

Self-Help Manual
for
Orange County Civil Appeals



Fourth Appellate District
Division Three

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California Court of Appeal
Fourth Appellate District, Division Three
601 West Santa Ana Blvd.
Santa Ana, California 92701

<http://www.courts.ca.gov/4dca.htm>

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Introduction

This manual describes in simple terms the civil appellate process and the related California Rules of Court that are in effect as of the date at the bottom of the page in each chapter. The manual is intended for persons who represent themselves (also called “self-represented litigants” and those “in pro per” or “in pro se”) who are bringing civil appeals to the California Court of Appeal, Fourth Appellate District, Division Three, which has jurisdiction over appeals from Orange County. The manual does not cover criminal or juvenile dependency appeals.

The customs and practices of each Court of Appeal and the divisions within them may be different. If you are not filing your appeal in Division Three of the Fourth Appellate District, you must be careful in using this manual to make sure the same rules apply to the court in which you have filed your appeal.

The materials included here are not legal advice and may not be used as legal authority. The primary legal authority for the practices described in this manual is the California Rules of Court. (The California Rules of Court are sometimes referred to in this manual as "CRC," for example, "CRC rule 8.100.") The manual does not replace or supersede the California Rules of Court. It is merely a general summary of the applicable rules. The rules themselves are subject to change, and you should consult them directly.¹ If the information here differs from the California Rules of Court, you must follow the California Rules of Court.

The process of appealing a civil case is a series of steps. Many of the steps are presented in this manual in the form of questions that you need to answer in the order shown. This manual answers some questions and guides you in answering others.

All of the forms referred to in this manual are included in the final section entitled "Sample Forms and Instructions," along with detailed instructions for filling them out. If you want to keep a **file-stamped** copy of the filed document for your personal files, you

¹ The California Rules of Court are available at any law library, on the Internet at <http://www.courts.ca.gov/rules.htm>, or can be ordered for a fee by calling 1-800-328-9352. See CRC rules 8.100–8.278 and 8.500-8.552 if you are appealing from the unlimited jurisdiction of the superior court to the Court of Appeal. Appeals from the limited jurisdiction of the superior court to the appellate division of the superior court are covered by CRC rules 8.700-8.773; transfer from the Appellate Division of Superior Court to the Court of Appeal is covered by CRC rules 8.1000-8.1018. This manual discusses only appeals to the Court of Appeal, not to the Appellate Division.

should (1) bring an extra copy if you are going to the court in person *or* (2) provide an extra copy and include a self-addressed, stamped envelope if you are filing your document by mail.

If you are reading a hard copy of this manual, you may access the entire manual online and print up the sample forms by going to the website for the Fourth Appellate District. <http://www.courts.ca.gov/2988.htm#tab19185> Scroll down to and click on "Self Help Resources." Click on the tab for Division 3, then click on "Self-Help Manual for Orange County Civil Appeals" to access the manual. Other useful information is also available on this website, including directions to the court, parking information, answers to frequently asked questions (click on "FAQ"), and the local rules, practices, and procedures of the court. You may also access online information about your own case by clicking on "Case Information." (See [Chapter 6](#).)

The sample forms in this manual are also available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courts.ca.gov/forms.htm>. A more abbreviated description of the civil appeal process (form APP-001) is also available at this Internet address.

For filing, briefing, and/or arguing your appeal, you should consider hiring an attorney if you are able to do so. Bringing a case to the Court of Appeal without an attorney is hard work and takes a good deal of time. If you are self-represented, you are held to the same level of work as if you were an attorney. In most cases, you have only one chance to have the court hear your case. In addition, you must follow all of the court's rules and procedures. If you do not, your case may be dismissed. An attorney who has done some appeals and knows how to handle them will know what to do when, and can guide your case through the court process.

If you do not pay fees and file papers on time, your appeal may be dismissed as having been "abandoned" by you. This happens because the Court of Appeal assumes that if you do not take care of the things that need to be done, you are no longer interested in going forward with your case. You will always get a notice that the case is going to be dismissed before it happens so you will have a chance to do whatever is needed to keep the appeal going. But if you do not promptly do what is needed, the appeal will be dismissed.

It is important to tell the superior court, the Court of Appeal, and all counsel and self-represented parties about any change in your address or telephone number. You can do this by serving and filing a change of address with both courts.

It is difficult to win an appeal. Only about 20 percent of civil appeal cases are reversed. The Court of Appeal does not retry the case, take new evidence, or weigh the credibility of witnesses. The appeal must be based on the record created in the superior court.

Generally, the appealing party must demonstrate that a legal error was made by the superior court. If you had a trial, the Court of Appeal will not second-guess the superior court judge or jury and find in your favor simply because you had more witnesses or more evidence than the other side. The Court of Appeal presumes the superior court judgment is correct, and the appealing party must overcome this presumption to win the appeal. Not only must there be a mistake or error of law for the case to be reversed, but the alleged mistake must generally have been pointed out through an objection to the superior court judge. In other words, your attorney—or you, if self-represented in superior court—must have made a specific objection during the trial to raise most issues on appeal. If there was a mistake, it also has to have been important enough that it could have made a difference in the outcome of the case.

If you do not win your appeal (the judgment or order you have appealed from is "affirmed"), you may be ordered to pay "costs" – the money paid for certain items by the other side in responding to your appeal. (CRC rule 8.278.) In some cases, costs may include the other side's attorney fees. This may be a large amount of money. You should carefully consider this risk before you file your appeal.

The appeals section of the superior court processes the *Notice of Appeal* and designation of the record, prepares the record for the appeal, and certifies the record to the Court of Appeal. After you have filed your *Notice of Appeal*, the superior court will send a copy of it to the Court of Appeal, where it will be given an appellate court case number. Any papers, pleadings, or briefs you file should have this number on the cover (if you use a cover) or on the first page.

You may not visit or talk about your case with a justice or a member of his or her staff. The Court of Appeal clerk's office will help you as much as they can, but they cannot give you legal advice or tell you what to put in your papers.

Chapter 1

Can You Appeal?

You are unhappy with a decision of the superior court. You wish to appeal to a higher court. Can you do so? The first three steps will help you decide. First you must consider whether you are a person who can appeal. Next the court must have made a judgment, an appealable order, or an order after judgment that is appealable, and you must have the paperwork to verify that. Then you must file a form called a *Notice of Appeal* by a certain deadline, letting the court know that you intend to appeal.

Step 1. Are you a person who can appeal?

Not everyone can appeal. In order to appeal, you must be “aggrieved.” “Aggrieved” means the superior court or administrative agency made a decision that affects your legal rights (for example, it upheld your being fired by your employer) or costs you money (for example, ordering you to pay doctor bills for someone you hurt in a car accident that you caused). Usually you must have been a party in the case in the superior court. You may not appeal for a spouse, a child (unless you are the child’s guardian), or a friend.

Step 2. What can you appeal?

Not every court ruling is appealable. In family law and probate cases, most of the orders made in the case can be appealed right away. However, in other cases you can appeal only a final judgment or an order after final judgment, with some exceptions. The court usually makes its final judgment at the end of the case. This may be a ruling by the superior court judge, with or without a hearing, or it may be after a trial with a jury.

In some instances, the court dismisses a case before it ever gets to trial. This means the plaintiff has not been able to show the court that anyone did anything legally wrong to him or her. A dismissal may come after a demurrer. A demurrer is a motion brought by the defendant saying that even if everything the plaintiff has said in his or her complaint is true, the complaint still does not present anything that is legally wrong or that can serve as the basis for a lawsuit. If the court agrees that there is no basis for a suit, it dismisses the case. An order granting a demurrer and dismissing the case is treated as a judgment if it is signed by the judge. Therefore, the ruling granting the demurrer (or, in legalese, “sustaining the demurrer without leave to amend”) and dismissing the case is an appealable order if it is signed by the judge.

Another condition under which a case might be dismissed before trial is after a motion for summary judgment has been brought. A motion for summary judgment comes after the parties have **discovery**—they have learned the facts of what happened and developed evidence in the case. If there are no “triable issues of material fact”—that is, there is no conflicting evidence about dispositive facts—either the plaintiff or the defendant or both may bring a **motion (or motions) for summary judgment** saying the court must rule in their favor as a matter of law. This is because the trial court is the fact-finding court, and if there is no genuine dispute about the material facts, there are no facts to be found; thus, the court need only apply the law to the undisputed facts and rule for the appropriate side.

Despite the name “summary judgment,” the ruling of the court that comes after the filing of a motion for summary judgment is an **order**, not a final judgment. An order granting summary judgment is not appealable. The court must make a later final judgment, which is appealable.

After the trial or hearing is over *or* the superior court judge makes a ruling, you need to get a file-stamped copy of the ruling you want to appeal. This ruling may be included as part of the court’s minutes, or it may be a separate piece of paper labeled *Judgment, Order* or *Order after Judgment*.²

What are the minutes? The minutes are the official court record of what happened during the case. Minutes are written down by the clerk and kept in the superior court file for your case. You can identify the minutes by looking at the bottom of the pages in your file and seeing the label “Minutes.” Among the minutes the clerk may record the court’s ruling if it is an order. Because it is presented in the minutes, it is called a **minute order**. (There is no such thing, however, as a minute judgment.) You can recognize the order because it is expressly called an order, or the language directs (orders) that something be done or the language decides or resolves a dispute. If the minute order is signed by the judge and file-stamped, it may be used as the basis of the *Notice of Appeal*.

If you do not see something in the minutes labeled “Order,” look closely through the minutes to see if the court has said that you or one of the other parties should prepare a formal judgment or order. If that is the case, you may not use the minutes but must wait until a separate document titled *Judgment, Order, or Order After Judgment* has been prepared, signed by the superior court judge, and file-stamped. The file

² We started this section by saying that not every court ruling is appealable. Mainly judgments and orders after judgment are appealable. Orders before judgment—orders from motions ruled on before trial, or during trial before there is a judgment—may be reviewed at the Court of Appeal by a petition for writ. This procedure is very different from appeal.

stamping makes this an official court document and includes the date on which the item was stamped. You then use this as the basis for your *Notice of Appeal*.

What is a judgment or order? A judgment comes at the end of the case and has to do with one or more of the parties. As already mentioned, it may be the verdict of the jury, or it may be a ruling by the superior court judge.

If it is a ruling by the judge, it may come after a trial in which the parties decided not to have a jury, or it may be the result of a motion before trial. After the superior court judge grants a motion for summary judgment, he or she issues a judgment. In any of these cases, it is the judgment that tells what the final result of the case is—who is the “winner.” It may award money to one or more of the parties, or it may direct that something be done. For example, it might say: “Damages to the plaintiff in the amount of a zillion dollars.” All final judgments are appealable.

Instead of a judgment, you may want to appeal an appealable order. As mentioned, an order is the ruling that is made after the superior court judge has heard and decided a motion. For the order to be appealable, it generally must follow a motion made in a family law or probate matter (in which most orders are appealable), a demurrer or some other motion resulting in a dismissal, or an order following a judgment.

For example, after the judgment has been entered, counsel may make a motion for attorney fees. The ruling on this motion can be appealed separately from the judgment on the case as a whole. In this example, the order would direct or deny the payment of attorney fees. If the judgment or order were in a separate document, the document would probably be titled *Judgment* or *Order* or *Order after Judgment*.

If there is no judgment in the court file, and nothing in the minutes says who is to prepare the judgment, then generally the winning party prepares the order or judgment. Before you start your appeal make sure you have a copy of this order or judgment. This court recommends that the order or judgment be signed by the judge and file-stamped in the upper right-hand corner. The date of the file stamp is the date of the entry of the judgment. (If your order is in the minutes, the date of entry is the file stamp on the minutes.) This is the date from which you count to figure out how much time you have to file your *Notice of Appeal*. (CRC rule 8.104(d).)

Step 3. When can you appeal?

When can you file a Notice of Appeal? A Notice of Appeal is the form you file in superior court to let the court know that you intend to appeal ([Sample Form A](#)). You can file a Notice of Appeal as soon as the order or judgment is signed by the superior court judge and file-stamped by the court clerk. The judgment is “entered” when it is

file-stamped; this is also called the entry of judgment. After the entry of judgment you may want to serve and file a Notice of Entry of Judgment ([Sample Form B](#)), which, as discussed later, puts a time limit on the filing of the Notice of Appeal.

If an appealable order is included in the minutes, signed by the judge and file-stamped by the court clerk, it can be the basis for your appeal.

If no appealable order is included in the minutes, the person designated in the minutes or, if no one is designated, the winning party, prepares an order or judgment. In any case, you must wait to file the *Notice of Appeal* until a separate document titled *Judgment, Order, or Order After Judgment* has been prepared, signed by the superior court judge and file-stamped by the court clerk. (CRC rule 8.104(d).)

In some cases, no order or judgment has been prepared, no party has been directed to prepare the order or judgment, or the party who was directed to prepare one has failed to do so. Then, any party may prepare an order or judgment in any case except family law cases. Most often, it will be the appellant who does so because he or she needs the order or judgment to go ahead with the appeal. If you prepare a proposed order or judgment, you must serve it (as discussed later) on opposing counsel and on the superior court. Ask for opposing counsel's approval as to form within a certain number of days say, 10 or 15.

If opposing counsel approves, take or mail the approval along with the proposed judgment or order to the superior court department where your case was heard. Ask the judge to sign it and the clerk to file-stamp it.

If opposing counsel does not approve the judgment or order or does not respond to your request for approval, the superior court will hold the proposed judgment for 20 days from the date of service. At the end of the 20 days the court may sign the order or judgment, hold a hearing, and/or make changes in the proposed order or judgment. In any case, the court will mail you a signed, file-stamped copy. It is this order or judgment that you should use as the basis of your appeal.

What factors affect the time of filing? The time allowed to file a *Notice of Appeal* depends on whether there was a notice of entry of judgment and, if so, when it was served (service is discussed later) *or* whether there was a timely motion (for new trial, to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration) that, when denied, extends the time.

What is notice of entry, and how does it affect the time of filing? Judgment is entered when the court clerk file-stamps the appealable order or judgment. The parties may not know the exact date when this was done. The court clerk or any party may provide notice that the judgment was entered. The clerk may do so by

serving (as discussed later) a Notice of Entry of Judgment (or Order) or a copy of the judgment or order to the person filing the Notice of Appeal; any party may provide Notice of Entry of Judgment by serving each of the other parties with either (1) a *Notice of Entry of Judgment* ([Sample Form B](#)) or (2) a file-stamped copy of the judgment. A *Proof of Service* ([Sample Form C](#)) must be attached to either document. If either the clerk or the party has served the notice of entry, the *Notice of Appeal* must be filed within 60 days of the date of either (1) the court clerk's serving or (2) the party's serving a copy of the judgment, minutes, or *Notice of Entry of Judgment*, whichever comes earlier. (CRC rule 8.104(a).)

What if there is no notice of entry of judgment? If there is no notice of entry, the appellant has 180 days after entry of the order or judgment to file the *Notice of Appeal*. (CRC rules 8.104(a), (c).) Even if there are extensions (see next section), the *Notice of Appeal* may not be filed if 180 days have passed since the entry of the order or judgment (recall that this is the date stamped in the upper right-hand corner of the judgment or order).

What motions will extend the time to file? The time to file the *Notice of Appeal* may be extended if there is a timely motion:

- For new trial,
- To vacate (or set aside) the judgment,
- For judgment notwithstanding the verdict, or
- To reconsider an appealable order. (CRC rules 8.108(b)–(e), 8.823(b).)

The time limits for filing these motions are set out in Code of Civil Procedure sections 659 (for motion for new trial), 663a (for motion to vacate the judgment), 629 (for motion for judgment notwithstanding the verdict), and 1008(a) (for motion to reconsider an appealable order). If one of these specified motions has been filed, you should carefully consult CRC rules 8.108 and 8.823 to determine the applicable deadline for filing the *Notice of Appeal*.

If the *Notice of Appeal* is late in a civil case, the appeal must be dismissed.

The five-day extension under Code of Civil Procedure section 1013 for service by mail does *not* apply to notices of appeal and does *not* extend the time to file them.

Chapter 2

Filing the Notice of Appeal

Now that you have determined that you *can* file an appeal, the first thing you need to do is file and serve your Notice of Appeal. Step 4 will tell you how to do this, how much it will cost and what happens if you do not pay on time.

Step 4. How does the appellant prepare the Notice of Appeal?

Look at the [Sample Form A](#) and the accompanying instructions. In the upper left-hand corner of the form is the place where the name and address of the attorney or the self-represented appellant goes. Below that is the name of the case (the caption) as it appeared on the papers in the superior court. The case number (item 7) is the superior court number. The appellant fills in the judgment and/or order that is being appealed and the date of the entry of judgment or order. The appellant, the attorney for the appellant, or the self-represented appellant bringing the appeal signs the Notice of Appeal. Once appellant has completed the Notice of Appeal, a copy must be “served on” all parties and the original must be filed with the superior court appeals section.

What is service? Service of documents means mailing, hand-delivering, or electronic transmittal when permitted. You let the parties know what you are doing by having copies of the documents you plan to file with the court—in this case, the Notice of Appeal—mailed or hand-delivered to them. Copies of all of the documents you prepare should be served on all counsel and self-represented parties, and the original filed with the court. A document may be hand-delivered or mailed only by someone who is over the age of 18 and is not a party to the lawsuit. For example, if you are self-represented in an appeal, you cannot hand-deliver or mail your Notice of Appeal to the parties. Someone else, an adult who is not a party, must do it for you.

How do you know the document was served? A Proof of Service, which must be filled out and attached to each document you file, is included in this manual as Sample Form C. Depending on whether you are having service done by mail or in person, the person doing the service needs to fill out the Proof of Service properly. The originals of the Notice of Appeal and Proof of Service are filed with the appeals section of the superior court. (CRC rule 8.100(a).)

Is there a charge for filing an appeal? The appellant must include a \$775 filing fee by check, money order, or cash along with the Notice of Appeal unless the appellant has a fee waiver. A check or money order should be made payable to “Clerk, Court of Appeal.” A second check or money order for \$100, made payable to “Clerk of the Superior Court,” must also be included and is a deposit for the clerk’s transcript. This second check need not be included if you, as appellant, plan to prepare an appendix under CRC rule 8.124, described later.

If you file a notice of cross-appeal, you must pay a \$775 filing fee. If you are a respondent or party other than the party who filed the appeal, you must pay a \$390 filing fee when you file your first document in a case. These fees are required unless you have a fee waiver.

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

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

What happens if fees are not paid? If these fees are not paid or waived, or if the appellant’s check bounces, the court gives the appellant notice that he or she has 15 days to either pay the fee or have it waived, or the appeal may be dismissed. If the matter is dismissed, the court may, upon a motion, reinstate the appeal if there is a good reason why the payment is late. (CRC rule 8.100(c).) If the court grants the motion to reinstate the appeal, it gives a specific time for payment(s) to be made.

