

# [Respondent's Brief](#)

## **6. Respondent's Brief**

The written briefs are the most important part of an appeal. That's because there is no new trial during an appeal. So the Court of Appeal makes a decision based on what they read in the written briefs, in the record on appeal, and in legal research.

Each party writes a brief to tell the Court of Appeal why they should win the appeal. A brief must include facts about the trial court case and examples from the law. Writing a brief can be hard and it can take a lot of time.

The respondent – who won in the trial court – writes only one brief. The respondent's brief argues that the trial court's decision was correct. Even if the trial court made a legal mistake, the respondent's brief may argue that the mistake did not impact the judgment.

The respondent's brief is optional. But if the respondent does not write a brief, the respondent gives up the opportunity to present their argument to the Court of Appeal.

Here's an overview of what to expect in this step of the appeal process and how to write a respondent's brief.

You can also:

[See a sample respondent's brief](#)

### **Timeline of a Respondent's Brief**

The respondent files a brief with the Court of Appeal within 30 days after the appellant files the first brief, which is called the opening brief.

### **Cost of Filing a Respondent's Brief**

There is a \$390 filing fee the first time a respondent files a motion or brief with the Court of Appeal. The respondent does not pay any other filing fees during the appeal, however there may be other fees to get parts of the record from the trial court.

[The respondent may apply for a fee waiver of the Court of Appeal filing fee.](#)

### **Before Preparing a Respondent's Brief**

Before taking time or spending money to write a brief, the respondent can first check for problems that could get the appeal dismissed.

Here are some things the respondent can review to see if the appellant followed the court rules about appeals:

- If the appeal is from a judgment, is there a final judgment? Generally only a final judgment can be appealed.
- If the appeal is from an order, is it an appealable order? [Learn more about which orders can be appealed](#)
- Was the notice of appeal filed on time? The deadline is generally 60 days after either the trial court clerk or the respondent serves notice of entry of the judgment or order to the appellant. The trial court clerk can confirm the deadline.

If the respondent finds any of these problems with the appeal, they can file a motion asking the Court of Appeal to dismiss the appeal.

[Learn more about filing a motion](#)

[Read the California Rules of Court about motions to dismiss the appeal](#) (before the record is filed)

[Read the California Rules of Court about other motions](#)

## Understanding What the Court of Appeal Reviews

An appeal is not a new trial of the facts. The Court of Appeal only considers legal issues or mistakes made by the trial court.

To win an appeal, the appellant must prove that the trial court made a legal mistake **and** that the mistake impacted the decision. This is hard to do because the Court of Appeal generally defers to the trial court's decision, unless it is de novo review.

In an appeal, the burden is on the appellant to present a legal argument that convinces the Court of Appeal to reverse the trial court's order or judgment.

An effective respondent's brief will focus on presenting facts that support the trial court's decision and arguing against the legal issues raised by the appellant in the opening brief.

## Preparing a Respondent's Brief

Appeals are won or lost on the briefs. Even though the law favors the respondent, sometimes an appellant is successful in the Court of Appeal. So the respondent needs to spend time writing a persuasive, concise legal argument that supports the trial court's decision. This may require research.

The respondent only needs to respond to arguments raised by the appellant in the appellant's opening brief.

To get started, the respondent will read all the information in the appeal. That means the respondent will:

### 1. *Review what's in the record*

- the ruling, decision, or judgment of the trial court judge
- the statutes, constitutional provisions, case decisions, and other legal authorities that the trial court judge used to support the decision

### 2. *Review the appellant's opening brief*

- the legal argument of why the trial court's decision should be reversed
- the standard of review to be considered
- the legal authorities that the appellant used to support their argument

The respondent's job is to find legal authorities – or examples from the law – that support the trial court's original decision. The respondent will include these legal authorities in a brief and argue that the appellant's legal arguments are not correct. There may also be an opportunity for the respondent to argue that the appellant did not follow the court rules about appeals so the case should be dismissed.

It's a good idea to start working on the respondent's brief as soon as the appellant's opening brief is filed. This will allow as much time as possible to complete all of the necessary information in the required format.

