Basic Civil Appellate Practice in the Court of Appeal for the Second District

Prepared by the Appellate Courts Committee of the Los Angeles County Bar Association

This pamphlet is not an official reference source, and you may not cite it as authority. You must evaluate your own case and conduct your own research. Although this pamphlet provides some legal authorities for your convenience, you are responsible for making sure that they apply to your case and that they have not been superseded.

Neither the Court of Appeal nor the Los Angeles County Bar Association is allowed to provide you with legal advice.

This Guide was prepared by members of the Appellate Courts Committee of the Los Angeles County Bar Association.

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I. INTRODUCTION

This guide provides a simplified outline of the basic procedures that govern appeals in civil cases in the California Court of Appeal for the Second Appellate District. It does not address appeals in criminal matters, writ petitions, or any aspect of appellate practice in the federal courts.

There are suggestions for further reading at the end of this guide. You may also wish to consult an appellate specialist.

II. AT THE OUTSET: SHOULD YOU CONSIDER SETTLEMENT?

Appeals can be time-consuming and expensive. They usually require considerable effort in procuring and reviewing the record of the trial, researching legal issues, and preparing briefs that meet the criteria for appellate review. The process may take many months or even years, and the outcome is never certain.

In order to help parties avoid the delay and expense of appeals, the Second District of the Court of Appeal conducts a voluntary settlement conference/mediation program for civil cases. The program has been instrumental in the early resolution of many appeals.

As soon as the notice of appeal is filed, the Superior Court sends a form to the appellant asking if the parties want to participate in this program. If all parties agree, the Court of Appeal appoints a volunteer settlement officer, either an appellate specialist or an experienced mediator with training in appellate issues. The conference usually takes place before the record on appeal is prepared and before any briefing. If the case does not settle, it proceeds along its normal course.

Parties who do not accept the Court's initial invitation can participate in the program later by contacting the Clerk of the Court of Appeal.

The parties' decision whether to participate in the settlement conference program has no effect on their case. Settlement conferences are conducted entirely through the Clerk's Office, which provides no information to the justices about individual settlement conferences.

Settlement conferences require a substantial investment of time by the Court's staff and volunteer settlement officers. Parties should not participate unless they are genuinely interested in settlement. **If your case settles while the appeal is pending, you must notify the Court immediately.**

III. GENERAL CONSIDERATIONS

A. The Second District of the Court of Appeal

The Second District of the Court of Appeal consists of eight divisions with four justices each. Division Six handles appeals from the superior courts of Ventura, Santa Barbara and San Luis Obispo counties. Appeals from the Los Angeles County Superior Court are randomly assigned to one of the remaining divisions (and on occasion to Division Six). Once a case is assigned to a division, it is heard by three of the justices within that division. You can learn more about the Court and each division by visiting the Court's website at: **http://www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict**.

B. The Limited Function of Appellate Review

An appeal is not a retrial. Trial courts resolve both legal and factual disputes, but appellate courts consider only legal questions. They do not reweigh the evidence, and they do not reassess witness credibility. With very narrow exceptions, appellate courts usually reject arguments that a judge or jury reached the wrong factual conclusion.
An appellate court is also limited by the "standard of review." This is the set of rules that govern how the court determines whether an error occurred. The standard of review varies depending on the type of issue and the procedural context, but it usually includes a presumption that the trial court's decisions were correct. In addition, even if the appellate court finds error, it cannot reverse the judgment unless it also finds that the error was prejudicial. In civil cases, this means the court cannot reverse unless it concludes it is reasonably probable that, without the error, the result would have been more favorable to the appellant. See below for more detail.

C. Threshold Questions

In evaluating whether to appeal or how to respond to an opponent's appeal, consider the following.

Is the order or judgment appealable? With a few important exceptions, only final judgments are appealable. For example, an order sustaining a demurrer without leave to amend or granting a summary judgment motion is not appealable; you can only appeal from the judgment entered pursuant to one of those orders. Code of Civil Procedure sections 904.1 and 904.2 list many types of appealable orders, but there are others. You should therefore consult practice guides and any special statutes that govern your case.

Does the prospective appellant have standing to appeal? To have standing, the appellant must be "aggrieved" by the judgment or order. In general, this means that the appellant must be a party to the case and must be "injuriously affected" in an "immediate, pecuniary, and substantial" way.

