

# Appealable Order

## 1. Appealable Order

There are two parties in every court case. So naturally, when a case is decided, one party will win and one party will lose. An appeal gives the party who loses an opportunity to challenge the decision. However, an appeal does not stop or delay the trial court's original order.

The option to appeal a court's decision is an important right in our judicial system. But there are strict rules to make the appeal process the same for everyone. The court must also follow strict rules and judge each appeal by the same legal standard.

There are two basic questions to guide a person who wants to appeal:

- **Can** the decision be appealed?
- **Should** the decision be appealed?

Here is an overview of the requirements to appeal and critical things to consider before filing an appeal.

### The Requirements to Appeal

These simple categories help determine if a decision can be appealed. All three of these requirements – who, what, and when – must be met to appeal a trial court's decision.

**WHO.** Generally, the person who wants to appeal must be the party who lost in the trial court. In legal terms, the party filing an appeal must be "aggrieved" by the decision. A friend or relative cannot file an appeal on behalf of a party to the case. A person who is affected by the decision, but who is not a party to the case, cannot file an appeal. There are some exceptions, such as a legal guardian filing on behalf of a minor child.

**WHAT.** The decision must be an appealable order. Not every court order or judgment can be appealed. The most common decision that's appealed is the final judgment in a case. As a general rule, most court orders *before* the final judgment cannot be appealed right away, while most court orders *after* the final judgment can be appealed. However, there are exceptions. There are also special rules for probate and family law cases, where orders may be appealable while the case is still active in trial court.

**WHEN.** The decision must be appealed within the time allowed by the court. The deadline is different for every case, but generally it is 60 or 180 days after the judge's decision. If a party is considering an appeal, he or she should ask the trial court to provide a deadline to file an appeal.

[California Rule of Court 8.104](#) includes general guidelines for when an appeal must be filed.

## The Legal Burden of Proof

To challenge a trial court's decision, an appeal must prove two things:

- The trial court made a legal mistake **and**
- The legal mistake impacted the decision.

It is hard to win an appeal. In California, less than 20% of all civil appeals succeed in reversing the original ruling. That's because the law says the Court of Appeal must presume that the trial court's decision was correct – unless the appellant can prove the court was incorrect.

An appeal must include a persuasive legal argument that convinces the Court of Appeal that the trial court made a legal mistake and it caused harm to the appellant in the decision. Generally, an appeal will only be successful if the appellant or their attorney made an objection during the trial to preserve the issue for appeal.

Examples that are valid legal arguments to appeal

- The trial judge erroneously admitted evidence over objection, and the inadmissible evidence prejudiced the appellant's case.
- The trial judge erroneously refused to admit relevant evidence and thus prejudiced the appellant's case.
- The jury instructions were legally incorrect.
- The trial judge misinterpreted the parties' contract that was in dispute.
- The trial judge misapplied or misinterpreted statutory, common law (case decisions), or constitutional law.
- The trial judge erred in sustaining a demurrer to the appellant's complaint because the complaint legally states a cause of action.
- The trial judge erred in granting summary judgment because there are material, disputed facts that require a trial.
- The trial judge or jury made a mathematical or other error in computing the amount of damages.
- The trial judge erred in awarding costs or attorney's fees.
- The findings of the trial judge do not support the judgment.
- The evidence is legally insufficient to support the findings or to support the judgment.

Examples that are not valid legal arguments to appeal

- I do not like the decision.
- The court believed witness A but they should have believed witness B.
- I feel the decision is not fair.

- I want a new trial or a different judge.
- I think the court should have believed my version of the story instead of the other side's version.
- I want to add new evidence or new witnesses to the case.

### Examples of judgments and orders that can be appealed

- **Judgment entered after trial by jury.** The jury verdict is not appealable. However, the judgment entered by the judge, which is based on the jury's verdict, can be appealed.
- **Judgment entered after a court trial, or a trial by a judge without a jury.** Sometimes a judge will announce the decision by written findings of fact or statement of decision. The decision in its document form cannot be appealed. But if a judgment (based on the document) is entered later by the trial court, that judgment can be appealed.
- **Judgment of dismissal.** A superior court case may be dismissed for various reasons. An order dismissing the case is appealable if it is signed by the judge and filed. *Note*, an unsigned entry in the clerk's minutes is not a judgment of dismissal and cannot be appealed. Similarly, an order sustaining a demurrer with or without leave to amend is not an appealable – it is just a preliminary step to a judgment of dismissal. If a single document contains both an order sustaining a demurrer without leave to amend **and** judgment of dismissal, it is an appealable order.
- **Judgment entered upon granting of motion for judgment on the pleadings.** An order granting a motion for judgment on the pleadings is not appealable, it's just a preliminary step to a judgment. If a single document contains both an order granting motion for judgment on the pleadings and a judgment, it is an appealable order.
- **Judgment entered upon granting of motion for summary judgment.** An order granting a motion for summary judgment is not an appealable order, it's just a preliminary step to a judgment. If a single document contains both an order granting a motion for summary judgment and a judgment, it is an appealable order.
- **An order granting or denying a request for an injunction, or granting or denying a request to dissolve an injunction.**
- **An order directing a party to pay an amount of money over \$5,000.**
- **An order granting or denying a special motion to strike a SLAPP suit** (Strategic Lawsuit Against Public Participation) brought under California Code of Civil Procedure section 425.16.
- **An order granting a motion to quash service of summons.**
- **An order granting a motion to stay or dismiss for inconvenient forum.**

## What to Consider Before Deciding to Appeal

Just because a decision *can* be appealed doesn't mean it *should* be appealed. It takes a lot of time, money, and effort to go through the appeal process.

