

Navigating the Court of Appeal, State of California, Second Appellate District: Answers to Frequently Asked Questions Regarding Civil Appeals

by Vangi Johnson

What is the first step in the appellate process?

The filing of a Notice of Appeal is the first step in the appellate process. Such is filed with the Superior Court. Rules of Court, Rule 1(a). When a Notice of Appeal is filed, jurisdiction of the Court of Appeal is immediately invoked. The trial court's power to enforce, vacate or modify the appealed judgment or order is suspended while the appeal is pending. The trial court may proceed with other matters which are not affected by the order or judgment. Code Civ. Proc. § 916(a).

What is appealable?

Code of Civil Procedure § 904.1 sets forth the matters which may be taken to the Court of Appeal, including judgments, as well as orders granting or dissolving an injunction, refusing to grant or dissolve an injunction, granting a new trial, denying a judgment notwithstanding the verdict, and interlocutory judgments imposing monetary sanctions of \$5,000.00 or more. Rules of Court, Rule 904.1.

What is the deadline for filing a Notice of Appeal?

There are three possible scenarios for the deadline for filing a Notice of Appeal, whichever occurs first: (1) 60 days after a party serves Notice of Entry of Judgment (this is the most common, as Code of Civil Procedure § 664.5 requires the party submitting a judgment or order to mail notice to all of the parties); (2) 60 days after the clerk's mailing of Notice of Entry of Judgment; or (3) 180 days after entry of judgment (this is rare, and occurs when neither the parties nor the clerk serve Notice of Entry of Judgment). Rules of Court, Rule 2(a)(1)-(3).

How is the Court of Appeal made aware of the record from the Superior Court, and what is the deadline for designating the record?

Since the Court of Appeal has no independent knowledge of the cases brought before it, a record must be designated. The designated record should include relevant documents filed in the Superior Court, as well as transcripts of pertinent oral proceedings. The record is generally designated by or with a Clerk's Transcript or an Appendix, with reporter's transcripts.

A Clerk's Transcript is prepared by the Superior Court, upon filing of a Notice to Prepare the Clerk's Transcript and payment of the estimated cost. The appellant must describe with particularity each document to be included within the Clerk's Transcript, including by title and filing date. Rules of Court, Rule 5.

An Appendix, in lieu of Clerk's Transcript, is prepared by the party serving the notice. It can be per party or joint. Joint Appendixes are preferred. An Appendix must be filed with the clerk of the reviewing court, and served on each of the parties concurrently with the Opening Brief. Rules of Court, Rule 5.1.

The deadline for designating the Clerk's Transcript or for filing a notice that election will be made under Rule 5.1 (Appendix) is 10 days after filing of the Notice of Appeal. Such can, however, be filed concurrently with the Notice of Appeal. Rules of Court, Rules 5 and 5.1.

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With regard to the pertinent oral proceedings, the court reporter will prepare the reporter's transcripts upon filing of the Notice Designating Reporter's Transcripts and payment of estimated cost. The deadline for filing such a notice is 10 days after filing of the Notice of Appeal. Where an appellant intends to proceed without reporter's transcripts, a notice of such intent must also be filed within the same deadline. Rules of Court, Rule 4.

When are appellate briefs due?

Appellant's Opening Brief must be filed within 30 days after filing of the record in the Court of Appeal, or if proceeding by Appendix, within 30 days from filing of the reporter's transcripts. If there are no reporter's transcripts, the Opening Brief must be filed within 70 days after filing of the notice that election will proceed under Rule 5.1. The Opening Brief is to be bound, and the cover is to be green. Rules of Court, Rules 15(a) and 44c).

The Respondent's Brief must be filed 30 days after filing of the Opening Brief. It is to be bound, and the cover is to be yellow. Rules of Court, Rules 16(a) and 44c).

The appellant's Reply Brief must be filed 20 days after filing of the Respondent's Brief. It is to be bound, and the cover is to be beige. Rules of Court, Rules 16(a) and 44c).

Is it possible to obtain an extension to file briefs?

The parties may extend the briefing schedule up to 60 days by filing one or more Stipulations in the reviewing court. A Stipulation is effective upon filing. In the alternative, prior to the date a brief is due, a party may apply to the presiding justice for an extension, upon a showing of good cause and that the party was unable to enter into a Stipulation. Rules of Court, Rule 15(b).