Does the appellant have the resources to see the appellate process through? Where a judgment requires the payment of money, the judgment creditor (the party who won in the trial court) can usually enforce it immediately. Can the appellant withstand this enforcement? If not, an appellant can stop enforcement by obtaining a bond from a surety company. In most cases, the appeal bond must be for at least 1½ times the judgment, most judgment debtors will have to give the surety company security equal to the amount of the bond, and the annual bond premium can be 1-2% of the amount of the bond. There are a few other ways to stop enforcement of a judgment, but they are beyond the scope of this pamphlet. The appellant should consult practice guides or an appellate specialist.

The appellant must also pay for preparing the record on appeal, which usually includes a reporter's transcript costing up to $655 per reported trial day. Additionally, the appellant needs to pay for the written portion of the appellate record, whether contained in a Clerk's Transcript or Rule 5.1 Appendix; this cost may be several hundred dollars, depending on the size of the transcript/appendix.

Will the appellant have the necessary financial and emotional endurance? The time from notice of appeal to the conclusion of an appeal can be more than a year or even two, depending on how long it takes for the superior court to prepare the appellate record, for the parties to prepare their briefs, and for the Court to hear argument and issue an opinion. During this time, most unpaid money judgments earn interest at 10 %. And in some cases, the prevailing party will also recover attorneys' fees.

Is there time to appeal? The deadline for filing a notice of appeal is jurisdictional, and it cannot be extended by any agreement, conduct of the parties, or court order. The Court of Appeal must dismiss a late-filed appeal.

In most cases, one of two deadlines applies: (1) 60 days after a party or the Clerk serves or mails a notice of the entry of the appealable judgment or order; or (2) if there is no notice, 180 days after entry. (The filing of a judgment or order constitutes "entry.") (Cal. Rules of Court, Rule 2.)

Rule 3 extends the 60-day period when there was a timely motion for new trial, to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration under Code of Civil Procedure section 1008. A cross-appeal must be filed within 20 days after the superior court clerk mails notification of the first appeal. (Rule 3(e).)

>>> 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.

Because the right to appeal can be lost forever if the appellant fails to file the notice of appeal on time, a prospective appellant should carefully study the applicable rules and practice guides, consider consulting an appellate specialist, and begin doing these things as early as possible.

What is the standard of review? Standards of review are rules that guide the appellate court's decision about whether the trial court committed an error. The opening brief must state which standard applies to each issue.

Generally, there are three standards of review:

1. "Substantial evidence": This standard usually governs review of factual findings. When the appellant claims that a finding is not supported by the evidence, the Court of Appeal examines the entire record to determine whether there is sufficient evidence to support the finding. If there is, the Court must accept the finding as correct, even if a great deal of evidence contradicts it.

2. "Abuse of discretion": This standard usually governs rulings on procedural questions. The reviewing court considers whether the trial court's ruling was within the bounds of reason, in light of all of the circumstances before it.

3. "De novo": This standard is usually limited to pure questions of law. The reviewing court independently examines the trial court record, applies the same standard for decision as the trial court, and decides the issue anew.

For example, if the appellant's only complaint about the trial is that the jury believed Witness A instead of Witness B, the substantial evidence standard will apply. That means the appellate court must accept Witness A's testimony and will affirm as long as that testimony supports the judgment, regardless of what Witness B said. But if the appellant claims that Witness A's testimony was inadmissible (and if the appellant made a proper and timely objection at trial), the Court of Appeal will probably review that claim under the de novo or abuse of discretion standards, or under some combination of the two. (For example, the de novo standard might govern whether a particular rule of evidence applies to the situation, and the abuse of discretion standard might govern whether the trial court acted within the range of options permitted by that rule.)

Many trial court rulings are governed solely by the abuse of discretion standard. For example, the trial court has substantial leeway in such areas as pre-trial discovery rulings, continuances, and managing trials. The Court of Appeal will rarely second-guess rulings in these areas.

IV. MECHANICS OF THE APPELLATE PROCESS

A. The Notice of Appeal

>>> The deadlines for filing a notice of appeal are mandatory and jurisdictional. Do not wait until the last minute to file a notice of appeal.

