerk inside the courtroom. The clerk will ask you to fill out a short form that provides basic information about the case you will be arguing.
- ✓ When the presiding justice asks whether your case is ready for argument, announce that you are ready to proceed as the appellant or as the respondent.
- ✓ When your case is called, proceed to the counsel table at the front of the courtroom and take a seat. Appellants sit on the left, respondents on the right, facing the justices.
- ✓ When it is your turn, go to the podium.

- ✓ Begin by stating your name. If you choose, you can start with the customary, "May it please the Court, I am . . ." Regardless of how you begin, remember to state your name at the outset of the argument.
- ✓ Speak slowly and clearly.
- ✓ Prepare to be flexible. The justices often have questions that may interrupt your presentation. Answer the questions as directly as you can. Questions are likely to concern the key points in your case, and you can lose valuable opportunity by not fully answering the questions in order to return to a pre-planned speech.
- ✓ Do not interrupt the justices.
- ✓ The presiding justice will announce when your time has expired. Immediately stop your argument and retake your seat at the counsel table.

Tips for an Effective Argument

- ✓ If your case turns on a statute or contract, bring a copy of the statute or contract with you to the podium.
- ✓ Avoid bringing too much material to oral argument. In 15 minutes, a large sheaf of papers or bulky transcripts are more likely to get in the way than to assist with your argument.
- ✓ Exhibits and charts are unlikely to be helpful in presenting argument because the justices will focus on legal issues rather than on the strength of the facts presented at trial.
- ✓ Focus on the legal principles that you believe apply to the facts as found in the trial court. Arguing facts as if to a jury is unhelpful because this Court does not reweigh the facts.
- ✓ Resist the temptation to plan too much for your allotted 15 minutes. You are unlikely to make 10 points in 15 minutes. More importantly, you probably do not need to do so. Appeals usually turn on one or two crucial issues.

- ✓ If you do not know the answer to a question, say so. Do not misrepresent the facts or law.

When Will I Receive a Decision?

At the conclusion of oral argument, an appeal is deemed "submitted" to this Court for decision. (CRC 8.256(d).) A written decision will be filed within 90 days after a case is submitted. (See Cal. Const., art. VI, § 19.) The clerk will send you a copy of the written decision.

CHAPTER EIGHT

THE DECISION OF THE COURT OF APPEAL, AND WHAT CAN YOU DO IF YOU LOSE?

This Court's decision will be in the form of either an opinion or an order. Section 14 of Article VI of the California Constitution provides, "Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated." So, when an appeal proceeds through briefing and oral argument, and the Court decides to affirm or reverse the judgment, the decision will be in the form of an opinion, a writing that includes a statement of the reasons for the decision. The decision is made by the majority of the three-justice panel, and is written by one of the justices and, usually, signed by the other two members. On occasion, a member of the panel who agrees with the decision may choose to file an additional opinion, called a concurrence. A justice in the minority who does not agree with the decision will file an additional opinion, called a dissent.

If the decision of this Court is that the appeal is not properly before it (e.g., because it is untimely, or it is from a nonappealable order), the Court may dismiss the appeal by written order. An order dismissing an appeal is not an opinion and need not include a statement of reasons. (*People v. Brown* (1957) 149 Cal.App.2d 175.)

If you wish to challenge this Court's decision, you have two options. One, you may petition this Court for rehearing. Two, you may petition the California Supreme Court for review. You do not have to file a petition for rehearing in this Court before you file a petition for review in the Supreme Court. However, on petition for review, the Supreme Court will generally accept this Court's statement of the issues and facts unless by a petition for rehearing you called this Court's attention to any material omission or misstatement of an issue or fact. (CRC 8.500(c).)