What is a Rule 17(a) Notice?

If a party fails to timely file an Opening Brief or a Respondent's Brief, the clerk of the reviewing court will notify the party by mail that the brief is due within 15 days. Failure to comply with a Rule 17(a) Notice will result in either the dismissal of an appeal, where the overdue brief is the Opening Brief, or decision of the matter on the record, without a Respondent's Brief, where the overdue brief is the Respondent's Brief. If a respondent fails to file a Respondent's Brief, the respondent is not entitled to Oral Argument. Rules of Court, Rule 17(a)(1)(2).

Will there be oral argument on all appeals, and when will it be set?

Once briefing is completed, the reviewing court will provide written notice of the date set for oral argument. At least 20 days notice is required. Oral argument is intended to focus the pertinent issues of a party's brief, and to discuss post-briefing legal or factual developments. The Court of Appeal has the discretion to disregard issues have not been briefed. Rules of Court, Rules 23; Mediterranean Construction Company v. State Farm Fire & Casualty Company (1998) 66 Cal.App.4th 257, 264, 267.

When will the Court of Appeal issue its decision on an appeal, and when will a decision become final?

An appeal is considered submitted for decision after completion of written and oral argument. Submission commences a 90-day deadline for issuance of a decision. Gov. Code § 68210. A decision will become final 30 days after filing by the reviewing court. Rules of Court, Rule 24(b)(1).

If unsatisfied with a decision regarding an appeal, is a Petition for Rehearing possible?

The Court of Appeal has the authority to grant a Petition for Rehearing, pursuant to Rules of Court, Rule 25. A majority of the justices must concur. The grounds for a rehearing have been established by case law, and include the following: (1) omission or misstatement of issue or fact; (2) mistake of law; (3) decision based upon an issue which was not briefed; (4) imperfect or impractical directions to the Superior Court; and (5) procedural defect. *In re Jessup's Estate* (1889) 81 Cal. 408; *Adoption of Alexander S.* (1988) 44 Cal.3d 857; *Kenney v. Kenney* (1954) 128 Cal.App.2d 128; *Moles v. Regents of University of California* (1982) 32 Cal.3d 867. The petition must be filed within 15 days after filing of the decision. The Court of Appeal will retain jurisdiction for 30 days from filing of the decision, and if it fails to act, the petition will be deemed denied. Rules of Court, Rule 25(a)(2).

In what instances can the Supreme Court be petitioned, and what is the deadline for such a filing?

The grounds for petitioning the Supreme Court are set forth in Rules of Court, Rule 28(b) as follows: (1) uniformity of decisions; (2) jurisdictional defects; (3) defective appellate panel; and (4) transferring the matter to the Court of Appeal for proceedings as ordered. The Supreme Court will not consider issues that could have been raised during briefing, nor will it consider issues or material facts which were omitted in the briefs filed with the Court of Appeal, unless such omissions were addressed at a rehearing. Rules of Court, Rule 28c). Petitions for Review must be bound, with white covers. The deadline for filing a Petition for Review is within 10 days of a decision of the Court of Appeal becoming final (within the 31st and 40th days of the date of the filing of the decision). Such is to be bound, and the color is to be white. Rules of Court, Rules 28(e) and 44c). An Answer Brief must be filed within 20 days after filing of the Petition for Review. Such is to be bound, and the color is to be blue. Rules of Court, Rules 28(e) and 44c). A Reply Brief must be filed within 10 days after filing of the Answer Brief. Such is to be bound, and the color is to be white. Rules of Court, Rules 28(e) and 44c).

When is jurisdiction with the Superior Court restored?

After the Court of Appeal renders its decision, the jurisdiction of the Superior Court will be restored with a Remittitur, 61 days after the decision is filed, in the absence of any extensions by the Supreme Court. A Memorandum of Costs, provided costs are awarded, is due 40 days from the mailing of the Remittitur. The Memorandum of Costs is to be filed in the Superior Court. Rules of Court, Rules 26 and 27(d).

For additional information, you can contact Vangi Johnson at, 213.738.5811.