The notice of appeal or cross-appeal must describe the order or judgment being appealed and must be signed by the appellant or the appellant's lawyer. The filing fees for a notice of appeal or cross-appeal are set forth in

Government Code section 68926, *et seq.*, and Rule 1. **You must file the notice of appeal and fees with the Superior Court.**

B. The Record on Appeal

The appellant must designate the record on appeal within 10 days after filing the notice of appeal; the designation may be included in the notice of appeal. (Rules 4 & 5.) If the appellant fails to do this, the superior court clerk will send out a notice of default. If the appellant fails to cure the default, the appeal can be dismissed. (Rule 8.) To avoid dismissal for failing to timely and properly designate the record on appeal, the appellant should study the applicable rules and practice guides before filing the notice of appeal.

Generally, there are three elements to the record on appeal: (1) oral proceedings, presented in a reporter's transcript (Rule 4); (2) documents filed or lodged in the trial court, presented in either a clerk's transcript prepared by the superior court (Rule 5) or an appendix prepared by the parties (Rule 5.1); and (3) exhibits, which may be copied in the clerk's transcript or appendix and/or transmitted to the reviewing court (Rule 18). Rule 18 governs the handling of exhibits that the trial court returned to the parties.

The designation of the reporter's transcript must comply with the Second District's Local Rule 3, which requires the notice to identify the date, the name of the reporter, and the nature of the proceedings. The designation of the clerk's transcript must state the title and filing date of each item the appellant wants to have included in the record. Alternatively, the appellant may elect to file an appendix under Rule 5.1, which requires only a notice stating the election.

Rules 4 and 5 allow the respondent to designate materials the appellant did not designate. In addition, the respondent may require the case to proceed with a Rule 5.1 appendix by filing a notice to that effect within 10 days after the filing of the notice of appeal.

The parties should cooperate in preparing the record on appeal, particularly when they are using a Rule 5.1 appendix. Their mutual goal should be to submit a record that has everything the Court needs to decide the case, assembled in an organized and easily-read way, without burdening the Court with irrelevant material.

C. The Civil Case Information Statement

Under Rule 1(f), the clerk of the Court of Appeal will send the appellant a Civil Case Information Statement form. The appellant must file the completed Civil Case Information Statement, including an attached copy of the judgment or order being appealed (showing the date of entry of the judgment/order) and a proof of service on all parties to the appeal) in the Court of Appeal within 10 days after the clerk mails the form.

- **THE FAILURE TO TIMELY COMPLY WITH RULE 1(f) MAY RESULT IN THE DISMISSAL OF THE APPEAL.**

D. Briefing

1. The basic timetable

Rule 15(a) states the deadlines for filing briefs:

(a) The appellant ordinarily must file and serve the opening brief within 30 days of the filing of the record in the appellate court. If there is a Rule 5.1 appendix and the appellant has not designated a reporter's transcript, the deadline for the opening brief is 70 days from the filing of the notice of election to proceed by appendix.

(b) The respondent's brief ordinarily must be filed and served within 30 days after the filing of the appellant's opening brief, counting from the date the appellant's opening brief is filed. (Rule 15(a).)

(c) The appellant then has 20 days to file and serve an optional reply brief, counting from the date the respondent's brief is filed. (Rule 15(a).)

If an appellant fails to file a timely opening brief, the Court will dismiss the appeal; if the respondent fails to file a timely brief, the Court will decide the appeal on the record, the opening brief, and any oral argument by the appellant. (Rule 17.) The court may reject a late reply and proceed to oral argument and decision without considering it.

Cross-appeals are governed by Rule 16, which dictates the briefing schedule and contents of the briefs.

>>> These deadlines all run from the date the record and briefs are filed, with no extension for service by mail.

2. Extensions of Time

The parties can agree to limited extensions of time for filing their briefs, and the Court can grant extensions on application. (Rule 15(b).) The Court prefers that parties stipulate to extensions if they are needed and justified under the factors set forth in Rule 45.5.
The maximum extension by stipulation is 60 days for each brief, and the parties must file the stipulation before the brief is due. (Rule 15(b).) If there is no stipulation, or if the parties have already stipulated to the full 60?day period, the party seeking an extension must apply to the Court.

Applications for extensions should be served on all parties and must include a declaration stating that the party was unable to obtain—or that it would have been futile to seek—a stipulation, or that the parties have already stipulated to the maximum 60-day period. (Rule 15(b)(2).) The application must also provide good reasons for the extension; Rule 45.5 lists relevant factors. A form application for an extension of time is available in the "Forms" section of the Court's website at:
**www.courtinfo.ca.gov/courts/courtsofappeal/
2ndDistrict/forms.htm**.

If you use this form, you may wish to provide an attachment that details the reasons for the extension; if the record is long you should note that fact.

