

# [Additional Filings](#)

## **4. Additional Filings**

During an appeal, all parties file documents with the trial court and the Court of Appeal. These documents contain information that the courts need to process the appeal, to get information about the trial court case, and to make a decision on the appeal.

You are required to file some documents. Other documents are only filed when you need to give the court more information or ask the court to do something that is not a routine part of every appeal.

Many documents have similar names but very different purposes with the court. This can be confusing. If you are not sure whether you need to file a form or another type of document, or if you have questions about documents filed with either the trial court or the Court of Appeal, you can always contact the court clerk.

### **Choose a type of court filing to learn more**

[Forms – including forms that must be filed before your brief](#)

[Motions & other filings – including motions to augment the record and motions to dismiss or reinstate the appeal](#)

[Designating the Record on Appeal](#)

### **FORMS**

During the appeal process there are many forms to file with the courts. The deadlines for these forms start as soon as the appellant files a notice of appeal.

It is very important for all parties in an appeal to know what forms they must complete and when. There may be additional required forms to fill out if the Court of Appeal in your district has a Mediation Program.

It is also very important to know where to file each form. Some forms are filed in the trial court and some forms are filed in the Court of Appeal.

Be sure to carefully read the rules for each form. If a form is missing information, the court will return it to be corrected. If certain forms are not filed or are filed late, the court can dismiss the appeal.

There are many resources to help you understand and complete court forms. These resources are available online and in person at the court.

Here's an overview of the most important pre-brief forms and how to get help.

You can also learn more about the forms required for each step of an appeal by visiting that step in this guide.

*Choose one of the forms to get started*

### [Designating the Record Forms \(Appellant and Respondent file\)](#)

**What happens next?** Most forms in an appeal are filed before the briefs. After submitting all the pre-brief forms and designating the record, it's time to work on the briefs. Each party in the appeal can prepare a brief that includes a legal argument about why their side of the appeal is correct. A brief can take a lot of time and research to write, so it's important to get started as soon as possible.

Civil Case Information Statement, Form APP-004 (Appellant files)

**Who files this form?** The appellant files the Civil Case Information Statement form [APP-004](#). The respondent does not file this form.

**What's the purpose of this form?** The Civil Case Information Statement includes basic information about the case. This information helps the court get started processing the appeal.

In form [APP-004](#), the appellant must tell the court about:

- the kind of case it is (for example, medical malpractice, real estate, or probate)
- the judgment or order that is being appealed
- important history and dates in the case
- names and contact information for all the parties and lawyers in the case
- any bankruptcy or court-ordered stay affecting the appeal

Form [APP-004](#) *should only include* a quick summary of the trial court case to help the Court of Appeal start the appeal.

Form [APP-004](#) *should not include* the arguments and legal issues of the appeal. The appellant presents their arguments and legal issues in the briefs.

**Where do I get this form?** The Civil Case Information Statement form [APP-004](#) is available at the court or online.

**Where do I file this form?** The Civil Case Information Statement is filed with the Court of Appeal.

**What's the deadline?** The appellant must file this form within 15 days after the trial court mails a confirmation that the notice of appeal was filed. The 15 days start counting on the day the court mails confirmation, not the day

the appellant receives confirmation.

**Note:** Form [APP-004](#) must be served on all the other parties in the case BEFORE it can be filed with the court.

***What happens if I miss the deadline?*** If the appellant does not file a completed Civil Case Information Statement within 15 days, the Court of Appeal will issue a notice of default. The court will give the appellant 15 additional days to file or correct the form. If the appellant does not do what the court says, the court can require the appellant to pay a fine or the court can permanently dismiss the appeal.

***Are there special serving and filing instructions?*** Yes. The appellant must include two attachments when serving form [APP-004](#) to other parties and filing the form with the Court of Appeal:

- a copy of the judgment or order that is being appealed  
**and**
- proof of service that a copy of the form was delivered to all parties in the appeal

***Does the respondent ever have to file a Civil Case Information Sheet?*** The respondent only files a Civil Case Information Sheet if they file a cross-appeal. A person who files a cross-appeal becomes both a respondent *and* an appellant to the case. That means they must follow all the rules, file all the forms, and pay all the fees for both sides of the case.

