

Appeals: Starting Your Civil Appeal

Basics

An appeal is a proceeding in which a higher court reviews the actions taken by a trial court.

Appeals are generally limited to a review of the record from the lower court. **Parties cannot introduce new evidence and are limited to what was said and introduced at the original proceeding.** Issues not raised at trial cannot be raised in the appeal. The appellate court reviews the lower court's application of the law to the facts as presented at trial. Factual findings by the judge or jury at the trial level are not reversible by the appellate court. The appellate court may only decide if there were errors of law serious enough to prevent a party from having a fair trial, or if there was insufficient evidence at trial to support the lower court's decision. If the trial judge properly applied the laws, and the decision was supported by substantial evidence, the appellate court will not overturn the trial court's decision.

Federal Procedure is Different

This article discusses appeals from the California Superior Court to the California Courts of Appeal. Appeals from the Federal District Courts to the 9th Circuit use different procedures. Find some information on the federal procedure at [Perfecting Your Appeal](https://www.ca9.uscourts.gov/guides/perfecting-your-appeal/) (<https://www.ca9.uscourts.gov/guides/perfecting-your-appeal/>) (manual and videos), on the Ninth Circuit website.

Standards of Review

"Standards of review" govern the manner in which the appellate court examines the record on a particular issue or judgment. There are three basic standards of review:

Independent review. When reviewing questions of law, the appellate court conducts an independent review of the record, putting no particular weight to the ruling or judgment of the lower court.

Substantial evidence. When reviewing factual findings, the appellate court will determine if there was sufficient evidence to support the lower court's findings. In these types of review, the appellate court will generally defer to the lower court's factual conclusions, because the trial

judge or jury is in a better position to observe the witnesses and evidence, and assess their credibility. The appellate review will generally be limited to whether or not the facts, as determined by the lower court, constitute sufficient evidence to support the judgment or ruling.

Abuse of discretion. When reviewing discretionary decisions by the lower court, the appellate court determines only whether or not the trial court followed the applicable rules and procedures, and whether or not the decision is reasonable. As long as all rules and procedures were properly followed, the appellate court cannot reverse the lower court's decision.

Appealable Orders

Not all orders and judgments can be appealed. To determine if your matter is appealable, consult [California Code of Civil Procedure \(CCP\) §§ 904.1 - 904.5](#)

(http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CCP&division=&title=13.&part=2.&chapter=1.&article=).

Where an Appeal is Heard

Rulings from limited civil cases are appealed to the appellate division of the superior court ([CCP § 904.2](#) (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=904.2), governed by [California Rules of Court \(CRC\) Rules 8.800-8.843, 8.880-8.891](#) (<https://www.courts.ca.gov/cms/rules/index.cfm?title=eight>)). Appeals from rulings in unlimited civil cases are heard by the California Court of Appeals, 3rd District ([CCP § 904.1](#) (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=904.1), governed by [CRC Rules 8.1-8.278](#) (<https://www.courts.ca.gov/cms/rules/index.cfm?title=eight>)). The general procedures are the same for both types of appeal.

Notice of Appeal

The Notice of Appeal formally notifies the court and your opponent that you plan to appeal the judgment or order. A Notice of Appeal must be served on the opposing party and filed with the clerk of the trial court. There are very strict deadlines for filing your Notice of Appeal.

Common deadlines are:

- **Limited Civil** –the earliest of 30 calendar days from the date of service of the notice of entry of judgment or judgment, or 90 days from the date of entry of judgment (see [CRC Rule 8.822](#) (http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_822)).

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- **Unlimited Civil** – the earliest of 60 calendar days from the date of service of the notice of entry of judgment or judgment, or 180 days from the date of entry of judgment (see [CRC Rule 8.104](http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_104) (http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_104)).

Remember that these are general guidelines, and may not apply to your case. For more information on calculating the time for filing your notice of appeal, see the resources listed below.

The Notice of Appeal may be typed on pleading paper, or can be made by completing a fill-in-the-blanks form specific to your type of case.

Commonly used Notice of Appeal forms in civil cases:

- [Notice of Appeal/Cross Appeal \(Unlimited Civil Case\) \(APP-002\)](http://www.courts.ca.gov/documents/app002.pdf) (<http://www.courts.ca.gov/documents/app002.pdf>)
- [Notice of Appeal/Cross-Appeal—Limited Civil Case \(APP-102\)](https://www.courts.ca.gov/documents/app102.pdf) (<https://www.courts.ca.gov/documents/app102.pdf>)

Notice Designating the Record

The appellate court judges were not present at the trial or hearing, so there must be an official record of the proceedings for the court to review in assessing the appeal. Within 10 days of filing the Notice of Appeal, the appellant must tell the trial court clerk in writing what documents and transcripts to include in the record that will be sent to the appellate court ([CRC Rule 8.121](http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_121) (http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_121) for unlimited cases, [CRC Rule 8.831](http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_831) (http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_831) for limited cases). The reviewing court will assume that all relevant materials are included in the record (see [CRC Rule 8.163](https://www.courts.ca.gov/cms/rules/index.cfm?title=eight) (<https://www.courts.ca.gov/cms/rules/index.cfm?title=eight>) for unlimited civil cases, [CRC Rule 8.830](http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_830) (http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_830) for limited civil cases), and will not consider any documents, exhibits, or testimony not included in the record (see *California Jurisprudence*, KFC 80 .C35, Appellate Review, §§ 485-576). Failure to designate a record may result in the dismissal of your appeal. The most common types of records are discussed below.