The party applying for an extension must file an original and a copy of the application, plus sufficient postage-paid, pre?addressed envelopes for mailing the Court's order on the application to all parties. (Rules 43, 44(b)(iv).)

>>> Counsel must notify their clients of all stipulations and applications for extensions, and must provide the Court with evidence that they have done so. (Rule 45(f).)

3. Technical requirements

Content. The appellant's opening brief must state the nature of the action; state the relief sought in the trial court; identify the judgment or order appealed from; demonstrate that the judgment or order is appealable; and provide a summary of the significant facts and procedure limited to matters in the record. (Rule 14(a).)

The statement of any factual or procedural matter in any brief must be followed by a reference to the pages of the record that support the statement. For example:

> Jones left his house "early in the morning" (RT 485) and followed his usual route to work (RT 490). Although he testified that he looked both ways when he reached Fifth Street (RT 495), in a pretrial declaration received in

> evidence he swore that he looked only to the left
> (CT 150 [Exhibit 25]).
>
> or
>
> In a special verdict, the jury found that Brown held an easement (Joint Appendix [“JA”] 345 [question no. 1]), but that she had abandoned it (JA 346 [question no. 3].) The trial court entered judgment for Green (JA 360), who served notice of entry of judgment on May 10, 2001 (JA 365).
>
> In an appeal from a summary judgment, your statement of facts should cite both the Statement of Undisputed Facts and the evidence supporting it.

>>> **Ordinarily, you may not rely on anything that does not appear in the record on appeal.**

Each legal proposition should be supported by an *accurate* citation to a statute, decision or text (such as a treatise or law review article). The citation should include the specific pages containing the language or reasoning you rely on. For example:

> As the California Supreme Court has observed, “Standing alone, a conspiracy does no harm and engenders no tort liability.” (Applied Equipment Corp. v. Litton Saudi Arabia Ltd. (1994) 7 Cal.4th 503, 511.)

You should not rely solely on the research you did for trial. There may be new cases, and a fresh look at the applicable authorities is always valuable.

Briefs should be concise, but comprehensive. You must cover all relevant points, because the failure to raise a particular contention waives it. However, you should remember that not every possible issue has merit and that some issues should be discarded, such as those that plainly will not affect the outcome of the appeal. Careful issue selection is an important part of skillful appellate advocacy.

You should try to get your points across without being verbose or redundant, and you should always remember that appellate practice is fundamentally different from trial practice. Your audience is the Court, not a jury charged with weighing the evidence. The sole concern of the appellate justices is to identify error and determine whether there was prejudice. **The most effective briefs are those that present their arguments concisely.**

Format. Each brief must begin with a table of contents and a table of authorities. (Rule 14(a).) Following the tables, briefs customarily contain a short introduction; a statement of facts and procedural history; a discussion of the applicable law as it relates to the pertinent facts; and a conclusion. Each topic must appear under “a separate heading or subheading summarizing the point.” (Rule 14(a).) If there is a cross-appeal, the parties must propose, and the Court will order, a briefing sequence. (Rule 16(a).)

Although no rule requires a particular citation style, it is useful to follow the California Style Manual (4th ed. 2000). California state courts generally follow this manual.

Briefs must have the colored covers specified by the rules—green for the appellant’s opening brief, yellow for the respondent’s brief and tan for the appellant’s reply brief. (Rule 44(c).) Plastic covers are not allowed. The cover must include the title of the brief; the title, trial court number and Court of Appeal number of the case; the name of the trial court and of each participating trial judge; the name, address, telephone number, and state bar

number of the lawyer filing or joining in the brief; and the name of the party whom each lawyer represents. (Rule 14(b)(10).)

Briefs that are produced on a computer may not, without Court permission, exceed 14,000 words, including footnotes. The brief must include a certificate stating the number of words used in the brief. You can rely on your computer's word-count program in preparing the certificate, but make sure that the program counts footnotes. (Rule 14(c).) The type size, including footnotes, must not be smaller than 13-point with a conventional font (e.g., Times New Roman, Arial). Briefs must be prepared on plain white 8½ x 11 paper. (Rule 14(b).) There are special requirements for typewritten briefs. (See Rule 14(b)(11).)

You must file a proof of service showing service of your brief on opposing counsel and the trial court and delivery of five copies to the California Supreme Court. (Rule 15.)

