

Chapter 6

Other Things You Should Know

Abandonment, Settlement, and Dismissal

At some point in the process we just described, the appellant may decide to abandon the appeal. If this happens before the record has been filed, the appellant should file and serve a written abandonment or stipulation for abandonment at the appeals section of the superior court. The filing effects a dismissal of the appeal (see [Sample Form T](#)). (CRC rule 8.244(b).) If the clerk’s transcript has not been completed, the portion of the deposit that has not been used should be refunded. (CRC rule 8.122(d).) If it is after the record has been filed, the appellant should file and serve a written request or stipulation to dismiss in the Court of Appeal. (See [Sample Form U](#).) At this stage, the court has the discretion to accept or deny the request. (CRC rule 8.244(c).)

If the parties are able to agree on a settlement of their differences, the appellant must immediately serve and file a notice of settlement in the Court of Appeal that informs the court that the matter has settled. (CRC rule 8.244(a) (1), (2).) Within 45 days of that filing (or longer if ordered by the court), the appellant must either abandon or dismiss the appeal, depending on when the notice of settlement was filed. (CRC rule 8.244(a)(3).)

If at any time the *respondent* believes the appeal should be dismissed, the respondent should file and serve a motion to dismiss. If the *Notice of Appeal* is late, or “untimely,” the court has no power to hear the appeal, and the case will be dismissed. If the ruling is not appealable, the court may dismiss or it may elect to hear the case as a writ. The court will exercise its discretion in considering other dismissal motions, and may deny such motions if the issues raised in the appeal are in the public interest.

Motions

When do you file a motion? If there are problems with the record, a need for more time to complete a task, a desire for preference or priority in getting the court to handle the case or any problem other than the failure to file a timely *Notice of Appeal*, you can file a motion or application asking the court to take care of the problem. (See, CRC rules 8.240, 8.54, 8.50.) A motion can also be used to vacate a dismissal that has been entered against you, to consolidate two cases, and so forth.

What is a motion or application? Any kind of request of the Court of Appeal (for example, for an extension of time) is made by motion or application. CRC rule 8.54 covers “motions in the reviewing court,” and CRC rule 8.50 deals with “applications” on routine matters, such as applications to extend or shorten time.

CRC rule 8.212(b) specifically covers stipulations and applications for extensions of time. The Fourth Appellate District, Division One does not differentiate between motions, applications, and requests.

How is a motion prepared? If filed in paper form, the motion should be typewritten, with *Proof of Service* (see [Sample Form C](#)) on all counsel and self-represented parties, and an original and one unbound copy without tabs, filed with the Court of Appeal (unless the Court of Appeal orders a different number of copies). (CRC rules 8.54(a), 8.44(b)(4).) You need to tell the Court of Appeal why you are making the request (show "good cause"), provide additional information that might be relevant, and let the Court of Appeal know what it is you want it to do (such as grant preference in the Court of Appeal in the processing of your case based on a terminal illness, add to the record, take judicial notice, etc.). Along with the motion should be points and authorities to support the request and documentary evidence (declarations and exhibits) if it is needed to support your request. Points and authorities are just that: the points set out the argument you wish to make, and the authorities give the legal reasons that the motion should be granted or denied (see [Sample Form L](#)). At least one declaration should, under penalty of perjury, identify the facts surrounding the request, what you have done or attempted to do to take care of the problem, what you want the court to do, and why it is necessary (see [Sample Form M](#)). Where motions are defective, the court may deny the motion "without prejudice," which means the applicant may correct whatever problems there are and refile the motion.

Any opposition to the motion must be served and filed within 15 days from the date the motion was *filed*. (CRC rule 8.54(a)(3).) Most motions are not ruled on until the time to file the opposition has passed. If no opposition is filed, the motion is usually granted. Generally, there is no hearing on a motion.

What is a motion to augment? A motion to augment the record is used when items are missing from the record on appeal (the clerk's or reporter's transcript). (See [Sample Forms L, M, N, O, P](#).)

If the superior court clerk or reporter failed to include something that was designated in your designation of record, you do not need to file a motion to augment. Instead, serve and file a notice to correct the record in the superior court, asking that the missing items be copied and sent to be added to the record. (CRC rule 8.155(b).) At the same time, you need to serve on the Court of Appeal and all parties copies of the notice to correct the record. The clerk or reporter must comply within 10 days. If the clerk or reporter does not, you then need to file a motion to augment. However, if you already have a copy of the document that the superior court clerk omitted, it may be faster and cheaper to file a motion to augment to which you just attach the document instead of filing a notice to correct the record.

If new material is to be added to the record because the appellant or respondent forgot to designate it or did not know at the time that it would be needed, a motion

to augment must be filed with the Court of Appeal. Each item requested must be a part of the record that was before the superior court such as a document that was filed in the superior court, received in evidence, or lodged with the court or a transcript of oral proceedings. An item that was “lodged” with the court (rather than being filed) was returned to the parties and thus is not physically in the superior court file or in the custody of the court. Any document or transcript that is available should be attached to the motion and the pages must be consecutively numbered, beginning with the number one. The court, if it grants the motion, then augments its record with the documents or transcripts included with the motion. A *Motion to Augment Record on Appeal* with documents attached is included as [Sample Form N](#).