A respondent may want to talk with a lawyer who has experience with appeals. A lawyer can give legal advice and write a respondent's brief. Even if a respondent decides not to hire a lawyer, an initial consultation with a lawyer can help the respondent understand the best legal arguments against the appeal. A lawyer can also give advice about what legal and court fees the respondent can ask to be reimbursed if they win the appeal.

## **Outline of a Respondent's Brief**

There are several sections in a respondent's brief. While all of them are important, some sections require more time and effort to write than others.

Here is an overview of each section with a description of what it includes.

*Choose a section to learn more*

Cover (required)

The cover of a respondent's brief must include basic information:

- the title of the brief (Respondent's Brief)
- the case title, trial court case number, and Court of Appeal case number
- the name of the trial court and the name of the trial court judge
- the respondent's name, mailing address, telephone number, fax number (if available), and e-mail address (if available)
- if the respondent hired a lawyer, the name and California State Bar

number of each attorney helping to write the brief

If a respondent's brief is filed on paper, **the cover must be yellow**. *The cover color rule does not apply to briefs filed electronically.*

See the full rules for a cover page [CRC 8.40\(c\)](#) and [8.204\(b\)\(10\)](#)

Certificate of Interested Entities or Persons (required except in certain cases)

The first page of the respondent's brief after the cover is the Certificate of Interested Entities or Persons.

The Certificate of Interested Entities or Persons form [APP-008](#) is available at the court or online.

The respondent prepares this form for the Court of Appeal to identify other entities and/or persons that have an interest in the outcome of the case. A business or an organization is an example of an entity.

A respondent is **NOT REQUIRED** to file a Certificate of Interested Entities or Persons **if the case is a family, juvenile, guardianship, or conservatorship case.**

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

Table of Contents (required)

The Table of Contents is a list of all the sections in the brief. Each section title is listed in order by the page number.

The Table of Contents tells the Court of Appeal where to find information in the brief. A judge should be able to get a good overview of the case by reading the Table of Contents.

Table of Authorities (required)

***What's in this section.*** The Table of Authorities is a list of all the legal authorities that the respondent discusses in the brief. Legal authorities are examples from the law that help prove a legal argument to the Court of Appeal.

Legal authorities may be found on the internet or at a law library. A librarian can help the respondent find legal authorities in the area of law that the case involves.

The Table of Authorities is created when the brief is finished and all the page numbers are final. Each legal authority must include a page number where

it can be found in the brief.

***What the respondent needs to consider.*** In the opening brief, the appellant will focus on legal authorities that support an argument against the trial court's decision. The appellant may not list all of the legal authorities that apply to the case, so the respondent should not depend on using the appellant's legal authorities. The respondent may need to research and find different legal authorities that support an argument for the trial court's decision.

Statement of the Case (optional)

***What's in this section.*** The Statement of the Case tells the "procedural facts" of the case. Procedural facts are facts relating to the court process. The Statement of the Case lists procedural facts in chronological order from when the complaint was filed to when the judgment was entered.

Every procedural fact in the brief must include:

1. the date when a procedural fact happened
2. a reference to the source and page number where the procedural fact can be found in the record on appeal

Here is a list of procedural facts to include in the Statement of the Case:

- filing of the complaint
- who sued whom and for what
- rulings on any motions or hearings related to issues the appellant is asking the Court of Appeal to review
- a description of orders related to issues the appellant is asking the Court of Appeal to review
- the judgment entered
- damages awarded

***What the respondent needs to consider.*** The appellant's opening brief must include a Statement of the Case. The respondent should carefully review the appellant's version to be sure it's correct. The appellant's Statement of the Case may not include or may misrepresent procedural facts that would support the trial court's decision.

If the respondent totally agrees with the appellant's version, then they are not required to include a Statement of the Case in the respondent's brief. The respondent can simply include a heading for Statement of the Case in the brief and write a sentence that says they agree with the appellant's Statement of the Case.

However most respondents do include a Statement of the Case to tell their side of the case in a way that supports the judgment or appealable order.