Chapter 3

Preparing the Record on Appeal

After filing the *Notice of Appeal*, the appellant next needs to pick out what items are to be in the **record on appeal**. This is called "designating the record" and must be done in every case. The record in an appeal is the official account of what went on at the hearing or the trial that is being appealed. A party designates the record by listing what items to include in a *Notice Designating Record on Appeal* form ([Sample Form F](#)). This notice must be served and filed at the superior court within 10 days of the filing of the *Notice of Appeal* (CRC rule 8.121). Because of the short time period between the filing of the *Notice of Appeal* and the *Notice Designating Record on Appeal*, **appellants often file both documents at the same time**. But the court does not require that they be filed together. Each document needs its own proof of service.

The record is an extremely important part of an appeal. Think of the record as a package that contains all of the information that the justices might need to know about what happened in the trial court in order to review the case. You can only put into the package those items (filings, transcripts, orders, motions, minutes, etc.) that were part of the trial court proceedings. Furthermore, when writing your brief and conducting oral argument, you can only refer to parts of the trial court proceedings that are included in the package. The contents of the record limit the scope of issues and information that the parties can use in their arguments and that the Court of Appeal will consider as it reviews the case. Anything in the record can be examined and considered. For the purpose of appellate review, any parts of the superior court trial that are not included in the record do not exist, will not be examined or considered by the Court, and cannot be used by either party to support their case.

The record normally includes:

1. A **clerk's transcript** (CRC rule 8.122), and
2. A **reporter's transcript** (CRC rule 8.130).

The **clerk's transcript** can include any documents that are in the superior court file—the papers that were filed, the orders that were made, the things that were done, or a record of administrative proceedings. The clerk's transcript is prepared by the superior court based on what you listed in the *Notice Designating the Record on Appeal*. Instead of having the superior court prepare a clerk's transcript, you or you and the opposing party may prepare and file a CRC rule

8.124 appendix (discussed below) or another substitute. (The substitute can be a CRC rule 8.128 stipulation to use the superior court file, a CRC rule agreed statement, or a CRC rule 8.137 settled statement.)

The reporter's transcript is a word-for-word record of everything that was said in court during the hearings or trial (the oral proceedings). It is taken down by a certified court reporter, who then types it out (transcribes it) for the appeal. A reporter's transcript is only needed if the oral proceedings relate to the issues you want to talk about on appeal. (The reporter's transcript may be substituted with a CRC rule 8.134 agreed statement or a CRC rule 8.137 settled statement.)

How do you let others know which kind of record you have selected? Prepare an Appellant's Notice Designating Record on Appeal ([Sample Form F](#)). The four most common choices for the type of record are: (1) appendix and reporter's transcript, (2) appendix only (no reporter's transcript), (3) clerk's and reporter's transcripts, and (4) clerk's transcript only (no reporter's transcript). Check the appropriate box on the form. If you choose to have the superior court prepare a clerk's transcript, fill out paragraph 4 on pages 2 and 3 of the Appellant's Notice Designating Record on Appeal, under the heading "NOTICE DESIGNATING CLERK'S TRANSCRIPT." This paragraph is where you list the documents from the superior court file that you want included in the clerk's transcript, as described in a later section. If you choose to have a reporter's transcript prepared, fill out paragraph 5 on pages 3 and 4 of the Appellant's Notice Designating Record on Appeal as noted earlier. The original Appellant's Notice Designating Record on Appeal is filed in the Appellate Division of the superior court. It must be accompanied by a Proof of Service (Sample Form C) showing that all counsel and self-represented parties were served. If a reporter's transcript has been requested, the court reporter needs to be served.

How soon does the notice need to be served and filed? The Appellant's Notice Designating Record on Appeal with Proof of Service must be served on all counsel, self-represented parties, and reporters if a reporter's transcript has been requested. It is filed with the appeals section of the superior court within 10 days after filing the Notice of Appeal.

For a court-prepared clerk's transcript and/or a reporter's transcript, the appellant must identify the specific items to be included. What is to be included will depend on the issues the appellant is planning to talk about on appeal. These issues, in turn, will depend on which rulings the appellant believes were so wrong that the judgment or order should be overturned. The appellant needs to think about the trial, what rulings may have been wrong, and what part of the record will best tell the Court of Appeal why these rulings were wrong. These are the items the appellant should "designate for the record."

The Appellant's Notice Designating Record on Appeal must be served on the respondent(s) and all known court reporters. The original must be filed with the

superior court appeals section within 10 days after filing the Notice of Appeal. It must have with it a Proof of Service on respondent(s) and reporter(s), a \$50 fee, and a deposit to pay for the reporter's transcripts. (CRC rules 8.121(a), 8.130(a).)

If the appellant does not provide everything needed in the *Appellant's Notice Designating Record on Appeal*, the superior court sends a notice to the appellant asking him or her to provide what is needed or correct the problem.

What if the respondent also wishes to designate the record? If, after being served with the Appellant's Notice Designating Record on Appeal, the respondent wishes to designate additional parts of the transcript, a respondent's designation or Respondent's Notice Designating Record on Appeal ([Sample Form M](#)) must be served and filed with the superior court Appellate Division within 10 days of the service of the appellant's designation. (CRC rule 8.130(a).)

Step 5. Getting the reporter's transcript

What is a reporter's transcript? The reporter's transcript is a word-for-word typewritten record of everything that was said in court during the trial or hearing.

When is it necessary? The appellant should request a reporter's transcript if what was said at the trial or hearing relates to the issues the appellant wants to talk about on appeal. If what was said at the trial or hearing has nothing to do with the issues for the appeal and the appellant does not want it typed up, the appellant does not need to request a reporter's transcript.

How soon do you have to ask for it? Within 10 days after filing the Notice of Appeal, the Appellate Division of the superior court must be told whether the appellant does or does not want a reporter's transcript.

What if the appellant is not requesting a reporter's transcript? The appellant should notify the Appellate Division of the superior court in writing that no reporter's transcript is needed by checking the proper box under paragraph 2, on pages 1 and 2 of the Appellant's Notice Designating Record on Appeal (Sample Form F), under the heading "RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT." This document must be served on the respondent. If the appellant does not ask for a reporter's transcript, the respondent may not ask for one, either. The Court of Appeal, however, may—on its own motion or on the motion of the respondent— order the preparation of the reporter's transcript in the interests of justice. The appellant is responsible for the cost of any reporter's transcript ordered by the Court of Appeal, unless the appellant obtains an order that it need not pay. (CRC rule 8.130(a)(4).)

What if the appellant is requesting a reporter's transcript? Make a list of the dates (and whether it was a full or partial day), departments, nature of proceedings, and names of the court reporters for each day or partial day that is to be typed up (transcribed). Check the box to show whether a certified transcript was previously prepared. Information on the reporters, dates, times, and departments can be found in the minutes located in the superior court file. This list must be filed with the clerk of the Appellate Division of the superior court. Paragraph 5 of the form Appellant's Notice Designating Record on Appeal (Sample Form F), under the heading "NOTICE DESIGNATING THE REPORTER'S TRANSCRIPT," may be used for this purpose. If only a portion of a witness's testimony is needed, the opposing parties (respondents) must agree, or stipulate to that, and the stipulation³ (agreement) must be filed with the superior court appeals section. (CRC rule 8.130(e).) In addition, you must set out the issues that you intend to raise on appeal. (CRC rule 8.130(a)(2).)

How much does the reporter's transcript cost? The appellant must pay both a deposit and a \$50 fee to get the reporter's transcript. The cost of the reporter's transcript depends on (1) how many days or hours the reporter is asked to transcribe, and (2) if the reporter has already prepared a certified transcript of some of the proceedings. The \$50 fee and the deposit of the transcript's approximate cost must be paid at the same time the *Appellant's Notice Designating Record on Appeal* is filed. (CRC rule 8.130(b).) The appellant can ask the reporter to give him or her a written estimate in advance and pay that amount, or pay the deposit.

For proceedings not previously transcribed, the rate is \$650 per day for each day in which there were more than three hours of proceedings, plus \$325 per day for each day in which there were less than three hours of proceedings. If the reporter's estimate does not end up covering all of the days, the appellant needs to deposit \$650 or \$325 for any day not covered.

For proceedings that were previously transcribed, the rate is \$160 per day for each day in which there were more than three hours of proceedings, plus \$80 per day for each day in which there were less than three hours of proceedings. If the court reporter has given the appellant a written waiver of the deposit, the appellant can

³ A stipulation is a written agreement between the parties about something they are going to do. In this context, it is an agreement that only parts of the testimony will be considered in the appeal. It is signed by all counsel and self-represented parties. If you want or need a stipulation, call or write counsel or a self-represented party and ask whether he or she is willing to agree to what you propose. If he or she is agreeable, prepare a written statement that "The parties agree (stipulate) to. . . ." setting out what has been agreed to. Add a separate signature line for each counsel or self-represented party to sign, with the person's name typed under the signature line and a place for the date on which the document was signed.

submit the waiver instead of a money deposit.

If the appellant has already had some or all of the proceedings transcribed, a certified copy of the transcript can be substituted for the deposit. The transcript(s) must comply with CRC rule 8.144. The appellant should be sure to keep a copy of this transcript for writing the brief.

If the appellant does not include the money deposit, waiver of deposit or certified copy of the transcript with the Appellant's Notice Designating Record on Appeal, the clerk will file the designation and issue a notice of default giving the appellant an opportunity to correct the problem within 15 days from the date the notice of default is mailed. (CRC rules 8.130(d)(3), 8.140.) If the deposit runs short, the reporter contacts the appellant about how much more is needed. (CRC rule 8.130(b).)

Please note that a waiver of deposit is merely that. It waives only the need for the deposit, not the cost of the reporter's transcript or \$50 fee. It may occur when the appellant has paid the reporter for part or all of the transcript in advance and there is no need for the deposit.

What if the appellant has no money? Financial assistance is provided through the Transcript Reimbursement Fund established by section 8030.2 and following sections of the Business and Professions Code. For more information, go to <http://www.courtreportersboard.ca.gov>. Click on the **Transcript Reimbursement Fund** under Quick Hits on the left, then click on **Transcript Reimbursement Fund Pro Per Pilot Project**.

How long does it take to get the transcript? Generally, it takes 30 to 60 days after the reporter is notified to get the transcript. The Court of Appeal may grant extensions of time for the reporter if he or she is unable to complete the transcript on time. (CRC rule 8.130(f).)

Is there a cheaper way to go? Not really. However, use of a "agreed" or "settled" statements are authorized under the CRC. The requirements are set out in CRC rules 8.130(g), 8.134, and 8.137(a), and are rarely used.

Step 6. The clerk's transcript

What is the clerk's transcript? The clerk's transcript is a "book" that includes copies of papers filed in the superior court case file that have to do with the issues being raised on appeal. If you ask the superior court to prepare these papers, the result is a clerk's transcript. If you prepare them yourself, the result is called an appellant's appendix. If the parties agree and the court permits, you can use a substitute for a clerk's transcript. Each of these options is discussed below.

What is in the clerk’s transcript? The papers you designated on your *Appellant’s Notice Designating Record on Appeal* are arranged chronologically—that is, in the order in which they were filed in the superior court, beginning with the first papers filed in the case and ending with the last papers filed in the case. After the papers are arranged in order, they are numbered in sequence. The clerk prepares two indexes and inserts them at the beginning of the transcript. One index lists the papers in the order they were filed, and the second index lists the papers in alphabetical order. Each index includes the page numbers and, if there is more than one volume, the volume number where the papers can be found in the transcript. A cover is prepared, and everything is then bound in book form.

Who puts together the clerk’s transcript? The clerk of the superior court creates the clerk’s transcript. The documents to be included, as specified in CRC rule 8.122, must be listed (designated) on the Appellant’s Notice Designating Record on Appeal form ([Sample Form F](#)). The cost to the appellant depends on the number of pages and the number of volumes.

Option 6a: Having the superior court prepare the clerk’s transcript

How much does it cost? If the superior court is preparing the clerk’s transcript, the cost depends on how many pages there are. The superior court charges a copying fee based on the number of pages designated, and a volume fee based on the number of volumes in the clerk’s transcript. Unless the appellant obtained a fee waiver from the superior court, he or she paid a \$100 deposit for the clerk’s transcript at the time of the filing of the notice of appeal. That money is put towards the cost of the clerk’s transcript. If the total cost ends up being more than \$100, the superior court gives all parties a written estimate. The appellant and any party wishing to have its own copy of the clerk’s transcript must pay the cost within 10 days. A person who is unable to pay for the clerk’s transcript can file with the superior court an application for a waiver of the clerk’s transcript fees. (CRC rule 8.122(c).)

The appellant pays the entire cost for preparation of the original clerk’s transcript and one copy, even when the respondent has designated items to be included.

What happens if fees are not paid? If fees are not paid, the superior court sends a notice (called a Notice of Default) telling the appellant to pay within 15 days or the appeal may be dismissed. (CRC rule 8.140(a).) If the fees are not paid within 15 days, the superior court sends a Notice of Failure to Clear Default to all parties and to the Court of Appeal. The Court of Appeal may then dismiss the appeal.

How does one designate the clerk’s transcript? To designate the clerk’s transcript, prepare an *Appellant’s Notice Designating Record on Appeal*. The designation must include a list of the documents the superior court clerk is to copy

for the clerk's transcript ([Sample Form E](#), paragraph 4, pages 2-3). This list should include the exact title of each document and the date it was filed or lodged with the superior court. If the date on which the document was filed is unknown, use the date the document was signed. The appellant does not have to individually designate each jury instruction or minute order. You can list "all" jury instructions and "all" minutes.

All exhibits, whether admitted into evidence, lodged, or refused, are considered part of the record. If some or all of the exhibits are needed in the appeal, the ones to be used are designated, and most often transmitted to the Court of Appeal under CRC rule 8.224, after the respondent's brief is filed. However, if a party wants a copy of one or more exhibits put in the clerk's transcript to be available while the briefs are being written, the exhibits to be included must be noted by number or letter in the *Appellant's Notice Designating Record on Appeal*. If a trial exhibit is something other than a standard size piece of paper, you should transmit the exhibit to the Court of Appeal under CRC rule 8.224.

Within 10 days after service of appellant's designation, the respondent may provide a list of additional items to be included in the clerk's transcript ([Sample Form M](#)). (CRC rule 8.122(a).) This list must also be specific as to the title of each document and the date it was filed. After the *Respondent's Notice Designating Record on Appeal* is filed, or the time to file has passed, the superior court appeals clerk locates the documents listed by both the appellant and the respondent and determines the cost of preparing the clerk's transcript. The superior court appeals clerk then notifies the appellant of the estimated cost of the clerk's transcript and, upon payment, begins to prepare it. The appellant pays the entire cost even when the respondent has designated items to be included. Whether designated or not, the clerk's transcript includes:

- The Notice of Appeal and the Appellant's Notice Designating the Record on Appeal;
- The judgment or order being appealed and any notice of entry;
- Any notice of intention to move for new trial, to vacate the judgment, for judgment notwithstanding the verdict, or for motion for reconsideration and rulings on those items; and
- The register of actions or docket.

How does the respondent get the record? The respondent does not automatically get a copy of the record. If he or she wants a copy of the clerk's and/or reporter's transcript, the request must be made promptly. The superior court appeals clerk will provide the respondent with an estimate of the cost to prepare the clerk's transcript. (CRC rule 8.122(c).) The respondent has 10 days to pay. If the respondent wants a

copy of the reporter's transcript, he or she should contact the reporter personally to arrange payment.

If the respondent does not wish to have to pay for his or her own copy, he or she may borrow the appellant's copy after notifying the appellant no more than 20 days after the record is filed in the Court of Appeal. The record is lent to the respondent when the appellant's opening brief is served, and returned to appellant when the respondent's brief is served. (CRC rule 8.153.)

When is the record sent to the Court of Appeal? Within 30 days after the appellant deposits money for costs or the court files an order waiving costs, the clerk's transcript should be ready. The superior court clerk should then send a copy of the transcript to the Court of Appeal and the appellant; in practice, the clerk sends a copy to the court and notifies the parties that the clerk's transcripts and the reporter's transcripts (if requested) are complete. The notice tells the appellant and any other party who paid for a copy of the record to pick up their transcripts. (CRC rules 8.122(d), 8.150(a).)

Option 6b: Preparing an appellant's appendix

If any party elects to prepare an appendix instead of asking the superior court to prepare a clerk's transcript, the appeal proceeds by "appendix." If the other party wants a clerk's transcript, that party must file a motion in superior court contesting the choice of an appendix. The motion must be filed within 10 days after the Appellant's Notice Designating Record on Appeal is served and filed. (CRC rule 8.124(a).)

How much does it cost? If the appellant is preparing his or her own appendix (CRC rule 8.124), there will be copying and binding costs.

How does one designate an appellant's appendix? Within 10 days of filing the Notice of Appeal, the appellant must file his or her intention to proceed under "rule 8.124," along with a Proof of Service on each of the other parties. The appellant gives notice of his or her intention by checking box "1(b)" on the first page of the Appellant's Notice Designating the Record on Appeal form ([Sample Form F](#)) under the heading "RECORD OF THE DOCUMENTS FILED IN THE TRIAL COURT."

What is included in an appellant's appendix? The appendix must include the following items:

- A chronological index of all of the items in the appendix ([Sample Form O](#)).

- An alphabetical index of all of the items in the appendix ([Sample Form P](#)).
- All documents necessary for the consideration of issues in the appeal.
- The judgment or order being appealed and any notice of its entry, any notice of intention to move for a new trial; any motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration and the rulings thereon; and any order on such motion and any notice of its entry.
- The Notice of Appeal; the notice to prepare the clerk's and reporter's transcripts, or the settled statement, or Appellant's Notice Designating Record on Appeal form; any notice of election to proceed by an appendix under CRC rule 8.124 and, for a joint appendix, the stipulation designating its contents; any stipulation to proceed by agreed statement under CRC rule 8.134, along with the agreed statement; and any settled statement approved by the court under CRC rule 8.137.

All exhibits admitted in evidence, lodged or rejected are considered as part of the record even if they are not physically included in the bound volumes of the appendix. (CRC rule 8.124(b).) They can later be lodged with the Court of Appeal by transmitting them under CRC rule 8.224.

If a party wants the appendix to contain a document or exhibit in the possession of another party, the party preparing the appendix must first ask the party who has the document or exhibit to provide a copy or lend it for copying. If that does not work, the party may serve and file a request for that document or exhibit in the Court of Appeal. Those procedures are described in CRC rule 8.124(c).)

A party can refer to (also called “incorporate by reference”) all or part of the record from another pending appeal or a prior appeal in the same case so that those materials will be considered as part of the appendix. (CRC rule 8.124(b)(2).) The party must follow the procedures for identifying the other appeal set forth in CRC rule 8.124(b)(2).

If you are the respondent, you may elect to use an appendix on appeal *only if* the appellant has not received a waiver of the fee for a clerk's transcript and there is no court order otherwise. The *Respondent's Notice Electing to Use an Appendix* ([Sample Form M](#)) must be served and filed within 10 days after the notice of appeal is filed. (CRC rule 8.124(a).)