Petition for Rehearing in this Court

As provided in CRC 8.268, a petition for rehearing may be served and filed within 15 days of when this Court files its opinion, an order for publication of the opinion, or a modification of the opinion that changes the judgment (the decision). IF you are not using electronic filing, file an original and four copies of your petition for rehearing with this Court's clerk. (CRC 8.44(b)(3).) The cover of the petition must be orange (CRC 8.40(b)) and should include your name, mailing address, telephone number and, if available, your fax number and e-mail address (CRC 8.40(c)(1)). The petition must comply with all relevant provisions of CRC 8.204, governing the contents and form of briefs. (CRC 8.268(b)(3).) (See Chapter Five.)

The petition for rehearing seeks to have this Court reconsider its decision. The petition should not repeat arguments contained in the briefs, but rather should show that the decision contains an error of law or fact. Rehearing is also appropriate when a decision fails to address an issue. Generally, this Court will not consider on rehearing issues not previously raised, with two exceptions: (1) the superior court or appellate court lacked jurisdiction; or (2) the appellate court in the opinion relied on facts or legal issues not previously presented by the parties.

An answer or opposition to the petition for rehearing can be submitted **only if requested by this Court**. (CRC 8.268(b)(2).) If an answer is requested, the cover must be blue (CRC 8.40(b)) and must include your name, mailing address, telephone number, and, if available, your fax number and e-mail address (CRC 8.40(c)(1)). An original and four copies must be provided to the Court. (CRC 8.44(b)(3).) The answer must comply with relevant provisions of CRC 8.204, governing the contents and form of briefs. (CRC 8.268(b)(3).) (See Chapter Five.)

If the petition for rehearing is granted, the decision of this Court is vacated, and the appeal is again pending before this Court. (CRC 8.268(d).)

The petition for rehearing may be denied by order of the Court or by expiration of 30 days from filing of the opinion without a ruling on the petition. This Court does not have authority to extend the time for rehearing, and a petition for rehearing is deemed denied if the Court does not rule on the petition before the decision is final. (CRC 8.268(c).) Absent a grant of rehearing, a decision of this Court is final as to this Court 30 days after filing of the decision. (CRC 8.264(b)(1).)

When the decision of this Court becomes final as to this Court, you may petition for review by the California Supreme Court.

Petition for Review by the California Supreme Court

A petition for review by the California Supreme Court must be served and filed within 10 days after this Court's decision becomes final as to this Court. Because this Court's decision is final as to this Court 30 days after it is filed, your 10-day period to file a petition for review in the Supreme Court begins to run on the 31st day after this Court files its decision, even if that day is a court holiday. (CRC 8.500(e)(1).) The Supreme Court will accept for filing petitions for review filed prior to the finality of the decision of the Court of Appeal. (CRC 8.500(e)(3).) However, be aware that if the last day to file the petition for review falls on a day the Supreme Court clerk's office is closed (a Saturday, Sunday, or court holiday), the deadline is not extended to the next day the clerk's office is open and the petition for review must be filed before that day when the clerk's office is open. (CRC 8.500(e)(1).)

You must file, in the Supreme Court, an original and 13 copies of the petition for review or, alternatively, you may file 8 copies of the petition and one electronic copy. (CRC 8.44(a).) The petition must be served on all parties to the appeal, the superior court clerk, and this Court's clerk, and on public officers and agencies as required by CRC 8.29. (CRC 8.500(f).)

The cover of the petition for review must be white (CRC 8.40(b)) and must include your name, mailing address, telephone number, and, if available, your fax

number and e-mail address (CRC 8.40(c)(1)). The title and designation of the parties of the petition for review must match the title of this Court's opinion or order. (CRC 8.504(b)(6).)