Statement of Facts (optional)

**What's in this section.** The Statement of Facts gives "historical facts" or evidence admitted in the trial court about what happened before there was a lawsuit. Every historical fact in the brief must be supported with a reference to the source and page number where the fact can be found in the record on appeal.

The Statement of Facts should only include "significant facts," meaning facts that are related to the legal issue or issues the appellant discusses in the appeal.

No new facts or evidence can be introduced in the Statement of Facts. The Statement of Facts can only mention facts or evidence presented in the trial court and included in the record on appeal.

**What the respondent needs to consider.** The appellant's opening brief is required to include a Statement of Facts. The respondent should carefully review the appellant's version to be sure it's correct. The appellant's Statement of Facts may not include or may misrepresent historical facts that would support the trial court's decision.

If the respondent totally agrees with the appellant's version, then they are not required to include a new Statement of Facts in the respondent's brief. The respondent can simply include a heading for Statement of the Facts in the brief and write a sentence that says they agree with the appellant's Statement of the Facts.

However most respondents do include a Statement of Facts to tell their side of the case in a way that supports the judgment or appealable order.

Argument (required)

The argument is the most important part of the respondent's brief. Here the respondent argues that the appellant's argument is wrong and the trial court's decision is right.

The respondent does several things in the argument:

1. **Respond to the legal issues in the appellant's opening brief (required)**  
The respondent carefully reviews the legal arguments in the appellant's opening brief. The respondent's brief should address all the legal issues raised by the appellant. The respondent should discuss each legal issue in the same order, with the same title and the same number that the appellant used. For each legal issue, the respondent must include a statement of law that shows why the appellant is wrong. Even if the appellant proves the trial court made a legal mistake, the respondent can argue that the mistake did not cause enough harm or "prejudice" for there to be a retrial or a reversal of the judgment.
2. **Include legal authorities that prove the trial court was right (required)**  
The respondent's argument must include a reference to a legal authority for every statement of law arguing why the appellant's argument is wrong

and the trial court's decision is right.

A legal authority can be a case decision, statute, rule of court, book written about the law, constitutional provision, or legal treatise. The respondent must explain how the legal authority applies to the facts in the case. It's generally easier for the respondent to find legal authorities that support their side of the case and harder for the appellant.

The respondent also carefully reviews the appellant's legal authorities, checking to see if they're approved legal authorities and if the appellant has correctly used the legal authorities. If there are problems with the appellant's legal authorities, the respondent can discuss those problems in the argument.

### 3. ***Discuss the standard of review (optional)***

The standard of review is the rules or guidelines the Court of Appeal uses to decide whether the trial court made a mistake. Different kinds of legal issues are reviewed by different rules. The court requires an appellant to include a standard of review for each legal issue in the opening brief.

The respondent should consider the standard of review chosen by the appellant. If the respondent agrees with the standard of review, then there's no need to discuss it in the argument. If the respondent disagrees with the standard of review, or if the appellant did not include a standard of review, then the respondent can discuss the problem in the argument.

### 4. ***Make additional arguments against the appeal (optional)***

The appellant will only make legal arguments that support their side of the appeal. After addressing the legal issues in the appellant's opening brief, the respondent's argument can include additional legal issues that support the respondent's side of the appeal.

The respondent can add as many issues as desired. Each legal issue is listed separately in the argument with a title that summarizes the issue in a few words.

For example, if the trial court provided alternate grounds for its order, but the appellant only discussed one of those grounds, the respondent could address the other grounds.

The respondent may also argue that the appellant made mistakes or did not follow the court rules about appeals. Here are examples of mistakes the respondent may find in the appellant's brief, court filings, or the record:

- the notice of appeal was filed after the deadline
- the order or judgment is not appealable
- the appellant forfeited or waived their right to appeal an issue by not objecting or filing a motion to challenge the issue during the original trial

Conclusion (required)

This is one paragraph where the respondent asks the court to affirm – or uphold – the judgment or order being challenged on appeal. If the respondent finds that the judgment or order is not appealable, they can ask the court to dismiss the appeal.

