



Court of Appeal of the State of California
Fourth Appellate District, Division Three

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O.C. APPEALS: A Detailed Guide

This handout describes appellate practice in Orange County as of the date on the bottom of this page. It may not apply to other divisions in the Fourth District, or to other appellate courts. Be sure to consult the California Rules of Court (CRC) to process your appeal properly; in the event of any conflict, the court rules prevail.

- You can download a copy (PDF) of this handout from the “Forms & Rules” portion of the 4th District’s website under the “Division 3” tab. See http://www.courts.ca.gov/documents/4DCA3_Guide-Detailed.pdf.
- Court practices are always subject to change; please contact our clerk’s office directly if you have any questions about Division 3’s current procedures.
- Here is a list of topics covered by this handout:

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◆ Part One: The Basics

NOTE: The court is called the Court of Appeal, *not* the Court of Appeals
All references to “CRC” are to the California Rules of Court, which you may find online at
<http://www.courts.ca.gov/rules.htm>.

A. Location & Facilities

1. **Location.** The courthouse for Division Three is located at 601 West Santa Ana Boulevard in Santa Ana, California, telephone (714) 571-2600.
 - a. The courthouse is adjacent to the Santa Ana City Hall in the southeast corner of the Civic Center, and across the street from the Ronald Reagan Federal Building and U.S. Courthouse.
 - b. For directions to the courthouse, see Appendix “A.”
2. **Mailing Address.** The court’s mailing address is P.O. Box 22055. Santa Ana, CA 92702.
3. **Court Facilities.** The 53,500 square foot courthouse houses the clerk’s office, the courtroom, judicial chambers for the justices, and a conference center. The building was dedicated on January 14, 2010, with Chief Justice Ronald M. George delivering the keynote address. A transcript of the dedication ceremonies can be found at 181 Cal.App.4th (2010) 1524. Among the building’s many noteworthy features is the artwork in the building lobby. Student artists at various Orange County high schools prepared large colorful murals illustrating some of the court’s leading cases. The lobby artwork was the result of a collaborative effort between the court and the Orange County Department of Education.

B. Courthouse Security

1. **General Screening.** All visitors to the building, including visitors to the Clerk’s Office, are screened by courthouse security officers at the building entrance. No weapons or sharp objects of any type are permitted.
2. **Screening—Oral Argument Days.** There are additional security procedures on days in which the court is in session for oral argument. All electronic devices, including cell phones and laptop computers, must be checked in at the security guard station, and can be retrieved only when exiting the building. No food, beverages, newspapers or magazines are permitted. These security procedures apply to all persons entering the building, whether or not they are attending oral argument.

C. Clerk’s Office

1. The clerk’s office is located inside the courthouse. Any court filings or personal deliveries should be made here.

- a. For San Diego County appeals, contact the Fourth District, Division One, which is located at 750 “B” Street, Suite 300, San Diego, CA 92101, (619) 645-2760, fax (619) 645-2495 (for pilot project fax filings only)
 - b. For Riverside and San Bernardino County appeals, contact Division Two, which is located at 3389 12th Street, Riverside, CA 92501, (951) 248-0200, fax (951) 248-0235 (for pilot project fax filings only)
2. The telephone hours for the clerk’s office are from 8 a.m. to 5 p.m.
 3. The deputy clerks are available to answer your questions about the status of an appeal, and about general appellate procedures, but they cannot practice law or give legal advice.
 4. All appellate court case numbers in Division Three begin with the prefix “G0,” followed by five digits. (This number is commonly called the “G number.”) Try to know your “G number” when you call or visit the court.

D. The Court’s Website

1. The **California Appellate Courts Case Information System** (see <http://appellatecases.courtinfo.ca.gov/>) provides case information for those matters pending before the court. At this web site, you can view a case summary and docket, including the names of parties and attorneys, trial court information, list of scheduled actions, when briefs or other applications and motions were filed, and dispositions. Juvenile records are not available as they are considered confidential. Case information is updated once an hour throughout the business day.
2. You may sign up to receive automatic e-mail notifications about a specific case in Division Three by using this link:
<http://appellatecases.courtinfo.ca.gov/email.cfm?dist=43>
3. The Fourth District’s website includes information about our Division 3 in Santa Ana. You can find it at <http://www.courts.ca.gov/4dca.htm>. There are links to our oral argument calendars, local court forms, judicial biographies, including biographies of our retired justices, practices & procedures and frequently asked questions. The court history, with links to articles about the formation of Division Three as Orange County’s appellate court, is contained in the “Division 3” tab at <http://www.courts.ca.gov/2746.htm>.

E. Court Rules & Procedures

1. **California Rules of Court (“CRC”).** The California appellate rules are contained in the California Rules of Court mostly in Title 8. You may find the California Rules of Court online at <http://www.courts.ca.gov/rules.htm>.
2. **Local Rules / IOPP’s.** The local practices and procedures for the Fourth Appellate District, Division Three are described in the court’s “IOPP’s,” which stands for “Internal Operating Practices and Procedures.” You can find them on the website at http://www.courts.ca.gov/documents/IOP_District4_division3.pdf
http://www.courts.ca.gov/documents/4dca3_iopps.pdf

F. Holidays & Furlough Days

1. If the filing date of your document falls on a Saturday, Sunday, court holiday or furlough day, the document is due by 4:00 p.m. the next court business day.
2. **Holidays.** The court is closed for the following holidays:
 - a. New Year’s Day – **January 1**
 - b. Martin Luther King, Jr. Day – **Third Monday in January**
 - c. Lincoln’s Birthday – **February 12**
 - d. Presidents’ Day – **Third Monday in February**
 - e. Cèsar Chàvez Day – **March 31**
 - f. Memorial Day – **Last Monday in May**
 - g. Independence Day – **July 4**
 - h. Labor Day – **First Monday in September**
 - i. Columbus Day – **Second Monday in October**
 - j. Veterans’ Day – **November 11**
 - k. Thanksgiving – **Fourth Thursday in November**
 - l. Day after Thanksgiving – **Fourth Friday in November**
 - m. Christmas – **December 25**
3. **Furlough Days.** As of the publication date of this Guide, the Court remains open to the public on a regular Monday through Friday weekday schedule. Because of the impact of the state’s budgetary crisis on the judicial branch, the court’s policy regarding closures for furlough days is subject to change. Check with the clerk’s office for updated information.

G. Fee Schedule

1. Filings in Superior Court

DOCUMENT	FILING FEE
Notice of appeal – civil appeals; <i>each</i> notice of appeal and cross-appeal	\$775
Notice of appeal – civil appeals brought by public agencies (Gov. Code § 6103)	No fee
Notice of appeal – conservatorship proceeding	No fee
Notice of appeal – juvenile proceeding	No fee
Notice of appeal – criminal appeal	No fee

2. Filings in Division Three

- a. There are no charges for most other documents not listed in the below fee schedule.
- b. Make all checks payable to **Clerk, Court of Appeal**, and write the appeal number on the check.

- c. **First Document Filing Fee.** There is a \$390 filing fee for applications, opposition to applications, motions, or oppositions to motions, among other documents, where they are the first document filed in the Court of Appeal by a party other than the appellant or petitioner in a civil case. (Govt. Code, §68926(b)(3); CRC 8.25(c)(2)(d).) There is no filing fee from an amicus curiae or from a governmental entity.

DOCUMENT	FILING FEE
Petition for Writ of Mandate, Prohibition or Certiorari <i>(except for criminal, juvenile and WCAB)</i>	\$775
Petition for Writ of Review involving Agriculture Labor Relations Board; Public Employees Relation Board; Public Utilities Commission; and Alcoholic Beverage Control cases	\$775
Petition for Writ of Review resulting from contempt proceedings	No fee
Petition for Writ of Review in Workers Compensation Appeals Board cases	No fee
Petition for Writ of Supersedeas <i>(must have previously filed notice of appeal in superior court)</i>	No fee
Petition for Writ of Habeas Corpus	No fee
Petition to Transfer (CRC 8.1008(b))	No fee
Certification of Documents (per certificate)	\$1
Copying opinions <i>(if not a party to appeal; per opinion)</i>	\$3
Transmittal of Records from State Records Center (per box)	\$25
First Filings by Parties Other than Appellant or Petitioner in Civil Cases (Govt. Code, § 68926(b)(3); CRC 8.25(c)(2)(d))	\$390
Motions / Oppositions	No fee unless first filing by respondent / real party
Appellate Briefs	No fee unless first filing by respondent / real party

H. Filing of Documents

1. Filing in Person; Proof of Service.

- a. The filing window at the clerk's office is open from 9 a.m. to 4:30 p.m., including lunch time. The clerk's office only accepts filings for appeals and writs arising from the Fourth District, Division Three (arising from the Orange County Superior Court.) The court does not have a drop box for after hours filing.

- b. The clerk's office will not file a document which does not contain a proper proof of service on the attorney for each party separately represented, and on each self-represented party. (CRC 8.25(a).) Self-represented parties (including attorneys) cannot themselves sign a proof of service because the rules require that the person making the service not be a "party to the cause." (Code Civ. Proc., § 1013a.)

2. **Filing by Mail; Proof of Service.**

- a. If you receive a court order requiring you to file a document by a particular date, you must make sure that the court receives the document by the due date. (CRC 8.25(b)(1).) You do not receive an additional five days because of mailing. Except for briefs, which have special rules for overnight mail service, you must make sure the clerk receives the document before the filing deadline expires. (CRC 8.25(b)(2).)
- b. The clerk's office will not file a document which does not contain a proper proof of service on the attorney for each party separately represented, and on each self-represented party. (CRC 8.25(a).) Self-represented parties (including attorneys) cannot themselves sign a proof of service because the rules require that the person making the service not be a "party to the cause." (Code Civ. Proc., § 1013a.)

I. **Fax Filing & E-Filing**

1. **General Provisions**

- a. The court is in the process of implementing various programs (including fax-filing, e-filing, hyperlinked e-briefs, and single briefs in .pdf format) for the convenience of litigants and the court.
- b. The filing party is responsible for verifying that documents are acceptable for fax filing or for e-filing.
- c. Until the program is fully implemented, some documents may be fax-filed, but not e-filed, and the court, for certain documents (such as briefs) encourages the submission of electronic documents, but still requires that paper documents be filed to meet filing deadlines.
- d. Please check the court's website or call the clerk's office if you have any questions about what may be fax-filed, e-filed or e-submitted.

2. **Fax Filing & Service**

- a. **Fax Number:** The court's fax filing telephone number is (714) 664-0897
- b. **Hours & Filing Fees**
 - 1) The court's fax filing machine is available 24 hours a day, although filings received after public office hours, or on weekends or court holidays, shall be deemed filed on the next court day.
 - 2) There is no additional fee for fax filing.

c. **Scope.** The following documents may be fax filed:

- 1) Applications for Extension of Time to File Briefs (CRC 8.60(c) – see page 35
- 2) Association / Substitution of Attorneys – see page 9
- 3) Bankruptcy Status Letter – see page 13
- 4) Certificate of Interested Entities or Persons
- 5) Change of Address see page 26
- 6) Civil Case Information Statement (CCIS) – see page 20
- 7) *Juvenile*: Full Concession Letter, County Counsel *Sade C* Letter, No Issues Letter and CRC, Rule 5.661 Appointments of Counsel recommendation
- 8) Notice of Abandonment of Appeal
- 9) Notice of Omissions in the Record on Appeal (CRC 8.340)
- 10) Request for Dismissal of Appeal – see page 63
- 11) Request for Publication of an Unpublished Opinion (CRC 8.1120) – see page 70
- 12) Request for Oral Argument– see page 65
- 13) Stipulation for Extension of Time to File Briefs (CRC 8.212(b)) – see page 35
- 14) Stipulation for Immediate Issuance of Remittur
- 15) Stipulated Request for Dismissal of Appeal

Other documents may be fax-filed *only* at the request of the court. If time is of the essence (for example, a document pertaining to a so-called “hot” writ petition with an immediate stay request, please contact the clerk’s office to ascertain whether permission can be granted for a fax filing. You may *not* fax file motions, briefs, writ petitions or appellate records.

d. **Format.**

- 1) The facsimile document must comply with all rules as would be required during traditional filing. (i.e. proof of service, etc.) The facsimile document must not exceed 10 pages in length. (Local Rule 5(b).)
- 2) **Fax Cover Sheet.** Each document must have a Fax Transmission Cover Sheet. The caption page must contain the phrase “By Facsimile” or “By Fax” immediately below the title of the document. An electronic copy of an optional 4DCA3 pilot project fax cover sheet is available at the “Local Forms” tab on the court’s website. See http://www.courts.ca.gov/documents/4DCA3_FaxCover-Form.pdf or http://www.courts.ca.gov/documents/4DCA3_FaxCover-Form.doc
- 3) **Original Signatures.** The document that is filed by facsimile shall have the same legal effect as an original paper document. Signatures on fax-filed documents are considered originals. The parties shall retain original signed documents should disputes arise requiring the court to verify original signatures.
- 4) **Extension Requests.** If you decide to you to use the Fax Filing Pilot Project to file an extension request, you need not supply additional postage prepaid envelopes as otherwise would be required under CRC

8.50(c). Be aware, however, that the court will not mail out copies of its ruling on any extension request that is filed by fax. Instead, the ruling will be posted on the court's web site at <http://appellatecases.courtinfo.ca.gov/>. You may sign up to receive automatic e-mail notifications by using this link: <http://appellatecases.courtinfo.ca.gov/email.cfm?dist=43>

e. **Conformed Copies.**

- 1) The court will not send out conformed copies of fax filings. The standard confirmation option of a fax machine serves as confirmation of the transmittal of a document to the court.
- 2) You may verify whether a document has been filed by checking the court's web site at <http://appellatecases.courtinfo.ca.gov/>. **Do not use this program if you need a conformed copy.**
- 3) If the confirmation returns unsuccessful, notify the court of the problem to be addressed. If your fax filing was not accepted by the court because of an error in transmission or because of clerical error, you should make a motion to the court for an order filing the document *nunc pro tunc*.

f. **Service by Fax.**

- 1) Service between the parties by facsimile transmission is permitted by written agreement between the parties.
- 2) Do not file any agreement with the court. The agreement, however, may be requested by the court should a dispute arise regarding agreement to accept fax service.

3. **E-Filing.** E-filed documents are single text-searchable documents in .pdf format that you electronically transmit to the court from your own computer either via the court's website (the preferred method) or through your own email program. You may *not* e-file briefs, although you are encouraged to electronically submit a courtesy copy of a brief in .pdf form. See III.G. at p. 43, below for further information about e-briefs.

a. **Requirements.**

- 1) The document must be an exact duplicate of the paper copy and must not be more than 5 MB in size.
- 2) You may e-file a document until 11:59 pm Pacific Time and the document will be deemed to be filed that day. E-filings received after 11:59 pm shall be deemed filed on the next court day. (CRC 8.79(c).)
- 3) There is no e-filing fee.

- 4) Signatures
 - a) If a document does not require a signature under penalty of perjury, the document is deemed signed by the party if the document is filed electronically. (CRC 8.77(b).)
 - b) If a document to be filed must be signed under penalty of perjury, the document may be filed electronically provided that the original, signed verification page or pages are filed with the court within 5 calendar days. (CRC 8.77(a).)
 - c) If a document to be filed electronically, such as a stipulation, requires the signatures of opposing parties, the party filing the document must obtain the signature of all parties on a printed form of the document. By electronically filing the document, the electronic filer indicates that all parties have signed the document and that the filer maintains the signed original in his or her possession. (See CRC 8.77(c).)
- 5) You may obtain more detailed instructions about e-filing by clicking on the following link:
<http://www.courts.ca.gov/20171.htm><http://www.courts.ca.gov/20433.htm>

b. **E-Filing Procedure.**

- 1) The preferred procedure is to use the court's website at <http://www.courts.ca.gov>. Click on the links for "4th District Court of Appeal" and "Electronic Filing / Submissions." You also may directly go to the following link:
<http://www.courts.ca.gov/20171.htm><http://www.courts.ca.gov/17383.htm>
- 2) Alternatively, you may attach the document as a .pdf (no more than 5 MB in size) and directly e-mail it to the court at the following address:
4d3efile@jud.ca.gov.

c. **E-Filing Documents & Their Names**

- 1) Name your document using the following naming convention:
Case Number_Abbreviation of Document Title_Filing Party. Please no spaces. *Examples:*
G012345_SUB_Jones;
G054321_CIP_ABCPlumbing;
G098765_CIP_Doe
- 2) Here is a list of permissible e-filed documents, and the abbreviations to be used in naming them (**in parentheses**):
 - a) Association / Substitution of Attorneys (**_ASN**) – see page 9
 - b) Certificate of Interested Entities or Persons (**_CIP**)
 - c) Change of Address (**_CHA**) – see page 26

- d) Civil Case Information Statement (**_DKT**)– see page 20
 - e) Request for Oral Argument (**_ROA**)– see page 65
 - f) Notice of Abandonment of Appeal (**_ABA**)
 - g) Notice of Omissions in the Record on Appeal (CRC 8.340)
 - h) Request for Dismissal of Appeal (before briefing) (**_RED**) – see page 63
 - i) Stipulation for Extension of Time to File Briefs (CRC 8.212(b)) (**_SEX**) – see page 35
- 3) The following documents may *not* be e-filed. (This list is subject to change).
- a) Applications for Extension of Time to File Briefs
 - b) Request for Dismissal of Appeal After Briefing
 - c) Bankruptcy Status Letter
 - d) Juvenile: Full Concession Letter, County Counsel *Sade C* Letter, No Issues Letter and CRC, Rule 5.661 Appointments of Counsel recommendation
 - e) Request for Publication of an Unpublished Opinion (CRC 8.1120)
 - f) Stipulation for Immediate Issuance of Remittur
 - g) Stipulated Request for Dismissal of Appeal
 - h) Motions and Oppositions to Motions (*NOTE: may not be fax-filed, but electronic copies may be submitted in addition to paper documents.*)
 - i) Writ petitions, informal responses and replies (*NOTE: may not be fax-filed, but electronic copies may be submitted in addition to paper documents.*)
 - j) Appellate briefs (*NOTE: may not be fax-filed, but electronic copies may be submitted in addition to paper documents.*)

NOTE: The court is in the process of expanding the number of documents which may be e-filed. Check with the clerk's office for an updated status of the court's e-filing program.