How does one put together an appendix?

1. Make copies of the documents that are related to the appeal. Photocopy on one side only, on recycled paper.
2. Arrange the documents in the order in which they were filed in the superior court (chronologically), and number the pages one after the other, beginning with page 1.
3. Make a chronological index of all documents by listing them in the order filed, with the first page number for each document and, if there is more than one volume, the volume number. ([Sample Form O.](#))
4. Make an alphabetical index of all the documents by listing them in alphabetical order, with the first page number of each document and, if there is more than one volume, the volume number. ([Sample Form P.](#))
5. Prepare a green-colored cover for an appellant's appendix, a yellow cover for a respondent's appendix, a tan cover for an appellant's reply appendix and a white cover for a joint appendix ([Sample Form N](#)). The cover should state the case title and superior court case number, the Court of Appeal number, the name of each of the participating Superior court judges, the names and addresses of appellate counsel for each party or any self-represented party, the volume number, and the inclusive page numbers (for example, 1-246) of that volume. It should be titled *Appellant's Appendix* (if prepared by the appellant), or *Joint Appendix* (if prepared jointly by appellant and respondent), *Respondent's Appendix* (if prepared by respondent), or *Appellant's Reply Appendix*. (CRC rules 8.124(c), 8.144(a),(b),(c).)
6. Put the materials together: cover, chronological index, alphabetical index, and documents in chronological order.
7. Make the necessary number of copies (one for each party, one for the court, and one for yourself), and bind the original and each of the copies into transcript (book) form. The appendix should be bound on the left side, in volumes of 300 pages or less. (CRC rule 8.144(c)(1).) The appendix may not be bound with the brief.

When does the appendix need to be ready? A **joint appendix** is prepared jointly by the parties, *or* the appellant and respondent may each prepare his or her own appendix. A joint appendix or an appellant's appendix must be served on the respondents and filed with the court at the same time as the appellant's opening brief. A respondent's appendix, if any, must be served on the appellants and filed with the court at the same time as the respondent's brief. An appellant's reply appendix, if any, must be served on the respondent and filed with the court at the same time as the appellant's reply brief. In filing an appendix you are certifying that the papers included are true and that correct copies of documents filed or lodged with the superior court. (CRC rule 8.124(d), (f).)

Option 6c: Using the superior court file

When can the superior court file be used in place of a clerk's transcript? This court permits the use of the superior court file instead of the usual clerk's transcript. Therefore, the parties may agree (stipulate) to use the superior court file instead of the usual clerk's transcript by filing their stipulation (see footnote 1 in this chapter) in the Appellate Division of the superior court with the Appellant's Notice Designating Record on Appeal under CRC rule 8.121. The appellant and respondent must both sign the stipulation to use the superior court case file. (CRC rule 8.128(a).)

Within 10 days of filing the stipulation, the superior court will notify you of how much it will cost to put the file in chronological order, number the pages, and prepare a chronological index. You must pay within 10 days of receiving the estimate.

If the parties stipulate to use the superior court file instead of the clerk's transcript, the superior court file is sent to the Court of Appeal. The appellant and respondent will receive only an index of the documents in the file. (CRC rule 8.128(a), (b).)

Record problems

What happens if you do not pay costs on time? If you have not made the required payments, the superior court will notify you by sending you a notice of default.

What is a notice of default? A notice of default says that someone did not do what the CRC said to do. Generally something was not done on time or was done incorrectly. The notice gives the responsible person a certain number of days from the date of the notice to do what needs to be done. Notices may be sent by the superior court or the Court of Appeal, depending on what the problem is. Examples of defaults in the superior court having to do with record preparation are: failing to file an Appellant's Notice Designating Record on Appeal, failing to pay the costs of the clerk's and/or reporter's transcript, and failing to correct the designation after notice was sent to the party by the superior court. (CRC rule 8.140.)

What if the default is not corrected? A party has 15 days from the date of the notice to resolve the problem. If the things to be fixed are still unresolved after the 15 days, the superior court sends a Notice of Failure to Clear Default to all parties and to the Court of Appeal. If the appellant is the party who has not complied with the rules, the appeal may be dismissed by the Court of Appeal; if the respondent is the party that has not complied on time, the appeal may go forward on the appellant's record alone. (CRC rule 8.140(b).)

What if something is missing from the record? In working with the record, a party may discover things that are missing or things that were overlooked in the designation or in the preparation of the clerk's or reporter's transcript. If the clerk or reporter omitted a required or requested item, serve on the parties and file in the superior court a Notice of Correction requesting that the omitted matter be prepared and sent to the Court of Appeal and all parties who received a copy. (CRC rule 8.155(b).) If the item was not listed in the designation of record, a motion to augment will be needed. (See the section on motions in Chapter 6.)

Filings in the Court of Appeal and the superior court can be made in person or by mail.

Chapter 4

Civil Case Information Statement and Certificate of Interested Entities or Persons

Step 7. Preparing the Civil Case Information Statement and Certificate of Interested Entities or Persons

A *Civil Case Information Statement* ([Sample Form G](#)) is a questionnaire about the case that appellants and cross-appellants, if any, must fill out and return to the Court of Appeal for all civil cases except juvenile dependency cases. It asks what type of case it is, whether and when there was notice of entry of judgment, whether there is a bankruptcy stay, and other questions. The answers on the *Civil Case Information Statement* help the court to know whether the *Notice of Appeal* is on time and whether the order or judgment is appealable.

The *Civil Case Information Statement* must be filed in the Court of Appeal within 15 days after the superior court clerk mails you a notice that the Notice of Appeal has been filed. A copy of the judgment or order being appealed and a Proof of Service of the *Civil Case Information Statement* ([Sample Form C](#)) on all parties to the appeal must be attached to the Civil Case Information Statement and filed with the Court of Appeal. (CRC rule 8.100(g).) If the Civil Case Information Statement is not received within the 15 day limit, the court of appeal clerk will send a Notice of Default. If the appellant does not cure the default within 15 days, the court may dismiss the appeal.

A *Certificate of Interested Entities or Persons* ([Sample Form L](#)) is a form that each party must prepare in order to identify entities and/or persons (other than the parties themselves) that the party knows has a financial or other interest in the outcome of their proceeding. (CRC rule 8.208(a), (e)(2).) This allows the justices of the court of appeal to better determine whether to disqualify themselves from a proceeding. A *Certificate of Interested Entities or Persons* does not need to be filed in family, juvenile, guardianship or conservatorship cases.

Each party must serve and file a *Certificate of Interested Entities or Persons* at the time it files its first motion, application or opposition to any motion in the Court of Appeal and also must include a copy of the form in its principal brief after the cover and before the tables of contents and authorities. (CRC rule 8.208(d)(1).) If no motion, application or opposition is filed before the principal brief, the party must include the *Certificate of Interested Entities or Persons* in its principal brief.

Chapter 5

Briefing the Case

An appellate brief is a written argument by the appellant or respondent that explains why the superior court acted correctly or incorrectly. Once the record is prepared, it is time to prepare a brief.

There are three briefs: (1) the appellant's opening brief, (2) the respondent's brief and (3) the appellant's reply brief.

- The appellant's opening brief tells the Court of Appeal what judgments or orders the appellant is appealing, why the appellant thinks the superior court acted incorrectly in making those judgments or orders, how the court's actions hurt the appellant, and what the appellant wants the Court of Appeal to do about it if it finds the superior court acted incorrectly.
- The respondent's brief responds to each of the issues raised by the appellant, showing why the appellant's arguments are not correct and expressing support for the trial court's decision.
- The appellant's reply brief addresses the arguments made by the respondent and shows how they do not overcome the arguments made in the appellant's opening brief. No new issues may be raised in the reply brief.

NOTE: One electronic copy of each of your briefs must be submitted to the court unless to do so would cause an undue hardship. (CRC rule 8.212(c)(2).) Submitting an electronic copy will satisfy the requirements for service on the California Supreme Court under rule 8.212(c)(2). Electronically transmitted briefs are not a substitute for the required paper filings, which are the official court record.

This link contains directions to get you to the page where you can electronically submit your document: <http://www.courts.ca.gov/9408.htm>.

We will discuss each of the briefs separately and then the items needed in all the briefs.

Step 8. Preparing your brief

Appellant's Opening Brief

When is the appellant's opening brief due? The appellant's opening brief is due 40 days after the Court of Appeal notifies the appellant that the record or reporter's transcript is filed. If the appellant prepared his or her own appendix and did not request a reporter's transcript, the appellant's opening brief and appendix are due 70 days from the date appellant filed the rule 8.124 election in the superior court. (CRC rule 8.212(a).) In either case the Court of Appeal sends a notice to appellant that says when the appellant's opening brief is due.

How does the appellant prepare the opening brief? A short example of an appellant's brief is included in [Sample Form Q](#). The appellant uses the facts in the case as determined by the jury or the court at the trial or hearing in superior court. In this example, we have used the facts from Goldilocks and the Three Bears as our case. There are only one or two items in our statement of authority and only one issue. Hopefully this example from a familiar story will be helpful as you prepare your tables of contents and authorities and set out the facts and issues of your case. You may find it useful to follow along in the sample brief as you read about the various parts of a brief in the sections that follow.

The appellant's opening brief is a single bound document that includes a cover, table of contents, table of authorities, statement of the case, statement of appealability, statement of facts, argument, conclusion, certificate of compliance with length limitations, and proof of service. (For a discussion of attachments to the brief, see the heading "Considerations that Apply to All Briefs" later in this chapter.)

The brief starts with a cover that includes identifying information about the case. The cover must be green for an opening brief, yellow for a respondent's brief, and tan for a reply brief. The cover should be made out of stiff paper called "cardstock." The back of the brief will be a blank page the same color as the front cover and made out of the same cardstock material. The rest of the brief should be bound within the cardstock covers. (See **What about format?** later in this chapter.)

The cover is followed by the table of contents, which lists the sections of the brief by page number. Next is a table of authorities, which lists the cases (in alphabetical order), the statutes and other authorities used in the brief, and the number of the page on which each can be found in the brief. These items cannot be completed until the brief is completed, for only then will the page numbers be known.

The next item is a statement of the case. This tells the Court of Appeal the procedural history of the case. You should explain what happened in the trial court, in chronological order from the filing of the complaint through the final judgment.

The statement of the case should tell about the motions, hearings, and orders that are relevant to the issues of the case, including the date on which the complaint was filed and the date on which the *Notice of Appeal* was filed. The appellant must show where this information can be found in the record by referencing the volume and page number(s) of the clerk’s or reporter’s transcript that has this information. (CRC rule 8.204(a)(1)(C).) The reference is set out in parentheses as **CT** (clerk’s transcript) or **RT** (reporter’s transcript). For example: “The complaint in this case was filed on December 25, 2000. (CT 1).” The “(CT 1)” tells the court it can find the first page of the complaint (which will have the file stamp with the date the complaint was filed on it) on page 1 of the first volume of the clerk’s transcript. ⁴

Next comes the **statement of appealability**, where the appellant tells the court why this case is now appealable. This may already be clear to the appellant, but for the person reading the brief for the first time, the statement sets the stage. The case may be appealable because there is a judgment or order of dismissal (after demurrer or other motion) and the case is finished, *or* there may be an order (usually one after the judgment, or after a hearing in a family law or probate case) *or* there may be a nonfinal judgment. If you are appealing an order or a nonfinal ruling, you need to explain why it is appealable. (CRC rule 8.204(a)(2)(B); Code of Civil Procedure, section 904.1.) Generally, an appellant states the statute that gives him or her the right to appeal the case.

Then the appellant should set out the **statement of facts** of his or her case. Before starting on the facts, the appellant should read through the entire record (the reporter’s transcript, clerk’s transcript or appendix, and exhibits, if any). The appellant may use only the information in the transcripts to prepare the statement of facts, because they are the only items the court and/or jury could use to determine the case in the superior court.

Your statement of facts will depend on the nature of the proceedings in the trial court. If there was a trial, you must remember that the Court of Appeal will not retry the case. As noted earlier, the Court of Appeal does not change the facts that were found by the superior court judge or the jury in a trial, as long as there is sufficient evidence to support those findings. If the record includes conflicting facts (for example, one witness said the light was green, and the other said it was red), the Court of Appeal will presume the superior court’s or the jury’s findings on the facts

⁴ Other sources that may be referenced are abbreviated as follows:
Appellant’s appendix—AA Appellant’s reply
appendix—ARA Joint appendix—JA Appellant’s opening brief—
AOB Respondent’s appendix—RA Respondent’s brief—RB
Appellant’s reply brief—ARB Superior court file—SC file

are correct. The Court of Appeal does not change the judge's or jury's decision about whom to believe if the witnesses disagreed about what happened. So if you are appealing after a trial, you should assume that the Court of Appeal will resolve all evidentiary conflicts in favor of the judgment being appealed. In other words, you should state the facts in the way that supports the judgment, even if you contested the factual findings made by the jury or the trial court. Of course, you may tell your side of the story as well, but you should base it only on evidence or testimony presented to the judge or jury. For every statement of fact you make in the brief, there should be a **citation** showing where that information can be found in the record (the reporter's transcript, clerk's transcript or appendix, or exhibits).

Your statement of facts will be different if the case was dismissed without a trial. Demurrers and summary judgments are two types of pretrial motions that may cause a case to be dismissed without a full trial. Because cases are commonly dismissed on demurrer or summary judgment, we shall explain a little about how to write the statement of facts when appealing from such a dismissal.

Demurrer. If a plaintiff files a case in superior court and the facts in the complaint do not state a cause of action (that is, they give no legal basis for the defendant to be held responsible), the defendant may bring a **demurrer** asking that the case be dismissed. If a cause of action *has been* stated, the superior court overrules the demurrer and the case continues on. If no cause of action has been stated but the court believes there may be more facts that will enable the plaintiff to state a cause of action, the court sustains the demurrer "with leave to amend," in which case the plaintiff can restate his or her case. If the court believes there is no cause of action, the court sustains the demurrer without leave to amend, and the case is dismissed. On appeal, the Court of Appeal looks only at the complaint and assumes all of the factual allegations are true in order to rule on whether the complaint states a cause of action. Thus, the Statement of Facts in the opening brief should be based on the facts as alleged in the complaint.

Summary judgment. In a **summary judgment**, one party may contend there are no facts that need to be decided, *or* the parties may agree on what the facts are. Either side (and sometimes both sides) may bring a motion for summary judgment arguing that they are entitled to a judgment in their favor without a trial. Unless the parties agree that there is no genuine dispute about material facts in the case, the court must determine whether there are any such disputed facts. Unlike a demurrer, the court is not limited to the allegations of the complaint, and it will review sworn statements or other evidence submitted by the parties in writing. The court will then decide if there is conflicting evidence in the record as to the material facts. If so, the summary judgment motion should be denied because the evidentiary conflict must be resolved in a trial. If not, the court can grant summary judgment in favor of either of the parties. For example, if all the evidence shows that the light was green,

the court does not need to hold a trial to determine whether the light was red or green.

A trial court's ruling granting summary judgment is an order. A party seeking to appeal the ruling must first get a *judgment* based on that ruling. In looking at the facts on appeal, the question is exactly the same as the issue before the trial court: Is there a genuine dispute as to material facts that must be resolved at a trial? If there is such a factual dispute, summary judgment should not have been granted, the judgment should be reversed, and the case should go back to the trial court for a trial. Thus, if you are the appealing party, your Statement of Facts should emphasize the evidence in the record that you believe conflicts with the trial court's ruling. With appropriate page number citations to the record, you should point out the evidence which demonstrates there is a factual conflict that must be resolved in a trial. If there are no factual disputes, you should argue that the trial court incorrectly applied the law in granting summary judgment to the opposing side.

The next section of the brief after the statement of facts is the **argument** section. This is the part of the brief in which you discuss each of the errors you believe the superior court made. You should discuss each issue separately in light of the facts and the laws. The appellant has the burden of showing that there was an error so serious that the court's decision must be reversed. In figuring out the issues, think about what happened at the trial or hearing where the alleged errors were made. Did these errors involve findings of fact, discretionary rulings by the judge, or questions of law? Do you think these rulings were really wrong? What did these rulings do to the outcome of your case?

You may need to read some legal materials on the subject. If so, go to a public law library. (See [Appendix 1](#) for information on library locations and hours.) Look at books that are written about the area of law that your case involves. For example, if your case involves a possible breach of contract for work that was not done or work that was not done properly look in the area of contract law. Ask the librarian to suggest readings about contracts and breaches of contract. In books written about the law ("secondary sources"), you will find mention of cases previously decided in the area of contracts. You may want to read those cases. They may tell you which laws apply to your case. Based on this information and the facts of the case, the appellant should make a list of the issues he or she wants to raise—the issues the appellant thinks hurt his or her case in superior court the most or the ones that would help his or her case the most now.

After making a list of the issues, the appellant then needs to determine what standard of review the court will apply to each issue.

What is the standard of review? When the Court of Appeal reviews an issue, it needs some kind of rules or guidelines to determine whether the superior court made

an error in its decision. Different kinds of rulings require different kinds of review guidelines. These guidelines are called **standards of review**. When the appellant argues that the superior court erred in its ruling, the Court of Appeal looks first at what the standard of review is for that particular issue. The three most common standards of review are (1) abuse of discretion, (2) substantial evidence, and (3) de novo review.

When is the “abuse of discretion” standard used? If the superior court’s decision is one that involved the exercise of its discretion, the “abuse of discretion” standard is used. Any decision for which the judge exercises his or her discretion, such as admissibility of evidence or issuance of restraining orders, comes under this standard. An abuse of discretion occurs when the superior court judge makes a ruling that is arbitrary or absurd—which does not happen very often.

When do you use the “substantial evidence” standard? If you are appealing the factual findings of a judge or jury after trial, the “substantial evidence” standard is used. The Court of Appeal reviews the record to make sure there is substantial evidence to support the factual findings made by the court or jury. The Court of Appeal’s function is not to decide whether it would have reached the same factual conclusions as the judge or jury. Instead, the Court of Appeal merely decides whether a reasonable fact-finder could have come to this conclusion based on the facts in the record. If there is a conflict in the evidence, and a reasonable fact-finder could have resolved the conflict either way, the Court of Appeal will affirm the decision. Because the judge or jury at the trial saw the witnesses and heard what the witnesses said, they are in a better position to decide what actually happened and who is telling the truth.

What is the de novo standard? *De novo* is a Latin phrase meaning “from the beginning.” In de novo review, the Court of Appeal does not defer to the decisions made in superior court and looks at the issue as if the superior court had never ruled on it. This type of review is generally limited to issues involving questions of *law*. If the issues involve questions of law—for example, the interpretation of a contract or a statute—the Court of Appeal does not assume the superior court’s ruling is correct but looks at the issue “from the beginning,” exercising its independent judgment. A trial court’s ruling granting a demurrer or motion for summary judgment is also reviewed under the de novo standard of review.