The petition for review must comply with the relevant provisions of CRC 8.204, governing the contents and form of briefs. (CRC 8.504(a).) (See Chapter Five.) A copy of this Court's order or opinion must be attached to the back of the petition for review, along with any order modifying this Court's opinion or directing its publication. (CRC 8.504(b)(3) & (4).) The petition for review must state whether a petition for rehearing was filed in the Court of Appeal and, if so, how the Court of Appeal ruled. (CRC 8.504(b)(3).) If produced on a computer, the petition must not exceed 8,400 words as certified by counsel or unrepresented party; if typewritten, the petition must not exceed 30 pages. (CRC 8.504(d)(1) & (2).) Certain tables, cover information, the signature block, and attachments are excluded from the word and page count. (CRC 8.504(d)(3).) The Chief Justice of the Supreme Court, for good cause, may permit a longer petition for review. (CRC 8.504(d)(4).)

The petition for review must begin with a brief statement of the issues to be presented to the Supreme Court and an explanation why the case presents an issue of sufficient importance that the Supreme Court should grant review. Review by the Supreme Court is a matter of discretion, and most recently that discretion has been exercised in only about three to five percent of the civil cases as to which review was sought. Review is generally limited to issues that have not previously been addressed ("questions of first impression") or as to which there are conflicting decisions in the Courts of Appeal, or to cases that have a substantial impact on the citizens of California. (CRC 8.500(b).)

A party may file an answer responding to the issues raised in the petition for review. (CRC 8.500(a)(2).) An original and 13 copies must be provided to the Supreme Court or, alternatively, 8 copies of the petition and one electronic copy. (CRC 8.44(a).)

The cover of the answer must be blue (CRC 8.40(b)) and must include your name, mailing address, telephone number, and, if available, your fax number and e-mail address (CRC 8.40(c)(1)). The answer must comply with the relevant provisions of CRC 8.204, governing the contents and form of briefs. (CRC 8.504(a).) (See Chapter Five.) If produced on a computer, the answer must not exceed 8,400 words as certified by counsel or unrepresented party; if typewritten, the answer must not exceed 30 pages. (CRC 8.504(d)(1) & (2).) Certain tables, cover information, the signature block, and attachments are excluded from the word and page count. (CRC 8.504(d)(3).) The Chief Justice, for good cause, may permit a longer answer. (CRC 8.504(d)(4).) An answer that raises additional issues for review must contain a statement of the issues and how the issues relate to the case. (CRC 8.504(c).)

The party petitioning for review may file a reply to the answer. (CRC 8.500(a)(3).) An original and 13 copies must be provided to the Supreme Court or, alternatively, 8 copies of the petition and one electronic copy. (CRC 8.44(a).) The cover of the reply must be white (CRC 8.40(b)) and must include your name, mailing address, telephone number, and, if available, your fax number and e-mail address (CRC 8.40(c)(1)). The reply must comply with the relevant provisions of CRC 8.204, governing the contents and form of briefs. (CRC 8.504(a).) (See Chapter Five.) If produced on a computer, the reply must not exceed 4,200 words as certified by counsel or unrepresented party; if typewritten, the reply must not exceed 15 pages. (CRC 8.504(d)(1) & (2).) Certain tables, cover information, the signature block, and attachments are excluded from the word and page count. (CRC 8.504(d)(3).) The Chief Justice, for good cause, may permit a longer reply. (CRC 8.504(d)(4).)

The Supreme Court may order review within 60 days after the last petition for review is filed, and, within that period, may extend its time to a date no later than 90 days after the last petition is filed. (CRC 8.512(b)(1).) If the Supreme Court does not rule within that time, the petition for review is deemed denied. (CRC 8.512(b)(2).)

If the petition for review is granted, you will need to become familiar with the rules and procedures of the California Supreme Court. (CRC 8.512-8.544.)

If the petition for review is denied or deemed denied, jurisdiction of the case will again be vested in the Court of Appeal. The Court of Appeal will then immediately issue a remittitur, a document establishing the finality of the decision of the Court of Appeal and transferring the case back to the jurisdiction of the superior court. (CRC 8.272.)

If no petition for review was filed, this Court's remittitur issues immediately after the expiration of the time for granting review, or 61 days after this Court filed its decision.