J. Change of Address

1. The court will use the mailing address, telephone number, fax number and email address that you provided on the first document filed in your case as your address and telephone number of record until you provide a written notice of change. (CRC 8.32(a).)
2. When you change your mailing address, telephone number, fax number or email address, you must promptly serve the other parties and file a notice (original plus 1 copy) of your change of address with the clerk's office. The court may not accept a filing from you if your address on the document does not match your address of record. Also, you may experience a delay in receiving documents mailed by the court. (See CRC 8.32(b).)
3. Even if you have more than one mailing address, telephone number, fax number or email address, you may only provide the court with one mailing address, telephone number, fax number or email address. (CRC 8.32(c).)

4. Change of address forms may be filed by fax to (714) 664-0897, or they may be e-filed. See section I.I.3, at page 11, above.

K. Substitution / Association / Withdrawal of Attorneys;

1. Only counsel of record or a self-represented party may file a document in the appeal.
2. If counsel is being substituted, the substitution of attorneys must be served and filed before any documents can be accepted from the new attorney. The substitution of attorneys must be signed by the new counsel and client, and it must be accompanied by a proof of service on all parties and on the superior court when presented for filing. (See CRC 8.36 for more information.)
3. Substitution and associations of attorney forms may be filed by fax to (714) 664-0897, or it may be e-filed. See section I.I.3, at page 11, above.

4. Motions to Withdraw

- a. A withdrawal of attorneys must be made by motion under CRC 8.54, and cannot be filed by fax or by e-filing.
- b. The motion should be served upon the party represented and the attorneys directly affected. (See CRC 8.36(c)(1).)
- c. The clerk's office will ordinarily hold the motion for 15 days for opposition, including opposition by the affected client.
- d. Counsel should be aware of pending deadlines affecting briefing or oral argument in making a motion to withdraw, and take necessary steps to protect the client by filing the motion in a timely manner, or requesting the necessary extensions of time to protect the client.
- e. Given proper grounds, a corporation's attorney may be permitted to withdraw, but the corporate client cannot represent itself in propria persona on appeal. Should it fail to secure new appellate counsel, it "risks forfeiture of its rights through non-representation." (See *Thomas G. Ferruzzo, Inc. v. Superior Court* (1980) 104 CA3d 501, 503.) This rule also applies to unincorporated associations. (*Clean Air Transport Systems v. San Mateo County Transit Dist.* (1988) 198 CA3d 576, 578-579.)

L. Bankruptcy Status Letters

1. Parties must promptly notify the clerk's office of any bankruptcy proceedings of which they are aware which may have the effect of automatically staying the appeal or writ.
 - a. Any such notice should include a copy of the most recent bankruptcy court order and any stay order, with an explanation whether a stay order or automatic stay is in effect and why it applies to the pending appeal or writ.

- b. Unless otherwise directed by the court, the debtor should thereafter periodically advise the court (usually every 60 days) of the status of the bankruptcy petition and whether the stay has been lifted.
2. Parties must promptly notify the court if the bankruptcy stay has been lifted or whether there are any circumstances or orders permitting the appeal or writ to proceed.
3. Bankruptcy status letters may be filed by fax to (714) 664-0897.

M. Certificate of Interested Entities or Persons

1. Each party to a civil appeal or writ (other than family, juvenile, guardianship and conservatorship cases) must complete a form, called a "Certificate of Interested Entities or Persons," to let the justices know of potential conflicts of interest. (CRC 8.208(b), 8.490(i).)
 - a. If an "entity" (such as a corporation, partnership, firm or other association) is a party, it must list any other entity or person that the party knows has an ownership interest of 10 percent or more in the party. (CRC 8.208(e)(1).) A governmental entity or its agencies does not have to make this disclosure.
 - b. You must list any other person or entity that has a financial or other interest in the outcome of the proceeding that you reasonably believe the justices should consider in determining whether to disqualify themselves. You should identify the nature of the interest of that person or entity. (CRC 8.208(e)(2).)
 - c. You may serve and file an application for permission to file your certificate under seal and separately from any brief, motion, application or opposition if your identity has not been publicly disclosed in the proceedings. (CRC 8.208(d)(1), 8.490(i)(3).)
2. You must complete this form when you file your first document with the Court of Appeal, including motions or applications, or oppositions to motions or applications. You also should include a copy of the document in your principal brief (including any petition for writ of mandate) after the cover and before the tables. (See CRC 8.208, 8.490(i), 8.494(c), 8.496(c), 8.498(d).)
3. You have a responsibility to update this form if you learn of changed or additional information that must be disclosed. (CRC 8.208(f).)
4. You may use Judicial Council Form APP-008 for the Certificate of Interested Entities or Persons; an electronic copy is available at the "Local Forms" tab on the court's website. See <http://www.courts.ca.gov/documents/app008.pdf>.
5. The Certificate of Interested Entities or Persons may be filed by fax to (714) 664-0897 or by e-filing. See section I.I., above at p. 9 for more information.

N. Programs for Law Students

1. Judicial Externs

- a. Each justice decides how he or she will structure an extern program for law school students. Externships are available during the school year and the summer. The program is administered by the individual justices and staffs, and typically involves intense, supervised work in legal writing, legal research and exploration of various areas of substantive law. Students may earn course credit depending on the policies of their law schools.
- b. The individual justices establish the criteria for selecting extern candidates. Candidates must have completed the first year of law school coursework, and usually commit a minimum of 20 hours per week to the program, although the hours may vary according to the needs of the justice and the time of the year. The program is highly competitive, and there are many qualified applicants. Standards for selection include: (a) legal, professional and intellectual skills to do the work required, (b) dependability, reliability and interpersonal skills, (c) commitment, and (d) integrity.
- c. Candidates should check with their law schools to determine the procedures and timing for submitting applications for judicial externships with any particular appellate court justice in Division Three.

2. Certified Law Students

- a. As authorized by CRC 9.42, the California State Bar has established a program, the Practical Training of Law Students (PTLS) Program, to allow certified law students to participate in certain court proceedings, including at the Court of Appeal, under the direct supervision of a supervising attorney. Certification is not available for first year law students.
 - 1) The supervising attorney should be an active member of the State Bar of California, who has practiced law or taught law in a law school as a full-time occupation for at least two years.
 - 2) Students who are interested in becoming certified law students should submit an application for certification to the State Bar of California, Office of Certification, 180 Howard Street, San Francisco, CA 94105, telephone (415) 538-2117.
 - 3) For further information about the PTLS program, see <http://www.calbar.ca.gov/>. You can find a copy of the application for certified law students (PDF) at <http://admissions.calbar.ca.gov/LinkClick.aspx?fileticket=uW4UdX177N4%3D&tabid=2266>. You can find a copy of the State Bar's declaration by supervising attorneys (PDF) at <http://admissions.calbar.ca.gov/LinkClick.aspx?fileticket=ZUKLvXfk2h1%3D&tabid=2266>
- b. **Appellate Briefing.** Certified law students may participate in the drafting of appellate briefs, and the brief may include a reference to the name of a

participating student, with an indication that he or she is a certified student of the California State Bar's PTLIS program. However, the attorney of record is the supervising attorney, who assumes personal professional responsibility for the brief, and who is the signatory (if any) on the brief. The supervising attorney's name, address and state bar number appears on the brief cover.

c. **Oral Argument.**

- 1) A supervising attorney must apply in writing to the Presiding Justice for permission for a certified law student to appear at oral argument.
- 2) The application must be made in writing before the date scheduled for oral argument, and served upon opposing counsel. The application should include the following: (1) a copy of the Notice of Certification / Recertification issued by the State Bar of California, and (2) a signed consent from the client. In the case of government agencies, the consent must be obtained from the chief counsel or prosecuting attorney. (CRC 9.42(d)(3).)
- 3) The supervising attorney is responsible for the certified law student's pre-argument preparation, and must be personally present at the counsel table during oral argument.

- d. **Written Opinions.** According to the California Style Manual, the names of certified law students are not listed in written opinions, even if they may have argued the case with the court's permission or assisted other attorneys in preparing appellate court briefs. (Cal. Style Manual, (4th ed. 2000), § 5.24.)

◆ Part Two: Initiating the Appeal – the Record

A. Notice of Appeal

1. Criminal Appeals.

- a. **Filing Fee.** No filing fee is required.
- b. **Forms.** You may use Judicial Council form CR-120 for a felony notice of appeal (Pen. Code §§1237, 1237.5, 1538.5(m), or CRC 8.304) (see <http://www.courts.ca.gov/documents/cr120.pdf>).
- c. **Where to File.**

Criminal Notices of Appeal:

Orange County Superior Court
700 Civic Center Drive West
First Floor / Room K107
Santa Ana, CA 92701
(657) 622-7402 or (657) 622-7438

Juvenile Delinquency Notices of Appeal

Orange County Superior Court
Juvenile Division / Second Floor
341 The City Drive, Room 207
Orange, CA 92868
(657) 622-5518

2. **Juvenile Dependency Appeals.**

- a. **Filing Fee.** No filing fee is required.
- b. **Forms.** You may use Judicial Council form JV-800 for a notice of appeal - juvenile (see <http://www.courts.ca.gov/documents/jv800.pdf>) . Use Judicial Council form JV-820 for extraordinary writs in juvenile dependency cases from orders setting a hearing under Welfare & Inst. Code §366.26 (see <http://courts.ca.gov/documents/jv820.pdf>), and Judicial Council form JV-825 for other petitions for extraordinary writs under CRC 8.452 & 8.456 (see <http://courts.ca.gov/documents/jv825.pdf>)
- c. **Where to File.**

Orange County Superior Court
Juvenile Division / Second Floor
341 The City Drive, Room 207
Orange, CA 92868
(657) 622-5518

3. **Civil Appeals.**

- a. **Filing Fee - Appellants.** You should file the notice of appeal in the superior court with a \$775 filing fee or a fee waiver. Make a check payable to the Clerk of the Court of Appeal for this amount. (CRC 8.100(b).) You also need a deposit of \$100 made payable to Clerk of the Superior Court. (Govt. Code, § 68926.1.)
- b. **Filing Fee – Respondents.** There is a \$390 filing fee for applications, opposition to applications, motions, or oppositions to motions, among other documents, where they are the first document filed in the Court of Appeal by a party other than the appellant or petitioner in a civil case. (Govt. Code, §68926(b)(3); CRC 8.25(c)(2)(d).)
- c. **Fee Waivers.** If you cannot afford to pay the court fees and costs, such as fees to prepare or get a copy of the clerk’s transcript on appeal, you may ask the court to issue an order saying you do not have to pay these fees. (This is called a “fee waiver.”) The court cannot waive the fees for preparing a reporter’s transcript in a civil case. You must complete a Request to Waive Court Fees completely and truthfully (see form FW-001, see <http://courts.ca.gov/documents/fw001.pdf>). See Judicial Council form APP-015 for more information about fee waivers (<http://www.courts.ca.gov/documents/app015info.pdf>)

- d. **Forms.** You may use Judicial Council form APP-002 for a notice of appeal or notice of cross-appeal in unlimited civil cases (see <http://courts.ca.gov/documents/app002.pdf>). See Judicial Council form APP-001 for more information on appeal procedures for unlimited civil cases (<http://courts.ca.gov/documents/app001.pdf>)

e. **Where to File.**

Civil Notices of Appeal (except Family Law, Probate, Guardianship & Adoption):

Orange County Superior Court
700 Civic Center Drive West
First Floor / Room D110
Santa Ana, CA 92701
(657) 622-7534

Family Law, Probate, Guardianship and Adoption Notices of Appeal:

Orange County Superior Court
Family Law Division / Seventh Floor
341 The City Drive, Room C706
Orange, CA 92868
PROBATE (657) 622-6501
FAMILY LAW (657) 622-6066

4. **Appeals in Limited Civil Cases; Motions to Transfer**

- a. You must file an appeal from a judgment in a limited civil case with the Appellate Division of the Orange County Superior Court. (CRC 8.800 et seq.) You cannot appeal the Appellate Division's decision on appeal to the Court of Appeal; instead, the Appellate Division's judgment on appeal is conclusive. (See Code Civ. Proc. § 904.1(a)(1)(c), § 904.2.) (*Limited civil cases are cases that used to be filed in municipal court before that court was unified with the superior court.*)
- 1) For more information about appeals to the Appellate Division of the Orange County Superior Court, see <http://occourts.org/directory/civil/appeals/>
 - 2) The rules for appeals to the Appellate Division are contained at CRC §§ 8.800 to 8.1018.
- b. You cannot appeal the Appellate Division's judgment granting or denying a petition for writ of mandate or prohibition if the judgment relates to a limited civil case. (Code Civ. Proc., § 904.1(a)(1)(C).)
- c. You cannot appeal a superior court's de novo review in a small claims case. (Code Civ. Proc., § 116.780(a).)
- d. **Motions to Transfer.** The Court of Appeal has *discretion* to order an appeal to the Appellate Division of the Superior Court *transferred to it* when the Appellate Division certifies that such transfer "is necessary to secure uniformity of decision or to settle an important question of law." (CRC 8.1002, 8.1005.) The Court of

Appeal approves a transfer only in exceptional circumstances, and is not bound by the Appellate Division's certification. The Court of Appeal also may order transfer on its own motion, or on a party's petition, but the court has a limited time to do so. (CRC 8.1008.)

B. Civil Case Information Statement (CCIS)

1. If you are an appellant or a cross-appellant in a civil appeal, the clerk's office will mail you a notice, confirming receipt of the notice of appeal, along with a blank Civil Case Information Statement (CCIS). Your answers help the court to know whether the notice on appeal is on time and whether the judgment or order is appealable, among other things. (CRC 8.100(f).)
2. You must promptly fill out and return the Civil Case Information Statement to the clerk's office, with a proof of service on all parties to the appeal. (CRC 8.100(f).)
 - a. The court will send you a notice of default if the clerk's office does not receive your completed CCIS within 10 days after the date of mailing. You must cure the default within 15 days (generally by correctly filing the CCIS), or your appeal will be dismissed.
 - b. An electronic copy of the Civil Case Information Statement is available at the "Local Forms" tab on the court's website. See <http://www.courts.ca.gov/documents/app004.pdf>.
 - c. Include a copy of the judgment or order from which you are bringing the appeal.
 - d. It's a good practice to include copies of any other post-trial orders which may have a bearing upon the timeliness of the appeal. For example, if you contend that your time to appeal should be calculated from the superior court clerk's service of a document entitled 'Notice of Entry of Judgment' (CRC 8.104(a)(1)(A)), include a copy of that document. Alternatively, if you contend that the time to appeal is extended by the denial of a motion for new trial (CRC 8.108(b)(1)(A)), include a copy of the notice of entry of such an order.
3. If you are only a respondent on a civil appeal and do not have a cross-appeal, you do not need to fill out a CCIS.
4. A CCIS may be filed by fax to (714) 664-0897, or it may be e-filed. See section I.I.3, at page 11, above.

C. Designating the Record on Appeal

1. **Appellant's Designation.** *If you are the appellant*, you must file your designation of the record on appeal within 10 days after you file your notice of appeal.
 - a. *File* the original of this notice in the superior court. You also may combine this notice with your notice of appeal. (CRC 8.121(a).)
 - b. You basically have two choices for the written record: (a) "elect" to use a clerk's transcript if you want the superior court to prepare the record, or (b) use the appendix method if you want to prepare the record yourself. (CRC 8.121(a).) The

respondent, however, may overrule your election to use a clerk's transcript by timely filing a notice in the superior court to use an appendix. If you oppose this, you must file a motion in the *superior court*. (CRC 8.124(a)(1).)

2. Respondent's Election to Use Appendix / Counterdesignation of Record. *If you are the respondent*, you may file your own election to use an appendix instead of the clerk's transcript (provided the appellant hasn't received a fee waiver for the clerk's transcript), *or* you may file a counterdesignation of the record to include additional items in the clerk's transcript that have not been designated by the appellant. (CRC 8.124(a)(1).)

- a. You must file your respondent's notice of election to use an appendix in the superior court within 10 days after the appellant has filed a notice of appeal. This election will govern the record on appeal unless the superior court, on noticed motion, directs otherwise. (CRC 8.124(a)(1).)
- b. If the parties are using a clerk's transcript rather than an appendix, you must file your counterdesignation of any additional items you want included in the clerk's transcript within 10 days after appellant has filed his or her notice of designation. (CRC 8.122(a)(2).)
- c. You also must file your counterdesignation of any additional items you want included in the reporter's transcript within 10 days after appellant has filed his or her notice of designation. (CRC 8.130(b)(3).) You can't require a reporter's transcript if the appellant hasn't asked for one. However, you can file a motion to require a reporter's transcript to prevent a miscarriage of justice. (CRC 8.130(b)(4).)

D. Clerk's Transcript.

1. Designating the Clerk's Transcript. If you elect to have the clerk prepare a clerk's transcript, include the exact title of each document, and its filing date, or, if the filing date is not available, the date it was signed. (See CRC 8.122(a)(1).)

- a. **Excluding Redundant Portions of Designated Documents.** You may specify *portions* of documents that you *don't* want included in the clerk's transcript. For example, motions may contain unnecessary or repetitive exhibits (such as copies of out-of-state cases, or copies of the complaint or other pleadings). (See CRC 8.122(a)(1).)
- b. **Designating Minute Orders; Jury Instructions Given & Refused.** You may ask the clerk to include "all" jury instructions and "all" minute orders, without individually designating them. Or you may designate "all" minute orders between specified dates. (CRC 8.122(a)(4).)
- c. **Trial Exhibits; Lodging Depositions.**
 - 1) For *significant* trial court exhibits, designate the trial court exhibit by number or letter in your notice of designation. This will allow them to be included in the clerk's transcript. (CRC 8.122(a)(3).)

- 2) If you want the Court of Appeal to consider other trial court exhibits that were admitted in evidence, refused or lodged, you must comply with the provisions of CRC 8.224 for transmitting exhibits.
- 3) Lodging Depos. Lodging deposition transcripts with the Court of Appeal does not make the entire deposition a part of the record on appeal where the record does not indicate the entire deposition was received into evidence or considered by the trial court. The court's review is limited to those specific portions of the deposition that were before the trial court. (See *Sacks v. FSR Brokerage, Inc.* (1992) 7 CA4th 950, 962; see also CRC 8.122(a)(3), 8.122(b)(4)(A) [transmitting deposition transcripts lodged in trial court].)