[Learn more about the Civil Case Information Statement](#)

[Fill out form APP-004](#)

Certificate of Interested Entities or Persons, Form APP-008 (Appellant and Respondent file)

***Who files this form?*** Both the appellant and the respondent must complete and file a Certificate of Interested Entities or Persons form [APP-008](#).

***What are the exceptions?*** You do not file this form if the case is a family, juvenile, guardianship, or conservatorship case.

***What's the purpose of this form?*** The purpose is to alert the Court of Appeal justices to potential conflicts of interest in people or entities who may be involved in the case.

If a justice has a relationship with any of the interested entities or persons – for example, if the justice owns a certain amount of stock in a company involved in the appeal – then the justice cannot participate in the case.

***Where do I get this form?*** The Certificate of Interested Entities or Persons form [APP-008](#) is available at the court or online.

**Where do I file this form?** The Certificate of Interested Entities or Persons form is filed with the Court of Appeal.

**What's the deadline?** There is no exact date. Instead, there are **two times** in the appeal process when the Certificate of Interested Entities or Persons must be filed:

- **With any motion or application.** Both the appellant and respondent are required to file a form [APP-008](#) the first time they file a motion, an application, or an opposition to a motion with the Court of Appeal.
- **With a brief.** Both parties are required to include a copy of form [APP-008](#) when they file their brief with the Court of Appeal. This form is always the next page after the cover page. That means it's the second page of the appellant's opening brief and the respondent's brief. This form must be included in the brief even if it was already filed with a motion.

**Note:** Form [APP-008](#) must be served on all the other parties in the case BEFORE it can be filed with the Court of Appeal.

**What is an interested entity or person?** This can be an individual person or an organization, business, firm, or partnership that has a financial or other interest in what happens in the case.

If the party completing the form is an organization, business, firm, or partnership, interested entities or persons include any other organization, business, firm, partnership, or person that has more than a 10% ownership in that party.

This includes partners or spouses who own more than a 10% interest in a business, but who are not listed in the lawsuit. The partner or spouse must be listed on form [APP-008](#) and the business must also be listed on the form.

Here are examples of well-known businesses that are owned by other businesses (as of 2019):

- JPMorgan Chase – Washington Mutual
- Bank of America – Merrill Lynch
- Walmart – Sam's Club
- Pepsico – Taco Bell, KFC, Quaker Oatmeal, Cheetos and Tropicana
- Nestle – Gerber baby food, Hot Pockets, KitKats, and L'Oreal
- Unilever – Axe body spray, Dove, Lipton tea, and Hellmann's mayonnaise

**What happens if I forget to include this form?** The Court of Appeal issues a notice of default giving the party 15 days to correct the mistake. The party must serve and file the form before the deadline in the court's notice of default.

If the *appellant* does not correct a mistake within 15 days, the court may reject the document, impose sanctions, or may dismiss the appeal.

If the *respondent* does not correct a mistake within 15 days, the court may

reject the document or impose sanctions. If the document is a brief and the court strikes the filing of the brief, the court will make a decision based on the appellant's opening brief, the record on appeal, legal research, and the appellant's oral argument (if they present one to the court).

***What if I want to keep an interested entity or person confidential?*** If the identity of an entity or person has not already been publicly disclosed in the case, you can apply to keep the identity confidential. You must serve and file an application to the Court of Appeal for permission to file the Certificate of Interested Entities or Persons under seal separately from a principal brief, motion, application, or opposition. If the court gives you permission, you must file a completed form [APP-008](#) under seal and without service within 10 days of the court's order granting you permission.

***What if I forgot to include an interested person or entity on the certificate that I filed with the court? What if information changes or there is new information?*** If you realize you forgot to include an interested person or entity, or you learn of changed or additional information about an interested entity or person, you must promptly serve and file a supplemental Certificate of Interested Entities or Persons with the Court of Appeal.

[Learn more about the Certificate of Interested Entities or Persons](#)

[Fill out form APP-008](#)

Request to Waive Court Fees, Form FW-001 (Optional for Appellant and Respondent)

During an appeal there are fees in both the trial court and the Court of Appeal.