An appeal is not a new trial. The Court of Appeal will only consider evidence and testimony in the record from the original trial.

When someone decides whether or not to appeal, he or she should carefully review the record of the trial for potential legal issues. It takes time to research and write a persuasive legal argument. The court can fine people who file appeals without legal basis. The party who loses in the Court of Appeal may have to pay some or all of the other side's court costs and legal fees.

There are strict rules and requirements to follow throughout the appeals process. This includes doing all the paperwork correctly, providing a record of what happened in the trial, and writing briefs. This also includes meeting deadlines. If the appellant misses the deadline to file an appeal, the appeal will be dismissed.

## **Next Steps**

If there's an appealable order and the party who lost plans to appeal, the next step is to file a notice of appeal with the trial court where the case was decided. The notice of appeal begins the appeals process. It lets the court and the other side know that the judgment is being challenged.

## **Additional Resource Links:**

[Review a list of questions to see if a decision can be appealed](#)

[Find a lawyer referral service in your area](#)

## **Common Questions:**

How do I know if there's an appealable order?

The [California Code of Civil Procedure section 904.1](#) includes a full list of orders and judgments that can be appealed.

You can also consult with a lawyer or contact your trial court directly to determine if you have an appealable order.

Can a case be appealed if there was no trial?

Cases are regularly dismissed without a full trial. Here are some general considerations for an appeal of common types of dismissals.

### **Demurrer.**

A demurrer ruling is an order but by statute it may be appealed. The order must say the case is dismissed. The Court of Appeal usually only looks at the complaint and assumes all the factual allegations are true in order to rule

on whether the complaint states a cause of action.

### **Summary judgment.**

A superior court's ruling granting summary judgment is an order. A party seeking to appeal the ruling must first get a *judgment* based on that ruling. The facts are taken from the evidence before the trial court at the time of its ruling. A common issue for appeal is whether the trial court was correct that there was no genuine dispute as to material facts that must be resolved at a trial.

Do I need a lawyer to appeal?

No. However, it will help to at least have an initial consultation with a lawyer who specializes in appeals. A lawyer can review the case to determine if there's a legal basis for an appeal, and what the legal argument(s) might be. It can save you time and money in the long run to consult with a lawyer, even if you ultimately choose to represent yourself in an appeal.

How do I find more help or an appeals lawyer?

The California Courts website has a lot of [information about lawyers and legal help](#).

Each Court of Appeal has [self-help resources online](#). You can also contact your local Court of Appeal to see if they have a self-help center.

You can also visit a [law library](#) to do legal research.

If you need help finding a lawyer, the California Bar Association can connect you to a [lawyer referral service](#) that connects people with lawyers in your area.

Are there other legal options besides an appeal?

There may be other legal options to help a person address what you feel went wrong in your trial. It may be possible to offer a **motion** or request to ask the trial court to cancel or reconsider the judge or jury's decision. Also, some courts have a **mediation or settlement** program that can help the parties reach an agreement. It is possible to pursue mediation even if an appeal is filed within the deadline. [Learn more about other legal options besides an appeal](#)

What happens to the original court order during an appeal?

It's important to know that filing an appeal does not stop or delay the trial court's order. During the appeal process the parties in the case must do what

the trial court order requires – that includes paying money. It may be possible to ask the court to postpone or “stay” the trial court’s order, but the court does not have to agree.

If the appeal succeeds in reversing the original decision, the Court of Appeal would provide direction about the trial court’s order. The Court of Appeal has several possible options including:

- Change all or part of the trial court’s order
- Enter a judgment in favor of the appellant
- Send the case back to the trial court for additional proceedings

How do I know if my case is a limited civil case or an unlimited civil case?

There are generally two types of civil cases:

1. Unlimited civil cases – family law cases, probate cases, temporary restraining orders, and cases involving an amount of money over \$25,000.
2. Limited civil cases – all other cases, including cases involving an amount of money less than \$25,000.

Appeals in unlimited civil cases are decided in a Court of Appeal. Appeals in limited civil cases are decided in the appellate division of a superior court.

The information in this resource is only for unlimited civil cases. For information about appeals in limited civil cases, visit or call the appellate division of the superior court in your case. [You can find your superior court online here.](#)



**Video:** Judicial Branch Overview, 8:00



**Vídeo:** Preserving the Record on Appeal, 5:33



**Vídeo:** To Appeal or Not to Appeal, 6:29

## **FORMS**

Documents you will need for your case.