2. **Cost.**

- a. **Appellant's Cost.** You must pay the entire cost of the clerk's transcript, even when the respondent has counterdesignated other items to be included. The superior court will provide a written estimate of the cost for the clerk's transcript if it is more than \$100. You must pay this within 10 days; if not, the clerk will send a notice of default requiring payment within 15 days, or your appeal will be dismissed. (CRC 8.120(a)). You may apply for a waiver of the clerk's transcript fees if your financial condition qualifies you for in forma pauperis status. (CRC 3.50.)
- b. **Respondent's Cost.** You must promptly request a copy of the clerk's transcript, if you want one. The superior court appeals clerk will provide you with an estimate of the cost for a copy, and you must pay within 10 days. (CRC 8.122(c).) You may ask to "borrow" the appellant's copy if you notify the appellant no more than 20 days after the record is filed in the Court of Appeal; the record on appeal (CRC 8.150.)

E. **Appendix.** If you who want to prepare your own appendix, or prepare the appendix jointly with the other side, so indicate in your notice designating the record if you are the appellant, or in your notice of election to use an appendix if you are the respondent. (CRC 8.124(a).) This option may reduce your costs and speed up the appeal. (*This used to be called a "Rule 5.1" appendix or "Rule 5.1 election" before the appellate rules were renumbered in January 2007.*)

- If you elect to use an appendix **but** do not designate any reporter's transcript, your appellant's opening brief will be due 70 days after you file your notice of election. (CRC 8.212(a)(1)(B).)
- If you elect to use an appendix **and** designate a reporter's transcript, your appellant's opening brief will be due 40 days after the reporter's transcript is filed in the Court of Appeal. (CRC 8.212(a)(1)(A).)

1. **Joint Appendix vs. Separate Appendices.**

- a. **Joint Appendix.** You are encouraged to file a joint appendix by stipulating with the other side about what documents to include. The joint appendix is filed with

the appellant's opening brief. Otherwise, each party should file a separate appendix. (CRC 8.124(a)(3).)

- b. **Appellant's Appendix.** You must include all essential documents for your appeal, even those that you should reasonably conclude would be relied upon by respondent. For example, if you filed a motion, also include the opposition. File your appellant's appendix at the same time you file your opening brief. (CRC 8.124(e).)
 - c. **Respondent's Appendix.** File a respondent's appendix to include necessary court documents that were omitted from the appellant's appendix. Do not duplicate previously filed documents. File your respondent's appendix (if any) when you file your respondent's brief. (CRC 8.124(e).)
 - d. **Appellant's Reply Appendix.** File an appellant's reply appendix to include necessary court documents that were omitted from the previous appendices and that address issues raised in the respondent's brief. Do not duplicate previously filed documents. File your appellant's reply appendix (if any) when you file your appellant's reply brief. (CRC 8.124(e).)
2. **Service.** You must serve the appendix on the other parties to the appeal, unless they agree that you don't have to serve them. You don't have to serve a copy of the appendix on the Supreme Court. (CRC 8.124(e).)
3. **Filing Information.** You only need to file an original of the appendix. Here is a table with general filing information about appendices:

Type of Document	Cover	To File:	To Serve:
Joint Appendix	White	Original	All parties (<i>unless parties otherwise agree - CRC 8.124(e)(1)(A); use no more than 300 pages per volume</i>)
Appellant's Appendix	Green	Original	All parties (<i>use no more than 300 pages per volume</i>)
Respondent's Appendix	Yellow	Original	All parties (<i>use no more than 300 pages per volume</i>)
Appellant's Reply Appendix	Tan	Original	All parties (<i>use no more than 300 pages per volume</i>)

4. **Content.**
- a. **Mandatory Content.** You *must* include the following documents (CRC 8.124(b)(1)):
 - 1) Notice of appeal;

- 2) The judgment (or appealable order) from which you have taken the appeal, and the notice of entry of judgment;
 - 3) Your notice of intention for new trial or for judgment n.o.v., and any order on such motion and notice of entry; and, supporting and opposing papers and attachments,
 - 4) The register of actions, if any.
- b. **Additional Content.** Consider including minute orders for each day the court was in session.
- c. **Documents Outside the Record.** Don't include documents that were not filed in the trial court. Be sure that your copies are *accurate* copies of superior court documents. These are serious violation of the rules, and could subject you to sanctions.
- d. **Unnecessary Material.** Don't include redundant or unnecessary materials. For example, don't include motions relating to discovery unless the appeal raises a discovery issue. Similarly omit exhibits consisting of published out-of-state decisions that otherwise would be available to the court. If you do exclude an exhibit as redundant, you should explicitly include a blank page explaining the title of the excluded exhibit and the reason why it was omitted.
- e. **Duplicative Material.** Don't include multiple copies of the same documents that were filed repeatedly in the superior court. Exclude redundant or repetitive exhibits to law-and-motion documents – it's not necessary to include multiple copies of your complaint, the same insurance policy or business contract.
- f. **Confidential / Sensitive Material: Social Security & Bank Account Numbers.**
- 1) Appellate records normally are public documents. Do not include personal identifying material such as social security numbers, bank account numbers, taxpayer IDs, etc. You may redact such personal identifying information from papers you submit to the court provided that you inform the court and the other parties that you have done so, and why. See also II.L.2. at p. 29, below.
 - 2) In juvenile and dependency proceedings, refer to the juvenile in all documents you file with the court by his or her first name and last initial. Use initials for both the first and last name if the first name is unusual. (CRC 8.401(a)(1).)
 - 3) After a verdict in a criminal matter, court records containing juror personal identifying information are sealed, and that information remains confidential (Code Civ. Proc., §§ 206,237). Initials or juror identification numbers, or similar identification adopted by local court rules or policies, may be used instead of names.
 - 4) The identities of victims or witnesses in criminal matters may be subject to protective nondisclosure. (See, e.g., Pen. Code, § 1054.7.)

5. **Trial Exhibits.**

- a. The most convenient way to include significant trial court exhibits in the record on appeal is to have copies of such exhibits included, where possible, in your appendix. Include a copy of any trial court exhibit you believe is necessary to the proper consideration of the issues. (CRC 8.124(b)(3).)
- b. If you want the Court of Appeal to consider other trial court exhibits that were admitted in evidence, refused or lodged, you must comply with the provisions of CRC 8.224 for transmitting exhibits.

6. **Sanctions for Inadequate, Excessive or Inaccurate Appendix.** The court may impose sanctions upon you for filing an inaccurate appendix, or that included documents that are outside the superior court record, or that are unnecessary for proper consideration of the issues. (CRC 8.124(g).)

7. **Format.**

- a. **Binding & Pagination.** Don't put more than 300 pages in any single volume of exhibits. Consecutively number *all* the pages within the appendix, including exhibits to any document. Bind the appendix separately from your brief. (CRC 8.124(d), 8.144(a), 8.144(c).)
- b. **Index & Table of Contents.** Include a separate alphabetical and a chronological index in the first volume of the appendix to show the volume and page where the document appears. It's also a good practice to include tabs, but you are not required to do so. (CRC 8.124(d), 8.144(b).)
- c. **Conformed Copies.** Conformed copies of documents are not required, but the appendix must show document filing dates necessary to determine the timeliness of the appeal.
- d. **Chronological Order.** Arrange the documents in the appendix in chronological order.

F. **Reporter's Transcript.** Your notice designating the record also must indicate whether you want to designate a reporter's transcript, or proceed without a reporter's transcript. You should request a reporter's transcript if you intend to raise any issue that requires consideration of the oral proceedings in the superior court. (CRC 8.120(b).) Specify the date of each proceeding to be included in the transcript, and specify what portions of the proceedings you do not want to include. (CRC 8.130(a)(1).) Serve the notice of designation on each known court reporter. (CRC 8.130(a)(5).)

1. **Opening Statement / Closing Argument / Post-Trial Motions.** Consider including opening statements and closing arguments in your designation of the reporter's transcript. They are very helpful in giving counsel and the court a picture of how the trial was conducted, and what was important, and may be very useful in determining the prejudicial effect, if any, of instructional or evidentiary error. The same considerations may apply for transcript of a hearing on post-trial motions like a motion for new trial or motion for judgment n.o.v.

2. **Partial transcripts.** You may decide to designate only parts of the reporter's transcript, but only where you also specify the points you intend to raise on appeal, and the portions of designated proceedings that are not to be included. This is particularly appropriate where some parts of the record are completely irrelevant to the issues on appeal (e.g., jury voir dire or testimony on damages in an appeal that only contests liability.) But you also should be aware that partial transcript may severely limit the scope of your appeal. (CRC 8.130(a)(2).)
3. **Costs.** At the same time you file your notice designating the record, you also must pay a deposit for the reporter's fees. You can ask the reporter for an estimate in advance, or you may calculate the funds yourself. There are a few options available if you do not have sufficient funds to pay the deposit, but the Court of Appeal does not have the power to waive the reporter's fees. See CRC 8.130 for information about the fees associated with the ordering of a reporter's transcript.

G. Electronic Records ("E-Submissions")

1. Purpose

- a. The court encourages parties to submit electronic copies of other parts of the record on appeal, including appendices, transcripts and exhibits. These electronic documents assist the court and parties to process cases more efficiently and to develop and implement better document management technologies.
- b. These e-documents are not a substitute for, but an addition to, the requested paper filings which constitute the official court record. That is why they are *submitted* to the court, rather than *filed* with the court. Even if you electronically submit an e-document to the court, you still are required to file paper copies.

2. **Submitting Electronic Records.** You may submit electronic records to the court in two forms: First, you may use an outside vendor to provide the court with a CD-ROM or DVD which contain all briefs and hyperlinks to the complete electronic record. Second, you may email the court an electronic copy of all or part of the record in searchable .pdf form, or you may burn the electronic .pdf files onto a CD-ROM or DVD.

- a. **Hyperlinked E-Briefs.** See III.G. at page 26, below, for a discussion of hyperlinked briefs.

b. E-Mailing an Electronic Record as a .pdf

- 1) Attach the document as a .pdf and directly e-mail it to the court at the following address: 4d3ebrief@jud.ca.gov.
- 2) Include the appellate case number and case name in the subject line of your email.
- 3) Your e-document .pdf must not be larger than 9 MB in size. If the size limitation is a problem, you may break down your e-document .pdf into separate e-mails, or contact the clerk's office to arrange for submitting your e-brief .pdf on a CD-ROM.

- 4) Your e-document .pdf must be an *exact duplicate* of the paper documents.
 - 5) By submitting an e-document .pdf, you certify that you have taken all reasonable steps to ensure that the copy does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system.
- c. **Submitting an Electronic Record as a CD-ROM or DVD.** Contact the clerk's office to make appropriate arrangements to submit a CD-ROM or DVD of large .pdf files of court documents.

3. Naming Electronic Records

- 1) Name your document using the following naming convention: *Case Number_Abbreviation of Document Title_volume# (where appropriate)*. Please no spaces.
- 2) Naming convention examples:
G012345_RT.pdf (*for the reporter's transcript*)
G012345_CT.pdf (*for the clerk's transcript*)
G012345_JA.pdf (*for a joint appendix*)
G012345_AA.pdf (*for the appellant's appendix*)
G012345_RA.pdf (*for the respondent's appendix*)
G012345_ARA.pdf (*for the appellant's reply appendix*)

H. **Administrative Record.** If you intend to raise any issue that requires consideration of an administrative record that was admitted into evidence, refused or lodged in the superior court, you also must request that it be transmitted to the court. (CRC 8.121(b)(2), 8.123.) Identify the administrative record by the title and date or dates of the administrative proceedings. (CRC 8.123(b)(1).)

I. Trial Court Exhibits

1. The best way is to include your most important exhibits in the clerk's transcript or appendix (see above).
2. If you haven't included copies of the exhibits in either the clerk's transcripts or appendix, you must arrange to have the exhibits you want the Court of Appeal to consider transmitted from the superior court to the Court of Appeal. Within 10 days after the last respondent's brief is filed, you must file and serve a notice in the superior court that designates any original exhibits that were not included in the clerk's transcript or appendix. Also serve a copy of the notice on the Court of Appeal. The Court of Appeal will provide notice to the superior court about the appropriate time to transmit the trial court exhibits. (CRC 8.224(a).)

J. Incomplete Records

1. **Missing Documents.** If the record is missing items that were previously designated, you will need to file a letter in the superior court and serve a copy on the Court of Appeal. (CRC 8.155(b)(1), 8.340(b).)

2. **Additional Documents – Augmenting the Record.** If you forgot to designate certain items that were before the lower court and would like to add them to the record, you will need to file a Motion to Augment. You only may seek to augment the record with matters that were before the superior court, and cannot bring up matters outside the superior court record, or that occurred during the pendency of the appeal.

a. **Augmenting the Record on Appeal - Civil Appeals**

- 1) See CRC 8.155 for information about how to augment or correct the record on appeal in civil appeals. At any time, on a party's motion or its own motion, the Court of Appeal may order the record augmented. You must attach to your motion a copy, if available, of any document or transcript that you want added to the record on appeal.
- 2) Consecutively number the augmented record beginning with the number one. (CRC 8.155(a)(2).)
- 3) If the Court of Appeal grants the motion, it may augment the record with the copy. If you cannot attach a copy of the matter to be added, you must identify it as required under CRC 8.122 and 8.130.

b. **Augmenting the Record on Appeal - Criminal Appeals**

- 1) See CRC 8.340 for information about how to augment or correct the record on appeal in criminal appeals.
- 2) If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or order requires, the clerk must promptly prepare and certify the document or the reporter must promptly prepare and certify the transcript without the need for a court order and send the document or transcript to the Court of Appeal, the defendant's counsel, and the Attorney General.

K. **Defaults in Procurement of Record**

1. Notice of Default; Time to Cure. The superior court clerk typically mails a notice to an appellant or respondent of a failure to comply with a deadline for record preparation, giving the defaulting party 15 days after the notice is mailed to cure the default. (CRC 8.140(a), 8.140(a)(1) [appellant's default], 8.140(a)(2) [respondent's default].)
2. Dismissal of Appeal – Appellant's Failure to Procure Record. The Court of Appeal may dismiss your appeal if you have received a default notice from the superior court clerk and have failed to correct it within the 15-day period. (CRC 8.140(b), 8.140(b)(1).)
3. Relief from Default; Jurisdictional Time Limits. After your appeal is dismissed because of failure to procure the record, you still may file a motion in the Court of Appeal to vacate the dismissal for "good cause," including for attorney default. (CRC 8.140(b), 8.140(b)(1).) **WARNING:** This court's dismissal order becomes "final" as to this court 30 days after filing. Beyond the 30-day period, the Court of Appeal loses jurisdiction to grant relief from default, however meritorious.

L. Confidential & Sealed Records.

1. **Prohibited Disclosure.** Court records are presumed to be open and available to the public. There are three exceptions, where parties may not disclose various court records in the record on appeal that is open to public inspection: (1) documents which are confidential as a matter of law, and which are not required to be sealed; (2) documents which are sealed by the trial courts pursuant to CRC 2.551(b), and (3) documents which are sealed by the Court of Appeal of appeal pursuant to CRC 8.46(e).
2. **Confidential Records.** Many different statutes and regulations require certain court records to be kept confidential. The following list is illustrative, but not exhaustive of confidential records that may be contained in a court file and that must remain confidential even if they are not formally sealed.
 - a. Address of public employees. The home addresses and home telephone numbers of state employees are not public records and are not open to public inspection. Govt. Code §§6205-6210.
 - b. Adoption records. Health & Saf. Code §102730; Fam. Code § 9200-9209.
 - c. Elder abuse reports. Welf. & Inst. Code § 15633 et seq.
 - d. Child abuse reports, including the identity of the reporters. Pen. Code. § 11167' Fam. Code §3118.
 - e. Child custody evaluations & investigation reports. Fam. Code §3111.
 - f. Conservatorship forms. The confidential conservator screening forms are confidential. CRC 7.1050(c).
 - f. Fee waiver information. Gov. Code §68633; CRC 3.54, 8.26, 8.818.
 - g. Financial account numbers. CRC 1.20(2)(B).
 - h. Guardianship screening form and suitability report. Prob. Code §§1513(d), 1543(b); CRC 7.1001(c).
 - i.. Juror identifying information. See Code Civ. Proc. §237; CRC 8.332.
 - j. Juvenile records. Access is limited to specified persons by statute, including court personnel, prosecutors, the minor who is the subject of the proceeding, the minor's parents or guardian, the attorneys for the parties, and other persons specified by statute. (See Welf. & Inst. Code, § 827.)
 - k. Lanterman-Petris-Short actions (mental health commitment proceedings). Welf. & Inst. Code §5328.
 - l. *Marsden* transcripts. The reporter's transcript of any hearing under *People v. Marsden* (1970) 2 Cal.3d 118, must be kept confidential.
 - m. Name Change Records for Domestic violence and Stalking Actions. Code Civ. Proc., §1278(b); CRC 2.575-2.577.
 - n. Paternity acknowledgment. Health & Saf. Code §102760.
 - o. Probation reports. Confidential except under certain conditions. Pen. Code § 1203.05.
 - p. Sex Offender registration forms. Pen. Copde §290.021.
 - p. Social security numbers. Govt. Code §§6254.27, 6254.28; CRC 1.20(2)(A);

- q. Tax returns or schedules. Civ. Code §1799.1a.
 - r. Uniform Parentage Act records. Fam. Code §7643.
 - s. Witness personal information and addresses. Govt. code §6254, Pen. Code §841.5, 964(a). Includes address, telephone number, driver's license, date of birth, mother's maiden name, bank / credit account numbers.
3. **Records Sealed in the Trial Court.** Parties must file under seal in the Court of Appeal any documents that were sealed part the trial court. While there is no need to make a new motion to seal, the party which is filed such sealed trial court records under seal in the Court of Appeal also must include the trial court order sealing the record and all pertinent moving and opposing papers. (CRC 8.46(c).)
4. **Records Sealed in the Court of Appeal.**
- a. Parties must obtain court approval to file a motion or documents supporting a motion under seal; they cannot do so by stipulation or agreement. A document may conditionally be lodged under seal pending a court ruling. (CRC 2.551(b); 8.46(e).)
 - b. The court will not permit sealed documents to be filed unless it expressly finds facts that establish (1) there exists an overriding interest that overcomes the right of public access to the record; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest. The sealed documents will be limited to those that need to be placed under seal; other documents will be placed in the public file. (CRC 2.550(d). 8.46(e)(8).)