If you want to have fees waived in both courts, you must have a fee waiver in both courts. That's because a trial court cannot waive fees in the Court of Appeal, and the Court of Appeal cannot waive fees in the trial court.

### **Additional Resources**

Fill out a [Request to Waive Court Fees form FW-001](#) online

[Learn more about how to qualify and what fees can be waived](#)

[Watch a video](#) or [read instructions](#) about how to fill out the fee waiver form

[Read the California Court's information sheet on fee waivers](#)

If you still have questions, you can contact your court for more information.

**Select an option to get specific fee waiver filing instructions**

[I am the appellant](#)

[I am a respondent](#)

**Important note about fee waivers:** A request for a fee waiver is signed under penalty of perjury. You must tell the truth on a fee waiver application and your answers must be complete. You may be ordered to go to court to answer questions about your ability to pay court fees and costs, and to provide proof of your eligibility. If you do not tell the truth, the court can penalize you.

**Who files this form?** Both the appellant and the respondent can ask the trial court and Court of Appeal to waive their court fees if they cannot afford to pay. This form is not served to other parties. It is only filed with the court.

**Where do I get this form?** The Request to Waive Court Fees form [FW-001](#) is available at the court or online.

**What's the deadline?** The Court of Appeal and trial court require each party to file the Request to Waive Court Fees form at different times.

**Who qualifies for a fee waiver?** There are 3 ways to qualify for a fee waiver:

- if you are receiving public benefits like Medi-Cal, Food Stamps (CalFresh), Cal-Works, General Assistance, SSI, SSP, Tribal TANF, IHHS, or CAPI
- if your household income (before taxes) is less than the amounts listed on form [FW-001](#) in item 5b
- if the court finds that you do not have enough income to pay for basic household needs *and* the court fees

**Are all the court fees waived?** It depends. During an appeal, there are fees in both the trial court and the Court of Appeal.

- In the **trial court**, some fees are always waived if you have a fee waiver. There are other fees that the court decides whether or not to waive based on the financial situation of the applicant. Generally there is a fee for the reporter's transcript. That's because a court reporter does not work for the court. A court reporter works for an independent business with permission to work in the court.
- In the **Court of Appeal**, there is a one-time filing fee for the appellant for each notice of appeal filed, and a one-time filing fee for the respondent. If the Court of Appeal approves your request for a fee waiver, then you will not have to pay a fee in the Court of Appeal. If the Court of Appeal does not approve your request for a fee waiver, then you will have to pay a one-time filing fee.

**What happens if I don't pay my filing fees?**

If you do not pay the filing fees or if your check bounces, the court will send a notice giving you a deadline to pay the fees or have them waived.

If you are the appellant and you do not pay the filing fees or ask for a fee waiver by the deadline, the court may dismiss the appeal.

If you are the respondent and you do not pay the filing fees or ask for a fee

waiver by the deadline, the court may not accept your brief. If that happens, the court will make a decision based on the appellant's opening brief, the record on appeal, the law, and the appellant's oral argument (if they present one to the court).

***What happens if my fee waiver is denied?*** The court does not automatically approve a fee waiver application. The court can deny a fee waiver because it finds a person is not eligible, or because the application is not complete.

If you apply for a fee waiver but the court denies the request, the court will send a notice giving you a deadline to pay the filing fees.

If your fee waiver application is denied, the court will give you a reason. Sometimes the court will ask you to submit a new application with more information.

Be sure to give the court all the information it asks for *and* meet all deadlines the court gives you. If you are the appellant and you do not do what the court says, your appeal can be dismissed.

***What if my financial situation changes?*** If your financial situation improves during the time you have a fee waiver, and you can afford to pay the court fees, you must tell the court within 5 days. Fill out a *Notice to Court of Improved Financial Situation or Settlement* [form FW-010](#) and file it with the clerk of the court handling your case.

If the court believes that your financial situation has improved, you may get a *Notice to Appear for Reconsideration of Fee Waiver* [form FW-011](#). This is a notice from the court to go to a hearing to reconsider your fee waiver. You must go to this court date. If you do not go, your fee waiver may be canceled and you may have to repay fees that were waived.