Here the respondent can also ask for compensation of their costs in the appeal. For example, the respondent can ask that the appellant pay all court fees. In some situations, the respondent may be able to ask the appellant to pay attorney fees.

*Note that no new arguments or issues should be addressed in the conclusion.*

Certificate of Compliance or Word Count (required)

There are rules about how long a brief can be. Each brief must include a Certificate of Compliance saying that it is within the maximum length allowed by the court.

Briefs prepared on a **typewriter** cannot be more than **50 pages**.

Briefs prepared on a **computer** cannot be more than **14,000 words**. The word count includes footnotes, but it *does not* include the cover, the Certificate of Interested Entities or Persons, the Tables of Contents and Authorities, the Certificate of Compliance, any signature block, proof of service forms, or any attachments.

The respondent can attach a maximum of 10 pages of documents to the end of the brief.

If needed, a respondent can ask the Court of Appeal to allow a longer brief. The respondent would file an “Application to File an Oversized Brief” with the Court of Appeal and serve a copy of the application to all other parties in the case. There is no court form for this application so the respondent types the application on a piece of paper.

The respondent must provide what the court calls “good cause” – which means a good reason – to file an oversized brief. The court may or may not say yes to the request.

[Read California Rules of Court 8.204\(c\) to learn more about the length limitations for briefs](#)

Proof of Service (required)

*Always check with your Court of Appeal to confirm the specific service requirements in your case.*

Generally, you must serve a copy of the respondent’s brief to all parties in the case, to the trial court judge, and to the Supreme Court of California **BEFORE** it can be filed with the Court of Appeal.



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

There are rules about who can serve a brief and how it can be served.

The respondent must give the Court of Appeal proof that all of the required copies were delivered. Respondents are encouraged to use court form [APP-009](#) (mail or in person) or [APP-009E](#) (electronic) to provide proof of service. This form tells the court who served the brief, who was served with the brief, how the brief was served, and the date it was served. The respondent must file one proof of service of service form for each brief that is delivered.

Proof of service forms are always included at the end of the respondent's brief, after the Certificate of Compliance.

## **Filing the Respondent's Brief with the Court of Appeal**

There are two ways to file a brief: electronically file (e-file) on the computer or file on paper at the Court of Appeal. *Always check with your Court of Appeal to confirm the specific filing requirements and copy requirements in your case.*

The court requires lawyers and people who have a lawyer to file electronically. If a respondent is self-represented – meaning they do not have a lawyer – then the respondent can choose to file electronically or file on paper.

If filing electronically, the court does not need or require paper copies.

If filing on paper, the original brief **and** proof of service forms are always given to the Court of Appeal. Some Courts of Appeal require that you file extra copies of the respondent's brief when you file the original.

The respondent should keep one copy of the brief. It's a good idea to bring or mail an extra copy of the brief to the court clerk. The respondent 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.

## **Next Steps after the Respondent's Brief**

After the respondent files a brief, the appellant can file a third and final brief. The appellant's reply brief addresses the issues and arguments raised in the respondent's brief. The appellant is not required to file a reply brief.

Each party who filed a written brief will have an opportunity to speak

directly to the Court of Appeal justices. This next step is called presenting oral arguments. It's the only time the parties can make their case in person at the Court of Appeal.

## **Additional Resource Links:**

[Sample respondent's brief](#)

[Official appeal procedures for unlimited civil appeal cases \(Form APP-001\)](#)

[California rules of court for the Courts of Appeal](#)

## **Common Questions:**

I'm the respondent. Do I have to file a respondent's brief?

Technically no. But the brief is your opportunity to tell the Court of Appeal your side of the story and argue why you're right. If you're the respondent and you do not file a brief, you will not be able to speak directly – or present an oral argument – to the Court of Appeal. So the Court of Appeal will only hear the appellant's arguments. That means the Court of Appeal will make a decision without hearing your side of the case. If you lose, the Court of Appeal may change or reverse the trial court's decision. You will have to do what the Court of Appeal says, and you may lose benefits you received in the original judgment or order being appealed.