M. Record Retrieval

- 1. **Court Docket.** The easiest way to view the docket in an appeal is to do so online. See <http://appellatecases.courtinfo.ca.gov/>
- 2. **Court Records in Pending Cases.**
 - a. You may view the record or briefs at the clerk's office during regular office hours. You are not allowed to take these documents outside of the viewing room at the clerk's office. There is no time limit for viewing court files during the court's regular office hours.
 - b. It's a good idea to call ahead to verify that the record is available for public viewing. Some documents in active cases may not be immediately retrievable if the case is under review by the court. Please contact the clerk's office to ascertain when the record may become available.
 - c. The court does not have any capacity to transmit court documents electronically, nor can you download court documents (except for recently filed opinions) from the court's website.
 - d. If the California Supreme Court has granted a petition for review, or if the Supreme Court has otherwise ordered that the record be transmitted to the

Supreme Court for further consideration, you must contact the Supreme Court in San Francisco to make arrangements to view or copy the file. Please contact the Supreme Court's clerk's office at 415-865-7000.

3. **Confidential Records.** Criminal and civil files are public records and available for viewing unless they have been sealed by the Court. However, juvenile, paternity and mental health commitment proceedings are confidential and not available to the public. (CRC 8.401(b); Lanterman-Petris-Short actions, Welf. & Inst. Code., §5325.1(b).)
4. **Copying Records or Briefs.** The court will not make copies of the record or briefs for you, but there is a self-serve copy machine in the clerk's office for you to make your own copies. The cost is 25 cents per page. You also may hire a copy service to duplicate larger records or you may bring portable copier equipment to the clerk's office to do so yourself. The parties may hire a copy service to duplicate larger records or bring portable copier equipment to the court to duplicate the record or briefs.
5. **Offsite Records (Inactive Appeals).**
 - a. Inactive appeals are located in an off-site storage facility, and may take about 7 to 15 days to retrieve.
 - b. Call the court to verify the availability of the record. The court clerk should be available to inform you if the record is still available and, how many boxes are involved to be retrieved. The court generally charges \$25 per box.
 - c. Make a written request to the court clerk for retrieval of the offsite records, and pay the retrieval fee. The court accepts checks, cash or money orders. Make your check payable to "Court of Appeal." Once the fee is received, the file will be ordered from storage. The retrieval may take 2 to 5 working days. You will be contacted when record is received.
6. **Document Retention Policy.** The court has a document retention policy for older court files, after which time they are destroyed.
 - a. Civil records are retained for 10 years.
 - b. Criminal and juvenile records are retained for 20 years
 - c. Some records may be preserved locally or archived at the California State Archives in Sacramento. For more information regarding archived records, please see the California State Archive website at:
http://www.sos.ca.gov/archives/archives_contacts.htm
7. **Certifying Court Documents.** Upon payment of a certification fee of \$1.50 per document, the clerk's office will copy and certify copies of the court's orders, opinions and remittiturs. Documents may be certified over the counter, or by written request, which request must include a check for certification and a prepaid, stamped envelope.

◆ Part Three: Briefs on Appeal

A. Service & Filing of Briefs

1. Briefs - General Filing Information

Here is a table with general filing information about briefs. You must file paper copies of your brief with the clerk's office even if you also electronically submit a copy of your brief to the court in .pdf format. However, you may avoid the requirement for electronically serving a copy of your brief on the California Supreme Court if you use the court's website to e-submit a .pdf copy of your e-brief.

Type of Document	Cover	To File:	To Serve:
Appellant's Opening Brief – Civil	Green	Original plus 4	Superior Court All parties Calif. Supreme Court (<i>1 electronic copy; or 4 paper copies in cases of hardship</i>) (CRC 8.44(b)(1).)
Appellant's Opening Brief – Criminal	Green	Original plus 4	Superior Court District Attorney Attorney General Appellate Defenders, Inc. Defendant
Appellant's Opening Brief Dependency	Green	Original plus 4	Superior Court County Counsel Counsel for Minor(s) Appellate Defenders, Inc.
Respondent's Brief – Civil	Yellow	Original plus 4	Superior Court All parties Calif. Supreme Court (<i>1 electronic copy; or 4 paper copies in cases of hardship</i>) (CRC 8.44(b)(1).)
Combined Respondent's Brief /Cross-Appellant's Opening Brief	Yellow	Original plus 4	Superior Court All parties Calif. Supreme Court (<i>1 electronic copy; or 4 paper copies in cases of hardship</i>) (CRC 8.44(b)(1).)
Respondent's Brief – Criminal	Yellow	Original plus 4	Superior Court Counsel for Appellant Appellate Defenders, Inc.

Respondent's Brief – Dependency	Yellow	Original plus 4	Superior Court Counsel for Appellant Counsel for Minor(s) Appellate Defenders, Inc.
Appellant's Reply Brief –Civil	Tan	Original plus 4	Superior Court All parties Calif. Supreme Court (<i>1 electronic copy; or 4 paper copies in cases of hardship</i>)
Combined Appellant's Reply Brief / Cross-Respondent's Brief	Tan	Original plus 4	Superior Court All parties Calif. Supreme Court (<i>1 electronic copy; or 4 paper copies in cases of hardship</i>) (CRC 8.44(b)(1).)
Appellant's Reply Brief –Criminal	Tan	Original plus 4	Superior Court District Attorney Attorney General Appellate Defenders, Inc. Defendant
Appellant's Reply Brief – Dependency	Tan	Original plus 4	Superior Court County Counsel Counsel for Minor(s) Appellate Defenders, Inc.
Amicus Curiae Brief	Gray	Original plus 4	Superior Court All parties
Post-Briefing Citation of Additional Authorities	No Cover	Original plus 4	All parties
Petition for Rehearing	Orange	Original plus 4	Same as for briefs
Answer to Petition for Rehearing	Blue	Original plus 4	Same as for briefs (<i>By Misc. Order 2007-3, opposing parties are automatically invited, but not required, to file an answer to a petition for rehearing. (CRC 8.268(b)(2).)</i>)

2. Time Limits

a. Appellant's Opening Brief (AOB) - Civil Appeals

- 1) **If you use a Clerk's Transcript:** The clerk's office will send you a notice to indicate when the record on appeal has been filed. (CRC 8.150(b).) You will have 40 days from the date of this notice in which to file an appellant's opening brief. (CRC 8.212(a)(1).)
- 2) **If you use an Appendix (CRC 8.124):** Your deadline to file the appellant's opening brief will depend upon whether you also have designated a reporter's transcript in addition to your election to use an appendix.
 - a) **If you elect an Appendix, and also have designated a reporter's transcript:** The clerk's office will send you a notice to indicate when the record on appeal has been filed. (CRC 8.150(b).) You will have 40 days from the date of filing of this notice in which to file an appellant's opening brief. (CRC 8.212(a)(1)(A).)
 - b) **If you elect an Appendix, but have NOT designated a reporter's transcript:** You will have 70 days after you filed your CRC 8.124 notice of election to file an appellant's opening brief. (CRC 8.212(a)(1)(A).)

b. **AOB Time Limits - Criminal Appeals.** The clerk's office will send you a notice to indicate when the record on appeal has been filed. (CRC 8.150(b).) You have 40 days from the filing of the record to file an opening brief. (CRC 8.360(c)(1).)

c. **AOB Time Limits - Dependency Appeals.** The clerk's office will send you a notice to indicate when the record on appeal has been filed. (CRC 8.150(b).) You have 30 days from the filing of the record to file an opening brief. (CRC 8.416(e).)

d. Respondent's Brief (RB) Time Limits

You have 30 days from the date the appellant's opening brief is filed to file your respondent's brief. (CRC 8.212(a)(2), 8.360(c)(2), 8.412(b)(2).) Where there are multiple sets of appellants, your time starts to run from the last-filed appellant's opening brief.

e. Appellant's Reply Brief (ARB) Time Limits

You have 20 days from the date the respondent's brief is filed to file an appellant's reply brief, if you want to file an appellant's reply brief, which is optional. (CRC 8.212(a)(3), 8.360(c)(3), and 8.412(b)(3).) Where there are multiple sets of respondents, your time starts to run from the last-filed respondent's brief.

f. Time Limits –Minor’s Brief

The minor’s brief in a juvenile fast track case (where the minor is not the appellant) is due 10 days from the filing of the respondent’s brief. (CRC 8.412(b)(4).)

g. Time Limits & Filing Fees – Amicus Curiae Briefs

Unless the presiding justice allows for later filing, you must serve and file an application for permission to file an amicus curiae brief within 14 days after the last appellant’s reply brief is filed or could have been filed under CRC 8.212. (CRC 8.200(c).) There is no \$325.00 one-time filing fee for amicus curiae briefs or applications.

3. Weekends, Holidays & Furlough Days

If your deadline to file a document or brief falls on a day (such as a Saturday, Sunday, holiday or furlough day) in which the clerk’s office is closed, then your filing deadline is automatically extended to the next day in which the clerk’s office is open. (Code Civ., Proc., § 12a.)

4. Overnight Delivery

- a. Briefs, applications to file amicus curiae briefs, answers to amicus curiae briefs, petitions for rehearing, and answers to petitions for rehearing are deemed filed on the date of mailing by priority or express mail as shown on the postmark or the postal receipt, or on the date of delivery to a common carrier promising overnight delivery as shown on the date of the carrier’s receipt. (CRC 8.25(b)(3).)
- b. The provisions for overnight delivery do not apply to writs, motions or oppositions to motions.

5. Filing by Fax or E-mail. Division Three does not accept filing of briefs by fax or e-mail. However, you may submit an electronic version your brief as a courtesy copy to assist the court’s review of your case. See section III.G. at page 43, below.

B. Extensions of Time

1. Extensions - Civil Appeals

a. Stipulations to Extend Time (CRC 8.212(b).)

- 1) You may extend time to file a brief by up to 60 days by securing a stipulation from your opponent. The stipulation must be filed in the Court of Appeal before your brief is due, and becomes effective on filing. (CRC 8.212(b)(2).) *Note:* the clerk’s office will accept faxed signatures from opposing counsel for stipulations regarding time extensions.
- 2) Stipulations to extend time may be filed by fax to (714) 664-0897, or they may be e-filed. See section I.I.3, at page 11, above.
- 3) Stipulated extensions may not be permitted for certain “fast-track” cases - see, e.g. Pub. Resources Code § 21167.6(H)

- b. **Applications to Extend Time (CRC 8.60(c).)** If the other side refuses to stipulate, or if you need more time beyond the stipulation, you must file an application for an extension. (CRC 8.212(b)(3).) You may use Judicial Council Form APP-006 for extension requests; an electronic copy is available at the “Local Forms” tab on the court’s website. See <http://www.courts.ca.gov/documents/app006.pdf>
- 1) **Factors.** Include specific facts to show good cause why the application should be granted. Explain when the brief is due, how long an extension is requested, 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) and 8.63(b). In determining good cause, the Presiding Justice considers such factors as: the degree of prejudice to any party, the position of the client and the opponent, the length of the record, and 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. (See CRC 8.63.)
 - 2) **Opponent’s Position.** It is helpful, and will speed the processing of an application, if you indicate the position of opposing counsel in a declaration indicating when opposing counsel was contacted and his/her response.
 - 3) **Proposed Order.** Include a proposed order, to be signed by the presiding justice.
 - 4) **Proof of Service.** Include a proof of service on opposing counsel **and** upon your client. The proof of service does not have to include the client’s address. (CRC 8.60(f).)
 - 5) **Filing Requirements.**
 - a) **Regular Filing.** File an original of your extension request (no cover) with the court. In addition, you must supply sufficient copies of the application and addressed, postage-paid envelopes for the clerk’s use to mail a copy of the court’s order on you or any other party. (CRC 8.50(c).)
 - b) **Filing by Fax.** You may file your extension request by fax to (714) 664-0897. While the signatures on fax-filed documents are considered originals, you should retain the original signed documents should a dispute arise requiring the court to verify original signatures. You need not supply addressed, post-paid envelopes as per CRC 8.50(c). Be aware, however, that the court will not mail out copies of its ruling on any extension request that is filed by fax. Instead, the ruling will be posted on the court’s web site at <http://appellatecases.courtinfo.ca.gov/>. You may sign up to receive automatic e-mail notifications by using this link: <http://appellatecases.courtinfo.ca.gov/email.cfm?dist=43>.

2. **Extensions - Criminal Appeals**

- a. You cannot stipulate to extend the time for filing a brief in a criminal case. (CRC 8.360(c)(4).)
- b. You may apply to the Presiding Justice for an extension on a showing of good cause. (CRC 8.60, and 8.360(c)(4).) Your request must contain specific facts showing good cause for granting the application and state when the brief is due, how long an extension is requested, and whether any prior extensions have been granted, their length and whether granted. (CRC 8.50, 8.60(c), and 8.63(b).) In determining good cause, the Presiding Justice considers the factors listed in CRC 8.63(c).
- c. File an original plus one copy of the application (no cover) with the clerk's office. You must include a proof of service on all parties to the appeal or proceeding. In addition, you must supply sufficient copies of the application and addressed, postage-paid envelopes for the clerk's use to mail a copy of the court's order on you or any other party. (CRC 8.50(c).) NO envelope is necessary for the Attorney General or Appellate Defenders.

3. **Extensions – Dependency Appeals**

- a. You may apply to the Presiding Justice for an extension of time, but you must show “exceptional” good cause. (CRC 8.416(f), 8.450(d).) Your request must contain specific facts to meet this very high standard, and must state when the brief is due, how long an extension is requested, and whether any prior extensions have been granted, their length and whether granted. (CRC 8.50, 8.60(c), and 8.63(b).) In determining exceptional good cause, the Presiding Justice considers the factors listed in CRC 8.63(c), including the priority granted to dependency proceedings.
- b. File the original request for an extension (no cover) with a proof of service on opposing counsel together with copies and preaddressed, stamped envelopes for each party, including yourself. (CRC 8.50(c).) Once the court has ruled on the request, the copies will be conformed and mailed to the parties in the envelopes provided.

C. **Default Notices** (*formerly called “Rule 17(a) notices” before the appellate rules were renumbered in January 2007*)

1. **Last-Chance “Grace Period.”** If an appellant's opening brief or a respondent's brief is not timely filed, the court will send a default notice. This notice automatically gives you a last-chance grace period in which to file either of these briefs, but it also warns you of serious sanctions if you miss this deadline.
 - a. For civil appeals, the notice gives you an additional 15 days from the date of mailing for your appellant's opening brief or respondent's brief. (CRC 8.220(a).) You may apply to the Presiding Justice for a further extension of time, provided that you do so within the grace period, and show good cause. (CRC 8.220(d).)
 - b. For criminal appeals, the notice gives you an additional 30 days within which to file your appellant's opening brief or respondent's brief. (CRC 8.360(c)(5).) You

may apply to the Presiding Justice for a further extension of time, provided that you do so within the grace period and show good cause. (CRC 8.220(d).)

- c. For dependency appeals, the notice gives you an additional 15 days within which to file the brief. (CRC 8.416(g).) Further extensions in dependency appeals require a showing of “exceptional” good cause. (CRC 8.416(f), 8.450(d).)
- d. **WARNING: No Further Notices.** This court will only issue one CRC 8.220 notice for any particular brief. This is true even if the court may grant additional extension requests! If you already have received a “grace period,” you will not get another one, and your brief must be filed on the final due date.

2. **Late Briefs**

- a. The clerk’s office will reject any appellant’s opening brief that is filed beyond the grace period provided by the Rule 8.220 default notice, or beyond the filing deadline, if the court already issued a default notice earlier in the briefing period.
- b. The clerk’s office will reject any respondent’s opening brief that is filed beyond the grace period provided by the default notice, or beyond the filing deadline, if the court already issued a default notice to the respondent earlier in the briefing period.
- c. The clerk’s office will reject any appellant’s reply brief that is filed beyond the filing deadline. There is no additional grace period.
- d. You must apply to the Presiding Justice for permission to file a late brief. Include a declaration explaining the reasons for the delay. The Presiding Justice has discretion to reject your application, particularly if you have received multiple extensions over a lengthy period of time.

3. **Failure to File a Brief.**

- a. If your appellant’s opening brief is not filed within the grace period provided by the default notice, your appeal will be dismissed. (CRC 8.220(a)(1).)
- b. If your respondent’s brief is not filed within the grace period provided by the default notice, the court will decide the appeal on the record, the opening brief, and any oral argument by the appellant. You will not be entitled to participate in oral argument. (CRC 8.220(a)(2).)
- c. Since your appellant’s reply brief is optional, there are no consequences for your failure to file a timely appellant’s reply brief, except that you will be unable to respond, in writing, to respondent’s arguments.

D. **Expedited Briefing**

- 1. You may obtain an expedited appeal schedule, which may include expedited briefing and preference in setting the date for oral argument by promptly serving and filing a motion for calendar preference. (CRC 8.240.)
- 2. Preferences may be granted for statutory reasons, including probate proceedings (Code Civ. Proc., § 44); arbitration (Code Civ. Proc. § 1291.2); eminent domain (Code Civ.

Proc., § 1260.010); environmental impact reports (Pub. Res. Code, § 21167.1) and general plans (Gov. Code, § 65752.)

3. The court may exercise its discretion to grant calendar preference for good cause — for example, because of the parties' age, illness or condition raising "substantial medical doubt of survival." (See, e.g., Code Civ. Proc., §§ 36(a), 36(d).)

E. Multiple Appeals / Cross-Appeals / Proposed Briefing Schedules

1. In civil cases with cross-appeals or multiple appeals, the parties must submit a proposed briefing schedule (preferably by joint agreement) within 20 days after the second notice of appeal is filed. (CRC 8.216(a).) If the parties are unable to agree upon a joint proposed briefing schedule, the parties may file separate proposed briefing schedules.
2. The proposed briefing schedule includes both the briefing sequence and the briefing period, using the times specified in CRC 8.212(a). The proposed briefing schedule identifies by name, rather than by status, the party or parties who will file each individual or combined brief, as well as the trigger point from which the period to file the brief commences to run.
3. The respondent's brief and cross-appellant's opening brief are combined into a single document (yellow cover), as is the appellant's reply brief and cross-respondent's brief (tan cover). (CRC 8.216(b).)

F. Content & Format of Briefs

1. Length of Briefs

a. Length of Briefs - Civil Appeals

- 1) There is a 14,000 word limit for your brief, including footnotes. You must include a certification of word count at the end of the brief, stating the number of words. A brief produced on a typewriter must not exceed 50 pages. (CRC 8.204(c).)
- 2) There is a 28,000 word limit for combined respondent's / cross-appellant opening briefs, or for a combined appellant's reply brief / cross respondent's brief. (CRC 8.204(c)(4).)
- 3) You must apply to the Presiding Justice for permission to file a longer brief, for good cause. (CRC 8.204(c)(5).) The court may require you to include your proposed brief with your application.