***Will I ever have to pay back waived fees?*** There are two situations when the court would ask you to pay back waived court fees:

- If your financial situation improves during your case, the court may order you to pay back any fees that were waived after your eligibility ended.
- If the trial court waived your fees in a civil case and you settle with the other side for \$10,000 or more, you may have to pay any waived fees. The court will put a lien on your settlement to pay these fees. And the court will not dismiss the case until the fees have been paid.

I am an Appellant

If you want your court fees to be waived in both the trial court and the Court of Appeal, you need a fee waiver from both courts.

- You use the same Request to Waive Court Fees [form FW-001](#) for both the trial court and the Court of Appeal.
- You must complete a separate [form FW-001](#) for each court – one form for

the trial court and one form for the Court of Appeal.

- Be sure to specify the name of the court you are applying to on the fee waiver form.
- You give the completed fee waiver forms for both the trial court and the Court of Appeal to the trial court at the same time you file a notice of appeal.
- Form FW-001 is not served to other parties. It is only filed with the trial court.
- If you file the fee waiver form when you file a notice of appeal, you will not have to pay any filing fees until the court makes a decision about your fee waiver application.

Special instructions for appellant's appeal fees:

- ***If you already have a fee waiver from the trial court***, it could still be valid when you file your notice of appeal. Fee waivers expire 60 days after the trial court's judgment. Please check with your trial court and ask if you need to submit a new fee waiver application.
- ***If you do not have a fee waiver from the trial court or your fee waiver is expired***, you must complete a fee waiver form [FW-001](#) for the trial court.
- ***Remember that you must complete a separate fee waiver form [FW-001](#) for the Court of Appeal*** and file it at the trial court when you file your notice of appeal.

I am a Respondent

If you want your court fees to be waived in both the trial court and the Court of Appeal, you must have a fee waiver in both courts.

Be sure to specify the name of the court you are applying to on the fee waiver form.

For respondent's appeal fees in the trial court:

- ***If you have a current fee waiver*** from the trial court that has not expired yet, you do not need to apply for a new fee waiver in the trial court. You will give the trial court a copy of the fee waiver when you request documents from the record. **Note:** Fee waivers expire 60 days after the trial court's judgment. Also, you need to apply for a new fee waiver if you want the trial court to waive your deposit for the reporter's transcript.
- ***If you do not have a fee waiver in the trial court or if your fee waiver is expired***, you can file a Request to Waive Court Fees form [FW-001](#) in the trial court when you request documents from the record. If you file a fee waiver form when you file your request for documents from the record, you will not have to pay any fees until the court makes a decision about your fee waiver application.

For respondent's appeal fees in the Court of Appeal:



- If you want to request that the Court of Appeal waive your \$390 filing fee, you must file a Request to Waive Court Fees form [FW-001](#) in the Court of Appeal.
- You will give the Court of Appeal a fee waiver form when you file your first document in the court. This could be a motion or a brief.
- If you file a fee waiver form with your first filing, you will not have to pay any fees until the court makes a decision about your fee waiver application.

**Note:** Form [FW-001](#) is not served to other parties. It is only filed with the court.

## **MOTIONS & OTHER FILINGS**

During an appeal, many parties file motions and other documents in addition to the required forms.

These additional filings are ways for you to give the court more information, to make a request of the court, to tell the court there is a problem, or to ask the court for permission to do something.

**Here are important things you need to know about motions and other filings in an appeal (*choose a question to learn more*):**

Who can file motions and other documents with the court?

After the appellant files a notice of appeal, any party in the appeal can file can file documents with the court document with the court.

When can I file motions and other documents with the court?

While most required court forms have specific deadlines, there are generally no exact dates that you must file motions and other documents. Any party can file motions and other documents with the court at any time during the appeal before the conclusion of oral arguments. This is when the case is submitted for the Court of Appeal's decision.

Is there a form for motions and other filings?

There is never a form for motions. Some other filings have forms and some do not. If there is not a form, a party must create a document.

How do I prepare a motion or other filing?

It is best to complete court filings on a computer or a typewriter. You can only file handwritten documents with the court if you are representing yourself (you do not have an attorney) and you are not a licensed attorney.

What information do I include in motions and court filings that do not have a form?