Once you determine which standard of review applies to the issue, you must point out why you think the court made the wrong decision and why you are entitled to reversal under that standard of review. Explain why this incorrect decision harmed your case so much that the error should cause the superior court’s order or judgment to be reversed.

For every statement of law you make in the brief, there must be a citation to a case, statute, rule, or legal treatise that sets out that proposition. Citations usually appear at the end of the sentence in parentheses. For more information on legal citations, see [Appendix 2](#).

Think of the argument section of your brief as a book in which each issue is a separate chapter. Set off each issue with a heading similar to a chapter title, and subheadings if needed, describing the arguments that will follow. (CRC rule 8.204(a)(1)(B).)

After you have discussed each issue, you should briefly restate your position in a **conclusion** and tell the court what you want it to do. If the opening brief is produced on a computer, it must also include a **certificate of compliance** with the length limitations discussed below (see Certificate of Compliance attached to [Sample Form Q](#)) and a **proof of service** ([Sample Form C](#)).

Respondent's Brief

When is the respondent's brief due? The respondent's brief is due 30 days after the appellant's opening brief is filed. (CRC rule 8.212(a).) There is no five-day extension if the appellant's opening brief was filed by mail. (Code of Civil Procedure, section 1013(a).)

How do you prepare the respondent's brief? If you are the respondent, you will need to address the facts and legal issues raised in the appellant's opening brief. First of all, make sure (1) there is a final judgment, if the appeal is from a judgment, or (2) the order is appealable, if the appeal is from an order and (3) the *Notice of Appeal* was filed on time, or "timely filed." If there is a problem with the appeal, you may file a motion to dismiss the appeal and/or argue in your respondent's brief that the appeal should be dismissed.

The respondent's brief should follow the same general format as the opening brief, with a cover, table of contents, table of authorities, statement of the case, statement of facts, argument, conclusion, certificate of compliance, and proof of service. There does not need to be a statement of appealability. (A short example of a respondent's brief is in [Sample Form Q](#).) For a discussion of attachments to the brief, see the heading "Considerations that Apply to All Briefs" later in this chapter.

Does there need to be a facts section? The facts are already set out in the appellant's opening brief. However, remember the decision is in the respondent's favor and the facts must be set out to support the winning side of the case. Make sure the facts, as stated by the appellant, are accurate and any conflicts in the facts have been resolved to support the decision. You may end up with a shorter version of the facts. If you totally agree with the way the appellant has set out the facts, you can ask to adopt those facts as yours. As with the appellant's opening brief,

you need to make a reference to the record for every fact and for every legal statement, and provide headings and subheadings for each point. (CRC rule 8.204(a).)

What about the issues the appellant has raised? The respondent has the burden of responding to the issues raised by the appellant and showing that the ruling of the trial court was correct. If it was not correct, the respondent, must show that the mistake the court made was so small that there was no prejudice. You should not rely on the legal references made by the appellant in his or her opening brief. You may need to do some reading on the subject. Go to the county public law library (see [Appendix 1](#)) and research the case law and statutes that relate to the issues on appeal. Reread the court’s statement of decision, if there is one, or the orders and judgment set out in the minutes of the court. Be sure to respond to each and every issue raised in appellant’s opening brief. Deal with each issue separately, with headings and subheadings that match the ones used by the appellant. Check the record and make sure that an objection or motion was made to challenge the ruling in the trial court at the time the ruling was made. If no objection or motion was made, the error may have been waived, or given up. Tell the court in your brief if you believe there was a waiver. If the Court of Appeal believes the appellant has waived the issue, it may decide to not even consider the issue the appellant has raised.

There may be additional issues—for example, concerning the statute of limitations or other defenses—that may result in a decision in your favor. You should discuss these issues in your respondent’s brief even though the appellant did not bring them up.

Appellant’s Reply Brief

When is the appellant’s reply brief due? The reply brief is due 20 days after the respondent’s brief is filed. (CRC rule 8.212(a).) There is no five-day extension if respondent’s brief was served by mail. (Code of Civil Procedure, section 1013(a).)

Why an appellant’s reply brief? Why no response to the reply? Because the appellant has the burden of showing the Court of Appeal that the trial court erred, the appellant is given the opportunity to respond to the respondent’s brief. The appellant’s reply brief is optional. No new issues may be raised in the reply, since the respondent would have no opportunity to rebut them. The appellant should show how the respondent has not countered the appellant’s claims stated in the opening brief; address the cases and the arguments raised in the respondent’s brief; and respond to new issues raised by the respondent in its brief. There is no response to the reply brief. Briefing has to stop somewhere, and this is where it stops! A short example of an appellant's reply brief is in [Sample Form Q](#).

Considerations that Apply to All Briefs

Table of contents and table of authority. When you have finished your brief, copy each heading and subheading into a **table of contents** (which will be page i of your brief). The person reading your brief should be able to get a good overview of the case by skimming the table of contents. Then go through the brief and write down all of the cases you used, then all the statutes, then all the rules of court, then all the other books and articles. List the cases alphabetically, the statutes alphabetically by code and numerically by section number within each code, and the books and articles alphabetically by author. Type these lists—cases, statutes, and “other authorities”—and note on which page each item is found. This is the **table of authorities**. (CRC rule 8.204(a).) The table of contents and table of authorities should be separately paginated from the rest of the brief using small Roman numbers. For example, the tables could be pages i-iv, and then you would start with page 1 for the *text* of your brief.

Certificate of compliance with length limitations. A brief produced on a computer must not exceed 14,000 words, including footnotes. A brief produced on a typewriter must not exceed 50 pages. The table of contents, table of authorities, the cover information, the *Certificate of Interested Entities or Persons*, any signature block, and attachments are not counted in computing the number of pages or words. (CRC rule 8.204(c).) Every brief produced on a computer must include a certificate of compliance stating the number of words in the brief. You may rely on the word count of the computer program used to prepare the brief. (See Certificate of Compliance attached to [Sample Form Q](#).)

Attachments to briefs. You may attach to your brief copies of exhibits or other materials already contained in the existing record on appeal or relevant local, state or federal rules or regulations. The attachments must not exceed a combined total of 10 pages, unless you get permission from the court. (CRC rule 8.204(d).) Before including attachments, you should carefully consult CRC rule 8.204(d).

You should be very careful about including attachments to your brief. Improper attachments can cause your brief not to be filed, or to be stricken or returned to you for corrections. (CRC rule 8.204(e).)

What about format? CRC rule 8.204 specifies the format requirements for briefs. Briefs should be:

- Typed or prepared on a word processor or computer;
- On 8-1/2-by-11 inch white or unbleached paper of at least 20-pound weight (except for the cardstock front and back covers) -- do not use legal or pleading paper with numbered lines;
- One-and-a-half or double spaced, with single-spaced headings and

footnotes; both sides of paper may be used unless prepared with a typewriter;

- Bound on the left side, with staples (if used) covered by tape (most briefs, however, are Velobound);
- Printed with a type size of at least 13 points or prepared on a standard pica typewriter (not elite) with type size no smaller than 10 characters per inch; and
- Given side margins of 1-1/2 inches, and upper and lower margins of 1 inch.

The cover colors are standardized as follows:

Appellant's opening brief or appendix—green
Respondent's brief or appendix—yellow
Appellant's reply brief or appendix—tan
Joint Appendix—white
Petition for rehearing—orange
Petition for review—white

The pages should be bound in pamphlet or book style. On the cover should be the title of the case, the superior court and Court of Appeal case numbers, the names of the superior court judge and county, the type of brief (for example, "Appellant's Opening Brief," "Respondent's Brief," or "Appellant's Reply Brief" (see "Cover" of [Sample Form Q](#)), and your name, address, and daytime telephone number. (CRC rule 8.204(b).) The court heading should be centered at the top of the brief cover.

What about service? All civil briefs must be served on all the parties and the clerk of the superior court (for delivery to the judge in the case). If you submitted an electronic copy of your brief, the requirements for service on the California Supreme Court under rule 8.212(c)(2) have been satisfied. If you did not submit an electronic copy of your brief then you must serve four paper copies on the California Supreme Court. An original and four copies of your brief must be filed in the Court of Appeal. (CRC rule 8.212.) For Proof of Service, see [Sample Form C](#); for court addresses, see [Appendix 1](#)). You must also serve any public officer or agency required to be served by CRC rule 8.29.

What if I need more time to file my brief? If you need more time to file your brief, you and opposing counsel can stipulate (agree, see Chapter 3, footnote 1) to up to a maximum of 60 days in extensions for each type of brief. However, you may not stipulate to extend the time if the court has already granted an application to extend time to file your brief. Stipulations to extend time (see [Sample Form H](#)) must be filed in the Court of Appeal before the date the brief is due. If you need more time and have already stipulated to 60 days or if you are unable to get opposing counsel to

agree to a stipulated extension, you must file a motion or application for extension of time with the Court of Appeal. (CRC rules 8.212(b), 8.50, 8.60, 8.63.) (See [Sample Form I.](#))

What if the brief is late or not filed at all? If the appellant’s opening brief or a respondent’s brief is late, the clerk of the court of appeal will send a notice (under CRC rule 8.220) that gives the party 15 more days to file the brief. If the appellant’s opening brief is not filed within the 15-day grace period allowed under the rule, the appeal may be dismissed. If the respondent’s brief is not filed within the 15-day grace period, the court may decide the case on the appellant’s opening brief, the record, and any oral argument by the appellant. (CRC rule 8.220.) Within the rule 8.220 grace period, a party may apply for an extension of that time for good cause. If a brief is not filed during the extension, the court may dismiss the appeal. (CRC rule 8.220(d).)

How are exhibits sent to the Court of Appeal? In the superior court, exhibits are lodged with the court. Since they were lodged, the superior court returns the exhibits to the parties at the end of the case. A party wishing to have the Court of Appeal consider an original exhibit that was not copied in the clerk's transcript or appendix must file a notice (which designates the exhibits to be sent) in superior court within 10 days after the respondent’s brief is filed. A copy of the notice must be sent to the Court of Appeal. Ten days after the notice is filed in superior court, any other party wishing to have the Court of Appeal consider additional exhibits may also file a notice in the Superior court. Under CRC rule 8.224(b), the superior court and the party requesting that exhibits be lodged with the Court of Appeal must each put the designated exhibits in their possession into numerical or alphabetical order. The exhibits are sent to the Court of Appeal along with two copies of the list of exhibits being sent. Since exhibits are lodged with the Court of Appeal, they will be returned at the end of the case.

What if the briefs are not prepared properly? If the brief is not done properly—for example has no table of authorities or no citations to the record—the court may decline to file it, or at the request of the opposing party or on its own motion, strike the brief and return it to the party for corrections and changes. In making these corrections, generally it is necessary to prepare a new document, which must be served on all the parties and filed with the court. If the incorrect or omitted items have been redone properly, the court files the corrected document. If the items have not been redone properly, the court may dismiss the case if it is an appellant’s opening brief, or let the appeal proceed on the record and the appellant’s opening brief if it is the respondent’s brief. (CRC rule 8.204(e).)

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 Appellate Division of the superior court. The filing effects a dismissal of the appeal (see [Sample Form J](#)). (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 the appellant wants to abandon the appeal 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 K](#).) At this stage, the court has the discretion to accept or deny the request. (CRC rule 8.244(c).)

If the parties 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.

How is a motion prepared? 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 copy 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 R](#)). 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 S](#)). If a motion is defective, the court may deny the motion “without prejudice,” which means the applicant may correct the problems 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).

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 comply, then you 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 T](#).

If copies are not available, the items must be identified the same way they would be 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 U](#). A *Motion to Augment Record on Appeal* with reporter’s transcript is included as [Sample Form V](#).

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 by 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).) The stipulation must be signed by and served on all parties. (See [Sample Form H](#).)

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 I](#).) 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)(2).)

An *Application for Extension of Time to File Brief* ([Sample Form I](#)) 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](#)), and self-addressed, postage prepaid envelopes for mailing the order that grants or denies the application to all counsel and self-represented parties. 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

<http://www.courts.ca.gov/4dca.htm>. Scroll down to "Case Information" and click on 4th Appellate District Division 3. 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 access additional information by clicking on one of the choices above the Case Summary. 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 the link at the end of the Case Summary. 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.

Electronic Filings

There are many documents, such as the *Certificate of Interested Persons or Entities* and the *Civil Case Information Statement*, that may be electronically filed. The electronic filing of these particular documents satisfies the filing requirement and no paper original is required. Not all documents are eligible for electronic filing. For a comprehensive list of documents that may be electronically filed go to <http://www.courts.ca.gov/9408.htm>.

E-Submissions

As mentioned in Chapter 5, one electronic copy of each of your briefs must be submitted to the court unless to do so would cause an undue hardship. (CRC rule 8.212(c)(2).) You can find a list of documents to be electronically submitted at <http://www.courts.ca.gov/9408.htm>.

Chapter 7

Post-Briefing

Step 9. Asking for oral argument

The court hears oral argument after all the briefs have been filed. Argument in Orange County is generally held in the third full week of the month, before a panel of three justices. The court sends a notice to the parties asking who wishes to argue the case orally. In the Fourth Appellate District, Division Three, 30 minutes for each side is the maximum time for argument. If argument is requested, the court will notify you of the date and time at least 20 days in advance. (CRC rule 8.256(b).) You should let the court know right away if you cannot attend court on the date given.

The fact that you orally argue a case does not affect the length of time it will be before you get your decision. Cases, whether argued or not, are randomly “put on calendar” (assigned to a justice to work on) in order of the dates on which their briefings were completed.

How do you prepare for oral argument? You need to review all of the legal citations in your brief to make sure nothing has been overruled and that there is no new authority that might be helpful to your case. If you do have new authority, you should let the court and opposing counsel know what it is in writing before the argument. (CRC Rule 8.254.) This is most important if you intend to argue the new material at argument. If it is sufficiently in advance of oral argument, you may wish to ask the court for leave so that you and opposing counsel can file supplemental letter briefs concerning the new authorities before the matter is heard.

You should review the record and the arguments in the brief so that you are very familiar with your case in the event one or more of the justices asks you questions about the case. Make an outline of the points you wish to emphasize and the responses you would make to possible questions that might be raised by the court or arguments that might be raised by opposing counsel. You should not prepare a written statement to read since you may be interrupted with questions from the justices. Be prepared to be flexible.

If at all possible you should take the time to sit in on an oral argument calendar in advance of your argument date. Generally oral argument is held the third week of the month. However, you should call the clerk's office in advance to confirm the date you wish to come since you may have selected a morning or afternoon when no calendar is scheduled. Argument is open to the public.

What will happen in court? When you arrive for oral argument you will go through a metal detector before entering the courtroom. Upon entering the courtroom, you will check in with the court clerk, giving your name and a revised time estimate. The amount of time per side may not exceed 30 minutes.. Once in the courtroom, sit in the audience until your case is called. When the justices enter the courtroom all persons rise. The presiding justice or the most senior justice sits in the middle and calls the calendar. Generally, but not always, the cases are heard in order with the cases taking the shortest time going first.

When your case is called, proceed through the gates to the podium area. The appellant sits at the table to the left of the podium and the respondent sits at the table to the right of the podium. The appellant argues first. If you are the appellant and wish to reserve part of your argument time to respond to or rebut the respondent's argument, tell the justices that before you start your argument. Be aware that the justices generally will call time when you have used up your announced time and when that occurs you should do no more than complete the sentence you are speaking. If you are the appellant and have requested time for rebuttal you are limited in the rebuttal to talking about only those arguments which the respondent has used. You may not present any new arguments at that time.

What do you say at oral argument? Often counsel will begin with the words "may it please the court." Whether you start with that or not, you should identify yourself saying that you are self-represented. By the time of oral argument, the three justices on the panel who hear your case are familiar with the facts of your case, the arguments you have raised and the law involved. Thus, there is no need for you to repeat anything that you have already told the court in your briefs. If you do not have anything to present other than what is in your briefs you should seriously consider not presenting any oral argument.

If, however, you have decided to argue orally, you should proceed, after identifying yourself, in a conversational tone limiting your comments to things which happened during the trial that you believe were error and that are part of your appeal. During your remarks one or more of the justices may pose questions to you. If so, stop what you are saying and answer the question. If you do not know the answer to the question, just say so.

How soon is there a decision? After all the briefs have been filed and oral argument, if requested, has been held, the case is "submitted." Cases that were assigned to that same particular month with no oral argument requested are all submitted at approximately the same time as the cases that were argued. After the case is submitted, the court does not accept any further information about the case. (CRC rule 8.256(d).) The justices on the panel discuss the case, and decide what

they think is the correct disposition. A decision is then filed within 90 days after the case is submitted.

Step 10. Petitioning for rehearing

After the opinion in the appeal is filed, you may file a *Petition for Rehearing* ([Sample Form W](#)) in the Court of Appeal. There is an automatic right to rehearing under limited circumstances as prescribed in Government Code section 68081. One does not need to petition for rehearing in the Court of Appeal before seeking review in the Supreme Court. However, as a policy, the Supreme Court accepts the statement of facts and issues as set out in the Court of Appeal opinion unless any alleged omission or misstatement of fact was brought to the Court of Appeal's attention by petition for rehearing. (CRC rule 8.500(c).)

How soon does the *Petition for Rehearing* need to be filed? The *Petition for Rehearing* must be served and filed within 15 days of the filing of the opinion, the order for publication, or the modification of the opinion if it changes the judgment. No opposition to the petition may be filed unless requested by the court. If no ruling on the petition for rehearing, or order for publication or modification that changes the judgment has been made within 30 days of the decision, the petition will be deemed denied. (CRC rule 8.268(b), (c).)

What goes into the petition? The petition should not merely repeat information and argument that was covered by the appeal. Instead, it should focus on specific errors or contradictions in the opinion.

Normally the court does not consider points or issues being raised for the first time on rehearing, with two exceptions: when the superior court or the Court of Appeal did not have the power (jurisdiction) to handle the case, and when the Court of Appeal, in an exercise of its discretion, agrees to consider new materials (such as a new case) that were not included earlier.

Generally, the petition for rehearing should be directed at errors in the opinion: a major misstatement of fact, an error of law, major law or facts that were left out, and/or an important argument that was not included.

The original and four copies should be filed with the Court of Appeal along with *Proof of Service* ([Sample Form C](#)) on all parties; one copy should go to the superior court, and four copies to the Supreme Court. (CRC rules 8.212(c) & 8.44.)

The Court of Appeal has jurisdiction (power to make rulings in the case) for 30 days from the date the opinion was filed *or* a request for publication was granted *or* an opinion was modified that changed the judgment. (CRC rules 8.264(b), 8.268(b).)