WARNING: The court disfavors oversized briefs, and will require a particularized showing.

b. Length of Briefs - Criminal & Dependency Appeals (Welf. & Inst. Code §§ 300, 601, 601)

- 1) There is a 25,500 word limit for your brief, including footnotes. You must include a certification of word count at the end of the brief, stating the number of words. A brief produced on a typewriter must not exceed 75 pages. (CRC 8.360(b), 8.412(a)(3).)

- 2) There is a 51,000 word limit for combined respondent's / cross-appellant opening briefs, or for a combined appellant's reply brief / cross respondent's brief. (CRC 8.360(b)(4).)
- 3) You must apply to the Presiding Justice for permission to file a longer brief for good cause. (CRC 8.360(b)(5).) The court may require you to include your proposed brief with your application.

WARNING: The court disfavors oversized briefs, and will require a particularized showing.

2. **Brief Covers & Binding**

- a. The brief cover should be made out of stiff paper called "cardstock." Try to use recycled stock (CRC 8.204(b)(10).) Include the following on your brief cover:
 - 1) Brief title (e.g., Appellant's Opening Brief, Respondent's Brief, etc.)
 - 2) Case title, Court of Appeal number and trial court number
 - 3) Trial judge's or trial judges' names
 - 4) The name, mailing address, telephone number, California state bar number, and fax number (if available) and e-mail address (if available) of each attorney filing or joining the brief.
 - 5) If there are multiple attorneys from the same or different law firms, corporations or public law offices representing any party, you must designate one attorney to receive notices and other communications in the case from the court. Do so by placing an asterisk (*) before the name of the attorney who is the contact person. Once you have designated the contact attorney with an asterisk, you need not provide contact information for other attorneys from the same law firm, corporation, or public law office. (CRC 8.40(c)(2).)
- b. Briefs shall be bound in book or pamphlet form with suitable covers. If stapled, the bound end and the staples should be covered with tape. (CRC 8.204(b)(8).)
- c. No plastic covers will be accepted.

3. **Table of Contents & Table of Authorities.**

List the sections of the brief in the table of contents, by page number. The table of authorities should list the cases, in alphabetical order, the statutes and other authorities used in the brief. (CRC 8.204(a)(1)(a).)

4. **Certificate of Interested Entities or Persons.**

Include a copy of the Certificate of Interested Entities or Persons in your principal brief after the cover and before the tables. (CRC 8.208(d)(1).) The contents of the certificate are described in CRC 8.208(e).

5. **Typeface, Margins, Spacing & Type of Paper.**

- a. The paper must be white or unbleached, recycled, 8½ x 11 inches. (CRC 8.204(b)(1).)
- b. Do not use numbered paper. You may use both sides of the paper, unless you use a typewriter. (CRC 8.204(b)(4).) Be sure to consecutively number the pages. (CRC 8.204(b).)
- c. Use single spacing only for block indented quotations, and for headings and footnotes. The brief text should be double-spaced or with 1½ spacing.
- d. You may use any conventional roman typeface, but the type size must be at least 13 points. (Use the same type size for footnotes.) If your brief is typewritten, you must use pica type.

6. **Record References.**

- a. You must support your references to the record on appeal with a citation to the volume and page number of the clerk’s transcript, reporter’s transcript, or appendix where the matter appears; a citation to the trial court’s decision is not sufficient. (See *Sharabianlou v. Karp* (2010) 181 Cal. App. 4th 1133, 1149.)
- b. Here are some suggested abbreviations for your record references:
 - 1) Clerk’s Transcript - “CT”. For example, to cite to Vol. 4 of the clerk’s transcript, page 206, lines 4 through 7, use “4 CT 206:4-7.”
 - 2) Reporter’s Transcript - “RT”. For example, to cite to Vol. 20 of the reporters transcript, page 1955, line 23 through page 1957, line 8, use “20 RT 1955:23-1957:8.”
 - 3) Joint Appendix - “JA”. For example, to cite to pages 405 through 407 of a single volume Joint Appendix, use “JA 405-407.”
 - 4) Appellant’s Appendix - “AA”. For example, to cite to Vol.3 of an Appellant’s Appendix, page 692, line 5 through page 693. line 7, use “3 JA 692:5-693:7.”
 - 5) Respondent’s Appendix - “RA”.
 - 6) Appellant’s Reply Appendix - “ARA”.

7. **Legal Arguments & Citation References.** You must support your contentions by “meaningful analysis” and citation of authority. (*Kim v. Westmoore Partners, Inc.* (2011) 201 CA4th 267, 293; CRC 8.204(a)(1)(B).

- a. Use italics or underlining for case cites.
- b. The comments to the appellate rules “encourage” you to follow the California Style Manual in your briefs and papers on appeal. (See CRC 8.204, Advisory Committee Comment.) The most recent edition is the Fourth Edition, which was published in 2000.
- c. Here are some general guidelines about proper citation form using the California Style Manual. You can also find the California Style Manual in any law library, or on online legal databases.
 - 1) **Citations.** In general, use parentheses around a citation, whether it appears within a sentence or following the end

- 2 **Case Citations.** The first time an opinion is cited in full, indicate the year of filing in parentheses *immediately* following the title. You don't have to include parallel citations. **Caution: CRC 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published.**
- a) (*Fair v. Bakhtiari* (2006) 40 Cal.4th 149.)
 - b) (*Pico v. Sepulveda* (1885) 66 Cal. 336.)
 - c) (*City of Stanton v. Cox* (1989) 207 Cal.App.3d 1557, 1564.)
 - d) *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, 1555 (dis. opn. of Crosby, J.)
 - e) (*U.S. v. X-Citement Video, Inc.* (1994) 513 U.S. 64, 77.)
 - f) (*Craig v. United States* (9th Cir. 1936) 81 F.2d 816.)
 - g) (*Dworkin v. Hustler Magazine, Inc.* (D.C.Wyo. 1985) 611 F.Supp. 781.)
 - h) *Allen v. Stoddard* (January 9, 2013, G046460) ___ Cal.App.4th ___ <http://www.courts.ca.gov/opinions-slip.htm> (used as example of recently filed opinion)
 - i) (*In re FairWageLaw* (Dec. 7, 2006, G037378) [nonpub. opn.]) (where appropriate to cite unpublished opinion under CRC 8.1115(b))
 - j) *Donato v. Moldow* (N.J. Super.Ct.App.Div. 2005) 865 A.2d 711, 720-727
- 2) Statutes & Rules
- a) (Cal. Const., art. VI, § 10.)
 - b) (U.S. Const., art. I, § 5, cl. 3.)
 - c) Civil Code section 51
 - d) (Bus. & Prof. Code, § 16700 et seq.)
 - e) (CRC 8.200(a)(5))
 - f) (Ct. App., Fourth Dist., Div. Three, Internal Practices and Proc., III A, Procedures for Processing Cases.)
- 3) Treatises
- a) (4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 800, pp. 977-978.)
 - b) (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 1997) ¶¶ 8:15 to 8:18, pp. 8-4 to 8-6 (rev. # 1, 1998).)
- 4) Law Reviews & Books
- a) Deason, *Enforcing Mediated Settlement Agreements: Contract Law Collides With Confidentiality* (2001) 35 U.C. Davis L.Rev. 33,
 - b) (Patel, *Immunizing Internet Service Providers From Third Party Internet Defamation Claims: How Far Should Courts Go?* (2002) 55 Vand. L.Rev. 647, 684.)
 - c) (Rifkin, *The Biotechnical Century* (1998) pp. 137-139.)
 - d) (Aragaki et al., *A Litigator's Guide to Effective Use of ADR in California* (Cont.Ed.Bar 2005) §§ 12.14, 12.19.)

8. **Confidential / Sensitive Material: Social Security & Bank Account Numbers.**

- 1) Appellate briefs normally are public documents. Do not include personal identifying material such as social security numbers, bank account numbers, taxpayer IDs, etc.
- 2) In juvenile and dependency proceedings, refer to the juvenile in all documents you file with the court by his or her first name and last initial. Use initials for both the first and last name if the first name is unusual. (CRC 8.401(a)(1).)
- 3) After a verdict in a criminal matter, court records containing juror personal identifying information are sealed, and that information remains confidential (Code Civ. Proc., §§ 206,237). In such cases, care must be taken to ensure that protected jurors not be identified in briefs. Initials or juror identification numbers, or similar identification adopted by local court rules or policies, may be used instead of names.
- 4) The identities of victims or witnesses in criminal matters may be subject to protective nondisclosure. (See, e.g., Pen. Code, § 1054.7.)

9. **Attachments.** You may attach up to 10 pages of copies of exhibits or other materials in the appellate record to your brief. You may not attach matters that are outside the appellate record. (CRC 8.204(d).) Unless you have arranged to have copies of these exhibits included in the clerk's transcript (CRC 8.122) or the appendix (CRC 8.122), you also must comply with the requirements in CRC 8.224 regarding transmitting exhibits.

10. **Joinder.** If you are a party to an appeal, you may join in or adopt by reference all or part of another party's brief. (CRC 8.200(a)(5).)

11. **Noncomplying Briefs.** The clerk's office may refuse to accept your brief for filing if it does not comply with the court rules. Instead, it may be marked "received but not filed" and returned to you. Even if a noncomplying brief is accepted for filing, the court may later decide to return it for corrections and refiling on its own motion or on the motion of any party. (CRC 8.204(e).)

G. Electronic Briefing: E-Briefs & E-Submission

1. **Purpose**

- a. The court *strongly* encourages parties to submit electronic copies of briefs (so-called "e-briefs"), including where feasible, e-briefs with hyperlinks to court records and case citations.
- b. These e-briefs are not a substitute for, but an addition to, the requested paper filings which constitute the official court record. That is why they are *submitted* to the court, rather than *filed* with the court. Even if you electronically submit an e-brief to the court, you still are required to file paper copies.
- c. Submitting an electronic copy of a brief via the court's website will satisfy the requirement in CRC rule 8.212(c)(2) requiring you to electronically serve a copy of your brief to the Supreme Court. There is no requirement for you to submit a

separate e-copy to the Supreme Court if you first submit an e-brief .pdf to us via the website.

2. **E-Brief .pdfs.** E- brief .pdfs are text-searchable documents in .pdf format that you electronically submit to the court either via the court's website (the preferred method) or through an email program on your computer.

a. **Using the Court's Website to Electronically Submit Your E-Brief .pdf.**

- 1) The preferred procedure is to use the court's website at <http://www.courts.ca.gov>. Click on the links for "4th District Court of Appeal" and "Electronic Filing / Submissions." You also may directly go to the following link:
<http://www.courts.ca.gov/20171.htm><http://www.courts.ca.gov/9408.htm#tab18464>
- 2) If you use the court's website to submit your e-briefs, the e-brief also will be automatically transmitted to the California Supreme Court.

b. **Submitting Your E-Brief .pdf by E-Mail.**

- 1) Alternatively, you may attach the document as a .pdf and directly e-mail it to the court at the following address: 4d3ebrief@jud.ca.gov.
- 2) Include the appellate case number and case name in the subject line of your email.
- 3) Your e-brief .pdf must not be larger than 9 MB in size. If the size limitation is a problem, you may break down your e-brief .pdf into separate e-mails, or contact the clerk's office to arrange for submitting your e-brief .pdf on a CD-ROM.
- 4) You must electronically submit your e-brief .pdf within two weeks after you have filed the original and paper copies of your brief with the court. Your e-brief .pdf must be an *exact duplicate* of your paper briefs.
- 5) By submitting an e-brief .pdf, you certify that you have taken all reasonable steps to ensure that the copy does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system.

c. **Naming Your E-Brief .pdf.**

- a) Name your document using the following naming convention: *Case Number_Abbreviation of Document Title_volume# (where appropriate)*. Please no spaces.
- b) Naming convention examples:
G012345_AOB.pdf (for an appellant's opening brief)
G012345_RB.pdf (for a respondent's brief)
G012345_ARB.pdf (for an appellant's reply brief)
G012345_PR.pdf (for a petition for rehearing)
G012345_APR.pdf (for an answer to a petition for rehearing)

G012345_AC_Name.pdf (for an amicus curiae brief)

G012345_ACA_PartyName.pdf (for an answer to an amicus curiae brief)

3. **Hyperlinked E-Briefs.** Hyperlinked e-briefs (“hyper e-briefs”) consist of linked and searchable copies of all briefs and supporting material, including the reporter’s transcript, clerk’s record (either as a clerk’s transcript or joint appendix), exhibits, and cited cases and other authorities. They are contained on a single CD-ROM or DVD.
 - 1) **Joint Submission.** Counsel who believe that a hyperlinked e-brief is appropriate for an appeal should confer as early as possible with opposing counsel and should cooperate in preparing it. The court encourages the parties to cooperate in filing a joint hyperlinked e-brief and to agree to share the cost.
 - 2) **Unilateral Submission.** In the absence of an agreement with the opposing party for a jointly submitted hyperlinked e-brief, any party may unilaterally file a CD-ROM that contains all briefs and supporting material, including the briefs of the opposing party. The opposing party shall provide electronic copies to the party preparing the hyperlinked e-brief.
 - 3) **Timing.** Hyperlinked e-briefs should be filed as early as possible, and in any event, no later than 15 days after the last paper brief is filed.
 - 4) **Notice.** Counsel must submit a written notice to the Clerk's Office of their intention to file an e-brief. The Court will work with counsel to minimize delay and maximize the effectiveness of the filing.
 - 5) **Filing and Service.** Two copies of the discs, all in the required form, must be filed with the court with proof of service on all counsel. No copies of the hyperlinked e-brief are to be served on the Supreme Court.
 - 6) **Further Information.** You may obtain more detailed instructions about hyperlinked e-briefs, including a list of commercial service vendors that prepare e-briefs, by clicking on the following link:
<http://www.courts.ca.gov/9408.htm#tab18465>

◆ Part Four: Writs

A. Service & Filing of Writs.

1. Writs - General Filing Information.

- a. File an original plus four (4) copies of the petition or responsive pleading. Use a red cover.
- b. There are special rules regarding environmental challenges under the Calif. Environmental Quality Act (CEQA) to so-called “environmental leadership projects,” certified by the Governor under Pub. Resources Code §§ 21178-21189.3. See CRC Rule 8.497.

c. **Filing by Fax or E-mail.** The court does not accept the filing of a writ petition by fax or e-mail. However, you may submit an electronic version your writ petition and exhibits as an e-brief as a courtesy copy to assist the court's expeditious review of the petition. See section III.G. at page 43, above.

d. Here is a table with general filing information about writs:

Type of Document	Cover	To File:	To Serve:
Petition for Writ	Red	Original plus 4	Superior Court All parties
Exhibits to Petition for Writ	Red	Original only	All parties (<i>Exhibits need not be served on Superior Court; use no more than 300 pages per volume</i>)
Informal Response (Preliminary Opposition)	Red	Original plus 4	Superior Court All parties
Return or Answer to Petition	Red	Original plus 4	Superior Court All parties
Reply to Return or Answer to Petition	Red	Original plus 4	Superior Court All parties
Petition for Writ of Habeas Corpus - filed by attorney for party	Red	Original plus 4	Superior Court Attorney General District Attorney
Petition for Writ of Habeas Corpus - filed by unrepresented party	Red	Original	Superior Court Attorney General District Attorney
Petition for Writ of Mandate Juvenile Dependency	Red	Original plus 4	Superior Court County Counsel All parties See CRC 8.452(d) and CRC 8.456(d) for additional service requirements
Petition for Writ of Review Workers' Compensation	Red	Original plus 4	2 copies on WCAB - San Francisco All parties
Petition for Writ of Review	Red	Original plus 4	Department of ABC

ABC			All parties
Petition for Writ of Review – Public Utilities Commission	Red	Original plus 4	Public Utilities Commission (<i>1 copy on Executive Director; 1 copy on General Counsel</i>) All parties
Petition for Writ of Review Agricultural Labor Relations Board	Red	Original plus 4	ALRB All parties
Petition for Writ of Review Public Employment Relations Board (PERB)	Red	Original plus 4	Public Employment Relations Board All parties

2. **Filing Fees.**

- a. A filing fee of \$775 must accompany the original proceeding except for criminal or juvenile proceedings, WCAB petitions or petitions for writ of supersedeas.
- b. If indigent, petitioner may submit a request for waiver of fees on the Judicial Council form that is available at the Court of Appeal.
- c. Petitioners (such as governmental entities) who claim to be exempt from fees should so indicate on the writ cover [for example, “Exempt from Fees-Govt. Code § 6103.”]
- d. Real party filing fees - There ordinarily are no first party filing fees for preliminary responses to writ petitions which are court-requested. There may be a one-timing filing fee of \$325.00 for unsolicited writ responses. Check with the court clerk if you are unsure whether there has been a court-requested response.

3. **Stay Requests.**

a. **Emergency Stay Requests.**

- 1) A petition for an extraordinary writ with a request for an immediate stay, injunction, or other form of relief be issued within 15 days must be **personally served** on the respondent and each real party in interest, unless the party served has agreed in advance upon a different form of expedited service. Unless the writ shows such service or without a showing of good cause, the court will not act on the stay request for at least 5 days, except to issue a summary denial. (Local Rule 1(a).)
- 2) The cover must state “STAY REQUESTED” or “IMMEDIATE RELIEF REQUESTED.” (Local Rule 1(a).) Include a **specific date** by when you require relief.

- 3) The cover must include the name and telephone number of the trial judge whose order the requests seeks to stay. (CRC 8.116(b).)
 - 4) It may be useful to give the clerk's office advance telephone notice (714-571-2600) of your intent to file a writ petition later in the day. This is particularly true if your petition may be filed shortly before the filing window is due to close, or in close proximity to a weekend or holiday. Be sure that you have personally served the petition, and adequately explained the urgency of the writ petition.
 - 5) The court may issue a stay order or other order necessary to preserve the status quo or the court's jurisdiction without waiting for opposition. (Local Rule 1(a).)
- b. **Other Stay Requests.** For other temporary stay requests, the document's cover must prominently display the notice "STAY REQUESTED", and identify the nature and date of the proceeding sought to be stayed. (CRC 8.116(a).)

4. Time Limits.

File the petition as soon as you can. The petition is deemed filed when the documents are received by the clerk's office. The special rules for overnight delivery of briefs do not apply to writs. (CRC 8.25(b)(4).)