Costs on Appeal

If a party is entitled to costs on appeal, the memorandum of costs must be filed in the superior court within 40 days of mailing of a copy of the remittitur. (CRC 8.278(c).)

APPENDIX A

SAMPLE APPELLANT'S OPENING BRIEF

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

In re the Marriage of ANNE and ROBERT ADAMS.	C099999
ANNE ADAMS, Plaintiff and Respondent, v. ROBERT ADAMS, Defendant and Appellant.	Yolo County Superior Court No. 08-123

Appeal from Judgment of the Superior Court
State of California, County of Yolo

The Honorable Mary Smith, Judge

APPELLANT'S OPENING BRIEF

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Appellant in Pro Per

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STATEMENT OF THE CASE

In 2008, respondent Anne Adams ("Anne") filed a petition for dissolution of marriage. (CT 1) In 2009, the superior court entered a judgment as to marital status only. (CT 63) The issues concerning division of community property, spousal support, and attorney fees were reserved for trial at a later date. (CT 60)

A trial in 2010 culminated with a decision in which the trial court divided the community property, calculated amounts for which appellant Robert Adams ("Robert") was ordered to reimburse the community, and denied motions for attorney fees, costs, and spousal support. (CT 147-150) Among other things, the decision ordered Robert to reimburse the community $5,128.36, one-half the amount paid from community funds, over several years, to pay property taxes on a parcel of property that was Robert's separate property. The court entered judgment on October 25, 2010. (CT 163)

Robert filed a notice of appeal on November 12, 2010. (CT 166)

STATEMENT OF APPEALABILITY

This appeal is from the final judgment of the Yolo County Superior Court that disposes of all issues between the parties, and is authorized by Code of Civil Procedure section 904.1, subdivisions (a)(1), (a)(2) and (a)(10).

STATEMENT OF FACTS

The parties were married on June 3, 1994, and separated in May 2008. (RT 7) There are no children from the marriage. (RT 258)

Prior to the marriage, Robert owned real property in Yolo County, which he leased to strawberry farmers ("the strawberry farm"). (RT 144) Because the property came to be held with joint title that included Robert

and Anne, the trial court determined that the strawberry farm was community property. (CT 148) Adjacent to the strawberry farm was another parcel of land that Robert had owned for years before the marriage. This parcel was leased to corn farmers, and remained Robert's separate property (the "corn field"). (RT 141; CT 148)

During the marriage, community funds were used to pay the property taxes on both parcels of property, i.e., on both the strawberry farm and the corn field. (RT 152) Anne was in charge of paying the family taxes, including property taxes. (RT 55) She knew she was using community funds to pay property taxes on the corn field, Robert's separate property. (RT 56) Anne testified she "knew and didn't care about the taxes." She "never worried about it." (RT 57) Anne admitted that Robert never promised or agreed to repay the community funds used to pay property taxes on the corn field. (RT 60)

ARGUMENT

I. THE TRIAL COURT ERRONEOUSLY ORDERED ROBERT TO REIMBURSE THE COMMUNITY'S PAYMENT OF TAXES ON ROBERT'S SEPARATE PROPERTY

The trial court impermissibly ordered Robert to reimburse Anne for community funds used to pay taxes on his separate property parcel, the corn field. (CT 150) The law is well-established that the use of community funds to pay property taxes on one spouse's separate property is not subject to reimbursement to the community.

The standard of review of a trial court order dividing community property is abuse of discretion. (*In re Marriage of Dellaria* (2009) 172 Cal.App.4th 196, 201; Hogoboom & King, Cal. Practice Guide: Family

Law (The Rutter Group 2010) ¶ 16:208, p. 16-66.) But a trial court abuses its discretion where, as here, its order fails to comply with the law.