Step 11. Review in the California Supreme Court

The Court of Appeal's decision becomes final in the Court of Appeal 30 days after the filing of its opinion or the grant of publication or modification of the opinion with a change in judgment. A petition for review in the California Supreme Court must be filed within 10 calendar days, which start the day after the 30th day whether the court is open or not. Thus, if the Court of Appeal's decision becomes final on a Friday, Saturday and Sunday are days 1 and 2 of this 10-day period during which the petition for review must be filed. (CRC rules 8.264(b), 8.500(e).)

At the beginning of the petition there should be a short statement of the issues to be presented, with a statement why this case is one the Supreme Court should take for review. (CRC rule 8.504(b).) If produced on a computer, the petition may not exceed 8,400 words or 30 pages if typewritten. The maximum length does not include exhibits and the copy of the Court of Appeal opinion that must be included. (CRC rule 8.504(b)(e).) An original and 13 copies must be filed in the Supreme Court. (CRC rule 8.40(b).) A copy must be served on the clerk of the Court of Appeal making the decision, on each party, and on the clerk of the superior court. An answer to the petition for review is not required unless the party opposing review wants to add an issue. If filed, an answer should be filed within 20 days after the petition is filed. (CRC rule 8.500(a)(2), (e)(4), (f).)

If the Supreme Court grants review, it may put off action while awaiting disposition of another case, or specify issues that are to be briefed. (CRC rules 8.512(d)(2), 8.516(a).) Within 30 days the petitioner must file an opening brief or the brief filed in the Court of Appeal. The opposing party then has 30 days to file an answer or a copy of the brief filed in the Court of Appeal. A reply brief, if filed, is due within 20 days. (CRC rule 8.520(a).)

Step 12. Issuance of the remittitur

This is the end of the case. The remittitur is a document that says the review of the case is final and transfers the power of the reviewing courts (Court of Appeal and Supreme Court) back to the superior court so the superior court can follow up on what, if anything, still needs to be done to carry out the decision or decisions made by the reviewing courts. (CRC rule 8.272.)

If no petition for review was filed in the Supreme Court, the remittitur is issued 61 days after the filing of the opinion in the Court of Appeal (unless a request for publication was granted or there was a modification of the opinion resulting in a change in the judgment, in which cases the time is more than 61 days). At that time

the case becomes “final” in the reviewing courts. (CRC rules 8.264(b), 8.272(b), 8.512(c).) If a party is entitled to costs, the memorandum of costs must be filed in superior court within 40 days of the mailing of a copy of the remittitur. (CRC rule 8.278(c).)

SAMPLE FORM A

NOTICE OF APPEAL

NOTICE OF APPEAL - INSTRUCTIONS

In order to appeal you must be "aggrieved." To be "aggrieved" the lower court or administrative agency must have entered a judgment or order that affects your legal rights or costs you money. Usually you must have been a party in the case in the lower court. You may not appeal on behalf of a spouse, child or other relative (unless you are a legally appointed guardian), or a friend. The notice of appeal is filed in the superior court and should be accompanied by a check, money order or cash of \$775.00 which is the filing fee. Checks or money orders should be made payable to "Clerk, Court of Appeal." A second check or money order for \$100.00 made payable to "Clerk of the Superior Court" is a deposit for the clerk's transcript. This second check need not be included if you, as appellant, plan to prepare an appendix under CRC rule 8.124. If you do not have the money for the filing fee, an application for waiver of court fees and costs must accompany the notice of appeal. (See [Sample Form D](#), for Application for Waiver of Court Fees and Costs.)

The Notice of Appeal form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courts.ca.gov/forms.htm>. Select "Appellate" forms, then click on Form APP-002.

Filling out the Notice of Appeal form:

Caption

- (1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.
- (2) In the "Superior Court of California, County of" area of the form, specify the county, address, and branch name of the superior court that made the order or judgment you are appealing.
- (3) In the next box on the form marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the superior court case caption.
- (4) Check the appropriate box for "Notice of Appeal" or "Notice of Cross-Appeal."
- (5) In the "CASE NUMBER:" box immediately to the right, write the superior court case number.

Page 1

Entry 1. State the date of the judgment or order you are appealing and check the appropriate box to describe the order or judgment. If it is not listed, check the "Other"

box, describe the order you are appealing, and specify the code section that authorizes the appeal.

Entry 2. Provide the requested information only if you are filing a cross-appeal.

Execution of Form. Write the date you are signing the Notice of Appeal, type or print your name legibly on the line at the bottom left of the page, and sign your name at the bottom right.

Page 2 - Proof of Service

Have someone over the age of 18 who is not a party to the action serve the Notice of Appeal and fill out the Proof of Service on page 2 of the form. See instructions accompanying [Sample Form C](#).

File:	Original plus fees in Superior Court Bring an extra copy to be file-stamped for your file
Serve:	All counsel All self-represented parties

SAMPLE FORM B

NOTICE OF ENTRY OF JUDGMENT

SAMPLE FORM B

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

PROOF OF SERVICE BY FIRST-CLASS MAIL

NOTICE OF ENTRY OF JUDGMENT OR ORDER

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):
 - a. deposited the sealed envelope with the United States Postal Service.
 - b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:
 - a. on (*date*):
 - b. from (*city and state*):

4. The envelope was addressed and mailed as follows:

<ol style="list-style-type: none"> a. Name of person served: Street address: City: State and zip code: 	<ol style="list-style-type: none"> c. Name of person served: Street address: City: State and zip code:
<ol style="list-style-type: none"> b. Name of person served: Street address: City: State and zip code: 	<ol style="list-style-type: none"> d. Name of person served: Street address: City: State and zip code:

Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

5. Number of pages attached ____.

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

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

SAMPLE FORM C

PROOF OF SERVICE BY MAIL

**PROOF OF SERVICE BY MAIL
INSTRUCTIONS FOR SUPERIOR COURT
OR COURT OF APPEAL**

Each document you prepare must be served on all counsel and self-represented parties in your case. The document must be served by mail or hand-delivered by someone who is over the age of 18, not a party to the appeal, and a resident of the county where the mailing or delivery occurred.

This sample form is for service by mail, which is the easiest and most common method of service. If you wish to have the document delivered in person instead of mailed, you may adapt this sample form by replacing line 3 with language indicating the name of the person(s) to whom the document was delivered, the date and time of delivery, and the address where the delivery occurred. (For sample language for a hand-delivery, see page 4, line 3b of [Sample Form F](#).)

All documents must be served on all attorneys of record and any self-represented parties. **If the document is a brief, you must also serve one copy on the Superior Court and four paper copies (or alternatively one electronic copy, CRC 8.212(c)(2)) on the California Supreme Court. If the document is a brief or petition, you must serve one copy on any public officer or agency required to be served by CRC rule 8.29.**

NOTE: The Court of Appeal requests a copy of each of your briefs to be electronically transmitted to the court. If you deliver a copy using electronic transmission, you still must comply with the other rules for paper filing. Electronically transmitted briefs are not a substitute for the required paper filings, which are the official court record.

To obtain information about electronic transmission of briefs, go to:
<http://www.courts.ca.gov/4dca-esub.htm>

How to serve a document:

Make a copy of your document for each person or entity you must serve and enough copies for filing with the Court of Appeal. The person doing the mailing must complete the Proof of Service and attach an unsigned copy to each copy of the document being served. The person doing the service should mail a copy of the document to each person listed in the Proof of Service by depositing it in the United States mail with postage fully prepaid. The envelopes may be deposited in a United States post office or mailbox. The original document cannot be filed with the court until service has been completed by mailing the copies. After the envelopes have been deposited into the mail, the original Proof of Service should be signed and attached to the original document for filing.

Filling out the Proof of Service form:

Fill out the case name, Court of Appeal case number, and Superior Court case number. If you are filing the document in the Superior Court, use the Superior Court case name. If you are filing in the Court of Appeal, use the Court of Appeal case name.

Fill out the name of the non-party over the age of 18 who will be doing the mailing.

On line 2, specify the residential or business address of the person doing the mailing, and check the appropriate line for residence or business.

On line 3, specify the date of the mailing, the name of the document being served (for example, "Appellant's Opening Brief"), and the place where the mailing took place. List the full names and addresses of all the parties or their attorneys to whom the documents are being mailed. If the document is a brief, you must also serve the Superior Court, the California Supreme Court (5 copies). If the document is a brief or petition, you must serve any public officer or agency who must be served under CRC rule 8.29. These addresses must also be listed on the Proof of Service.

Date the Proof of Service, type or print the name of the person doing the mailing, and include the signature of the person doing the mailing.

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties.

SAMPLE FORM D

REQUEST TO WAIVE COURT FEES

REQUEST TO WAIVE COURT FEES - INSTRUCTIONS

When you file your notice of appeal (or notice of cross-appeal), there is a filing fee of \$775.00 which is due at the time of filing. A deposit of \$100.00 needs to be paid to the Superior Court if you want it to prepare a clerk's transcript for you. A fee of \$390.00 is due with the first filing of any document or brief by respondent. If you feel you cannot afford these fees, you may fill out a Request to Waive Court Fees. Generally, you would file the application in the Superior Court when you file your notice of appeal, along with the Order on Application for Waiver of Court Fees and Costs (Sample Form E). If you did not file the application in Superior Court you may file it in the Court of Appeal.

The Request to Waive Court Fees form and the Information Sheets on Waiver of Court Fees and Costs are available online in Adobe Acrobat PDF format and the form may be filled out electronically for free at <http://www.courts.ca.gov/forms.htm>. Select "Fee Waiver" forms, then click on Form FW-001 for the form. For the Superior Court information sheet click on Form FW-100-INFO. For the Court of Appeal information sheet, click on Form APP-015/FW-015- INFO.

If you are requesting waiver of fees from both the Superior Court (such as the \$100.00 deposit or fees for the clerk's transcript) and the Court of Appeal (such as the \$775 filing fee), you may be asked by the Superior Court to provide two signed copies of the *Request to Waive Court Fees* form. (Advisory Committee Comment, CRC 8.26(b)(1).)

Filling out the Request to Waive Court Fees form:

Boxes

Do not fill in the first box in the top right hand corner of the form (the clerk will use that box).

In the box immediately below the first box (to the right of the "Your Information" section), specify the Court branch name and street address of the court from which you are requesting a fee waiver.

In the boxes labeled, "Case Number" and "Case Name," write the Superior Court case number for your case and the Court of Appeal number if you have one, and write the plaintiff's name and defendant's name as they appear in the Superior Court case caption.

Entries

Entry 1. In the "Your Information" section, write your name, street or mailing address, city, state, zip code and telephone number where you can be reached during the day.

Entry 2. In the "Your Job" section, write your job title, employer and employer's address. If you do not have a job, write "unemployed."

Entry 3. In the "Your Lawyer" section, if you have a lawyer, write his or her name, law firm or affiliation, address, phone number and State Bar number. Indicate "yes" or "no" if the lawyer has agreed to advance all or a portion of your fees or costs. If you answer "yes," the lawyer must sign the form.

Entry 4. Check the box specifying which court's fees you are asking to be waived.

Entry 5. Check only one of boxes (5(a), 5(b), or 5(c)) that best applies to your situation.

Check box 5(a) if you are receiving financial assistance, and also check the box or boxes next to the type of financial assistance you are receiving. If you have checked box 5(a), you need not fill out page two of the form.

Check box 5(b) if your gross monthly income is less than the amount shown on the Family Size/Family Income box. If you check this box, you must fill out items 7, 8, and 9 on page two of the form, then date the form and fill out your name and signature on the bottom of page two.

Check box 5(c) if your income is not enough to pay for the common necessities of life for yourself and your family and still pay court fees and costs. If you check this box, you have to complete page two of the form in its entirety, then date and sign the bottom of page one.

Entry 6. Specify if the court has waived your court fees for this case in the last six months. If you have a copy of your prior request, attach it to the form and check the box.

At the bottom of page one, write the current date, type or print your name legibly, and sign the form.

If you must fill out all or a portion of page two, write your name and case number(s) at the top of the page.

SAMPLE FORM E

ORDER ON COURT FEE WAIVER

ORDER ON COURT FEE WAIVER - INSTRUCTIONS

These forms are orders from the Superior Court and Court of Appeal either granting or denying your request to waive fees. The court fills out most of these forms. The only parts you will fill out are the court name and street address, case number and entries 1-3. **[Note: The Court of Appeal can only waive the Court of Appeal filing fee of \$775.00.]**

If you are filing a request to waive court fees in the **Superior Court**, submit form FW- 003 along with your Request to Waive Court Fees.

If you are filing a request to waive court fees in the **Court of Appeal**, submit form APP-016/FW-016 along with your Request to Waive Court Fees.

These forms are also available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courts.ca.gov/forms.htm>. Select "Fee Waiver" forms, then click on either form FW-003 or form APP-016/FW-016.

Filling out the Order on Court Fee

Waiver: Court name and case number

If you are using form FW-003: Order on Court Fee Waiver (Superior Court):

If you are requesting a fee waiver in the **Superior Court**, fill in the Superior Court name and street address in the second box (below the first box on the top right hand corner of the form).

In the "Case Number:" box below immediately below the court name box, write the Superior Court case number for your case.

In the "Case Name:" box immediately below the Case Number box, fill out the plaintiff's name and defendant's name as they appear in the Superior Court case caption.

If you are using form APP-016/FW-016: Order on Court Fee Waiver (Court of Appeal or Supreme Court)

If you are requesting a fee waiver in the **Court of Appeal**, fill in the Court of Appeal case name and street address in the middle right hand box (in this court, it is "Fourth District, Division One, 750 B Street, Suite 300, San Diego, California 92101"). In the lowest right hand box, fill in the Court of Appeal case number.

Entries 1-3 (Applies to Superior Court form FW-003 or Court of Appeal form APP- 016/FW-016)

Entry 1. Print your name, street or mailing address, city, state, and zip code.

Entry 2. If you have a lawyer, list his or her name, address, phone number, e-mail, and State Bar number.

Entry 3. If you previously filed a request to waive court fees, write the date you filed the request. If the Superior Court previously made a fee waiver order, write the date of the order.

SAMPLE FORM F

**APPELLANT'S NOTICE DESIGNATING RECORD ON
APPEAL**

SAMPLE FORM F

APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL - INSTRUCTIONS

After filing your notice of appeal you have 10 days to tell the Superior Court what you want in the record that will be sent to the Court of Appeal; this is called the Appellant's Notice Designating Record on Appeal. On the next few pages is a form to assist you in designating the record. What you choose to include in your record depends on the issues you wish to raise on appeal. This notice is filed in the Superior Court.

The Appellant's Notice Designating Record on Appeal is available online in Adobe Acrobat PDF format and may be filled out electronically at <http://www.courts.ca.gov/forms.htm>. Select "Appellate" forms, then click on Form APP-003.

Filling out the Notice Designating Record on Appeal:

Caption

- (1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.
- (2) In the "Superior Court of California, County of" area of the form, specify the county, address, and branch name of the superior court that made the order or judgment you are appealing.
- (3) In the next box on the form marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the superior court case caption.
- (4) In the "Superior Court Case Number" box to the right, write the superior court case number.
- (5) In the "RE: Appeal filed on (*date*)" box, write the date the Notice of Appeal was filed.
- (6) In the "Court of Appeal Case Number (*if known*)" box immediately to the right, write the Court of Appeal case number, if you have it.

Page 1, Paragraph 1, RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

Check only one of the five boxes (a, b, c, d, or e) under paragraph 1.

Check box "1(a)" if you want to have the Superior Court prepare a clerk's transcript. If you check this box, you must check box "1(a)(1)" or "1(a)(2)," and fill out the clerk's transcript section on page 2 of the form.

Check box "1(b)" if you plan to prepare your own transcript (appendix) under CRC rule 8.124 instead of having the Superior Court prepare a clerk's transcript. If you check this box, go to paragraph 2 under **RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT**.

There is no need to fill out paragraph 4 pertaining to a clerk's transcript.

Check box "1(c)" if you want to use the original superior court file under CRC rule 8.128. If you check this box, go to the next section under **RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT**. There is no need to fill out page two.

Check box "1(d)" if you want to use an agreed statement under CRC rule 8.134. If you check this box, you must check box "2(b)(2)" under **RECORD OF ORAL PROCEEDINGS IN THE TRIAL COURT** and attach to your agreed statement copies of all documents that are required to be included in the clerk's transcript.

Check box "1(e)" if you want to use a settled statement under CRC rule 8.137. If you check this box, you must check box "2(b)(3)" and attach the required motion to the *Notice Designating Record on Appeal*.

Page 1, Paragraph 2, RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

If you have not already chosen to use an agreed or settled statement (and checked box "2(b)(2)" or "2(b)(3)"), you need to decide whether you want to proceed with or without a reporter's transcript. Check box "2(a)" if you want to proceed without a reporter's transcript. Check box "2(b)(1)" if you want a reporter's transcript under CRC rule 8.130. If you check this box, be sure to fill out the subparagraphs, as well as the reporter's transcript section in paragraph 5 on pages three and four.

At the bottom of page four, write the current date on the form, type or print your name legibly, and sign the form.

Page Two, Paragraph 3, RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

Fill out paragraph 3 if your matter involved an administrative proceeding and you want the clerk to transmit the record of the administrative proceeding to the Court of Appeal.

Pages Two and Three, Paragraph 4, NOTICE DESIGNATING CLERK'S TRANSCRIPT

Fill out paragraph 4 only if you checked box "1(a)" on page one; if you checked box "1(b)," "1(c)" or "1(d)" or "1(e)" you do not need to fill out this paragraph. The first seven documents are filled in for you under paragraph 4(a). You may designate any other documents in the Superior Court file as part of your record on appeal under paragraph 4(b), choosing as few or as many documents as you wish. You may also designate exhibits that were admitted in evidence, refused, or lodged in the trial court under paragraph 4(c). What you choose to include in your record depends on the issues you wish to raise on appeal. You will need to make a \$100.00 deposit with the Superior Court if you select this option.

Page Three, Paragraph 5, NOTICE DESIGNATING REPORTER'S TRANSCRIPT

Fill out paragraph 5 on page three only if you checked box "2(b)(1)" on page one; if you checked box "2(a)" or "2(b)(2)" or "2(b)(3)" you do not need to fill out this page. A reporter's transcript is a word for word typewritten record of everything that was said in court during a trial or hearing.

Check box "5(a)(2)" if you want your copy of the reporter's transcript in computer readable format.

Fill in box 5(b) for each day you want transcribed and write the date, the department of the Superior Court you were in, whether it was a full or partial day, a description of the proceeding, and the reporter's name. Check the box to show whether a certified transcript was previously prepared. The reporter's transcript costs money: a deposit plus a \$50 fee. You can ask the reporter to give you a written estimate of what it will cost in advance and pay that. Or, if the proceedings were not transcribed before, you can pay \$650 per day for days where there were more than three hours to be transcribed or \$350 per day where there were less than three hours to be transcribed. If the proceedings were previously transcribed, you can pay \$160 per day for days where there were more than three hours to be transcribed or \$80 per day where there were less than three hours to be transcribed.