A brief may include an attachment of up to 10 pages of exhibits or other materials in the appellate record. (Rule 14(d).) If there is a particularly important exhibit—for instance, a contract, a photograph, or a property plot plan—you should consider attaching it to your brief.

4. Common pitfalls

Failing to cite the record or relying on material that is not part of the record. As noted above, you must support all statements of factual or procedural matters with citations to the record. You may, however, ask the Court to take judicial notice of legislative history and a few other types of information. This requires a formal application to the Court, which must include a copy of the material of which you request judicial notice. (See Rule 41.5.)

Ignoring the standard of review. Identify the correct standard of review for each issue you discuss in your brief, and be sure to apply it correctly. This tells the Court that you understand your case, and, more importantly, helps you to frame your legal arguments correctly.

Waiver. You must be sure the issues you want to raise were preserved for appeal. For example, a reviewing court ordinarily will not consider a challenge to the admission of evidence unless trial counsel made a timely objection and obtained a ruling on it. If the issues were not preserved, you must show the Court why it can still review them. Remember that the failure to address a material issue in a brief may be treated as a waiver.

Overlooking prejudice. No proceeding is perfect, and errors do not require reversal unless they were prejudicial. An opening brief therefore must not only identify error but also show prejudice—that is, why it is probable that without the error, the result would have been different. Conversely, a respondent's brief can acknowledge or assume that error occurred, but effectively argue that the error was not prejudicial.

String Cites. One or two cases are usually enough support for a basic proposition. String citations—multiple cases with no discussion of their relevance—are rarely useful.

Improper citation of unpublished decisions. Do not cite California opinions that are not certified for publication under Rule 976 or Rule 976.1. (Rule 977.) If the Supreme Court grants review of a California Court of Appeal opinion, the opinion is automatically vacated and cannot be cited unless the Supreme Court orders otherwise.

Improper tone. Never personally attack an opponent, opposing counsel, or a judge. Name-calling and invective are never appropriate in legal writing, particularly in an appellate brief. They detract from the merits of your appeal, and may well offend the Court.

Failure to Proofread. Read, re-read and re-read again to make sure spelling, grammar and citations are correct.

Not clearly telling the Court what you want it to do. As the appellant, do you want the Court of Appeal to

order a retrial on all issues, a retrial on only some of the issues, or entry of judgment in your favor with no retrial? Depending on the nature of your case and the issues you raise, you may need to provide legal support for the result you request.

5. What if the Clerk rejects a document?

The Clerk may reject a document for a number of reasons, such as:

- Failing to serve or improperly serving counsel, the Superior Court, or the Supreme Court
- Failing to serve parties with extension stipulations and applications
- Omitting an original signature when one is required
- Presenting a brief that exceeds the word-count limit without an application for permission to file an oversize brief
- Submitting an insufficient number of copies
- Failing to include an attorney's California state bar number
- Failing to include a proposed order with a motion or application

The Clerk will usually give a reason for the rejection. Fix the deficiency and file the corrected document within the time allowed. You may have to file a motion for relief from default. Call the Clerk's Office if you have questions.

V. ORAL ARGUMENT AND DECISION

A. Scheduling

The Court will usually schedule oral argument within a few months after briefing is complete. When the Court notifies the parties, it may ask for a time estimate for the argument. While the rules allow a maximum of 30 minutes per side (Rule 22.1), effective arguments can often be made in a few minutes. Usually only complex cases require lengthy argument. A failure to timely respond to the notice of oral argument may be treated as a waiver of argument.

>>> You should notify the Court immediately of any scheduling conflict.

B. Preparing for Argument

Update your authorities. If any authorities cited in the briefs are no longer valid or you discover new authorities you wish to rely on, notify the Court and all opponents in writing before the argument. This is particularly important if you want to cite the new authorities at oral argument.

Review the record, the arguments and the key authorities. Since you never know what may interest the Court, you must be conversant with every aspect of the case.

Carefully prepare your key points and anticipate questions from the Court. You should have a clear idea about the points you want to make. You should also try to anticipate questions by the Court and arguments by your opponent, and prepare responses to them. You should not write out a prepared statement.

Organize your materials. It is a good idea to prepare an outline for easy reference to the points you want to make. If there are key authorities or key aspects of the record that are likely to come up, you may find it useful

to have copies of relevant pages organized for easy access.

C. Participating in Argument
Where to go. The courtroom is on the third floor of the Ronald Reagan State Building, 300 South Spring Street in downtown Los Angeles. The cafeteria on the second floor is open to the public. Restrooms are on the ground floor opposite the public elevators in the north side of the building and outside the cafeteria on the second floor. Public telephones are on the ground floor.