- a. **Statutory Writs.** There may be very short time limits for certain statutory writs, such as:
- 1) a writ from an order denying summary judgment (Code Civ. Proc., § 437c(m)(1)),
 - 2) a writ from an order granting or denying a motion to expunge a lis pendens (Code Civ. Proc., § 405.99),
 - 3) a writ from an order denying a motion to quash service (Code Civ. Proc., § 418.10(c)),
 - 4) a writ from an order granting or denying a motion for change of venue (Code Civ. Proc., § 400),
 - 5) a writ from a good faith settlement order (Code Civ. Proc., § 877.6), and
 - 6) a ruling on a motion to disqualify a judge or on a peremptory challenge (Code Civ. Proc., § 170.3(d)).

This list is illustrative only, and does not list all types of statutory writs.

Let the clerk's office know if you are filing a writ on the last day of the statutory deadline. This may assist in the timely processing of your writ.

- b. **Nonstatutory Writs – The 60-day "guideline".** Nonstatutory writs are governed by equitable principles, which means that you should not unreasonably delay filing the petition to the prejudice of the court or the other parties. A 60-day period is often used as an outside guideline for filing of writs, but this is a guideline only, and the court has discretion to deny writs that are filed within the 60-day period if the petitioner has waited too long before seeking help from the Court of Appeal.

B. Content & Format of Writs

1. Title.

- a. Your case should be titled, “[Petitioner] v. Superior Court of Orange County.”
- b. **“Et al” designations.** Include the names of *all* the petitioners. Even if you have used the “et al.” designation in the superior court, you cannot so list the parties you represent in your initial petition. (You may do so in subsequent documents.) The clerk’s office may reject an original writ petition that contains an “et al.” party designation for petitioners.
- c. **Real Parties.** List as real parties in interest the names of *all* the parties who appeared below. Even if you have used the “et al” designation in the superior court, you cannot so list the real parties in your initial petition. (You may do so in subsequent documents.) The clerk’s office may reject an original writ petition that contains an “et al.” party designation for real parties. even if it has been applied below.
- d. **Supersedeas.** Petitions for writ of supersedeas bear the same title as the appeal and the same appellate court docket number. (CRC 8.112(a)(2).)

2. **Verification.** All petitions, with the exception of habeas corpus, must be verified by petitioner or counsel. A verification on “information and belief” generally is not sufficient.

3. **Writ Covers.** The writ cover should be red. (CRC 8.40(b)(1).) Include the following:

- a. Case title and trial court number
- b. Name of the trial judge or judges whose ruling is challenged.
- c. The name, mailing address, telephone number, California state bar number, and fax number (if available) and e-mail address (if available) of each attorney filing or joining the petition.
 - 1) If there are multiple attorneys from the same or different law firms, corporations or public law offices representing any party, you must designate one attorney to receive notices and other communications in the case from the court. Do so by placing an asterisk (*) before the name of the attorney who is the contact person. (CRC 8.40(c)(2).)
 - 2) Once you have designated the contact attorney with an asterisk, you need not provide contact information for other attorneys from the same law firm, corporation, or public law office. (CRC 8.40(c)(2).)
- d. If you request a stay, the court must so state, in capital letters “IMMEDIATE RELIEF REQUESTED” or “STAY REQUESTED.” Include also the nature and date of the proceedings sought to be stayed (for example, “Petitioner’s deposition set for [date].”)

4. **Table of Contents & Table of Authorities.** List the sections of the brief in the table of contents, by page number. The table of authorities should list the cases, in alphabetical order, the statutes and other authorities used in the brief. (CRC 8.204(a)(1)(a).)

5. **Certificate of Interested Entities or Persons.** Include a copy of the Certificate of Interested Entities or Persons in your petition after the cover and before the tables. (CRC 8.490(i), 8.494(c), 8.496(c) and 8.498(d).) The contents of the certificate are described in CRC 8.208(e). Include the names of all the parties – do not use an “et al.” designation.
6. **Page Limits.** There is a 14,000 word limit, including footnotes, but excluding the tables, certificate, verification and supporting documents. (CRC 8.490(b)(6).) You must include a certification of word count at the end of the brief, stating the number of words. A brief produced on a typewriter must not exceed 50 pages. (CRC 8.204(c)(1), 8.490(a)(1), 8.490(b)(6).)
7. **Typeface, Margins, Spacing & Type of Paper.**
 - a. The paper must be white or unbleached, recycled, 8½ x 11 inches. (CRC 8.204(b)(1).)
 - b. Do not use numbered paper. You may use both sides of the paper, unless you use a typewriter. (CRC 8.204(b)(4).) Be sure to consecutively number the pages. (CRC 8.204(b).)
 - c. Use single spacing only for block indented quotations, and for headings and footnotes. The brief text should be double-spaced or with 1½ spacing.
 - d. You may use any conventional roman typeface, but the type size must be at least 13 points. (Use the same type size for footnotes.) If your petition is typewritten, you must use pica type.
8. **Peremptory Writ in the First Instance?** If you desire the court to issue a peremptory writ in the first instance, you should include such a request in your prayer; and explain why the matter is “urgent” or why the need for relief is “obvious” and “settled.” (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 179.)
9. **Confidential / sensitive materials.** See section II.E.4.f. at p. 24, above.
10. **Proof of Service –Civil Matters.** In writs arising from civil matters, there must be a proof of service on the judge in the superior court from whose ruling the petition is taken and upon the attorney for each separately represented real party in interest, and upon each unrepresented real party in interest. (CRC 8.25(a), 8.490(f)(1).) The proof of service should include the state bar number and telephone number of each attorney served. (CRC 8.490(f)(3).) You must include a proof of personal service of any petition with a request for an immediate stay (within 15 days); indeed, it is good practice to include proof of personal service of any petition for which you seek immediate relief.
 - a. You must include a proof of service on the Attorney General on a writ petition in unfair competition, false advertising and false claims cases and any writ petition that questions the constitutionality of a state statute. (CRC 8.29(c), 8.490(f)(4).) Indicate this service on the cover of your petition in the following form: “Service on [insert name of the officer or agency] required by [insert citation to the statute or rule.] (CRC 8.29(b).)

- b. In unfair competition, false advertising and false claims case, you must include a proof of service on the Orange County district attorney. (CRC 8.490(f)(4).)
 - c. If the real party has been represented by an attorney in the superior court proceedings, you must serve a copy of the petition for writ of mandate and the appendix upon that attorney, including his or her name (and preferably his or her state bar number as well) in your proof of service. This also applies to public entities which are real parties – include the name of the city attorney, county counsel, outside counsel, etc., who handled the case below.
 - d. Self-represented parties (including attorneys) cannot themselves sign a proof of service because the rules require that the person making the service not be a “party to the cause.” (Code Civ. Proc., § 1013a.)
10. **Noncomplying Petitions.** Consideration of your writ petition may be delayed if it does not comply with the court rules. Noncomplying petitioners may be stricken or summarily denied if not brought into compliance within a reasonable time. (CRC 8.490(d)(2)).
11. **Subsequent Developments.** A petitioner should notify the clerk’s office immediately of any circumstances, including a settlement, that makes moot the request for writ relief. It is advisable to telephone the clerk’s office, and to follow-up with a letter, with a declaration (if necessary), that is served upon all parties.

C. Exhibits to Writ Petition,

- 1. **Formatting.** Exhibits must contain a table of contents, be tabbed (by number or letter) on the right hand side and consecutively paginated. (CRC 8.490(d)(B).) Use a red cover.
- 2. **Number of Pages.** Don’t put more than 300 pages in any single volume of exhibits. Consecutively number the pages. (CRC 8.490(d)(1)(A).) If you don’t have many exhibits, you may bind them together in a single volume with the writ petition.
- 3. **Filing.** You only need to file an original of the exhibits if they are bound separately from the petition. (CRC 8.44(b)(5).)
- 4. **Service.** You must serve a complete set of the exhibits on each real party in interest. You do not have to serve a copy of the exhibits on the superior court. (CRC 8.490(f)(1).)
- 5. **Electronic Copy.** You may submit an electronic copy of the writ petition and exhibits to the court by emailing the court an electronic copy of all or part of the record in searchable .pdf form, or you may burn the electronic .pdf files onto a CD-ROM or DVD. See II.G. above at p. 26 for more information about delivering electronic records to the court (“E-submissions.”) You still must file a paper copy of the exhibits even if you also submit an electronic copy as a courtesy to the court and to opposing counsel.

D. Opposition to Writ Petition

1. **Preliminary Opposition.** You are not required to oppose a writ petition, and you may elect to wait until invited to do so by the court. The court ordinarily will not issue an alternative writ, order to show cause or a peremptory writ unless you either have filed an opposition or unless the court has invited you to do so by written order. (Local Rule 1(a), 1(b).) However, the court may issue a stay or other order necessary to preserve the status quo or its jurisdiction without waiting for opposition. (Local Rule 1(a).)
 - a. **Filing.** Unless the court specifies a different due date, your preliminary opposition should be served and filed within 10 days after the petition is filed. (CRC 8.933(a).) Opposition to a petition for writ of supersedeas is due within 15 days, unless the court orders a different time. (CRC 8.112(b)(1).) There are no filing fees.
 - b. **Filing by Fax or E-mail.** Division Three does not accept filing of preliminary responses by fax or e-mail, unless the court has specifically requested that a copy of the response be faxed or emailed to the court by a specified time. However, you may submit an electronic version of your preliminary response as a courtesy copy to assist the court's expeditious review of the writ petition. See section III.G. at page 43, above.
 - b. **Certificate of Interested Entities.** Include a copy of the Certificate of Interested Entities or Persons in your preliminary opposition, or, if no opposition is filed, in your return, if any. (CRC 8.490(i).)
 - c. **Contents.** Your preliminary opposition should explain or correct any factual or legal inadequacies in the petition, and should point out why writ relief is not appropriate or why the petitioner has other remedies. The preliminary opposition need not contain a full-blown legal analysis. If necessary, you will have another chance when you file your return.
 - d. **Formatting.** The preliminary opposition is relatively informal, and may be in letter form. It should explain why there is no urgency, or why the case is too complex or disputed to permit such a summary remedy.
 - e. **"Palma Notice."** Where you receive a "Palma notice" (that the court is considering issuing a peremptory writ in the first instance), your opposition should fully and completely brief the legal and factual issues, since this may be your only opportunity to do so. (See *Brown, Winfield & Canzoneri, Inc. v. Superior Ct* (2010) 47 Cal.4th 1233, 1237-1238; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)
2. **Return.** You should file a return if the court issues an order to show cause, or an alternative writ. (CRC 8.490(h).)
 - a. **Certificate of Interested Entities.** Include a copy of the Certificate of Interested Entities or Persons if you did not previously include it in your preliminary opposition, if any. (CRC 8.490(i).)

- b. **Filing.** The return is due on the date specified by the court; if no date is specified, the return is due within 30 days after the court issues the alternative writ or order to show cause. (CRC 8.490(h)(2).) The return is deemed filed when received by the clerk's office. The special rules for overnight delivery of briefs do **not** apply to writs. (CRC 8.25(b)(4).)
- c. **First Document Filing Fee.** Real parties must pay a \$390 filing fee in conjunction with their return, if they have not already done so. While the court may have waived the filing fee for an informal response, the waiver does not extend to the return, which is in the nature of a pleading. (Govt. Code, §68926(b)(3); CRC 8.25(c)(2)(d).) There is no filing fee from a governmental entity.
- d. **Formatting.** The return, like the petition, is a pleading, and should contain the return itself (in the form of an verified answer, demurrer or both), a table of contents and table of authorities, a legal memorandum of points and authorities, and a certificate of the word count, not to exceed 14,000 words. (CRC 8.204(c)(1), 8.490(a)(1).) Use a red cover. (CRC 8.40(b)(1).)
- e. **Verification.** The return should include a statement of "any material fact not included in the petition," but if you do include such facts, you must verify them. (CRC 8.490(g)(2), 8.490(h)(1).) Also use the verified answer to deny any material facts alleged in the petition. Without a verified answer, the court may accept petitioner's factual allegations as true.
- f. **"Palma Notice."** Where you receive a "*Palma* notice" (that the court is considering issuing a peremptory writ in the first instance), your return should fully and completely brief the legal and factual issues, since this may be your only opportunity. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

E. Reply in Support of Writ Petition

- 1. **Reply following Preliminary Opposition.** A petitioner may file an optional reply in support of a writ petition after receiving preliminary opposition from the other side. You may serve and file a reply within 10 days after the preliminary opposition is filed, unless the court specifies a different date. (CRC 8.933(a).) But be aware that the writ panel already may have reached a decision on your writ petition before this time!
- 2. **Reply following Return.** You may have a longer period of time to file a reply if the court issues an alternative writ, order to show cause or a "*Palma* notice" (that the court is considering issuing a peremptory writ in the first instance). The court usually will specify the deadline for such a reply in the alternative writ or order to show cause. If it does not, you have 15 days to serve and file a reply after the return or opposition is filed. (CRC 8.4890(h).)

F. Ruling on Writ Petition.

1. **Time Limits.** The court is not bound by a time limit for ruling on a petition. The consideration of any particular writ depends upon the urgency of the relief, the adequacy of the record, whether preliminary opposition is requested, the size and complexity of the writ petition and the other matters for the writ panel to consider.
2. **Writ Panel.** The Presiding Justice assigns three of the court's eight justices to serve as members of a writ panel on a rotating basis. The writ panel serves together for three or four months during the calendar year, although other justices may substitute if one of the panel members is unavailable. The writ panel usually holds a face-to-face writ conference once a week. This generally takes place on Thursdays, but the timing of writ conferences may vary.
3. **Writ Calendar / Writ Conference.**
 - a. The managing appellate court attorney and central staff attorneys prepare confidential written summaries of original proceedings which are placed on the writ calendar for the weekly writ conference. These are provided to the writ panel members before the conference. Urgent matters may be handled on an ad hoc basis without a written summary.
 - b. The court tries to place pending writs on the court's weekly writ calendar as expeditiously as possible. The calendaring of any particular writ depends upon the urgency of the relief, the adequacy of the record, whether preliminary opposition is requested, the size and complexity of the writ petition and the other matters on the writ calendar.

4. Writ Remedies

The writ panel discusses the merits of the writ petition at the writ conference and decides upon an appropriate remedy. The writ panel has a number of procedural options.

- a. **Summary Denial.** The writ panel may deny the writ petition without opposition (Local Rule 1(b)), or the writ panel may issue an order denying the writ after preliminary opposition has been filed or after the deadline for preliminary opposition has passed. The order denying the writ may (or may not) provide reasons for the denial.
 - 1) The writ petition or stay request may be summarily denied if the petitioner doesn't submit an adequate record or explain why some documents are missing and what they would have contained. The writ petition or stay request also may be rejected or delayed if the petitioner doesn't meet other procedural requirements for service (including personal service for requests for emergency stays), verification, certificate of interested entities. (CRC 8.490(c)(5).) If a transcript of the hearing has been ordered, but is not yet available, the writ petition may be delayed until the transcript arrives. (CRC 8.490(c)(2).)
 - 2) There is no right to an oral argument for a summary denial.

- 3) A summary denial of a writ petition is final immediately, and the court loses jurisdiction over the matter. (CRC 8.264(b)(2)(A).)
- b. **Alternative Writ.** The writ panel may issue an alternative writ to provide the superior court with a second chance to change its ruling. The alternative writ directs the petitioner to serve the alternative writ upon the superior court and provides the court an additional period of time in which to comply with the alternative writ.
- 1) If the superior court reverses its ruling, the writ petition will be denied as moot. The petitioner should immediately notify the Court of Appeal if the superior court complies with the alternative writ.
 - 2) If the superior court does not comply with the alternative writ, the alternative writ usually will specify a deadline for a return to be filed by the real party in interest, and for an optional reply to be filed by petitioner. (CRC 8.487(b).) [Note: if the court does not set a deadline, the return is due with 30 days, and the reply is due within 15 days.] (CRC 8.487(b)(2).) The alternative writ also may set a date for oral argument, and the matter ultimately will be decided by written opinion with reasons stated. The opinion becomes final 30 days after filing, unless the court grants earlier finality in the interests of justice. (CRC 8.264(b)(1), 8.264(b)(3).)
- c. **Order to Show Cause.** If the court wants further briefing and argument on the issues raised by the writ petition, the court will directly issue an order to show cause (OSC) to the real party in interest without issuing an alternative writ. Unless the order to show cause specifies otherwise, the real party's "return" must be served and filed within 30 days, and the petitioner's reply within 15 days after the return is filed. (CRC 8.487(b).) The order to show cause also may set a date for oral argument. The court will file a written opinion whether or not relief is granted. The opinion becomes final 30 days after filing, unless the court grants earlier finality in the interests of justice. (CRC 8.264(b)(1), 8.264(b)(3).)
- d. **"Suggestive" Palma Notice.** After receiving a preliminary response from the real party in interest, this court may issue an order (called a "suggestive *Palma* notice") to give the trial court an opportunity, to re-review the challenged order in light of the writ petition and with guidance from the appellate court. This "suggestive" *Palma* notice is analogous to a tentative appellate ruling, but such conclusions are preliminary only and are not binding on either the trial or appellate court. (See *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 C.4th 1233,)
- e. **Peremptory Writ in the First Instance.** A peremptory writ in the first instance is reserved for *exceptional situations* where either (i) some "*unusual urgency*" justifies acceleration of the normal writ process or (ii) petitioner's entitlement to relief is "so *obvious* that no purpose could reasonably be served by plenary consideration of the issue." This may occur where there has been clear error

under well-settled principles of law and undisputed facts. (See *Lewis v. Superior Court* (1999) 19 Cal.4th 1232.)

- 1) **“Palma Notice”**. The Court of Appeal will not issue a peremptory writ in the first instance unless you have been given what is called a “Palma notice.” (The name of the notice comes from the California Supreme Court decision in *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.) The *Palma* notice puts the real party in interest on notice that the court may issue a peremptory writ in the first instance, without a prior alternative writ.
 - a) You may receive a *Palma* notice in the prayer of the petition itself if the petitioner asks the Court of Appeal to issue a peremptory writ in the first instance.
 - b) The Court of Appeal may issue a *Palma* notice by separate court order. The *Palma* notice should not be viewed as an expression by the appellate court about the merits of the writ petition.
 - c) If you receive a *Palma* notice, you may choose to separately address why you do not think that writ relief should be granted on an expedited basis. Explain why further briefing (in the form of a verified return) and oral argument are necessary.
- 2) The court may (or may not) decide to have oral argument *on peremptory writs*.
- 3) A written opinion granting a peremptory writ in the first instance becomes final 30 days after filing, unless the court grants earlier finality in the interests of justice. (CRC 8.264(b)(1), 8.264(b)(3).)