If copies are not available, the items must be identified as they are in a designation of the record so that the superior court can prepare the needed clerk’s and/or reporter’s transcripts. These added transcripts are called “**supplemental**” **clerk’s and/or reporter’s transcripts** if the motion is granted. (CRC rule 8.155.) A *Motion to Augment* where the documents must be copied by the superior court to prepare a supplemental clerk’s transcript is included as [Sample Form O](#). A *Motion to Augment Record on Appeal* with reporter’s transcript is included as [Sample Form P](#).

If you need to have a supplemental clerk’s and/or reporter’s transcript prepared, it will take some time. The superior court will prepare an estimate of the cost of preparing the supplements. After the estimate is paid, the superior court is usually given 30 days to actually prepare the materials. If your brief is due within this time, your motion to augment should include a request to extend the deadline for filing the brief to 30 days after the supplemental transcript is filed. The title of your document should be “Motion to Augment the Record and Application to Extend Time to File [Appellant’s Opening, or Respondent’s or Appellant’s Reply] Brief.”

If the Court of Appeal orders the record augmented on its own to include a supplemental reporter's transcript, the appellant is responsible for the cost unless it obtains an order that it need not pay.

What is a stipulation or request for extension of time? The parties may stipulate (agree) to extend the briefing time up to 60 days for each type of brief by filing one or more stipulations in the Court of Appeal before the brief is due. (CRC Rule 8.212(b)(1).) However, you may not stipulate to extend the time if the court has already granted an application to extend time to file your brief. The stipulation must be signed by and served on all parties. (See [Sample Form Q](#).)

If a party needs more than the 60 days already stipulated to, or if the opposing party refuses to stipulate to an extension, the party needing the extension must file an application for extension of time. ([Sample Form R](#).) The party seeking additional time must give reasons, also known as "**good cause**," why that extension

is needed. In addition, the applicant for an extension of time should explain either that (1) the applicant was unable to get the agreement of the other party to a stipulated extension or (2) the parties have already stipulated to the maximum 60 days and the applicant now is seeking permission of the court for a further extension. (CRC Rule 8.212(b)(3).)

An *Application for Extension of Time to File Brief* ([Sample Form R](#)) should include the current deadline for the brief or item, the length of the requested extension, any previous applications that have been granted or denied, and any notices that have been issued under CRC rule 8.220, in addition to a statement of good cause (the reason). (CRC rules 8.50, 8.60(b), 8.63.) You need to file with the court an original *Proof of Service* of the request on all parties (see [Sample Form C](#)). In a civil case, a request for an extension of time must be served on any party represented by the attorney requesting the extension. Evidence of this need not include the client's address. (CRC rules 8.50, 8.60(f).)

Most often, applications for extension of time are ruled on without waiting for opposition. Thus, if you wish to oppose an application for extension of time, you must file the opposition (or call the clerk's office and let them know you will be filing an opposition) right away.

Costs

As a general rule, the party who wins the appeal (also called the "prevailing" party) is entitled to recover "costs." (CRC rule 8.278.) Costs include the money paid by the other side for certain items listed in CRC rule 8.278(d)(1), and the amount will typically be determined by the superior court, not the Court of Appeal. If you win your appeal and want to recover your costs, you must follow the procedure in CRC rule 8.278(c) for filing a verified Memorandum of Costs in the superior court. If you lose your appeal, you may be ordered to pay the costs of the other side. You may also be ordered to pay costs if you abandon your appeal. In cases where a statute or contract allows it, costs may include attorney fees. In order to obtain a fee award, the party must follow certain procedures for making that request either in the Court of Appeal or in the superior court. (CRC rule 3.1702; Code of Civil Procedure, section 1033.5(c)(5).)

Online Case Information & E-mail Notification

You may obtain online information about your individual case by clicking on "Case Information" at the website for the Fourth Appellate District, Division One, <http://www.courts.ca.gov/4dca.htm>. Find the "Case Information" section, click on "Division 1 (Case Prefix D)." You may access information about your own case by searching the Court of Appeal case number, the trial court case number, party name, attorney name, or case caption. The best method is to use the Court of Appeal case number. Once you get to the case information summary screen for your case, you may

view all of the docket entries for your case, a summary of future scheduled actions, a briefing summary, the disposition (if the opinion has been issued), party and attorney information (including attorney addresses), and trial court information (including name of trial judge and date of judgment).

You may also request automatic e-mail notifications about future actions taken in your case by clicking on "[Click here](#)" to request automatic e-mail notifications about this case. If you provide your e-mail address, you will automatically be notified of certain specified events that occur in the case. You may choose to be notified when the record on appeal is filed, when a brief is filed, when the court issues a calendar (oral argument) notice, when the court finally disposes of the appeal, and when the remittitur is issued. Whether or not you sign up for e-mail notification, you will still be notified of all of these events by a mailed notice from the court.