Proof of Service

Have someone over the age of 18 who is not a party to the action serve the Notice Designating Record on Appeal and fill out a Proof of Service. See instructions accompanying [Sample Form C](#).

Due: 10 days after filing Notice of Appeal

File: Original with Superior Court
(Bring an extra copy to be file-stamped for your file.)

Serve: Court Reporter (if reporter's transcript requested) All counsel
All self-represented parties

SAMPLE FORM G

CIVIL CASE INFORMATION STATEMENT

SAMPLE FORM G

CIVIL CASE INFORMATION STATEMENT - INSTRUCTIONS

The Civil Case Information Statement must be filed in the Court of Appeal within 15 days after the superior court clerk mails you a notice that the *Notice of Appeal* has been filed. Attach a copy of the order or judgment which you are appealing to the Civil Case Information Statement. The court recommends that the order or judgment be file-stamped and signed by the lower court judge. You also need to attach a Proof of Service to the Civil Case Information Statement showing you served a copy of the Civil Case Information Statement with its attachment on all counsel and self-represented parties. (See [Sample Form C.](#)) The Civil Case Information Statement is filed in the Court of Appeal.

This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courts.ca.gov/forms.htm>. Select "Appellate" forms, then click on Form APP-004.

Filling out the Civil Case Information Statement form: Caption:

- (1) Fill out the top box of the form as follows: "Court of Appeal, Fourth Appellate District, Division Three." Indicate the Court of Appeal case number in the box to the right.
- (2) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.
- (3) In the next box down, indicate your name next to "APPELLANT" and the responding party's name next to "RESPONDENT."
- (4) In the next box down, specify the Superior Court, address, and branch name of the court that made the order or judgment you are appealing.
- (5) In the "JUDGES" box, list all of the Superior Court judges who had anything to do with your case. In the box to the right, write the Superior Court case number.

Part I - Appeal Information

- A.1. Mark the box that best describes what you are appealing.
- A.2. If your appeal disposes of all causes of action including all cross-actions between the parties check "yes". If not, check "no".
- B.1. The date of entry of judgment or order appealed from.

B.2. The date notice of entry of the judgment or order was served or mailed. If none was served or mailed, leave this space blank.

B.3. Check "yes" if you made a motion for (a) new trial, (b) judgment notwithstanding the verdict, (c) reconsideration of an appealable order or (d) vacating the judgment, and that motion was denied. Check the "no" box if you did not make any of the above motions. If you checked yes, write in the type of motion you filed, the date the motion was filed, the date the motion was denied and the date the denial was served.

B.4. The date you filed your notice of appeal or cross-appeal in Superior Court.

C. Check if there is a bankruptcy case or any court issued stay which would have an effect on your appeal in the Court of Appeal. If you check this box you must attach to this form a file- stamped copy of the bankruptcy petition and any documentation related to the stay. Leave blank if there is no bankruptcy case or other court issued stay which would have an effect on your appeal in the Court of Appeal.

D. Check "yes" if you have any related appeals, writs or any other proceeding before this or any other California appellate court. Check "no" if you do not have any other appeals, writs or proceedings before this or any other California appellate court. If you checked "yes," write the name of the court in which you have or had a case, the appellate court case number, the title of the case, name of trial court and trial court case number. If you have or had multiple cases, attach the list of cases to this form on a separate sheet of paper.

E. Some types of cases require service of briefs or petitions on the Attorney General. Check the list on the form to see if yours is one of these types of cases. In addition, Rule 8.29(c) requires service on the Attorney General for the following types of cases: (1) those questioning the constitutionality of a state statute; (2) those in which the state or a state officer in his or her official capacity is a party; and (3) those in which a county is a party. Check the "yes" box if service on the Attorney General is required, and check the "no" box if it is not.

PART II -NATURE OF ACTION

A. Check the box or boxes that best describe the nature of the action of your case. If it is not listed, check "Other action" and describe the nature of the case.

B. Check this box if your case is entitled to calendar preference or priority on appeal. Write the rule of court or statute that entitles you to calendar preference or priority. Leave blank if your case is not entitled to calendar preference or priority.

PART III - PARTY AND ATTORNEY INFORMATION

In the boxes provided or on a separate sheet of paper, write or type all the parties and their attorneys of record who will participate in the appeal. For each party, list the party's name, appellate court designation (appellant or respondent) and designation in the trial court proceeding (plaintiff, defendant, etc.). For the attorneys, list the party the attorney represents, the name of the attorney, state bar number, law firm name, mailing address, telephone number, fax number and e-mail address. If the party is self-represented, list the name, designation in the trial court proceeding (plaintiff, defendant, etc.), mailing address, telephone number, fax number and e-mail address. List only parties who will be participating in the appeal and no one else.

Fill in the appellate case title and appellate court case number in the boxes at the top of pages 2 and 3.

At the bottom of page 2, write or type your name legibly, and date and sign the form. Serve a copy of the form on all parties. (See [Sample Form C.](#))

Due: 15 days after the superior court clerk mails notice that the *Notice of Appeal* has been filed.

File: Original of Civil Case Information Statement, judgment or order and Proof of Service on all parties. File with Court of Appeal.

Provide an extra copy to be file-stamped for your file.

Serve: All counsel
All self-represented parties

SAMPLE FORM H

**STIPULATION FOR EXTENSION OF TIME TO FILE
BRIEF (CIVIL CASE)**

SAMPLE FORM H

STIPULATION FOR EXTENSION OF TIME TO FILE BRIEF - INSTRUCTIONS

If the court has not already granted an application to extend the time to file your brief, the parties may stipulate to extend the briefing time for 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).) The stipulation must be signed by and served on all parties.

This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courts.ca.gov/forms.htm>. Select "Appellate" forms, then click on Form APP-012.

Filling out the Stipulation For Extension of Time form:

Caption

- (1) Fill out the top box of the form as follows: "Court of Appeal, Fourth Appellate District, Division Three." Indicate the Court of Appeal case number and the Superior Court case number in the boxes to the right.
- (2) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, telephone number where you can be reached during the day, and if available, e- mail address and fax number.
- (3) In the next box down, write your name next to "APPELLANT" and the responding party's name next to "RESPONDENT."

Page 1, entries 1-6

Entry 1. Check whether your stipulation is for appellant's opening brief, respondent's brief, combined respondent's and appellant's opening brief, combined appellant's reply brief and respondent's brief, or appellant's reply brief.

Entry 2. Fill in the date the brief is currently due (**before** your stipulated extension). Entry 3. Fill in the number of days of your requested extension, and the new due date.

Entry 4. Check whether there have been earlier extensions by stipulation. If earlier extensions were received by stipulation, fill in the total number of days briefing has already been extended. The combined extensions to file a brief by stipulation may not exceed 60 days.

Entry 5. If you are an attorney, you must certify you have served a copy of the stipulation on your client and check the box.

Entry 6. You must attach a **Proof of Service** and serve it on all parties. Have someone over the age of 18 who is not a party to the action serve the stipulation and fill out a Proof of Service (see APP-009). See requirements in box below, and instructions accompanying [Sample Form C](#).

Date the form at the bottom of page 1, type or print your name legibly, and sign.

File: Original and one copy with Proof of Service on all counsel and self-represented parties

Serve: All counsel
All self-represented parties
(If you are an attorney, serve your client.)

SAMPLE FORM I

**APPLICATION FOR EXTENSION OF TIME TO FILE
BRIEF (CIVIL CASE)**

SAMPLE FORM I

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF - INSTRUCTIONS

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. The party seeking additional time must give reasons, also known as "**good cause**," why that extension is needed. (CRC rule 8.63.) You must serve a copy of your extension request on all parties (or the attorneys for represented parties). You should file an original of your extension request in the Court of Appeal, along with a proof of service. ([Sample Form C](#).) You must also provide the Clerk of the Court of Appeal with enough copies of the extension request for each party (including yourself) and stamped envelopes addressed to each party (including yourself). The Clerk will use these extra copies and envelopes to mail out the court's order granting or denying the extension request.

This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courts.ca.gov/forms.htm>. Select "Appellate" forms, then click on Form APP-006.

Filling out the Application for Extension of Time to File Brief form: Caption

- (1) Fill out the top box of the form as follows: "Court of Appeal, Fourth Appellate District, Division Three." Indicate the Court of Appeal case number and the Superior Court case number in the boxes to the right.
- (2) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, telephone number where you can be reached during the day, and if available, e- mail address and fax number.
- (3) In the next box down, write your name next to "APPELLANT" and the responding party's name next to "RESPONDENT."

Page 1, entries 1-7

Entry 1. Check whether the extension is for appellant's opening brief, respondent's brief, combined respondent's and appellant's opening brief, combined appellant's reply brief and respondent's brief, or appellant's reply brief and fill in the date the brief is due. Add the date you would like the brief to be due after the "be extended to (*date*)" language.

Entry 2. Check one of the two boxes to indicate whether or not CRC rule 8.220 notice has been received.

Entry 3. Check whether there have been previous extensions. If earlier extensions were received, indicate how many were granted by stipulation, how many by the court, and for each type of extension, the total number of days briefing has already been extended. Check whether the court has stated there would be "no further" extensions.

Entry 4. Check why you are unable to file a stipulation.

Entry 5. If a brief has already been filed, check whether the most recent brief filed was the Appellant's Opening Brief ("AOB"), the Respondent's Brief ("RB"), the combined Respondent's and Appellant's opening brief ("RB and AOB"), combined Appellant's Reply brief and Respondent's Brief ("ARB and RB"), and write the date it was filed. If no brief has yet been filed, leave this entry blank.

Entry 6. Fill out the requested information for the length of the appellate record and the date the record was filed.

Entry 7. Fill out this box if the trial court has stopped the case during the appeal. (The court may refer to this as a "stay" of the case pending the appeal.)

Page 2

Entry 8. Give "**good cause**" for the extension by explaining why the extension is needed. (See CRC rule 8.63(b) for a list of the relevant factors.) You may use an optional form declaration, APP-031, Attached Declaration (Court of Appeal), to write your explanation. This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courts.ca.gov/forms.htm>. Select "Appellate" forms, then click on Form APP-031.

Entry 9. If you are an attorney, serve a copy of the application on your client and check the box. Entry 10. You must attach a **Proof of Service** and serve it on all parties. Have someone over the age of 18 who is not a party to the action serve the application and fill out the Proof of Service. See requirements in box below, and instructions accompanying [Sample Form C](#). Date the form at the bottom of page 2, type or print your name legibly and sign.

File: Original with a Proof of Service on all counsel and self-represented parties (if you are an attorney, serve your client), together with copies and preaddressed, stamped envelopes for each party.

Serve: All counsel
All self-represented parties
(If you are an attorney, serve your client.)

SAMPLE FORM J

**ABANDONMENT OF APPEAL
(UNLIMITED CIVIL CASE)**

SAMPLE FORM J

ABANDONMENT OF APPEAL (UNLIMITED CIVIL CASE) INSTRUCTIONS

If you wish to abandon your civil appeal **BEFORE** the record is filed, you should file a written Abandonment of Appeal (Unlimited Civil Case) form in the **Superior Court**.

This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courts.ca.gov/forms.htm>. Select "Appellate" forms, then click on Form APP-005.

Filling out the Abandonment of Appeal (Unlimited Civil Case) form: Caption

- (1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.
- (2) In the "Superior Court of California, County of" area of the form, specify the county, address, and branch name of the superior court that made the order or judgment you are appealing.
- (3) In the next box on the form marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the superior court case caption.
- (4) In the "Superior Court Case Number" box to the right, write the superior court case number.
- (5) In the "Court of Appeal Case Number (*if known*)" box, write the Court of Appeal case number, if you know it.

Abandonment Statement

Fill in the date your Notice of Appeal was filed. At the bottom of the form, write the current date, type or print your name legibly, and sign the form.

Page Two (Proof of Service)

Have someone over the age of 18 who is not a party to the action serve the Abandonment of Appeal and fill out the Proof of Service on page 4 of the form. See instructions accompanying [Sample Form C](#).

File: Original with **Superior Court**
Provide an extra copy to be file-
stamped for your file.

Serve: All counsel
All self-represented parties

SAMPLE FORM K

**REQUEST FOR DISMISSAL OF APPEAL
(CIVIL CASE)**

SAMPLE FORM K

REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE) INSTRUCTIONS

If you wish to abandon your civil appeal AFTER the record is filed, you should file a written Request for Dismissal of Appeal (Civil Case) form in the Court of Appeal. Dismissal of the appeal is discretionary with the Court of Appeal.

This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courts.ca.gov/forms.htm>. Select "Appellate" forms, then click on Form APP-007.

Filling out the Request for Dismissal of Appeal (Civil Case) form: Caption

- Fill out the top box of the form as follows: "Court of Appeal, Fourth Appellate District, Division Three." Indicate the Court of Appeal case number and the Superior Court case number in the boxes to the right.
- In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.
- In the next box down, indicate your name next to "APPELLANT" and the responding party's name next to "RESPONDENT."

Dismissal Request

Write in the date your Notice of Appeal was filed. At the bottom of the form, write the current date, type or print your name legibly, and sign the form.

Page Two (Proof of Service)

Have someone over the age of 18 who is not a party to the action serve the Request for Dismissal and fill out the Proof of Service on page 4 of the form. See instructions accompanying [Sample Form C](#).

File: Original plus 1 copy with Court of Appeal

Provide an extra copy to be file-stamped for your file.

Serve: All counsel, all self-represented parties

SAMPLE FORM L

**CERTIFICATE OF INTERESTED ENTITIES OR
PERSONS**

SAMPLE FORM L

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS INSTRUCTIONS

The Certificate of Interested Entities or Persons is a form that each party must prepare in order to identify for the Court of Appeal other entities and/or persons that the party knows has a financial or other interest in the outcome of their proceeding. (CRC rule 8.208(a).) The Certificate of Interested Entities or Persons does not need to be filed in family, juvenile, guardianship or conservatorship cases.

Each party must serve and file a Certificate of Interested Entities or Persons at the time it files its first motion, application or opposition to any motion in the Court of Appeal and also must include a copy of the form in its principal brief after the cover and before the tables of contents and authorities. (CRC rule 8.208(d)(1).) If no motion, application or opposition is filed before the principal brief, the party must include the Certificate of Interested Entities or Persons in its principal brief.

This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courts.ca.gov/forms.htm>. Select "Appellate" forms, then click on Form APP-008.

Filling out the Certificate of Interested Entities or Persons form: Caption

Fill out the top box of the form as follows: "Court of Appeal, Fourth Appellate District, Division Three." Indicate the Court of Appeal case number and the Superior Court case number in the boxes to the right.

In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.

In the next box down, indicate your name next to "APPELLANT" (if you are the appellant) and the responding party's name next to "RESPONDENT."

Check whether you are filling out your first (Initial) Certificate or a Supplemental Certificate.

Entries 1 and 2

Entry 1. Indicate the name of the party for whom the form is being submitted.

Entry 2. Check box "a" if there are no interested entities or persons that must be listed in this Certificate under rule 8.208. Check box "b" if there are interested entities or persons that must be listed. Fill in the full name of each interested person or entity, check the box that applies if the interested person or entity is a party or non-party, and explain the nature of the interested person or entity in the space provided.

Fill in the date, type your name and sign the form.

Have someone over the age of 18 who is not a party to the action serve the Certificate of Interested Entities or Persons and fill out the Proof of Service form. See instructions accompanying [Sample Form C](#).

File: Original

Provide an extra copy to be file-stamped for your file.

Serve: All counsel
All self-represented parties

SAMPLE FORM M

**RESPONDENT'S NOTICE DESIGNATING RECORD
ON APPEAL (APP-010)**

**RESPONDENT'S NOTICE ELECTING TO USE
APPENDIX (APP-011)**

SAMPLE FORM M

RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (APP-010)

After the appellant serves its notice designating the record, you have 10 days to tell the Superior Court what additional documents or exhibits you want in the record that will be sent to the Court of Appeal. (CRC rules 8.122(a), 8.130(a).) This is called the Respondent's Notice Designating Record on Appeal. This notice is filed in the Superior Court.

The Respondent's Notice Designating Record on Appeal is available online in Adobe Acrobat PDF format and may be filled out electronically at <http://www.courts.ca.gov/forms.htm>. Select "Appellate" forms, then click on Form APP-010.

Have someone over the age of 18 who is not a party to the action serve the Respondent's Notice Designating Record on Appeal with a Proof of Service. See instructions accompanying [Sample Form C](#).

RESPONDENT'S NOTICE ELECTING TO USE AN APPENDIX (APP-011)

If the appellant has not received a waiver of the fee for a clerk's transcript and there is no court order otherwise, the respondent may elect to use an appendix on appeal. The Respondent's Notice Electing to Use an Appendix must be served and filed within 10 days after the notice of appeal is filed. (CRC rule 8.124(a).)

The Respondent's Notice Electing to Use an Appendix is available online in Adobe Acrobat PDF format and may be filled out electronically at <http://www.courts.ca.gov/forms.htm>. Select "Appellate" forms, then click on Form APP-011.

Have someone over the age of 18 who is not a party to the action serve the Respondent's Notice Electing to Use an Appendix with a Proof of Service. See instructions accompanying [Sample Form C](#).

SAMPLE FORM N

COVER FOR RULE 8.124 APPENDIX

COVER FOR RULE 8.124 APPENDIX (APPELLANT'S OR RESPONDENT'S)

No. [Appellate number starting with "G"]

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION THREE

[Name of Plaintiff from Superior Court case title and that party's appellate designation],

Plaintiff and [Appellant or
Respondent], v.

[Name of Defendant from Superior Court case title and that party's appellate designation],

Defendant and [Appellant or
Respondent].

Court of Appeal

No. [Appellate number starting with "G"]

(Superior Court No. [Number from Superior Court case])

Appeal From a Judgment of
The Superior Court of California, County of Orange
The Honorable [Name of Superior Court Judge], Judge

APPELLANT'S (or RESPONDENT'S) APPENDIX
IN LIEU OF CLERK'S TRANSCRIPT

[Names and addresses
of counsel for other parties
and of self-represented parties]

Your Name
Your Address
Your Phone Number During the Day
Self-represented

SAMPLE FORM O

CHRONOLOGICAL INDEX FOR RULE 8.124 APPENDIX

CHRONOLOGICAL INDEX FOR RULE 8.124 APPENDIX

Chronological Index

ENTRY	DATE	PAGE
Complaint	1/01/01	01
Minute Order	2/15/01	07
Motion for Summary Judgment	4/15/01	08
Separate Statement of Undisputed Facts	4/15/01	20
Opposition to Motion for Summary Judgment	4/28/01	35
Minute Order Denying Summary Judgment	5/15/01	42
Judgment Appealed From	5/30/01	43
Notice of Entry of Judgment	6/02/01	44
Notice of Appeal	6/30/01	45

SAMPLE FORM P

ALPHABETICAL INDEX FOR RULE 8.124 APPENDIX

ALPHABETICAL INDEX FOR RULE 8.124 APPENDIX

Alphabetical Index

ENTRY	DATE	PAGE
Complaint	1/01/01	01
Judgment Appealed From	5/30/01	43
Minute Order	2/15/01	07
Minute Order Denying Summary Judgment	5/15/01	42
Motion for Summary Judgment	4/15/01	08
Notice of Appeal	6/30/01	45
Notice of Entry of Judgment	6/02/01	44
Opposition to Motion for Summary Judgment	4/28/01	35
Separate Statement of Undisputed Facts	4/15/01	20

SAMPLE FORM Q

SAMPLE BRIEFS

SAMPLE
APPELLANT'S OPENING BRIEF

The name of the plaintiff or petitioner shown in the *superior court order or judgment* is always listed first (above the “v.”) and the name of the defendant in that order or judgment is listed below the “v.”