G. Writs in Limited Civil Cases

1. **Filing with the Appellate Division.** You should file a writ petition challenging a ruling in a limited civil case with the Appellate Division of the Orange County Superior Court, *not* with the Court of Appeal. That is because the Appellate Division is the next higher court capable of granting relief.
 - a. For more information about appeals to the Appellate Division of the Orange County Superior Court, see <http://occourts.org/directory/civil/appeals/>
 - b. The rules for writ proceedings in the Appellate Division are contained at CRC§§ 8.930 to 8.936.
2. **Filing with the Court of Appeal.**
 - a. If you do choose to file a writ petition with the Court of Appeal from a ruling in a limited civil case, you must indicate whether you have previously filed with the Appellate Division and, if yes, how the Appellate Division ruled. Attach a copy of the Appellate Division’s decision.

- b. If you have not previously filed with the Appellate Division you must specify the extraordinary circumstances making it proper to file the petition with the Court of Appeal in the first instance. (CRC 8.486(a)(1).)
- c. Since the Appellate Division is the proper forum for appellate review of rulings in limited civil cases, you probably cannot get a “second bite at the apple” from the Court of Appeal. Your writ petition should explain why your case involves a public interest issue of statewide importance, or why writ review by the Court of Appeal is necessary to settle an important question of law.

◆ Part Five: Motions & Applications

A. Service & Filing of Motions & Applications

1. Motions & Applications - General Filing Information.

- a. File an original and three copies of any motion with the clerk’s office. The Court of Appeal accepts only original signatures on motions, declarations and other documents; faxed signatures are *not* accepted.
- b. Any opposition must be served and filed within 15 days after the motion is filed. To expedite the processing of an unopposed motion, the moving party should file a stipulation of nonopposition. If there is no such stipulation of nonopposition, the clerk’s office will hold the motion for 15 days, or until opposition is filed.
- c. You may overnight motions and oppositions by a company guaranteeing overnight delivery, but the documents will be deemed to be filed on the date the clerk’s office receives it. The special provisions in CRC 8.25(b) for overnight delivery apply only to briefs, not motions.
- d. Here is a table with general filing information about motions, applications and other court documents:

Type of Document	Cover	To File:	To Serve:
All motions (do <i>not</i> include in your brief)	None	Original plus 3	All parties
All oppositions to motions	None	Original plus 3	All parties
Requests for Judicial Notice (do <i>not</i> include in your brief)	None	Original plus 3	All parties
Abandonment of appeal	None	Original	Superior Court

					All parties
Request for dismissal on settlement	None	Original	Superior Court All parties <i>(Telephone the clerk's office if the case has been calendared for oral argument)</i>		
Stipulated Request for Reversal of Judgment	None	Original plus 3	All parties; All Clients <i>(need not include clients' addresses on proof of service)</i>		
Application for Extension of Time – Civil	None	Original plus extra copies for order	All parties <i>(include stamped, addressed envelopes for yourself and each party)</i> All Clients <i>(need not include clients' addresses on proof of service)</i>		
Application for Extension of Time – Criminal	None	Original plus extra copies for order	All parties <i>(include stamped, addressed envelopes for yourself; none needed for Attorney General or Appellate Defenders)</i>		
Oral Argument Request / Waiver	None	Original	All parties		
Request to Continue Oral Argument	None	Original	All parties; <u>must</u> indicate opposing party's position		
<i>Pro Hac Vice</i> (CRC 9.40(c)(2))	None	Original plus 3	All parties State Bar of California <i>(at SF office)</i>		
Substitutions - Attorney or Party	None	Original plus 1	Superior Court <i>(for attorney substitutions)</i> All parties		
Withdrawal Motions; see section 1J4 at page 4, above.)	None	Original	Attorneys directly affected Requesting Attorney's Client <i>(need not include address)</i>		
Request for Publication of Unpublished Opinion	None	Original plus 3	All parties to appeal <i>(any person may make request, including nonparties)</i>		
Civil Case Information Statement	None	Original	All parties		
Settlement Conference Information	None	Original	Optional on other parties <i>(document is</i>		

Form (SCIF)		plus 1	<i>confidential with court</i>
Certificate of Interested Entities or Persons	None	Original	All parties. Also include a copy of the certificate in your principal brief after the cover and before the tables.
Change of Address	None	Original	All parties

2. **Motions & Applications: Filing by Fax or E-mail.** The court does not accept filing of motions or oppositions by fax or e-mail unless the court has specifically requested that a copy of the response be faxed or emailed to the court by a specified time. However, you may submit an electronic version of your papers in conjunction with a motion as a courtesy copy to assist the court’s review. See section III.G. at page 43, above.

3. **Filing Fees / First Document Filing Fees & Certificate of Interested Parties**

- a. There are no filing fees for filing motions or oppositions in the court on pending appeals or writs.
- b. **First Document Filing Fee.** There is a \$390 filing fee for applications, opposition to applications, motions, or oppositions to motions, among other documents, where they are the first document filed in the Court of Appeal by a party other than the appellant or petitioner in a civil case. (Govt. Code, §68926(b)(3); CRC 8.25(c)(2)(d).) There is no filing fee from a governmental entity.
- c. **Certificate of Interested Entities or Persons.** You must file a Certificate of Interested Entities or Persons (see section I-M at p. 15, above) with the first motion or opposition you file with the Court of Appeal if this occurs before you file your principal brief. (CRC 8.208(d)(1))

4. **Content & Format of Motions / Oppositions.**

- a. Motions in the Court of Appeal must be in writing and must state the grounds and relief requested. (CRC 8.54.) You may not make a motion in a brief; use a separate document to do so.
- a. Include a proof of service on all parties to the appeal.
- b. Neither motions nor oppositions are blue-backed. Staple the documents at the upper left-hand corner. If the documents and supporting exhibits are so voluminous as to make stapling impracticable, you may bind the documents and use a blue cover.
- c. The motion or opposition should be as concise as reasonably possible, with a citation to court rules and judicial decisions, and a short discussion of their applicability. There are no special page limits for motions or oppositions in the appellate court rules.

- d. Confidential / sensitive materials. See section II.E.4.f. at p. 24, above.
- e. Stipulations. The clerk's office only accepts original signatures on stipulations; you cannot file a stipulation with faxed signatures from opposing counsel. *Note: there is a limited exception for purposes of stipulations to extend time for briefing, where faxed signatures from opposing counsel are acceptable. (See CRC 8.212(b).)*

5. Rulings on Motions.

- a. The clerk's office generally will "hold" a motion for 15 days before submitting it to the court in order to give the opposing party time to file a response. Let the court know if there is a particular urgency to a motion, or if the other parties have signed a stipulation of nonopposition.
- b. Motions in writ proceedings are not generally held for opposition absent a request by the parties.
- c. The court may rule on the motion at any time after the time for opposition has passed. The court may defer a determination on the motion until it rules on the merits of the appeal.
- d. The court does not conduct oral arguments on motions except by court order.

6. Peremptory Challenges. There are no peremptory challenges for appellate justices.

B. Request for Judicial Notice.

- 1. Requests for judicial notice must be made by separate motion. Requests for judicial notice may not be included within a brief alone. (CRC 8.252(a)(1).)
- 2. Explain the relevance of the matters sought to be noticed. Include a copy of the matter to be judicially noticed, or explain why it is not practicable to do so. (CRC 8.252(a)(2).)
- 3. Explain whether you presented the judicial notice request to the trial court, and what action, if any, the trial court took in response to your request. If the trial court did not take judicial notice of the matter, explain why the matter is subject to judicial notice under Evid. Code §§ 451, 452 or 453. (CRC 8.252(a)(2)(C).)
- 4. Explain whether the matter to be judicially noticed relates to proceedings occurring after the order or judgment from which you have taken the appeal. (CRC 8.252(a)(2)(D).)
- 5. The court may immediately rule on the request for judicial notice, or may defer the ruling until it decides the merits of the appeal.

C. Motion for Sanctions on Appeal or Writ.

- 1. Appellate sanctions are only awarded by motion of a party or on the court's own motion. Sanctions requests may not be included in appellate briefs. The court will not consider a sanctions request that is only made in a party's brief. (CRC 8.276(b), 8.490(n).)

A party's motion for sanctions on appeal must be served and filed no later than 10 days after an appellant's reply brief is due.

2. Grounds include: taking a frivolous appeal or petition, appealing or filing a writ petition solely to cause delay, unreasonably violating court rules or a court order, and filing an appendix that contains inaccurate copies of documents. (CRC 8.276(a), 8.490(n).) BUT NOTE: "A request for sanctions should be reserved for serious violations of the standard of practice, not used as a bullying tactic. . . . But for serious and significant departures from the standard of practice, for departures such as dishonesty and bullying, such steps are necessary." (*Kim v. Westmoore Partners, Inc.* (2011) 201 CA4th 267, 294.)
3. The court will provide written notice to the parties if it is considering sanctions. (CRC 8.276(c).) Only then should the opposing party file an opposition to the sanctions motion. Any opposition must be served and filed within 10 days after the court gives such notice. (CRC 8.276(d).) Oral argument on the sanctions motion usually is heard in conjunction with the appeal on the merits. (CRC 8.276(e).)

◆ Part Six: Dismissals & Settlements

A. Notice of Settlement

1. Filing & Service Requirements

- a. **Court of Appeal.** If you settle a civil appeal in which you are the appellant, you must immediately file a Notice of Settlement with the clerk's office, and serve it upon opposing counsel. (CRC 8.244(a).)
 - 1) **Sanctions.** The court may impose sanctions if timely notice of settlement is not given. (CRC 8.276(e)(1)(c).) Such sanctions may include amounts payable to the clerk of the court for the costs to taxpayers for processing the appeal.
 - 2) **Downloadable Form.** You may download an electronic version of the Notice of Settlement from the "Local Forms" tab on the court's website at <http://www.courts.ca.gov/documents/4DCA3-NoticeSettlement.pdf>.
- b. **Superior Court.** If you settle a civil appeal before the record has been filed, you also should serve a copy of the notice on the superior court clerk.
- c. **Telephonic Notice – Oral Argument.** If you settle or dismiss a case that either has been calendared for oral argument you must telephone the clerk's office immediately at (714) 571-2600 in addition to filing a written Notice of Settlement.
- d. **Stipulated Requests for Reversal.** You don't have to file a Notice of Settlement if you are filing a stipulated request for reversal under Code of Civil Procedure section 128(a)(8). (See CRC 8.244(a)(5).)

2. 45-Day Rule; Extension Requests

a. Within 45 days of the notice of settlement, you must file one of the following: (1) an abandonment of appeal (if the record has not been filed), (2) a stipulated request for dismissal or request to dismiss, or (3) a letter to the court stating good cause why you did not file either of these documents to effectuate your settlement. Unless you do so, the court may dismiss the appeal on its own. (CRC 8.244(a).)

b. Extension Requests

1) Under CRC 8.244(a), the court may extend your time to file an abandonment or request to dismiss on a showing of good cause. This may occur, for example, if your settlement agreement conditions dismissal of the appeal on the satisfactory completion of specified terms that are not to be performed within 45 days of the date of the settlement.

2) If your settlement calls for performance beyond the 45-day period, you should file a stipulated request for an extension of time under CRC 8.244(a) at the same time as you file a Notice of Settlement. The stipulated request should contain a date certain on which the request for dismissal will be filed.

B. **Voluntary Abandonment or Settlement of Appeals Before Record Is Filed** (CRC 8.244(b)(1).)

Before the record on appeal has been filed, you may file a written abandonment by appellant or stipulation for abandonment with the clerk of the superior court, who will then forward it to this court. You may use Judicial Council Form APP-005 for an abandonment of appeal. See <http://www.courts.ca.gov/documents/app005.pdf>

C. **Voluntary Abandonment or Settlement of Appeals After Record Is Filed** (CRC 8.244(c)(1).)

1. After the record has been filed, you must file a written request or stipulation for dismissal with the clerk of the Court of Appeal. If you stipulate with the other parties to dismiss the appeal, the parties may stipulate that each side shall bear its own costs on appeal. If there is no such stipulation, respondent will be awarded costs. The remittitur will be issued forthwith. (CRC 8.244(c)(1).)

2. A stipulated request to dismiss the appeal will leave the underlying judgment intact. You cannot ask the court to reverse or vacate the judgment below in conjunction with your stipulated request to dismiss the appeal. If you want to reverse or vacate the judgment below, you must follow more stringent procedures (see below), which a panel of three justices will independently review the stipulated request for reversal and write an opinion on the subject. See VI.F at p. 63, below.

3. Forms

a. **Appellant's Request for Dismissal (Costs on Appeal to Respondent).** You

may use Judicial Council Form APP-007 for a dismissal of an appeal. See <http://www.courts.ca.gov/documents/app007.pdf>. If you use form APP-007, the court will award costs on appeal to the respondent.

- b. **Stipulated Request for Dismissal (No Costs on Appeal).** A sample stipulated request for dismissal, with each side to bear its own costs, is available on the website. See the “Local Forms” tab on the court’s website at [Stip for Dismissal \(pdf\)](#) or [Stip for Dismissal \(Word doc\)](#).
 - c. Requests for dismissal may be filed by fax to (714) 664-0897, or they may be e-filed. See section I.I.3, at page 11, above.
- D. **Dismissals of Appeals Without Prejudice.** The court will not dismiss an appeal without prejudice, even if you stipulate with the other side to request such a dismissal. All dismissals, whether voluntary or involuntary, are with prejudice.
- E. **Dismissals of Appeals With Prejudice.**
1. Grounds. The court may dismiss an appeal on its own motion, or on motion of a party. Grounds for involuntary dismissal of an appeal include untimeliness, lack of standing, lack of client consent to appeal, default in procurement of a record, failure to file an appellant’s opening brief, and mootness.
 2. Motion for Relief from Default. The best time to challenge a dismissal is to seek relief before the court files the dismissal order. The court for “good cause” may relieve a party from a default resulting from any failure to comply with the appellate rules except for the failure to file a timely notice of appeal. (CRC 8.60(d).)
 3. Motion to Vacate Dismissal Order; Jurisdictional Limits
 - a. After an appeal has been dismissed, the appellant may file a motion to vacate the dismissal under Code Civ. Proc. §473 for mistake, inadvertence, surprise or excusable neglect, and to cure the default. The motion for relief also may include an attorney’s affidavit of fault.
 - b. **WARNING!** Be aware that the dismissal order becomes final as to this court 30 days after it has been issued. After that time, the court may lack power to grant relief under Code Civ. Proc. § 473 during the time that appellate jurisdiction shifts to the California Supreme Court.
- F. **Stipulated Requests for Reversal** (Code Civ. Proc., §128, subd. (a)(8)).
1. Many settlements include a provision for reversing or vacating the trial court judgment. The Court of Appeal will not enforce such a settlement on the unilateral motion by one of the settling parties to reverse or vacate the judgment. Instead, you must follow detailed procedures for filing a *stipulated* request for reversal, with a *joint* application by the parties.
 2. Do not presume that the court will grant your stipulated request for reversal simply because both sides have agreed to it. To the contrary, the court will consider your application on a case-by-case basis, based upon the showing that you make in your joint letter brief and joint application (See E4, below.) The court may deny a stipulated

request if your showing is inadequate or perfunctory, or if it may have an adverse impact upon nonparties or upon the public.

3. Stipulated reversals are disfavored by statute, and are granted only where the court finds that specific statutory criteria have been met. (See Code Civ. Proc., § 128, subd. (a)(8); see *Hardisty v. Hinton & Alfert* (2004) 124 Cal.App.4th 999, 1005 [presumption against stipulated reversals]; *Union Bank of California v. Braille Inst. Of America, Inc.* (2001) 92 Cal.App.4th 1324, 1329-1330 [accepting stipulated reversal upon concession of likely reversible error].)
4. **What You Must File.** A stipulated request for reversal must include the following:
 - a. **Joint Application and Stipulation.** Your joint application for a stipulated reversal should describe your requested disposition of the appeal, and any proposed directions to the trial court.
 - b. **Memorandum of Points & Authorities / Joint Brief.** Your stipulated request for reversal should include a memorandum of points & authorities that persuasively argues why the panel should accept the stipulation under the statutory criteria in Code of Civil Procedure section 128(a)(8).
 - c. **Joint Declaration.** Include in your stipulation a joint declaration of counsel that describes: (1) the parties and factual and legal issues presented at trial; (2) whether the judgment involves important public rights or unfair, illegal or corrupt practices, or torts affecting a significant number of persons, or otherwise affects the public or a significant number of persons not parties to the litigation, (3) whether the judgment is against a state licensee, and, if so, whether it will subject him or her to any possible disciplinary proceeding; (4) whether the judgment may have collateral estoppel or other effects in potential future litigation and, if so, whether any third parties who might be prejudiced by stipulated reversal of the judgment have received notice of the stipulated request, and (5) whether the judgment involves discretionary determinations by the trial court that cannot be reversed by stipulation of the parties alone without independent appellate review. (See, e.g., *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123; *Stewart v. Stewart* (1955) 130 Cal.App.2d 186, 193.)
 - d. **Service Requirements.** Include a proof of service to show not only that you have served a copy of the stipulation on all parties, but also on all clients as well. (The proof of service need not include the clients' addresses.)
 - e. **Attachments.** Include a copy of the judgment that you are seeking to have reversed.
 - f. If you are filing a Stipulated Request for Reversal, you don't have to file a separate Notice of Settlement. (See CRC 8.244(a)(5).)