Checking in. Arrive before the scheduled time. After passing through a security station, you will find a schedule of the day's arguments, or the "calendar," on a table in the anteroom outside the courtroom. This sometimes identifies the three justices who will hear your case. On the same table, you will also find check-in slips, to be filled out by the person who will argue the case. The clerk inside the courtroom collects these slips.

Calling the calendar. Each division calls the calendar a little differently. The Court may simply call the first case the justices wish to hear, or it may "call the calendar"—read the list of cases and ask counsel for appearances and time estimates. If the Court does call the calendar, stand and identify yourself and the party you represent and, if asked, state your time estimate.

Typically, the cases with the shortest time estimates will be heard first. In those divisions that ask for time estimates on the argument request form, the calendar will usually list the cases the order in which they will be called.

Presenting argument. When the Court calls a case for argument, the appellant's counsel (or appellant "in pro per"—representing himself or herself) should go directly to the lectern, and the respondent's counsel (or respondent in pro per) should take a seat at the counsel table to the right of the lectern. Clients must remain in the audience. If there are more than three justices on the bench, the Presiding Justice will usually identify the three hearing the case. The appellant should then state his or her appearance and proceed. If as the appellant you want to reserve time for rebuttal, you should advise the Court; failing to do so may deprive you of an opportunity for rebuttal.

The justices will have reviewed your briefs, and you should assume that they are familiar with your case. You should highlight the pivotal issues in a conversational manner, and you should not read a prepared statement. Maintain eye contact. Avoid excessive rhetoric. If a Justice asks a question, stop your presentation and answer as directly as possible. If you do not know the answer, say so. If the question seems significant, ask for permission to address it in a letter brief to be filed shortly after argument.

The respondent should address the appellant's key points, and may want to address questions that the Court posed to the appellant.

The appellant's rebuttal is limited to replying to the respondent's arguments; this is not an opportunity to present new arguments. If the Presiding Justice says that your time has expired, stop speaking. However, if you are the middle of making a point, you may ask for permission to complete it.

D. Decision
At the conclusion of oral argument, the Court will take the case under submission, and it will ordinarily file its decision within three months. The Clerk will mail a copy to counsel and to parties appearing in pro per. You can request email notification of the filing of the decision through the Court's website. The decision will be stamped with its filing date, and it will say whether the Court has certified it for publication under Rule 976. Both published and unpublished decisions are available on the Court's website. The decision ordinarily becomes final as to the Court of Appeal 30 days after filing, which means that the Court of Appeal loses jurisdiction to modify the decision or certify it for publication.

>>> The filing date of the Court's decision is important because several deadlines run from it.

VI. PETITIONS FOR REHEARING

A. Should You Seek Rehearing?

In most cases, probably not. The grounds for rehearing are extremely limited, such as where there is an omission or misstatement of a material issue or a material fact (it is not enough that a decision does not address every point a party raised, or makes a minor mistake of fact), or where the directions to the trial court are unclear, incomplete, or impractical. In addition, Government Code section 68081 requires a rehearing when the decision is "based upon an issue which was not proposed or briefed by any party to the proceeding."

You should consult practice guides to evaluate whether a rehearing petition is appropriate or necessary to preserve issues for possible Supreme Court review.

B. Deadlines

A petition for rehearing in the Court of Appeal must be filed and served within 15 days after the date the decision is filed. An answer, if any, must be filed and served within 23 days after the decision is filed. Since the Court of Appeal does not have authority to extend the 30-day period during which it retains jurisdiction, it can grant only very short extensions of time to file a petition for rehearing or an answer to a petition.

>>> These deadlines run from the filing date of the opinion; there is no extension for mailing.

C. Briefing Considerations

Petition. A rehearing petition is not an opportunity to reargue the entire case, nor is it an opportunity to raise new issues (other than a recent change in the law). Focus on the specific, narrow ground for rehearing and explain why rehearing is necessary.

A respectful tone is essential. You must identify the Court's mistake and explain why it is important without berating or insulting the Court. Keep the petition short. The Court is familiar with the case and does not need a lengthy reiteration of the facts or the law.

Answer. It is not always necessary to file an answer to the petition, particularly if the petition merely reargues the case or does not raise any proper ground for rehearing. If you decide to file an answer, keep it as short as possible. Before filing it, call the Clerk or check the Court's website, because the Court may have already denied the petition.