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

THE THREE BEARS,

Plaintiffs and Respondents,

v.

GOLDILOCKS,

Defendant and Appellant.

Court of Appeal No. G0_____

(Super. Ct. No. _____)

Appeal From a Judgment [or Order]
Of The Superior Court, County of Orange
Hon. [insert name of Superior Court judge],
Judge

APPELLANT'S OPENING BRIEF

Your name
Your Address
Your Phone Number During the Day

Appellant
Self-Represented

Regardless of whether you were the plaintiff or defendant in superior court, in the appellate court you are called the appellant if you are the one who is appealing or the respondent if you are responding to an appeal filed by someone else.

The cover sheet for an Appellant's Opening Brief should be green.

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STATEMENT OF FACTS	1
ARGUMENT	Describe each of your issues under a separate heading.
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B. Elements of the Action	3
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TABLE OF AUTHORITIES

CASES

Separately list each case, constitutional provision, statute, court rule, and other authority you are relying on and the page number where those authorities appear in your brief. (Rule 8.204(a)(1)(A).)

	Page
Gallin v. Poulou (1956) 140 Cal.App.2d 638.	3
Miller v. National Broadcasting Co. (1986) 187 Cal.App.3d 1463.	3
Williams v. General Elec. Credit Corp. (1946) 159 Cal.App.2d 527.	3
Williams v. Wraxall (1995) 33 Cal.App.4th 120.	3

STATUTES (if any)

OTHER

Restatement 2nd of Torts, section 167.	3
5 Witkin, Summary of California Law (9th ed. 1988)	3

STATEMENT OF THE CASE

Provide a summary of the nature of the action, the relief sought in the trial court, and what happened in the trial court proceedings. (Rule 8.204(1)(2)(A).)

The Three Bears filed a complaint in August 2001 alleging Goldilocks had trespassed on their property by entering their home when they were not at home, consuming a meal and falling asleep in a bed. The complaint alleged that Baby Bear had suffered physical and mental damages as a result of being frightened upon discovering Goldilocks. (I CT 1-4.) After a civil trial on the matter over a period of two days, the court found that Goldilocks had committed trespass. (I CT 25.) The court entered a final judgment in favor of the Three Bears in the amount of \$50,000. (I CT 27.)

STATEMENT OF APPEALABILITY

Describe the order or judgment being appealed from and explain why it is appealable. (Rule 8.204(a)(2)(B).)

This appeal is from the judgment of the Orange County Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1).

Provide a summary of significant facts limited to matters in the record. (Rule 8.204(a)(2)(C).) Each fact should be followed by a citation to the reporter's transcript, clerk's transcript, or appendix. Citations should include the volume and page number of the record where the matter appears. (Rule 8.204(a)(2)(C).)

STATEMENT OF FACTS

Papa Bear lives in Santa Ana, California with his wife, Mama Bear and son, Baby Bear.

(IRT 1.) Appellant Goldilocks lives a few miles away on the other side of the forest. (I RT 25.)

The Bears' neighbor, Gloria Gardner, watched what happened from her garden next door. (I RT 15.)

Gardner testified she saw the Bear family leave their house without shutting the front door about 8:00 a.m. and saw Goldilocks enter the house at about 8:30. At about 9:30 a.m. she heard screams and saw Goldilocks run from the Bears' house. (I RT 17.)

Peter Rabbit testified he was on a stroll in the forest around 8:30 a.m. when he saw Goldilocks look into the Bears' house. (II RT 30.) Rabbit smelled sweet porridge and heard Goldilocks say, "I sure am hungry. I'll just have one bite." (II RT 31.) Rabbit then saw

Goldilocks enter the house and, through the front door, he observed Goldilocks trying a spoonful

This is how you cite record: (1) put the volume number of the transcript, (2) put the type of transcript (CT from clerk's, RT for court reporter's), and then (3) put the page number where the information is located. This example cites to volume I of the reporter's transcript at page 1.

from three bowls of porridge on the dining table. (II RT 32.) One bowl was a great big bowl, another was a medium-sized bowl, and the last one was a tiny bowl. (II RT 32- 33.) Goldilocks stopped at the tiny bowl and exclaimed, "Yummy! This is just right!" (II RT 32.)

The Bears testified that when they returned from the walk, they saw they had left the front door open. (I RT 3.) Food was missing from the dining room table. (I RT 4.) Baby Bear found Goldilocks asleep in his bed. (I RT 6.) Terrified, Baby Bear screamed and woke up Goldilocks. (I RT 9.) Startled and confused, Goldilocks ran from the Bears' house. (I RT 30.)

An expert bear cub psychologist, Dr. Dramatic, who has done extensive research in the phobias of young bears, testified to the traumatic effects when a bear cub comes in contact with a human child. Baby Bear had physical symptoms of blackouts stemming from his encounter with Goldilocks as well as mental anguish requiring therapy. (I RT 21-24.)

Goldilocks testified she was looking for a boarding facility to take a rest, the Bears' house was very large, there was no fence to indicate this was private property, the door of the house was left open and there was a mat at the front door that said "WELCOME". (I RT 25; II CT 4.) She thought this was a commercial boarding establishment, as large amounts of food were set out as if for guests; she looked for someone to ask about spending the night and saw several sets of chairs and beds all in different sizes. (I RT 27-28.) She sat down on a bed and fell asleep. (I RT 29.)

Here is an example of a citation to the clerk's transcript. This citation refers to volume II of the clerk's transcript at page 4.

ARGUMENT

State each issue or argument under a separate heading or subheading that summarizes the point. (Rule 8.204(a)(1)(B).)

I. GOLDBLOCKS WAS GIVEN IMPLIED CONSENT TO ENTER THE HOUSE AND THUS HER ENTRY WAS NOT “WRONGFUL”

Provide the court with the standard of review or the “lens” it should look through to review the matter. Case law will tell you what standard of review applies to your issue.

A. The Standard of Review. The trial court erred in finding that Goldilocks trespassed on the Bears' property as there is no substantial evidence to support that finding. On review, the appellate court looks to the record to see if there are facts to support the trial court or jury's findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict in favor of the party who won in the trial court. (*Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 132.)

If possible, cite the case law or other authority that shows the standard of review that applies to your issue. (Rule 8.204(a)(1)(B).)

B. The Elements of the Action. A trespass occurs when a person intentionally,

Provide a summary of the law relevant to your argument with citations to authority where possible.

recklessly or negligently enters land in the possession of another. (*Gallin v. Poulou* (1956) 140 Cal.App.2d 638, 645.) The intent to enter is the only intent needed. (*Miller v. National Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1480.) However, consent or permission to enter upon the property is a defense. (*Williams v. General Elec. Credit Corp.* (1946) 159 Cal.App.2d 527, 532; 5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706; Rest.2d Torts, § 167.)

C. No Evidence of Wrongful Entry. Here, Goldilocks did not intend to enter on private

State how the law applies to the facts of your case

property. She thought the Bears' house was a public, commercial boarding house. Although her actual intent is not a legal defense, her actual intent reinforces her argument that she had consent to enter the building. The door was open, the WELCOME mat was out, the food was on the table, and there were many beds and chairs about. All of this points to the conclusion the Bears were prepared for and awaiting the arrival of numerous persons and supports Goldilocks' belief this was a boarding house and there was no reason for her not to enter. At a minimum the house

was prepared and open for an "open house". No evidence points to any indication the house was closed, off-limits to outsiders, or limited in the types of persons who would be admitted. There is no evidence to support a finding Goldilocks' entry was wrongful. The judgment must be reversed.

CONCLUSION

In the conclusion, briefly summarize your arguments.

Goldilocks submits the Three Bears have failed to meet their burden of proving that her entry into their house was wrongful and, thus, a trespass. All of the evidence supports a finding that the Bears by their conduct consented to Goldilocks' entry. Goldilocks respectfully asks that this Court reverse the decision of the trial court and vacate the award of damages.

End your brief with a statement about what relief you want from the court

Respectfully submitted,

DATED:

By: _____
(Signature)

(Your name-printed or typed)

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains _____ words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By: _____
(Your Signature)

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties. (See Sample Form C.)

SAMPLE
RESPONDENT'S BRIEF

The name of the plaintiff or petitioner shown in the *superior court order or judgment* is always listed first (above the “v.”) and the name of the defendant in that order or judgment is listed below the “v.”

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

THE THREE BEARS,

Plaintiffs and Respondents,

v.

GOLDILOCKS,

Defendant and Appellant.

Court of Appeal No. G0_____

(Super. Ct. No. _____)

Regardless of whether you were the plaintiff or defendant in superior court, in the appellate court you are called the appellant if you are the one who is appealing or the respondent if you are responding to an appeal filed by someone else.

Appeal From a Judgment [or Order]
Of The Superior Court, County of Orange
Hon. [insert name of Superior Court judge],
Judge

RESPONDENT’S BRIEF

Your name
Your Address
Your Phone Number During the Day

Respondent
Self-Represented

The cover sheet for a Respondent’s Brief should be yellow.

RESPONDENT’S BRIEF

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TABLE OF AUTHORITIES

Separately list each case, constitutional provision, statute, court rule, and other authority you are relying on and the page number where those authorities appear in your brief. (Rule 8.204(a)(1)(A).)

CASES

	Page
Gallin v. Poulou (1956) 140 Cal.App.2d 638.	3
Miller v. National Broadcasting Co. (1986) 187 Cal.App.3d 1463.	3
Williams v. General Elec. Credit Corp. (1946) 159 Cal.App.2d 527.	3
Williams v. Wraxall (1995) 33 Cal.App.4th 120.	3

STATUTES (if any)

OTHER

Restatement 2nd of Torts, section 167.	3
5 Witkin, Summary of California Law (9th ed. 1988)	3

STATEMENT OF THE CASE

Provide a summary of the nature of the action, the relief sought in the trial court, and what happened in the trial court proceedings. (Rule 8.204(1)(2)(A).)

The Three Bears filed a complaint in August 2001 alleging Goldilocks had trespassed on their property by entering their home when they were not at home, consuming a meal and falling asleep in a bed. The complaint alleged that Baby Bear had suffered physical and mental damages as a result of being frightened upon discovering Goldilocks. (I CT 1-4.) After a civil trial on the matter over a period of two days, the court found that Goldilocks had committed trespass. (I CT 25.) The court entered a final judgment in favor of the Three Bears in the amount of \$50,000. (I CT 27.)

Provide a summary of significant facts limited to matters in the record. (Rule 8.204(a)(2)(C).) Each fact should be followed by a citation to the reporter's transcript, clerk's transcript, or appendix. Citations should include the volume and page number of the record where the matter appears. (Rule 8.204(a)(2)(C).)

STATEMENT OF FACTS

Papa Bear lives in Santa Ana, California with his wife, Mama Bear and son, Baby Bear.

(IRT 1.) Appellant Goldilocks lives a few miles away on the other side of the forest. (I RT 25.)

The Bears' neighbor, Gloria Gardner, watched what happened from her garden next door. (I RT 15.)

Gardner testified she saw the Bear family leave their house without shutting the front door about 8:00 a.m. and saw Goldilocks enter the house at about 8:30. At about 9:30 a.m. she heard screams and saw Goldilocks run from the Bears' house. (I RT 17.)

Peter Rabbit testified he was on a stroll in the forest around 8:30 a.m. when he saw Goldilocks look into the Bears' house. (II RT 30.) Rabbit smelled sweet porridge and heard Goldilocks say, "I sure am hungry. I'll just have one bite." (II RT 31.) Rabbit then saw Goldilocks enter the house and, through the front door, he observed Goldilocks trying a spoonful from three bowls of porridge on the dining table. (II RT 32.) One bowl was a great big bowl, another was a medium-sized bowl, and the last one was a tiny bowl. (II RT 32- 33.) Goldilocks stopped at the tiny bowl and exclaimed, "Yummy! This is just right!" (II RT 32.)

This is how you cite record: (1) put the volume number of the transcript, (2) put the type of transcript (CT from clerk's, RT for court reporter's), and then (3) put the page number where the information is located. This example cites to volume I of the reporter's transcript at page 1.

The Bears testified that when they returned from the walk, they saw they had left the front door open. (I RT 3.) Food was missing from the dining room table. (I RT 4.) Baby Bear found Goldilocks asleep in his bed. (I RT 6.) Terrified, Baby Bear screamed and woke up Goldilocks. (I RT 9.) Startled and confused, Goldilocks ran from the Bears' house. (I RT 30.)

An expert bear cub psychologist, Dr. Dramatic, who has done extensive research in the phobias of young bears, testified to the traumatic effects when a bear cub comes in contact with a human child. Baby Bear had physical symptoms of blackouts stemming from his encounter with Goldilocks as well as mental anguish requiring therapy. (I RT 21-24.)

Goldilocks testified she was looking for a boarding facility to take a rest, the Bears' house was very large, there was no fence to indicate this was private property, the door of the house was left open and there was a mat at the front door that said "WELCOME". (I RT 25; II CT 4.) She thought this was a commercial boarding establishment, as large amounts of food were set out as if for guests; she looked for someone to ask about spending the night and saw several sets of chairs and beds all in different sizes. (I RT 27-28.) She sat down on a bed and fell asleep. (I RT 29.)

Here is an example of a citation to the clerk's transcript. This citation refers to volume II of the clerk's transcript at page 4.

ARGUMENT

State each issue or argument under a separate heading or subheading that summarizes the point. (Rule 8.204(a)(1)(B).)

I. GOLDBLOCKS TRESPASSED BY WRONGFULLY ENTERING THE BEARS' HOUSE

Provide the court with the standard of review or the "lens" it should look through to review the matter. Case law will tell you what standard of review applies to your issue.

A. The Standard of Review. The trial court correctly found that Goldilocks trespassed on the Bears' property as there was substantial evidence to support that finding. On review, the appellate court looks to the record to see if there are facts to support the trial court or jury's findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict in favor of the party who won in the trial court. (*Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 132.)

If possible, cite the case law or other authority that shows the standard of review that applies to your issue. (Rule 8.204(a)(1)(B).)

Provide a summary of the law relevant to your argument with citations to authority where possible.

B. The Elements of the Action. A trespass occurs when a person intentionally, recklessly or negligently enters land in the possession of another. (*Gallin v. Poulou* (1956) 140 Cal.App.2d 638, 645.) The intent to enter is the only intent needed. (*Miller v. National Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1480.) However, consent or permission to enter upon the property is a defense. (*Williams v. General Elec. Credit Corp.* (1946) 159 Cal.App.2d 527, 532; 5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706; Rest.2d Torts, § 167.)

State how the law applies to the facts of your case

C. Evidence of Wrongful Entry. Here, Goldilocks intended to enter private property. When she looked through the front door, Goldilocks saw the Bears were not home but there were three different sized bowls of sweet porridge on the dining table, as if they belonged to a family. After seeing and smelling the porridge, Goldilocks said she was hungry and entered the Bears' house to have just one bite. Goldilocks tried the three bowls of porridge until she found the right one. This evidence points to the conclusion that Goldilocks knew the Bears' house was private property and she intended to enter because she was hungry, not because she thought the house was a public boarding house. Accordingly, there was sufficient evidence to support the trial court's finding that Goldilocks trespassed on the Bears' property. The judgment must be affirmed.

CONCLUSION

In the conclusion, briefly summarize your arguments.

The Three Bears submit there was substantial evidence to support the court's finding that Goldilocks's entry into their house was wrongful and, thus, a trespass. The Three Bears respectfully ask that this Court affirm the decision of the trial court.

End your brief with a statement about what relief you want from the court

Respectfully

submitted,

DATED:

By: _____
(Signature)

(Your name-printed or typed)

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains _____ words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By: _____
(Your Signature)

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties. (See Sample Form C.)

SAMPLE
APPELLANT'S REPLY BRIEF

The name of the plaintiff or petitioner shown in the *superior court order or judgment* is always listed first (above the “v.”) and the name of the defendant in that order or judgment is listed below the “v.”

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

THE THREE BEARS,

Plaintiffs and Respondents,

v.

GOLDILOCKS,

Defendant and Appellant.

Court of Appeal No. G0 _____

(Super. Ct. No. _____)

Appeal From a Judgment [or Order]
Of The Superior Court, County of Orange
Hon. [insert name of Superior Court judge],
Judge

Regardless of whether you were the plaintiff or defendant in superior court, in the appellate court you are called the appellant if you are the one who is appealing or the respondent if you are responding to an appeal filed by someone else.

APPELLANT'S REPLY BRIEF

Your name
Your Address
Your Phone Number During the Day

Appellant
Self-Represented

The cover sheet for an Appellant’s Reply Brief should be tan.

A reply brief is optional, so only file it to address something raised in Respondent’s Brief that needs a response. Do not raise completely new arguments in the reply brief.

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TABLE OF AUTHORITIES

CASES

Separately list each case, constitutional provision, statute, court rule, and other authority you are relying on and the page number where those authorities appear in your brief. (Rule 8.204(a)(1)(A).)

	Page
Kuhn v. Department of General Services (1994) 22 Cal.App.4th 1627, 1633.	1
Roddenberry v. Roddenberry (1996) 44 Cal.App.4th 634, 651.	1
In re Estate of Teed (1952) 112 Cal.App.2d 638, 644.	1

STATUTES (if any)

OTHER (if any)

INTRODUCTION

Provide a summary of your reply argument. Avoid repeating the arguments raised in the opening brief. Instead, concentrate on clarifying, explaining or addressing specific points raised in respondent's brief.

The Three Bears argue there was sufficient evidence to support the trial court's finding that Goldilocks trespassed on their property. However, based on the entire record, a reasonable trier of fact could not have concluded Goldilocks intended to trespass on the Bears' property.

ARGUMENT

State each issue or argument under a separate heading or subheading that summarizes the point. (Rule 8.204(a)(1)(B).)