You need to clearly tell the court what you are requesting. You must give good cause – which means a good reason – why the court should grant your request. You should write an organized argument in favor of your request. Your argument should include:

- basic facts about the request
- what you have done or attempted to do to take care of the problem
- what you want the court to do
- why it is necessary

You need to support your argument with legal authorities – or examples from the law – giving the court legal reasons that your request should be approved. You may also need to include documentary evidence, like exhibits, to support your request. Be sure to follow the general court guidelines for formatting and provide all the information the court will need to make a decision about your request. There are examples of many motions and other filings in this guide to help you.

Do I need to include any forms with a motion or other filing?

The first time an appellant or respondent files a document in the Court of Appeal, they must file a Certificate of Interested Entities or Persons, Form [APP-008](#). [Learn more](#)

Do I need proof of service for motions and other filings?

Yes. You must serve – or give – a copy of most court filings to all the other parties (or their lawyers) in the appeal before you can file them with the court. There are only a few exceptions. [Learn more about proof of service](#)

Do I file motions and other documents with the trial court or the Court of Appeal?

It depends. Some documents are filed in the trial court and some are filed in the Court of Appeal. Documents are always filed with the court clerk. You can contact the court clerk if you have questions about where to file a document.

How long does the court have to make a decision about a request? Can other parties challenge a request?

After a party submits a motion or other filing, the court will consider the party's request. The court generally waits at least 15 days to make a decision on motions, and the court often has more time to decide special requests. The court can wait to make a decision about a request until a future date or until the case has been decided. If the issue in a motion is time sensitive, the court may give an order with a waiting period of less than 15 days.

During the waiting period, other parties have an opportunity to challenge the request. If an opposing party wants to challenge the request, they must write an opposition arguing against the request and file a document with the court. The court decides whether to grant or deny a motion. Sometimes the court denies a motion that has not been challenged by an opposing party.

All parties receive notice when the court makes a decision.

Can I make a request before the court in person or do I have to file a document?

In the Court of Appeal there is no new trial, so almost all of the information you give to the court during an appeal must be in writing. There is an opportunity for parties to make an oral argument before the Court of Appeal, but it is one of the last steps in the appeal and there is a very limited amount of time for each party to speak.

Where can I get help with motions and other filings?

There are resources available at the court and online to help you. If you are not sure whether you need to file a form or another type of document, or if you have questions about court filings, you can contact the court clerk.

## **Here are common motions and other filings during an appeal:**

Each motion or other filing below includes a sample document. You can use these examples to learn what information needs to be in the document and how it should be formatted. You will need to write your own document to include the specific details of your case and your request of the court.

*Choose a filing to learn more*

## Abandonment of an Appeal (Appellant files)

If an appellant decides they want to end the appeal and it is before the record is filed, the appellant can file an abandonment of the appeal. This document is filed by the appellant in the appeals section of the trial court, and the appeal will be dismissed. If the clerk's transcript has not been completed, the portion of the deposit that has not been used will be refunded to the appellant.

[Read California Rule of Court 8.244 \(b\)](#)

## Request to Dismiss the Appeal (Appellant files)

If an appellant decides they want to end the appeal and it is after the record has been filed, the appellant can file a request to dismiss the appeal. This document is filed by the appellant in the Court of Appeal. The court may grant or deny the request.

[Read California Rule of Court 8.244 \(c\)](#)

## Motion to Dismiss an Appeal (Respondent files)

The respondent can file a motion to dismiss the appeal any time after the appellant files a notice of appeal and before the case is submitted for decision after oral arguments. This document is filed by the respondent in the Court of Appeal. If a motion to dismiss an appeal is filed before the record is filed in the Court of Appeal, the respondent must include certain information listed in California Rule of Court 8.57(a).

[Read California Rule of Court 8.57 \(a\)](#)

## Motion for Judicial Notice (Optional for Appellant and Respondent)

When you ask the Court of Appeal for judicial notice, you are asking the court to recognize facts or evidence that are not reasonably subject to dispute. Any party in the appeal can motion for judicial notice.

A common example is when there are two related cases and the record from the prior case is relevant to the current case. In this situation, a party may ask the court to take judicial notice of the record or opinion from the prior case.