How many briefs can a respondent write?

The respondent only writes one brief. The appellant must write the first or opening brief, then the respondent can write a respondent's brief. If the respondent writes a brief, then the appellant can write a final brief called a reply brief.

The law says that the Court of Appeal must assume the trial court decision was correct unless the appellant proves there was an error, which means the law favors the respondent. So the law gives the appellant an opportunity to write a second brief to address the arguments made in the respondent's brief. This is because the appellant has the burden of showing the Court of Appeal that the trial court made a mistake.

The appellant cannot make new legal arguments in the reply brief, so there is nothing new in the reply brief that the respondent needs to address.

Where can I get help writing my brief?

[Form APP-001](#) has full instructions on appeal procedures, including what needs

to be in a brief.

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 at the court.

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

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

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

What legal arguments can the appellant make in an appeal?

Here are some common legal arguments made by the appellant:

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

What is the standard of review?

The Court of Appeal's job is to determine if the trial court followed the law and how to resolve any issues if the trial court did not follow the law. To do this, the Court of Appeal uses a process that's called the "standard of review." These are basic guidelines to help the Court of Appeal evaluate the appellant's argument.

The standard of review is different for each legal issue. Here are three common standards of review:

1. **De novo standard.** In de novo review, the Court of Appeal does not defer to the decisions made in the trial court. Instead, the Court of Appeal

looks at the issue as if the trial court had never ruled on it. This type of review is generally limited to issues involving questions of law. It is the most favorable standard of review for an appellant.

2. **Abuse of discretion.** During a trial, the judge uses his or her discretion to decide on many things. This includes whether or not to allow discovery, admit evidence, issue restraining orders, award damages, and more. When an appellant argues that “abuse of discretion” standard applies in the case, they must prove that the trial court judge’s decision “exceeded the bounds of reason.” Since the Court of Appeal generally defers to the trial court’s exercise of discretion, this type of appeal is difficult to win.
3. **Substantial evidence.** This standard is used when an appellant is arguing against the factual findings of a judge or jury after a trial. The Court of Appeal reviews the record and decides whether a reasonable fact-finder could have come to the same conclusion as the trial court. The Court of Appeal does not decide whether it would have reached the same factual conclusions as the judge or jury. This kind of appeal is difficult to win because it argues that the trial court did not consider or understand all the evidence, believed the wrong witnesses, or failed to properly weigh the evidence. The Court of Appeal will reject this kind of argument if there is any substantial evidence –contradicted or not – that supports the trial court’s finding of the facts.

How is the Statement of Facts prepared if there was no trial?

The statement of facts in an appeal brief will be different if the case was dismissed without a full trial.

Cases are commonly dismissed without a full trial in two ways: demurrer or summary judgment. If there was no trial in your case, you should consider doing legal research or talking to a lawyer to get help preparing your Statement of Facts.

Here are some general considerations for an appeal of these 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. The Statement of Facts in the respondent’s brief should include facts that support the trial court’s demurrer ruling and facts as stated in the complaint.

### **Summary judgment**

A trial 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.

Can I include new information or new evidence in my brief?

No. An appeal is not a new trial. You cannot introduce new information, new evidence, or new witnesses during the appeal process. The Court of Appeal will only consider what's included in the record on appeal.

Can I include confidential information in a brief?

No. Briefs are generally filed publicly, and publicly filed documents must not disclose confidential or sealed material.

If you need to refer to confidential or sealed material in your brief, please carefully review the procedure described here in [CRC 8.46\(f\)](#) and [CRC 8.47](#).

How do I put things in the record on appeal for the Court of Appeal to review?

[Learn how to designate – or choose – materials from the trial court record to send the Court of Appeal.](#)

How do I reference sources from the record on appeal?

For every event or fact about the case that you include in your brief, you must provide an exact location and page number where the court can find it in the record on appeal.