In the absence of an agreement to the contrary, community funds become separate property when used to make property tax payments for one spouse's separate property. The general rule is that payments from community funds to property purchased by one spouse before marriage creates a community interest; but that general rule "has been commonly understood as excluding payments for interest and taxes." (*In re Marriage of Moore* (1980) 28 Cal.3d 366, 371-372.) Indeed, this Court held, in *In re Marriage of Wolfe* (2001) 91 Cal.App.4th 962, 973, that the trial court erred in ordering one spouse to reimburse the community for property taxes paid on his separate property. (See also Hogoboom & King, *supra*, ¶ 8:303, pp. 8-77 to 8-78.)

The trial court's decision orders Robert to reimburse Anne for half of the community funds used to pay taxes on his separate property, the corn field. The trial court erred as a matter of law.

CONCLUSION

For the reasons stated above, Robert respectfully asks this Court to reverse the judgment to the extent it orders Robert to reimburse Anne for $5,128.36, one-half the amount paid from community funds to pay property taxes on the corn field, Robert's separate property.

Respectfully submitted,

Dated: June 30, 2011

By: Robert Adams
Appellant in Pro Per

CERTIFICATE OF WORD COUNT

I certify that, according to the computer program used to prepare this brief, the Appellant's Opening Brief contains 750 words, not including the cover, the Tables of Contents and Authorities, the Certificate of Interested Entities or Persons, this certificate, and the signature block.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed June 30, 2011, in Davis, California.

_____

Robert Adams
Appellant in Pro Per

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years, and am not a party to this action. My address is 111 Main Street, Davis, California 95616.

On the date entered below, I served the attached **Appellant's Opening Brief** by placing a true copy thereof in an envelope addressed to the persons named below at the addresses shown, and by sealing and depositing that envelope in the United States Mail at Davis, California, with fully prepaid postage. There is delivery service by the United States Postal Service to each of the places so addressed.

Anne Adams
20000 Douglas Boulevard
Roseville, California 95661
(Respondent in Pro Per)

Clerk
YOLO COUNTY SUPERIOR COURT
725 Court Street
Woodland, CA 95695

Clerk
CALIFORNIA SUPREME COURT
350 McAllister Street
San Francisco, California 94102
(4 *copies*)

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

Executed on June 30, 2011, in Davis California.

MARYLOU JONES

APPENDIX B

CITING YOUR SOURCES OF INFORMATION

CITING YOUR SOURCES OF INFORMATION

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

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

Here are some simple guidelines for proper citation form:

CASES:

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

Federal court citations follow the same general format. United States Supreme Court cases can be found in three separate reporters: the United States Supreme Court Reporter (abbreviated U.S.), the Supreme Court Reporter (abbreviated S.Ct.), or the Lawyer's Edition Reporter (abbreviated L.Ed.). You may cite to any of these reporters. For example: *Montana v. United States* (1981) 450 U.S. 544, 551. For other federal courts, your citation should identify which federal circuit or district court decided the case. Federal circuit court cases are cited as follows: *Clicks Billiards, Inc. v. Sixshooters, Inc.* (9th Cir. 2001) 251 F.3d 1252, 1257. "9th Cir." indicates that the case was decided by the Ninth Circuit Court of Appeals, and "F.3d" refers to the third series of the Federal Reporter. Federal district court cases are cited as follows: *Plute v. Roadway*

Package System, Inc. (N.D. Cal. 2001) 141 F.Supp.2d 1005, 1010. "N.D.Cal." indicates that the case was decided by the United States District Court for the Northern District of California, and "F.Supp.2d" refers to the second series of the Federal Supplement Reporter.

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

STATUTES:

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

RULES:

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

CONSTITUTIONS:

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

TREATISES:

For legal treatises, you should indicate the volume number of the treatise you are citing (if it has more than one volume), the author of the treatise, the title, edition and year, and the section and page number that supports the proposition of law you are stating. For example, "5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706." This is a citation to volume 5 of a treatise by author Witkin entitled Summary of California Law, and the specific portion of the treatise cited is section 607 of the Torts chapter on page 706.

LAW REVIEWS AND JOURNALS:

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

OTHER SOURCES:

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