If you want the Court of Appeal to take judicial notice of a matter, your motion must state clearly:

- what material you want the court to take judicial notice of
- why the matter to be noticed is relevant to the issues on appeal

- whether the matter was presented to the trial court
- whether the trial court took judicial notice of the matter
- whether the matter relates to proceedings that occurred after the order or judgment that is being appealed

If the trial court did not take judicial notice of the matter, you must also explain why the matter is subject to judicial notice pursuant to Evidence Code section 452, 452, or 453.

If the matter to be noticed is not in the record, you must also attach a copy of it (or explain why you cannot attach a copy). **Note:** *The Court of Appeal generally will not take judicial notice of matters that were not presented to the trial court.*

A motion for judicial notice is also commonly used to ask the Court of Appeal to recognize the legislative history of a statute, which may not have been presented to the trial court but is relevant to the case on appeal. When the legislature enacts or amends a statute, there are documents that go along with that. Examples of legislative history documents include different versions of a bill before it becomes a law, and committee reports or analyses of a statute.

If you want the court to take judicial notice of legislative history documents, your motion must identify each document as a separate exhibit and provide legal authority supporting the consideration of each document.

[Read California Rule of Court 8.52 \(a\)](#)

Motion to Augment the Record (Optional for Appellant and Respondent)

After the parties receive their copies of the record, sometimes they find item(s) are missing from the clerk's transcript or the reporter's transcript. If this happens because the parties made an error – either they forgot to include item(s) in their designation or did not realize they would need them – it can be corrected by filing a motion to augment the record.

Any party in the appeal can file a motion to augment the record in order to add item(s) from the trial court record to the record on appeal. Only item(s) that were filed or lodged in the trial court, or transcripts that are part of the oral proceedings in the trial court, can be added to the record on appeal.

A motion to augment the record is filed in the Court of Appeal. If the filing party has a copy of the item(s) to be added, they should attach a copy to the motion. If the filing party does not have a copy of the item(s) to be added, they must clearly identify the missing item(s) from the trial court record. The item(s) should be listed in the same format used on Form [APP-003](#) to designate the record.

**Note:** The Court of Appeal will always consider the motion but the court is not required to grant the motion. There may be a cost to add item(s) to the

record on appeal.

The Court of Appeal will give the trial court a deadline of 30 days or less to prepare the augmented record. If your brief is due before the trial court is required to have the record prepared, your motion to augment the record should include a request to extend the deadline for filing the brief. The title of your document should be "Motion to Augment the Record and Application to Extend Time to File (write the name Appellant's Opening, or Respondent's or Appellant's Reply) Brief."

[Read California Rule of Court 8.155 \(a\)](#)

Notice of Omission (Optional for Appellant and Respondent to correct the record)

After the parties designate the record, sometimes they find items are missing from the clerk's transcript or the reporter's transcript. If this happens because the trial court clerk made an error and did not include item(s) in the record on appeal that the parties designated in the record, it can be corrected by filing a notice of omission.

This document is filed in the trial court. A notice of omission asks that the missing item(s) be copied and sent to the Court of Appeal. You must serve a copy of the notice of omission to the Court of Appeal and all parties in the appeal or their lawyers.

**Note:** If you have a copy of the omitted item(s), it may be faster and cheaper to file a motion to augment the record in the Court of Appeal and just attach the document instead of filing a notice of omission with the trial court.

[Read California Rule of Court 8.155 \(c\)](#)

Motion for Relief from Default (Appellant or Respondent may file)

If a party fails to do something on time – for example, does not pay a fee or file a brief – the Court of Appeal sends a notice of default to the party. A notice of default gives the party 15 days to correct the mistake. If the party misses the deadline to do what the court asks them to do, the party can file a motion for relief from default showing good cause for the relief. This document is filed in the Court of Appeal.

[Read California Rule of Court 8.60 and 8.63](#)

Request to Reinstate an Appeal After Dismissal (Appellant files)

If the Court of Appeal issues an order to dismiss the appeal, in some cases an appellant can challenge the decision by filing a request to reinstate the appeal.

A request to reinstate an appeal asks the Court of Appeal to reinstate the case and resume hearing the appeal. If the court grants the request, the appeal continues from the step in the appeal process where the court issued a dismissal order (the appeal does not start again from the beginning).