Format. Use the same form as any other appellate brief. The cover of the petition should be orange; the cover of the answer, blue. File the original and four copies with the Clerk of the Court of Appeal, with a proof of service on opposing counsel and the trial court and of delivery of five copies to the California Supreme Court. (Rule 44.)

Decision. If the Court of Appeal does not rule on a petition for rehearing before the decision becomes final (30 days after filing), the petition is deemed denied. If the Court does rule, it can deny the petition, deny it with a modification of the decision, or grant it. If the Court grants the petition, ordinarily there will be no further briefing or oral
argument; the Court will issue a new decision in due course.

If the Court modifies the decision, it will state whether the modification effects a change in the judgment. If there is a change in the judgment, the 30-day finality period restarts as of the date of the modification.

VII. POST-DECISION PROCEEDINGS

A. Supreme Court Review

Supreme Court review is beyond the scope of this pamphlet. Be aware, however, that if the Court of Appeal's decision presents a proper ground for review (see Rule 29), you must file the petition for review in the Supreme Court within 10 days after the Court of Appeal's decision becomes final—that is, 40 days after the Court of Appeal filed its decision, unless there has been a rehearing or a modification of the judgment that restarted the 30-day finality period.

B. Remittitur

Once all proceedings in the Court of Appeal and Supreme Court have concluded, the Clerk issues a remittitur. This is a document the Court of Appeal sends to the trial court, notifying it that the Court of Appeal's decision is final. The remittitur reiterates the disposition and specifies which party, if any, is entitled to recover its costs on appeal. Ordinarily, the remittitur is issued after expiration of the time within which the Supreme Court can grant review. If the Supreme Court grants review, the remittitur will issue after the Supreme Court's decision becomes final. Once the remittitur is issued, the trial court reacquires jurisdiction of the case.

C. Recovering Costs on Appeal

The Court of Appeal usually requires the losing party to pay the prevailing party's costs on appeal, but it has discretion to make any (or no) award, to apportion the costs, or to defer the award for decision by the trial court at the conclusion of the case. The Court of Appeal's determination is binding on the trial court.

Rule 26(c) describes the few items recoverable as costs. They include the cost of preparing an appendix or purchasing a clerk's transcript; the cost of the reporter's transcript; the cost of obtaining an appeal bond; and filing and service costs.

The party entitled to costs must file and serve a verified cost memorandum in the trial court within 40 days after the Clerk mails a notice of issuance of remittitur. The party liable for costs may challenge specific items (but not the entitlement to costs) by making a motion to tax costs within 15 days after service of the cost memorandum.

VIII. REPRESENTING YOURSELF

If you represent yourself (that is, if you are appearing "pro per"), you must comply with all of the rules discussed above. You are held to the same standards as parties represented by counsel, and should not expect to be treated differently.

For example, your briefs must follow the format discussed above. You must support all of your factual statements with citations to the record, and you must support your legal arguments with citations to case law or statutes.

Although the Clerk of the Court of Appeal can answer some basic questions about the status of the appeal, the Clerk is not allowed to practice law or give legal advice. Pro per litigants should strongly consider retaining counsel and possibly consulting an appellate specialist.

IX. ADDITIONAL INFORMATION AND RESOURCES

For more in-depth analysis and discussion of appellate issues and strategy, several outstanding resources are available at your local law library. They include California Civil Appellate Practice (Cont.Ed.Bar 3d ed. June 2003); Eisenberg, Horvitz & Wiener, Cal. Practice Guide: Civil Appeals & Writs (The Rutter Group); Kline & Richland, West's California Litigation Forms—Civil Appeals and Writs (1999); 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal; California Appellate Practice Handbook, published by the San Diego County Bar

Association.

You can find general information, local rules and forms at the Second District's website: **http://www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict**. The Court also maintains a website with information for each case, including a complete copy of the docket, at **http://appellatecases.courtinfo.ca.gov**. This website also provides a way for you to request email notification of important events in the case, but—as the website warns—you should not depend solely on this source.

The Court urges you to call the Clerk's Office (213/830-7000) if you have a question. However, you should think through the question, know what information you need, and have your case number readily available (preferably the Court of Appeal number, but at least the superior court number). **Remember that the Clerk is not allowed to give legal advice**.

The Appellate Courts Committee
of the
Los Angeles County Bar Association

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