I. THE EVIDENCE DID NOT SUPPORT THE TRIAL COURT'S CONCLUSION THAT GOLDBLOCKS TRESPASSED ON THE BEARS' PROPERTY

A. Legal Principles. This substantial evidence standard of review does not require the court to blindly seize any evidence in support of the trier of fact's findings in order to affirm the judgment. Rather, it compels the court to determine whether a reasonable trier of fact could have found for the respondent based on the entire record. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) So, after reviewing the whole record, the court must determine whether there exists substantial evidence, which is evidence of ponderable legal significance that is reasonable, credible and of solid value, supporting the challenged findings of the trier of fact. (*Ibid.*) While substantial evidence may consist of inferences, they must be the result of logic and reason emanating from the evidence and not mere speculation or conjecture. (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) It must actually be substantial proof of the essentials that the law requires in a particular case. (*In re Estate of Teed* (1952) 112 Cal.App.2d 638, 644.)

This is an example of a citation to legal authority. If possible, cite case law or other authority that supports your position.

Address specific points in Respondent's Brief.

B. No Evidence of Wrongful Entry. Here, the Bears argue there was substantial evidence to support the trial court's finding that Goldilocks trespassed on their property. The Bears point to evidence that there were three different sized bowls of porridge on the dining table and suggest this evidence supports the conclusion that Goldilocks knew she was entering private property. Specifically, the Bears contend three different bowls indicates a family lived at the house. This conclusion is mere speculation and conjecture. The totality of evidence establishes that Goldilocks

believed the Bears' house was a public, commercial boarding house. The door was open, a WELCOME mat invited visitors, food was on the table and there were many beds and chairs in the house. A reasonable trier of fact could not have found in favor of the Bears based on the entire record. Thus, the judgment must be reversed.

CONCLUSION

Goldilocks submits the totality of the evidence does not support the conclusion that she trespassed on the Bears' property. All of the evidence supports a finding that the Bears by their conduct consented to Goldilocks' entry. Goldilocks respectfully asks that this Court reverse the decision of the trial court and vacate the award of damages.

In the conclusion, briefly summarize your arguments.

End your brief with a statement about what relief you want from the court

Respectfully submitted,

DATED:

By _____
(Signature)

(Your name-printed or typed)

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains _____ words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By: _____
(Your Signature)

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties. (See Sample Form C.)

SAMPLE FORM R

**MEMORANDUM OF POINTS AND AUTHORITIES
FOR MOTION TO AUGMENT**

SAMPLE FORM R

**MEMORANDUM OF POINTS AND AUTHORITIES
FOR MOTION TO AUGMENT - INSTRUCTIONS**

A Memorandum of Points and Authorities in support of your motion to augment must be attached to the motion to augment. **[NOTE: This memorandum is only a sample. You should give your own reason in paragraph 2 and your own circumstances in paragraph 3 as to why you need to augment the record and why there is no prejudice.]**

You should attach your memorandum and a supporting declaration ([Sample Form S](#)) to one of the three forms of motions to augment set forth in this manual. ([Sample Forms T, U, or V](#).) You must also attach a proof of service of all these documents. ([Sample Form C](#).) These should all be stapled together in one document, with the caption page of the motion to augment in front.

Filling out the Memorandum of Points and Authorities Form:

- (1) Today's date.
- (2) Your signature.
- (3) Type or legibly print your name.

<p>File: Original plus 1 copy of: Motion to Augment (Sample Mtn Aug 1, 2, or 3) Memorandum of Points and Authorities (Sample P's and A's) Declaration (Sample Declaration) Proof of Service (Sample Form C)</p> <p>Provide an extra copy to be file-stamped for your file.</p> <p>Serve: Superior Court All counsel All self-represented parties</p>
--

MEMORANDUM OF POINTS AND AUTHORITIES

**AUGMENTATION SHOULD BE ORDERED TO ALLOW APPELLANT TO RECEIVE
FULL AND FAIR APPELLATE REVIEW**

Rule 8.155(a) of California Rules of Court permits the augmentation of the appellate record and specifically under Rule 8.155(a)(1) allows a certified transcript or document not designated under Rule 8.130 to be augmented and permitted. It is well established that this rule is to be construed liberally. (*People v. Brooks* (1980) 26 Cal.3d 471, 484.)

The need for augmentation here is compelling. Appellant believes the trial court erred in granting summary judgment based on its own determination of the credibility of conflicting declarations. The issue can only be reviewed on appeal if the reporter's transcript of the court's comments before ruling is part of the appellate record.

Not only is augmentation necessary, it will not prejudice any party. The augmentation request concerns documents which were all part of the record. Additionally, the augmentation will not cause a substantial delay in this appeal.

CONCLUSION

For the above reasons, this Court should order the record to be augmented on appeal by including the reporter's transcript or document(s) requested in this motion.

Dated: (1) [redacted]

Respectfully Submitted,

(2) Signature [redacted]
(3) Type or Print Name [redacted]

SAMPLE FORM S

**DECLARATION IN SUPPORT OF MOTION TO
AUGMENT**

SAMPLE FORM S

DECLARATION IN SUPPORT OF MOTION TO AUGMENT - INSTRUCTIONS

A declaration in support of your motion to augment must be attached to the motion.
[NOTE: This declaration is only a sample. You should insert you own reasons in paragraphs 3 and 4 and add your own support for paragraph 6.]

Filling out the Declaration in Support of Motion to Augment form:

Your name.

The date of the hearing you want to augment.

The name of the Superior Court judge who presided at the hearing you want transcribed.

The date of the hearing you want to augment.

Today's date.

Month and year.

City where you signed the declaration.

Your signature.

Type or legibly print your name.

File:

Original plus 1 copy of:
Motion to Augment
(Sample Form [T](#), [U](#), or [V](#))
Memorandum of Points and Authorities
([Sample Form R](#))
Declaration ([Sample Form S](#))
Proof of Service ([Sample Form C](#))

Provide an extra copy to be file-stamped
for your file.

Serve: Superior Court All counsel
All self-represented parties

DECLARATION IN SUPPORT OF MOTION TO AUGMENT

I, (1) , declare and state as follows:

I am a self-represented litigant.

On (2) , I argued the matter before the Honorable (3) . The court reporter reported the matter.

I did not order the reporter's transcript of (4) , thinking it was unnecessary.

I believe the court used the incorrect standard of review. The court's comments before announcing its ruling are material to this issue. The transcript of that hearing is therefore a necessary element of the record on appeal.

If documents attached use paragraph below:

[Because the document(s) requested is attached to this motion, there will be no significant delay, and possibly no delay at all with this appeal.]

I know of no prejudice to any party as a result of the granting of this motion.

This motion is made in good faith for the reasons set forth above and not for the purposes of delay.

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

Executed this (5) day of (6) , at (7), California.

(8)Signature

(9)Type or Print Name

SAMPLE FORM T

**MOTION TO AUGMENT RECORD ON APPEAL
(DOCUMENTS ATTACHED)**

SAMPLE FORM T

MOTION TO AUGMENT RECORD ON APPEAL (DOCUMENTS ATTACHED) - INSTRUCTIONS

After the record on appeal is filed, you might discover there is something missing from the record that you think the court should consider when deciding your case. You may make a Motion to Augment Record on Appeal (Documents Attached). Attach the documents to your motion to augment that you want added to the record on appeal and number each page consecutively, beginning with the number one. The motion is filed in the Court of Appeal. You must file an original plus one copy of the motion with points and authorities and your declaration (Sample Forms [R](#) & [S](#), adapted to fit your specific request). You must serve your motion on all parties. ([Sample Form C.](#)) The motion, memorandum, declaration, attached documents, and proof of service may be stapled together in one document, with the caption page of the motion in front.

Filling out the Motion to Augment Record on Appeal (Documents Attached):

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number which begins with "D0".
- (10) The Superior Court number from your Superior Court case.
- (11) Your name.
- (12) List the documents you are attaching, for example:
 1. Order dated August 20, 2014.
 2. Declaration of John Doe dated August 30, 2014.

(13) State why you are requesting the item(s) be added. For example, forgot to list it in Notice Designating Record, just learned I need the item to support argument, etc.

(14) Today's date.

(15) Month and year.

(16) Your signature.

(17) Type or legibly print your name.

File: Original plus 1 copy of:
Motion to Augment
(Sample Form [T](#), [U](#), or [V](#))
Memorandum of Points and Authorities
([Sample Form R](#))
Declaration ([Sample Form S](#))
Attached documents
Proof of Service ([Sample Form C](#))
Provide an extra copy to be file-stamped
for your file.
Serve: Superior Court All counsel

SAMPLE FORM U

**MOTION TO AUGMENT RECORD ON APPEAL
(DOCUMENTS REQUESTED)**

SAMPLE FORM U

MOTION TO AUGMENT RECORD ON APPEAL (DOCUMENTS REQUESTED) - INSTRUCTIONS

After the record on appeal is filed, you might discover there is something missing from the record that you think the court should consider when deciding your case. If you do not have copies of the documents you want to include, you may make a Motion to Augment Record on Appeal (Documents Requested). The motion with points and authorities and your declaration ([Sample Forms R & S](#), adapted to fit your specific request) is filed in the Court of Appeal. You must file an original plus one copy. You must serve your motion on the Superior Court, all counsel and all self-represented parties, and you must file a proof of service. ([Sample Form C](#).) The motion, memorandum, declaration, and proof of service may be stapled together in one document, with the caption page of the motion in front. If the court grants your motion, the Superior Court clerk will give you an estimate of how much it will cost to copy the documents you list to be included in the record. If you do not pay it, you will be placed in default.

Filling out the Motion to Augment Record on Appeal (Documents Requested):

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number which begins with "D0".
- (10) The Superior Court number from your Superior Court case.
- (11) Your name.

(12) List the documents you are requesting, for example:

1. Order dated August 20, 2004.
2. Declaration of John Doe dated August 30, 2004.

(13) State why you are requesting the item(s) be added. For example, forgot to include it in Notice Designating Record, etc.

(14) Today's date.

(15) Month and year.

(16) Your signature.

(17) Type or legibly print your name.

File: Original plus 1 copy of:

Motion to Augment ([Sample Form T](#), [U](#), or [V](#))

Memorandum of Points and Authorities ([Sample Form R](#))

Declaration ([Sample Form S](#))

Proof of Service ([Sample Form C](#))

Provide an extra copy to be file-stamped for your file.

Serve: Superior Court
All counsel
All self-represented parties

(1)
(2)
(3)
(4)

Self-represented

COURT OF APPEAL, FOURTH APPELLATE
DISTRICT DIVISION THREE
STATE OF CALIFORNIA

(5) _____,
Plaintiff and (6) _____,
v.

G(9) _____ .
(Superior Court No. (10) _____)
MOTION TO AUGMENT RECORD
ON
APPEAL (DOCUMENTS
REQUESTED)

(7) _____
Defendant and (8) _____ .

Pursuant to Rule 8.155(a) of the California Rules of Court, I, (11), request augmentation of the record on appeal to include documents in this case that were not included in the Clerk's Transcript. Those documents are:

(12) _____

The reason I am requesting the items(s) is: (13) _____

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

Executed at _____, California this (14) _____ day of (15) _____ .

(16)

(17)

SAMPLE FORM V

**MOTION TO AUGMENT RECORD ON APPEAL
WITH REPORTER'S TRANSCRIPT**

SAMPLE FORM V

MOTION TO AUGMENT RECORD ON APPEAL WITH REPORTER'S TRANSCRIPT - INSTRUCTIONS

After the record on appeal is filed, you might discover there is a transcript of a proceeding missing from the record that you think the court should consider when deciding your case. You may make a Motion to Augment Record on Appeal With Reporter's Transcript. You must specify the date and approximate time of each proceeding you want transcribed. If you have the name of the court reporter, it would be helpful to include it. The motion with points and authorities and your declaration ([Sample Forms R & S](#), adapted to fit your specific request) are filed in the Court of Appeal. You must file an original plus one copy. You must serve your motion on the Superior Court, all counsel and all self-represented parties, and you must file a proof of service. ([Sample Form C](#).) The motion, memorandum, declaration, and proof of service may be stapled together in one document, with the caption page of the motion in front. If the court grants your motion, you will have to pay for the reporter's transcript. (See CRC rule 8.130(b).) The Superior Court clerk or court reporter will give you an estimate of how much the transcript you are requesting will cost. If you do not pay, you will be placed in default.

Filling out the Motion to Augment Record on Appeal With Reporter's Transcript:

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number which begins with "D0".
- (10) The Superior Court number from your Superior Court case.
- (11) Your name.

(12) List the proceedings, date, and time, and court reporters name, for example:

1. Hearing on June 15, 2004 from 9:00 a.m. to 11:30 a.m. Court reporter is John Doe.
2. Hearing on June 16, 2004, all day beginning at 9:00 a.m. Court reporter is Jane Doe.

(13) Write the reason you need to augment the record.

(14) Today's date.

(15) Month and year.

(16) Your signature.

(17) Type or legibly print your name.

File: Original plus 1 copy of:

Motion to Augment ([Sample Form N](#), [O](#), or [P](#))

Memorandum of Points and Authorities ([Sample Form L](#))

Declaration ([Sample Form M](#))

Proof of Service ([Sample Form C](#))

Provide an extra copy to be file-stamped for your file.

Serve: Superior Court
All counsel
All self-represented parties

(1)
(2)
(3)
(4)

Self-represented

COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

(5) _____,
Plaintiff and (6) _____,
v.
(7) _____,
Defendant and (8) _____.

G(9) _____.

(Superior Court No. (10) _____)

MOTION TO AUGMENT RECORD ON
APPEAL WITH REPORTER'S
TRANSCRIPT

Pursuant to Rule 8.155(a) of the California Rules of Court, I, (11) _____,
request augmentation of the record on appeal to include the reporter's transcript(s) listed below.

(12)

The reason I am requesting to augment the record is:

(13)

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

Executed at San Diego, California this (14) _____ day of (15) _____.

(16) _____
Signature

(17) _____
Type or Print Name

SAMPLE FORM W

PETITION for REHEARING

PETITION FOR REHEARING - INSTRUCTIONS

After the opinion has been filed in your case, or a request for publication granted or modification of opinion changing judgment, you have 15 days to ask the Court of Appeal for a rehearing. You ask for a rehearing if you feel that the opinion misstates the facts, has an error of law, has a significant omission in the facts or law or failed to consider an important argument. There is an automatic right to rehearing if the Court of Appeal makes a decision based on an issue that was not proposed or briefed by any party. (Government Code section 68081.) The petition for rehearing has an orange cover. An original plus four copies of the petition for rehearing must be filed in the Court of Appeal. A proof of service showing service on the Supreme Court, the Superior Court and all counsel and self-represented parties must accompany the petition for rehearing.

Filling out the Cover Page:

- (1) The plaintiff's name as it appears on your Superior Court caption.
- (2) Whether plaintiff is "appellant" or "respondent".
- (3) The defendant's name as it appears on your Superior Court caption.
- (4) Whether defendant is "appellant" or "respondent".
- (5) The Court of Appeal case number which begins with "G0".
- (6) The Superior Court number from your Superior Court case.
- (7) Write the county where the Superior Court case originated.
- (8) The name of the Superior Court judge.
- (9) Your name.
- (10) Your mailing address.
- (11) Your city, state and zip code.
- (12) Your telephone number where you can be reached during the day.

Filling out the Petition for Rehearing:

- (1) Your name.
- (2) Your mailing address.

- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number.
- (10) The Superior Court number from your Superior Court case.
- (11) Write whether you are "appellant" or "respondent".
- (12) Your name.
- (13) The date the opinion was filed.
- (14) Why you think there should be a rehearing.
- (15) The arguments in support of your reason why there should be a rehearing.
- (16) Write "affirm", "reverse" or "modify", however you think the court should have ruled in its opinion.
- (17) Current date.
- (18) Your signature.
- (19) Type or legibly print your name.

Due: 15 days after opinion filed, or request for publication granted, modification of opinion changing judgment, or consent to decrease or increase amount of judgment filed.

Cover Color: Orange

File: Original plus 4 copies with Court of Appeal with Proof of Service
Provide an extra copy to be file-stamped for your file.

Serve: California Supreme Court - 4 paper copies (or one electronic copy)
Superior Court - 1 copy
All counsel
All self-represented parties

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION THREE

STATE OF CALIFORNIA

(1) _____,

Plaintiff and (2) _____,

v.

(3) _____,

Defendant and (4) _____.

G(5) _____.

(Superior Court No. (6) _____)

Appeal From the Superior Court of (7) _____ County
Honorable (8) _____, Judge

PETITION FOR REHEARING

(9)

(10)

(11)

(12)

Self-Represented

(1)
(2)
(3)
(4)

COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION THREE
STATE OF CALIFORNIA

(5) _____,
Plaintiff and (6) _____,
v.
(7) _____,
Defendant and (8) _____.

G(9) _____.
(Superior Court No. (10) _____)

PETITION FOR REHEARING

(11) _____, (12) _____, seeks rehearing of the
court's opinion in the above case filed on (13) _____. The rehearing is necessary
because (14) _____.

(15)

CONCLUSION

Petitioner requests that rehearing be granted and that the court (16) _____, the judgment.

DATED: (17) _____

(18) _____
Signature

(19) _____
Type or Print Name

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties. (See [Sample Form C.](#))

APPENDIX 1

COURTS AND LAW LIBRARY INFORMATION

COURTS

Orange County Superior Court Appellate Division

700 Civic Center Drive West
Santa Ana, CA 92701
(657) 622-7533 (Civil)

California State Court of Appeal Fourth District, Division Three

601 W. Santa Ana Blvd.
Santa Ana, California 92701
Mailing Address:
PO Box 22055
Santa Ana, CA 92702
Filing Hours: 9:00 a.m.-4:30 p.m.
Telephone Hours: 8:00a.m.-5:00 p.m.
Phone: (714) 571-2600

California Supreme Court

The address for filing copies of briefs and petitions for review:

California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(415) 865-7000

ORANGE COUNTY PUBLIC LAW LIBRARY

515 N Flower St
Santa Ana, CA 92703
(714) 834-3397

Hours of Operation

Monday-Thursday: 8:00 AM-5:55 PM
Friday: 8:00 AM-4:55 PM
Saturday: 9:00 AM-4:55 PM
Sunday: Closed

APPENDIX 2

CITING YOUR SOURCES OF INFORMATION

CITING YOUR SOURCES OF INFORMATION

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

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

Here are some simple guidelines for proper citation form:

CASES:

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

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

Reporter. Federal district court cases are cited as follows: *Plute v. Roadway Package System, Inc.* (N.D. Cal. 2001) 141 F.Supp.2d 1005, 1010. "N.D.Cal." indicates that the case was decided by the United States District Court for the Northern District of California, and "F.Supp.2d" refers to the second series of the Federal Supplement Reporter.

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

STATUTES:

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

RULES:

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

CONSTITUTIONS:

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

TREATISES:

For legal treatises, you should indicate the volume number of the treatise you are citing (if it has more than one volume), the author of the treatise, the title, edition and year, and the section and page number that supports the proposition of law you are stating. For example, "5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607,

p. 706." This is a citation to volume 5 of a treatise by author Witkin entitled Summary of California Law, and the specific portion of the treatise cited is section 607 of the Torts chapter on page 706.

LAW REVIEWS AND JOURNALS:

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

OTHER SOURCES:

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