***When can I file a request to reinstate an appeal after dismissal?***

**You cannot file** a request to reinstate an appeal if the dismissal order is based on a non-appealable order or an untimely appeal. If your appeal was dismissed for one of these reasons, you may be able to file a petition for rehearing.

**You can file** a request to reinstate an appeal if the dismissal order is based on a procedural default where you did not fix what the court asked you to do. Here are examples of procedural defaults:

- failure to pay the Court of Appeal filing fee or provide a fee waiver application
- failure to properly designate the record on appeal
- failure to pay for the record on appeal
- failure to file a Civil Case Information Statement
- failure to file a brief
- failure to file an appellant's mediation statement (**Note:** this default is only valid in the 3<sup>rd</sup> District Court of Appeal)

A request to reinstate an appeal based on a procedural default is asking the Court of Appeal to give you another chance to fix what you previously failed to do.

***What is the deadline to file a request to reinstate the appeal?*** A party should file a request to reinstate the appeal as soon as possible after the Court of Appeal files a dismissal order.

Check with your Court of Appeal to find out what the deadline is to file a request to reinstate the appeal in your case. The Court of Appeal only has jurisdiction – or legal authority – over a case for 30 days after the dismissal order. The Court of Appeal cannot extend the time to file a motion to reinstate your appeal.

The request to reinstate the appeal must be served to all parties in the case, and the trial court **BEFORE** it is filed in the Court of Appeal. [Learn more about how to serve a request to reinstate the appeal](#)

***Is there a filing fee?*** There is no additional court cost to file a request to reinstate the appeal.

***What do I include when writing a request to reinstate an appeal?*** There is no court form for a request to reinstate an appeal. Basically it has two required parts:

- [a cover page](#) that includes general information about the parties (like contact information) and the appeal (like the case number)
- [a document](#) that includes general information about the parties and the

appeal, **and** an explanation of the reasons why a party is filing a request to reinstate the appeal.

**How and when does the Court of Appeal make a decision on a request to reinstate the appeal?** The Court of Appeal reviews the request to reinstate the appeal and decides what to do. The court has jurisdiction – or legal authority to make rulings – for 30 days after the date it issues a dismissal order. This means the court only has authority to rule on the request to reinstate an appeal for 30 days after the dismissal. Therefore, any request to reinstate the appeal should be filed as soon as possible after the dismissal.

The Court of Appeal can respond to a request to reinstate the appeal in three ways:

- the court can decide not to respond and take no action *or*
- the court can deny the request to reinstate the appeal
- the court can agree to reinstate the appeal and let the appeal proceed forward allowing the party a certain amount of time to fix their default

**Note:** Some Courts of Appeal prefer you file a petition for rehearing if your appeal was dismissed because of a non-appealable order or untimely appeal. Contact the Clerk's Office at your Court of Appeal to determine which you file. [Learn more about a petition for rehearing](#)

Opposition to a Motion (Optional for Appellant and Respondent)

A party generally has 15 days after a motion is filed by another party to challenge that motion. If the issue in a motion is time sensitive, the court may give an order with a waiting period of less than 15 days.

A party who wants to challenge a motion must write an opposition arguing against the motion and file a document with the Court of Appeal. The court will consider opposition but ultimately the court decides whether to grant or deny a motion.

All parties receive notice when the court makes a decision about the motion.

**Note:** A party can generally file opposition to any motion with a few exceptions. A party cannot file opposition to a petition for rehearing or a motion for sanctions unless the Court of Appeal requests opposition.

[Read California Rule of Court 8.54](#)

**Here is general information about serving and filing documents with the court (*choose a question***



## **to learn more):**

Who needs to receive a copy of motions and other filings? When do I serve documents to other parties?

*Always check with your court to confirm the specific filing and service requirements in your case.*

**Generally, you must serve a copy of all documents to all parties in the case BEFORE you can file documents with the trial court and/or the Court of Appeal.**

If the other party *has a lawyer*, then the document is served to the lawyer. If the other party *does not have a lawyer*, then the document is served to the other party.

You *may* be required to serve documents to the trial court, the California Supreme Court, to a public officer or agency that is not a party to the case, or to the California Attorney General. For example, if you are arguing that a California statute is unconstitutional, you must serve a copy of the request to the Attorney General.