5. **Judicial Rulings.**

- a. Stipulated requests for reversal ordinarily are heard by a three-justice writ panel, unless the appeal already has been assigned to another three-justice panel for decision.
- b. The court issues a written decision, which is posted on the court's website, explaining why a stipulated reversal does (or does not) satisfy the statutory criteria in Code of Civil Procedure section 128, subdivision (a)(8).
- c. Occasionally, the panel may publish an opinion on a stipulated reversal, or direct the parties to appear for oral argument.
- d. Here are some examples of unpublished opinions from this court concerning stipulated requests for reversals: (1) *Scalzo v. Scalzo* (G045601, Apr. 26, 2012), 2012 Cal.App.Unpub. LEXIS 3192; (2) *Marbella Development Co. v. City of San Juan Capistrano* (G043605, Nov. 22, 2011) 2011 Cal.App. Unpub. LEXIS 9012; (3) *Laguna Terrace Park v. Cummins* (G040662, Dec. 7, 2010), 2010 Cal.App.Unpub. LEXIS 9682, 2010 WL 4953021; (4) *Afshar v. Mourshaki* (G043756, May 20, 2011) 2011 Cal.App.Unpub. LEXIS 3819, 2011 WL 1908271; (5) *Kunysz v. Sandler* (G041745) 2010 Cal.App.Unpub. LEXIS 317, 2010 WL 158775, and (6) *Carter v. Hunt Club Community Assn.* (G036053, Feb. 9, 2007) 2007 Cal.App.Unpub. LEXIS 1051, 2007 WL 431963. Since these are unpublished opinions, you may not cite or rely upon them as legal authority, but they are provided only as exemplars of judicial opinions on the subject.

G. **Dismissal of Writs.**

1. If you decide to withdraw or dismiss a writ that you previously have filed, you should file a written request or stipulation with the court to deny the writ. (Technically, the court *denies*, rather than *dismisses*, writ petitions.) The court retains discretion whether a petition should be denied based upon your request or stipulation.
2. A petitioner should notify the clerk's office immediately of any circumstances, including a settlement, that makes moot the request for writ relief. It is advisable to notify the clerk's office by telephone, and to follow-up with a letter, with a declaration (if necessary), that is served upon all parties to the writ proceeding.

- H. **Judicial Settlement Program.** In light of the budget shortfall for the judicial branch in the 2011-2012 California state budget, Division Three's Judicial Settlement Program has been terminated, effective July 1, 2011, excepting those matters for which tolling orders already have been issued. (CRC 8.248(d).)

◆ **Part Seven: Oral Argument**

A. **Oral Argument Calendar.**

1. **Schedule and Posting.**

- a. Each division in the Fourth District hears oral argument on pending cases one week per month.

- 1) Oral argument in Division Three (Santa Ana) is normally held the **third** full week of every month.
 - 2) Oral argument in Division One (San Diego) is normally held the **second** full week of every month.
 - 3) Oral argument in Division Two (Riverside) is normally held the **first** full week of every month.
- b. The court's oral argument calendars are posted at <http://www.courts.ca.gov/11666.htm> (click on tab for "Division 3"). The calendars show the date, time and assigned justices in any given month for matters that have been scheduled for oral argument. Calendars generally are posted at least one month in advance, but you should check periodically to see whether they have been revised.

2. **Request/ Waiver of Argument.**

- a. The clerk's office will send you a form asking whether you request oral argument. (This is generally mailed with the filing of the last respondent's brief.) You must file a written request for oral argument within 15 days of the date of the court's letter.
- b. You are limited to a maximum of 30 minutes per side (including time for rebuttal), but most appeals consume less time. State the amount of time you request, and serve all parties.
- c. If you do not respond to the court's letter, the court will assume that you have waived oral argument.
- d. Requests for oral argument may be filed by fax to (714) 664-0897, or they may be e-filed. See section I.I.3, at page 11, above.

3. **Calendar Preference.** If you claim calendar preference for oral argument, you must promptly serve and file a motion for preference. (CRC 8.240.)

4. **Panel Assignments.** Panels, including a justice tentatively designated to author the opinion, are generally assigned on a random rotating basis, subject to the presiding justice's responsibility to ensure that the court's resources are allocated in an effective and efficient manner to fairly and expeditiously resolve disputes, and to promote access to justice for all members of the public. (CRC 10.603(a).)

5. **Time Limits.** Additional time beyond the 30 minutes per side is allotted only in highly unusual situations, and requires an advance written request to the court. You must specify the amount of additional time and explain why. Serve the request on opposing counsel. If the Presiding Justice grants the request, both sides will be allotted equal time.

B. Continuances.

1. **Written Request.** You must make any request to continue oral argument no later than 15 days after mailing of the oral argument calendar. Your request must show proof of service on opposing counsel. Requests for continuance submitted later than 15 days will only be entertained by the court in a true emergency situation.
2. **Opponent's Position.** Your written request must state the other side's position. Without this, the request will not be forwarded to the Presiding Justice for consideration.
3. **Stipulated Requests for a Continuance.** The court will not agree to continue an oral argument simply because both parties have "stipulated" to it. While you may file a stipulated request for a continuance, the request must be made in a timely fashion and accompanied by a showing of good cause.
4. **What Constitutes "Good Cause."** Because of the considerable investment of court time and resources necessary to prepare a case for oral argument, continuances are disfavored and will be granted only on a showing of good cause. Be specific and explain why you cannot make alternative arrangements. Counsel are reminded that lower court proceedings do not take precedence.
5. If no appearance is made, the case may be ordered submitted.

C. New or Newly Discovered Authorities.

1. If you become aware of additional authorities or new cases after briefing has been completed, you must write a letter to the court in advance of oral argument listing such authorities, with service upon opposing counsel. Do not include any legal arguments or other discussion of the authority (CRC 8.254(a).)
2. You must send this letter about new authorities to the court as soon as you learn about it. (CRC 8.254(c).)
3. After oral argument is heard, you may send the court a letter about new authority only if the new authority was not available in time to be addressed at oral argument. (CRC 8.254(c).)

D. Oral Argument Proceedings.

1. **Tentative Rulings.** Division Three does not issue tentative rulings before oral argument.
2. **Timing of Appearances.** Attorneys and non-represented parties should appear no later than 9:00 a.m. and 1:00 p.m. to check in with the clerk inside the courtroom. Except for those matters specially set, counsel must be prepared to argue at 9:30 a.m. for the morning calendar and at 1:30 p.m. for the afternoon calendar.

3. **Content of Argument.** Make your oral argument as direct and concise as possible. The justices on your panel already will have read the briefs and will be familiar with the facts and legal issues. Appeals with longer time estimates generally are placed at the end of the calendar.
4. **Visual or Audiovisual Aids.** The court does not allow visual or audiovisual aids during oral argument. This prohibition extends to devices like poster boards, exhibits, projectors and, computer-assisted presentations.
5. **Media Requests re Oral Argument.** The Fourth District strictly follows CRC 1.150 in exercising its discretion to grant or deny requests to photograph, record or broadcast oral argument in high profile cases. Judicial Council forms are available for such requests, which must be filed at least five court days before such proceedings, unless good cause to shown to shorten the time.
6. **Remote Appearances; Video conferencing.** Due to budgetary constraints, the court's oral argument video conference has been suspended, effective May 15, 2013.
7. **Security Procedures on Oral Argument Days.** See page 5, above
7. **Transcripts / Audio Recordings of Oral Argument.**
 - a. The court does not transcribe oral arguments, and cannot provide written transcripts.
 - b. The court will provide audio recordings of oral arguments upon payment of a \$20 fee. You must provide the court with the name of the case and case number, the date of oral argument, and a check for \$20, made payable to "Clerk, Court of Appeal." Upon the receipt of the application, the clerk's office will send a copy of the recorded CD by return mail. There is a downloadable request form available on the court's website. See <http://www.courts.ca.gov/2746.htm>

◆ Part Eight: The Decision & Beyond

- A. **The "Submission" Date.**
 1. **The "90-Day Rule".** The "submission" date triggers the deadline for appellate decisions. The court files a written opinion within 90 days after the case is submitted.
 2. **Oral Argument Cases.** A case is generally "submitted" at the end of oral argument, as directed by the Presiding Justice. However, if the Presiding Justice allows the parties to submit supplemental post-argument letter briefs, the case will be deemed submitted when the supplemental briefs are due. (CRC 8.256(d)(1).)
 3. **"Waiver" Cases.** If there is no oral argument, the case is submitted at the conclusion of briefing and when the court accepts the waiver of argument. (CRC 8.256(d)(1).)

4. **Vacating Submissions.** The court may vacate the submission for good cause (for example, to consider the impact, if any, of a new Supreme Court opinion, or to consider diverging views by one or more panel members). The resubmission order will set a new timetable for the decision. (CRC 8.256(e).)

B. **Petition for Rehearing**

1. **Filing a Petition for Rehearing.**

- a. You must serve and file a petition for rehearing within 15 days after the filing of the opinion, or within 15 days after the filing of an order by the court to publish an unpublished opinion. (CRC 8.268(b)(1).) The court also may grant rehearing on its own motion. (CRC 8.268(a).)
- b. The petition for rehearing should not merely repeat arguments from the briefs, and is not a prerequisite for review in the Supreme Court. It should be directed at major misstatements of fact in the opinion, significant errors in the court's legal analysis, or important facts that were omitted. (CRC 8.268(b).)
- c. The rules for overnight delivery apply to petitions for rehearing. They are deemed constructively filed on the date of mailing by priority or express mail as shown on the postmark or the postal receipt, or on the date of delivery to a common carrier promising overnight delivery as shown on the date of the carrier's receipt. (CRC 8.25(b)(3).)

2. **Opposing a Petition for Rehearing**

- a. Because of the short period for finality, the court has adopted a miscellaneous order (Misc. Order #2007-3, see <http://www.courts.ca.gov/documents/pet-rehearing-dca4div3.pdf>) inviting, but not requiring you, to file an answer to a petition for rehearing. This permits you to file an answer notwithstanding CRC 8.268(b)(2) ("A party must not file an answer to a petition for rehearing *unless the court requests an answer.*") The court will send you a copy of this miscellaneous order whenever a petition for rehearing is filed.
- b. You will have 8 days from the date of the court's notice in which to file your answer, unless the court otherwise orders. (CRC 8.268(b)(2).) The rules for overnight delivery apply to answers for petitions for rehearing. (CRC 8.25(b)(3).)

3. **Jurisdictional Considerations.**

- a. The court loses its jurisdiction to rule on a petition for rehearing within 30 days from the date of filing of the opinion. If the court does not rule on the petition before the decision is final, the petition is deemed denied. (CRC 8.268(c).) Because of this, the time to file a petition for rehearing may not be extended, and the court has very limited powers to accept late petitions or answers. (CRC 8.268(a), 8.268(c).)
- b. An order granting rehearing vacates the decision and any opinion filed in the case and sets the matter at large in the Court of Appeal. (CRC 8.268(d).)

C. Finality of Opinions.

1. The Court of Appeal has jurisdiction over an appeal for 30 days from the date the opinion was filed or a request for publication was granted or an opinion was modified in a manner that changed the judgment. The court cannot modify or change an opinion or grant rehearing after an opinion becomes final. (CRC 8.264(b)(1), 8.268(a)(2), 8.268(c).)
2. While the Court of Appeal may shorten the time for finality for good cause, it may not extend it. (CRC 8.264(b)(3), 8.264(c), 8.268(c).)
3. Dismissals of appeals on request or stipulation become final immediately, as do summary denials of writ petitions. (CRC 8.264(b)(2).)
4. The parties only have 10 calendar days from the date of finality to file a petition for review with the California Supreme Court. (CRC 8.500(e).)

D. The Remittitur.

1. The remittitur is the document that says that the review of the case in both the Court of Appeal and the Supreme Court has terminated. The remittitur transfers jurisdiction back to the superior court so that the superior court can carry out the decision or decisions of the Court of Appeal or Supreme Court. (CRC 8.272.)
2. The clerk's office schedules the remittitur to issue 65 days after the date of filing of the opinion in the Court of Appeal. This time may be lengthened if a petition for review is filed in the Supreme Court and the Supreme Court extends the period, or grants review. The parties may stipulate to the immediate issuance of a remittitur as part of a settlement and dismissal of an appellate case. (CRC 8.244(c)(2), 8.272(c).)
3. The clerk sends the superior court a copy of the remittitur and a file-stamped copy of the appellate opinion or order. The remittitur includes a judgment awarding costs on appeal to the party prevailing on appeal unless the appellate court otherwise specifies. (CRC 8.276.)
4. If the appellate court awarded you costs on appeal, you must serve and file your memorandum of costs in the superior court within 40 days after the issuance of the remittitur. (CRC 3.1700, 8.278(c).)

E. Published & Unpublished Opinions.

1. The Court of Appeal decides cases by written opinion. Opinions are posted on the court's website throughout the day, usually within hours of filing. All the court's opinions are public documents. CRC 8.1100 through 8.1120 contain the standards for publishing appellate court opinions.
2. **Published Opinions.**
 - a. The same justices who decided an appeal also decide whether the opinion should be certified for publication. Published opinions may be immediately cited as legal precedent from the date of issuance, even though they generally do not become final for another 30 days. (CRC 8.1115(d).)

- b. The panel publishes an opinion where it: (1) establishes a new rule of law, (2) applies an existing rule of law to significantly different facts, (3) or modifies, explains or criticizes an existing rule, (4) advances a new interpretation of a constitution or statute, (5) addresses a legal conflict, (6) involves an issue of continuing public interest, (7) makes a significant contribution to legal literature, (8) invokes a previously overlooked rule of law, or (9) is accompanied by a concurrence or dissent on a legal issue, where publication of both would make a substantial contribution to the development of the law. (See CRC 8.1105(c).)
- c. Published opinions are posted at <http://www.courts.ca.gov/opinions-slip.htm> for 120 days after issuance. After 120 days, they are available for personal use on the searchable Official Reports public access website at <http://www.lexisnexis.com/clients/CACourts/>, which is updated monthly.

3. **Unpublished Opinions.**

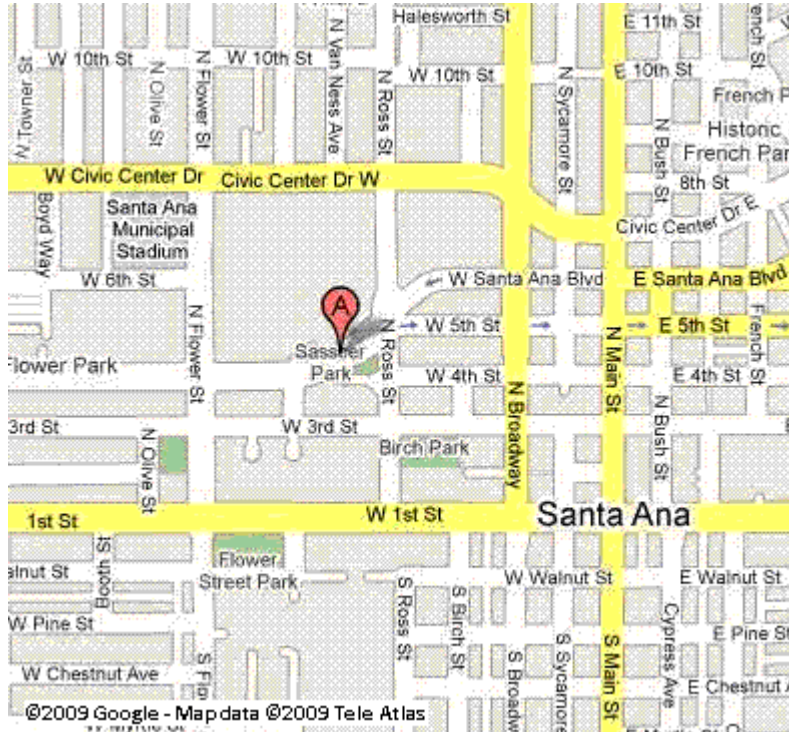
- a. Unpublished opinions are posted at <http://www.courts.ca.gov/opinions-nonpub.htm> for 60 days to inform the public about the court's work. Unpublished opinions cannot be cited as authority in any other action or proceeding except in very limited circumstances. (CRC 8.1115.)
- b. Any person (whether or not a party to the appeal) may request publication of an unpublished opinion. This request must be made by letter to the deciding justices, with a reasoned explanation. The letter must be filed and served within 20 days after the opinion is filed. (CRC 8.1120(a).) File an original with the court, with a proof of service on all parties to the appeal. Requests for publication may be filed by fax to (714) 664-0897. (See 4th District's Fax Filing Pilot Project, page 7, above.)

4. **Publication Status.** You should periodically check recently issued opinions to determine any changes in publication status because of petitions for rehearing, petitions for review, or requests to publish or depublish all or part of an opinion. (See CRC 8.1105(d).)

Appendix

DIRECTIONS TO COURTHOUSE

601 West Santa Ana Boulevard, Santa Ana, CA, (714) 571-2600



- **Driving south on Santa Ana Freeway (Interstate 5)**

Go south on the Santa Ana Fwy (I-5), until the Broadway / Main Street transition road. Exit at *either* Broadway or South Main Street. Proceed south for 1.2 miles until the intersection with Santa Ana Blvd.

Turn right onto Santa Ana Blvd. Continue west on Santa Ana Blvd. for .3 mile until you pass Ross Street, where you will see the courthouse on your right as you cross the intersection. Turn right at the next signal (Parton Street), where you will enter the P6 parking area.

- **Driving north on Santa Ana Freeway (Interstate 5)**

Go north on the Santa Ana Fwy (I-5). Exit at the Santa Ana Blvd. / Grand Ave. exit and make a left turn onto Grand Ave. Continue on Santa Ana Blvd. for 1.4 miles, past Ross Street. where you will see the courthouse on your right as you cross the intersection. Turn right at the next signal (Parton Street), where you will enter the P6 parking area.

- **Driving from John Wayne Airport**

Follow signs pointing to the SR 55 Freeway North (Riverside). Take the SR 55 Freeway North and continue until you reach the Santa Ana Freeway (Interstate 5) going north. Follow "Driving north on Santa Ana Freeway (Interstate 5)" directions above.

PARKING

Handicap parking is located in the P6 public parking structure which is located west of the court off Santa Ana Blvd. Public parking is also available at metered spaces available on the streets surrounding the court.

To park in the P6 structure, take a parking ticket at the gate, which is located to the north of the intersection of Santa Ana Blvd. and Parton St. Park in the first parking structure to your left, or in the open parking lot to your right. There are two self-service machines located inside the P6 parking structure, at the front. Insert your ticket and make the payment.

The parking cost is \$1 per half-hour, up to a maximum of \$20 per day (credit cards accepted). The court does not validate parking.

Reinsert your stamped ticket at the parking gate as you exit the parking structure.

Questions or Problems? Call the parking office (24 hours): (714) 973-0268.

ADMITTANCE TO THE COURT

As you leave the P6 parking structure, you will see the rear side of the court building, which is immediately to your east. Follow the "Court of Appeal" signs, past the Santa Ana City Hall, to the front entrance of the courthouse, which is located at the corner of Ross Street & Santa Ana Blvd.

A handicap ramp and staircase/pathway are located next the public parking structure and exits onto Ross Street on the north side of the building.