Here's a list of places information can be found in the record on appeal:

- Appellant's appendix-AA
- Appellant's opening brief-AOB
- Appellant's reply appendix-ARA
- Appellant's reply brief-ARB
- Augmented clerk's transcript-Aug CT
- Augmented reporter's transcript-Aug RT
- Clerk's transcript-CT
- Joint appendix-JA
- Reporter's transcript-RT
- Respondent's appendix-RA
- Respondent's brief-RB
- Superior court file-SC file
- Supplemental clerk's transcript-SCT
- Supplemental reporter's transcript-SRT

Each case is different. Some cases have all these sources in the record on

appeal, and some cases only have a few of these sources.

In your brief, you will support each event or fact with a reference to a page number in one of the sources in this list. You will use the abbreviation that matches the source to tell the Court of Appeal where to look for the information. The court will check each reference to make sure it supports your version of the story.

For example, say you want to tell the court a fact about the case that's on page one of the clerk's transcript. Here's what you would write in the brief: "Appellant filed a civil complaint on January 3, 2018. (CT 1)"

If there is more than one volume of the clerk's transcript or reporter's transcript, you'll need to write the volume number, then CT or RT, and then the page number. For example: (1 CT 3), (2 RT 150).

If there is more than one augmented clerk's transcript, also include the transcript by date. For example: (1/3/18 Aug CT 2).

What are common mistakes in briefs?

Here is a list of common mistakes made in briefs:

- not citing the record on appeal (giving the court the exact place in the record to look) for a fact that you put in your brief
- including information and sources that are not in the record on appeal
- not citing the law (giving the court the name and place in a published court decision, statute, or other law) for what you say is the law in your brief
- using improper citations that are not legal authorities, like a blog post or an unpublished court decision
- improper or unprofessional tone (don't use curse words or say bad things about people)
- not proofreading (the brief has typos and other obvious errors)
- not clearly telling the court what you want

What are the formatting rules for briefs?

Briefs filed on paper and briefs filed electronically must follow the formatting instructions in [California Rule of Court 8.40](#) and [California Rule of Court 8.204](#).

If you e-file, you must follow additional formatting rules. Be sure to review the [general Court of Appeal instructions for electronically filed documents \(pdf\)](#). You also need to check with your Court of Appeal to find out if your court has any special requirements.

Can I include attachments or exhibits with my brief?

Attachments should only be included with a brief if they are absolutely necessary. Improper attachments can cause a brief not to be filed, or to be rejected and returned for corrections.

Copies of exhibits or other materials may only be attached if they are already in the existing record on appeal, or in relevant local, state, or federal rules or regulations. The attachments must not be more than a combined total of 10 pages, unless the court grants you permission to break this rule.

If you need to file more than 10 pages of attachments, you can ask the Court of Appeal for permission. You may file a "Request to Attach Additional Exhibits" with the Court of Appeal and serve a copy of the application to all other parties in the case. There is no court form so you type the request on a piece of paper. You must provide what the court calls "good cause" – which means a good reason – to attach additional exhibits. The court may or may not say yes to your request.

Instead of including a lot of attachments, it may be easier to simply make a reference in your brief to any legal authorities, or to exhibits already in the record on appeal.

Before including attachments you should carefully review [CRC rule 8.204\(d\)](#).

Who needs to receive a copy of my brief? How do I serve my brief 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.

Generally, you must serve a copy of the brief to all parties in the case, to the trial court judge, and to the Supreme Court of California **BEFORE** it can be filed with the Court of Appeal.

- **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.

A party to the case can serve a brief electronically. 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 brief is served on paper, the Supreme Court must receive 4 copies. 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).

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

Get a blank proof of service form [APP-009E](#) (electronic)

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



How do I file my brief with the Court of Appeal?

There are two ways to file documents with a court: electronically file (e-file) on the computer or file on paper at the court.

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.

How can I check the deadline to file my brief?

You can contact the clerk at your Court of Appeal if you have questions about the deadline to file your brief.

What if I miss the deadline to file my brief?

If the respondent's brief is not filed by the deadline, the Court of Appeal will mail a notice that the brief must be filed within 15 days.

