

## UNDERSTANDING YOUR APPEAL

-- Information for Appellants --

This information letter will help explain what an appeal is all about. It answers some of the questions most often asked by appellants.

### "WHAT IS AN APPEAL?"

An appeal is not a new trial. The purpose of an appeal is to check over the proceedings in the trial court, to see if they followed the law.

An appeal can deal with only the matters shown in the record. The record includes (1) the papers in the trial court files, and (2) a court reporter's word-for-word record of what happened in the courtroom. The Court of Appeal cannot consider facts outside the record. It hears no witnesses and takes no new evidence.

The Court of Appeal has no power to decide questions of fact, such as whether a certain witness was lying, or what a particular piece of evidence proves. Decisions like those are only for the jury or trial judge, and the Court of Appeal cannot change them.

The Court of Appeal deals with legal questions. It decides whether the trial court proceedings followed the law. For example, it might decide whether certain evidence was incorrectly admitted, or whether the jury was properly instructed, or whether the trial judge gave adequate reasons for a particular ruling, and other questions of those types.

If the Court of Appeal finds that the proceedings were conducted correctly, the judgment is "affirmed," and the trial court's ruling will not change.

If the Court of Appeal finds some important mistake was made in the trial court, your case will probably be "reversed" (in part or in full) and sent back to the trial court for a new trial or some other proceeding to correct the mistake. Some mistakes can be corrected by the Court of Appeal itself, without sending the case back.

### "WHO WILL REPRESENT ME ON APPEAL?"

The Central California Appellate Program is a firm of appellate attorneys. The firm helps to manage criminal appeals and some types of civil cases, including conservatorship appeals, in the Third and Fifth District Courts of Appeal.

In every case requiring the appointment of an attorney on appeal, the Central California Appellate Program either handles the case itself, finds a private attorney to handle the case, or refers the case to the State Public Defender.

Your case will be checked for length, difficulty, and seriousness of disposition and will be given to an attorney with appropriate qualifications.

If a private attorney is selected, a Central California Appellate Program attorney will be available to assist the private attorney at every stage of the appeal.

### "WHAT CAN I EXPECT TO HAPPEN DURING THE APPEAL?"

The usual steps in an appeal include:

1. Preparation of the Transcripts. The trial court clerk and reporter began preparing the transcripts in your case after the notice of appeal and designation of the record were filed. It is hard to guess how long it will take them to finish. Sometimes the transcripts are done in less than a month, and sometimes they take six months or more, especially if the trial was long. When your attorney receives the record, he or she may ask that additional transcripts be prepared

2. The Appellant's Opening Brief. After all the transcripts are filed, your attorney will study them and decide what issues should be presented to the Court of Appeal. These issues will be presented in the appellant's opening brief.

The brief normally will have several parts. First, it will describe the trial court proceedings, in a section called "Statement of the Case." Then it will describe the evidence, in a section called "Statement of the Facts." (By strict rule the evidence which supports the judgment must be presented as the "facts.")

The next part of the brief will be the "Argument." In this part, your lawyer will show how the trial court proceedings did not follow the law, and will argue why you should be given a new trial or some other relief.

The opening brief is due 30 days after the transcripts are filed. In many cases, however, one or more 30-day extensions of time are needed.

3. The Respondent's Brief. About a month or two after the appellant's opening brief is filed, the Attorney General's office will file its answer, called the "Respondent's Brief." In it, the Attorney General will usually argue something like: no mistakes were made in the trial court; or any mistakes were unimportant and did not hurt you; or a particular issue cannot be raised on appeal; or something else in answer to your issues.

4. The Appellant's Reply Brief. In this brief, your attorney will have a chance to answer the arguments made in the Attorney General's brief. It is due 20 days after the Attorney General's brief is filed. The "Appellant's Reply Brief" is optional and will be filed only if your lawyer thinks it will help.

5. Oral Argument. Usually within a few months after all the briefs are filed, the Court of Appeal will give both sides a chance to ask for oral argument. In oral argument, the lawyers for both sides go to the court and argue in person. It usually takes only a few minutes. You will not be there, although if you are not in custody you are free to attend.

Oral argument is not held in every case. Your lawyer will decide if he or she believes it would be helpful in your case.

6. The Opinion. The Court of Appeal will give its decision in a written "opinion." The opinion explains why the court decided each issue as it did.

The opinion will be filed sometime after oral argument is held or waived. It may be only a few days later, or as much as three months later.

Three judges of the Court of Appeal will decide your case. They will read the briefs, look at the transcripts, and hear oral argument (if it has been requested). Then they will vote. It takes at least two judges voting the same way to reach a decision. One of the judges writes the "opinion." One or both of the other judges may write separate opinions, if they disagree with something the first judge said.

7. Petition for Rehearing. If the decision is against you in some way, your lawyer may decide to file a "petition for rehearing," asking the Court of Appeal to reconsider. The state may also file a "petition for rehearing," if the decision is against the prosecution. The petitions are due 15 days after the opinion is filed. Very few are granted.

8. Petition for Review in the California Supreme Court. Another possible step to take, if you lose in the Court of Appeal, is to file a "petition for review." In it, your lawyer would ask the California Supreme Court to reach a decision on one or more of the issues raised in the Court of Appeal. Your lawyer will file the petition if he or she believes one is warranted in your case. The state may also petition for a review, if it has lost in the Court of Appeal.

The petition must be filed no earlier than 30 days, and no later than 40 days, after the Court of Appeal's opinion is filed. If the petition is denied, the decision of the Court of Appeal is left standing and becomes "final." Very few petitions are granted.

Many other motions and papers can be filed in an appeal. Your lawyer may file them in your case if they are necessary. Your attorney should send you copies of all the briefs, the opinion, any petitions filed, and all other important papers.

Most appeals take at least a year from the time the Notice of Appeal is filed, to the time the decision of the Court of Appeal becomes final. Of course, your case may be shorter or longer, depending on how long the transcripts are, how many issues are raised, and other considerations.

#### "HOW CAN I FIND OUT MORE ABOUT MY APPEAL?"

This letter is intended only to give you a general idea of what to expect in your appeal. Your own case may be different from the "usual" case in some way. When an attorney is appointed for you, he or she will explain what is happening in your case and will try to answer any questions you may have.

Your attorney needs to work with the transcripts in your case, in order to properly prepare the appeal. When the appeal is over, your attorney will send the transcripts to you.