Clerk's Transcript

The Clerk's Transcript is a compilation of documents filed in the lower court. The appellant must specify each document to be included by its title and filing date. If no specific documents are designated, the clerk will prepare the records described in [CRC Rule 8.122](http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_122) (http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_122) ([CRC Rule 8.832](http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_832) (http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_832)).

https://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_832 for limited civil cases). Unless an approved fee waiver is on file, the appellant is responsible for the costs of preparing the Clerk's Transcript. In certain situations, you may be able to use an Appendix instead of a Clerk's Transcript. See the resources listed below for more information.

Reporter's Transcript

A Reporter's Transcript is a written record of the oral proceedings in the trial court. A Reporter's Transcript is not required, but is often necessary if the appellant wishes to appeal an issue that requires consideration of the oral proceedings. Reporter's Transcripts are described in [CRC Rule 8.130](http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_130) (http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_130) ([CRC Rule 8.834](https://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_834) (https://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_834) for limited civil cases). Reporter's Transcripts are not available for all cases.

With the notice designating the Reporter's Transcript, you must deposit the approximate cost of transcribing the desired portions of the proceedings. The cost may be obtained from the reporter's written estimate, or calculated at a rate of \$650 per court day (over 3 hours of court time) or \$325 per fraction of a court day (less than 3 hours of court time). The costs of Reporter's Transcripts are not covered by a fee waiver. You may apply to the Transcript Reimbursement Fund for a free copy of the transcript (see [CRC Rule 8.130\(c\)](https://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_130)

(https://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_130 for information on this procedure).

Additional details about this program are available from the [California Court Reporters Board website](https://www.courtreportersboard.ca.gov/trf/index.shtml) (<https://www.courtreportersboard.ca.gov/trf/index.shtml>). For more information about obtaining a Reporter's Transcript for a case heard in the Sacramento County Superior Court, see the [court's website](http://www.saccourt.ca.gov/court-reporters/court-reporters.aspx) (<http://www.saccourt.ca.gov/court-reporters/court-reporters.aspx>).

If a Reporter's Transcript is not available for your case, you may be able to prepare a Settled or Agreed Statement instead. Settled or Agreed statements may be used for strategic reasons, as well. See [CRC Rules 8.134-8.137](https://www.courts.ca.gov/cms/rules/index.cfm?title=eight) (<https://www.courts.ca.gov/cms/rules/index.cfm?title=eight>) ([CRC Rules 8.836-8.838](https://www.courts.ca.gov/cms/rules/index.cfm?title=eight) (<https://www.courts.ca.gov/cms/rules/index.cfm?title=eight>) in limited civil cases) and the resources listed below for more information.

Opening Brief

After the record is filed in the appellate court, the court will notify the parties of the dates by which the briefs are due. Opening Briefs are typically due within 30 days after the record is filed or within 70 days if the parties are proceeding without a transcript.

The appellant's Opening Brief must concisely describe the legal errors in the trial court proceedings, using references to the record, the facts of the case, and the relevant law supporting each argument made in the appeal. In this brief, the appellant must raise all issues to be appealed, and provide supporting authority for all issues raised. Neglecting to raise an issue or provide supporting authority for an issue will render that issue waived or abandoned.

The brief must contain a table of contents, a table of authorities, and a certificate of interested parties. The brief must comply with the length and format requirements described in [CRC Rules 8.200-8.224](https://www.courts.ca.gov/cms/rules/index.cfm?title=eight) (<https://www.courts.ca.gov/cms/rules/index.cfm?title=eight>) ([CRC Rules 8.882-8.883](https://www.courts.ca.gov/cms/rules/index.cfm?title=eight) (<https://www.courts.ca.gov/cms/rules/index.cfm?title=eight>) for limited civil cases). If you do not conform to these requirements, the court will not consider your appeal. A copy of the brief must be served on each party or his or her attorney, and four copies must be filed with the court.

For more information

In the Law Library

California Civil Appellate Practice KFC 1075 .S7 Chap. 12

Electronic Access: On the Law Library's computers, using *OnLaw*.

California Forms of Pleading and Practice KFC 1010 .A65 C3 (Ready Reference) Chap. 50

Electronic Access: On the Law Library's computers, using *Lexis Advance*.

California Jurisprudence KFC 80 .C35 (Ready Reference) Appellate Review, §§ 589-631

California Practice Guide: Civil Appeals and Writs KFC 1075 .E48 Chap. 9

Handling Civil Appeals: Here's How and When to Do it KFC 1075 .D38

Electronic Access: On the Law Library's computers, using *OnLaw*.

On the Web:

California Appellate Courts Self-Help Resource Center, [California Appeals Process: Plain and Simple](https://selfhelp.appellate.courts.ca.gov/) (<https://selfhelp.appellate.courts.ca.gov/>). Instructions and videos for self represented people starting an appeal and following the process through filing briefs and oral argument.

Public Counsel Appellate Clinic, [Library of Resources and Materials](https://publiccounsel.org/clinics/appellate-clinic/resources-materials/) (<https://publiccounsel.org/clinics/appellate-clinic/resources-materials/>). forms, samples, and videos. This group provides

assistance to self-represented people in the Second District of California (Los Angeles), but their samples and guides can be adapted for other districts.

San Diego Law Library, [Civil Appeals Guide: Sample Briefs.](#)

<https://sdlawlibrary.libguides.com/c.php?g=1290756&p=9477393> Sample briefs and modifiable templates for opening, responding, and reply briefs, as well as links to other helpful resources.