How do I serve motions and other filings to other parties or courts?

*Always check with your court to confirm the specific filing and service requirements in your case. Not all courts allow electronic filing.*

Serving a document means delivering a copy of the document to another party, or delivering a copy to a different court than the one where you are filing the document.

- **Serving documents to other parties.** There are three ways to serve a document to another party: by mail, in person, or electronically. If you want to serve a document electronically, you will first need to get the recipient to agree.

The court has rules about who can serve a document by mail or in person. It must be a person who is over 18 and lives in the county where they are serving. A party to the case cannot serve a document by mail or in person to another party.

If the other party *has a lawyer*, then the document is served to the lawyer. If the other party *does not have a lawyer*, then the document is served to the other party.

If you submit your document electronically, there's an option to have TrueFiling™ serve your document electronically to the other parties before your document is filed with the trial court or Court of Appeal. TrueFiling™ will automatically attach an electronic proof of service to

any documents you electronically file (e-file).

- **Serving documents to the trial court.** The trial court may be served by mail and some trial courts may be served electronically. Always check with your trial court to see if they accept electronically served documents.
- **Serving documents to the California Supreme Court.** The Supreme Court may be served either by mail or electronically. If a document is filed electronically through TrueFiling™, it automatically fulfills the service requirements for the California Supreme Court.

What's proof of service?

**You need a proof of service form for each person or court who receives a copy of the document. You are encouraged to use form [APP-009 \(serve by mail or in person\)](#) or [APP-009E \(serve electronically\)](#) for proof of service.**

The person who is serving a document must complete and sign a proof of service form when they deliver the document. The court requires this form as proof that the document was delivered to all parties in the appeal and the necessary courts.

The original proof of service forms should be attached as the last pages of the original document that you file in the court.

A copy of the proof of service forms must be attached as the last pages of each copy of the document that you serve to other parties.

If you submit your document electronically, there's an option to have TrueFiling™ serve your document electronically to the other parties before your document is filed with the trial court or Court of Appeal. TrueFiling™ will automatically attach an electronic proof of service to any documents you electronically file (e-file).

How do I file motions and other documents with the court?

There are two ways to file documents with a court: electronically file (e-file) on the computer or file on paper at the court. *Always check with your court to confirm the specific filing requirements and copy requirements in your case. Each court has different rules about paper and electronic filing.*

The **Court of Appeal** requires lawyers and people who have a lawyer to file electronically. If you are self-represented – meaning you do not have a lawyer – then you can choose to file electronically or file on paper.

If filing electronically, the Court of Appeal does not need or require paper copies.

If filing on paper in the Court of Appeal, the original document **and** proof of

service forms are always given to the Court of Appeal. Some courts also require you to file extra copies of the documents.

You should always keep one copy of all documents you file with the court. It's a good idea to bring or mail an extra copy of the document to the court clerk. You can ask the clerk to stamp "filed" on the extra copy to show that the original was filed, and keep the extra copy as proof.

## Helpful Links

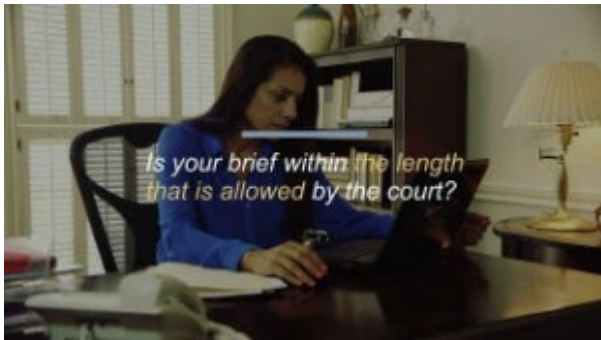
[Get a blank proof of service form APP-009 \(mail or in person\)](#)

[See the instructions sheet for the proof of service form](#)

[See detailed proof of service information from the California Courts](#)

[Read the California rules of court on proof of service requirements CRC 8.25\(a\), 8.212\(c\)\(1\), and CRC 8.29, 8.212\(c\)\(3\).](#)

[Visit TrueFiling™, the court's online filing system](#)



**Video:** Preparing to File Your Brief, 5:09

## FORMS

Documents you will need for your case.