During this 15-day timeframe, the respondent may file an application for an extension of time. The Court of Appeal may grant an extension if it finds there is a good reason.

If the respondent does not file a brief or request an extension to file within the 15-day timeframe, the appeal will be decided without the respondent's brief.

What if I need more time/an extension to file my brief?

If you need more time to file your brief, you can agree – or "stipulate" – with the other parties to extend the deadline up to a maximum of 60 days. An extension or stipulation must be filed in the Court of Appeal **before the date the brief is due**. Stipulations must be signed by all parties and served to all parties.

Note: The parties cannot stipulate to extend the time if the court has already granted an extension to file the brief.

If a party needs more time to file and has already stipulated to 60 days *or* if the parties are unable to agree to an extension, a motion or application for extension of time may be filed with the Court of Appeal. The court may or may not grant the extension for more time.

[Get a blank form APP-006 application for extension of time to file a brief](#)

[Get a blank form APP-012 stipulation for extension of time to file a brief](#)

What if my brief is rejected?

If a respondent's brief is incomplete or does not follow the formatting rules, the Court of Appeal may decline to file it.

If the brief only requires minor corrections, the court clerk may contact the respondent and ask for permission to make the minor corrections. The court may also return the brief to the respondent for corrections and changes.

After making corrections it is generally necessary to prepare a new document. The new revised brief must be served again on all the parties and filed again with the Court of Appeal.

The Court of Appeal will review a revised respondent's brief and decide how to proceed:

- *If the problems have been corrected*, the court will file the revised respondent's brief.
- *If the problems have not been corrected*, the court may decide the appeal with only the information in the record on appeal and the appellant's opening brief, but without hearing the respondent's side of the case.

What happens if a party files a cross-appeal?

If one of the parties files a cross-appeal, then the briefing contents and briefing schedule are different.

In the event of a cross-appeal, the opposing parties must try to agree on a briefing schedule. The parties must either submit a joint briefing schedule or submit separate briefing schedules for the court to consider and make a final decision.

See [CRC 8.216](#) to learn about the procedures for submitting a briefing schedule in a cross-appeal.

I cannot afford to pay the Court of Appeal filing fee. How do I get a fee waiver?

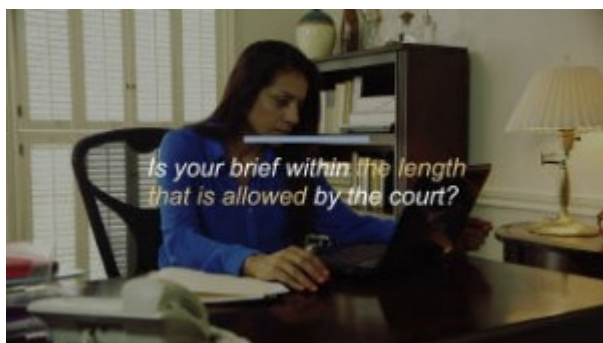
The respondent pays a one-time \$390 filing fee to the Court of Appeal. The respondent pays this fee when they file their first document – which may be a motion or a brief – with the Court of Appeal.

*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](#) with your first filing in the Court of Appeal. 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.*

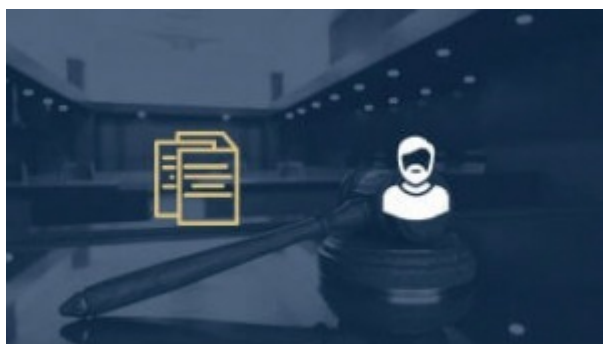
The Request to Waive Court Fees form [FW-001](#) is available at the court or online.

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

[Learn more about fee waivers](#)



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



**Video:** What is a Brief?, 4:27

## **FORMS**

Documents you will need for your case.