



UNDERSTANDING YOUR APPEAL

The information contained in this document is intended to explain what an appeal is all about and to answer some of the questions you may have about your appeal.

WHAT IS AN APPEAL?

An appeal is *not* a new trial. The purpose of an appeal is to review the proceedings in the trial court to determine if they were conducted legally.

An appeal deals only with matters shown in *the record*. The record is generally in the form of transcripts, which include (1) the papers filed with the clerk in the trial court (the clerk's transcripts) and (2) a court reporter's word-for-word record of what was said in the courtroom (the reporter's transcripts). Normally, the Court of Appeal cannot consider matters that are not contained in the transcripts. It hears no witnesses and takes no new evidence.



The Court of Appeal has no power to decide questions of fact, such as whether you are guilty or innocent, or whether a certain witness was lying, or what a particular piece of evidence proves. It has no power to say what sentence you should get, among those allowed by law. Decisions like these are reserved for the jury or trial judge, and the Court of Appeal cannot alter them.

The Court of Appeal decides legal questions. It determines whether the trial court proceedings adhered to the law. For example, it might decide whether certain evidence was correctly admitted, whether the jury was properly instructed, or whether the trial judge provided adequate reasons for choosing a particular sentence, and other similar matters.

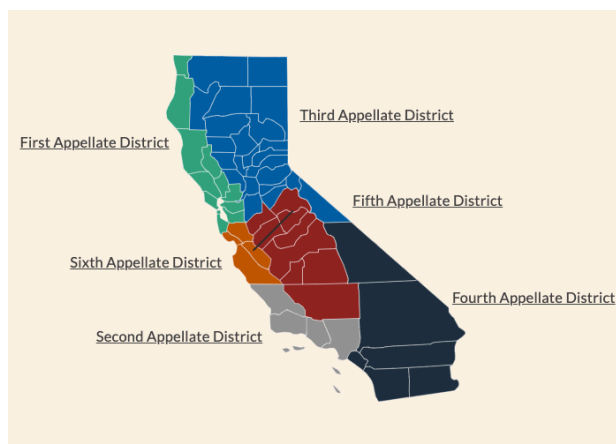
If the Court of Appeal finds that the proceedings in the trial court were conducted correctly, the judgment is *affirmed*, and your conviction and sentence will not change. If the Court of Appeal finds that a significant error occurred in the

trial court, the judgment will likely be *reversed*. Sometimes, the Court of Appeal will reverse part of the judgment and affirm the remainder. In some cases, a reversal requires sending the case back to the trial court for further proceedings (or *remanded*) if the mistake is one that can be corrected. Those proceedings may include a new trial, a new sentencing hearing, or another proceeding. The Court of Appeal itself can correct some mistakes, without sending the case back. And some mistakes, such as the failure to present sufficient evidence to prove a charge, cannot be corrected and require a reversal of the affected conviction, along with release from its consequences.

Even where legal error occurs, with the exception of insufficient evidence, reversal is not automatic. The defendant must show that the error prejudiced his case—i.e., that it is probable or possible (depending upon the nature of the error) that the defendant would have received a more favorable outcome absent the error.

WHO WILL REPRESENT ME ON APPEAL?

In California, every criminal defendant has a constitutional right to an appeal represented by counsel, even if they cannot afford an attorney. The Judicial Council of California's Court-Appointed Counsel Program fulfills the constitutional mandate of providing adequate representation for indigent appellants in noncapital cases. Nonprofit organizations (called *projects*) contract with the Judicial Council to appoint and supervise attorneys to handle such matters. There are five such projects in California, each with responsibility for appointments in a specific Court of Appeal district:



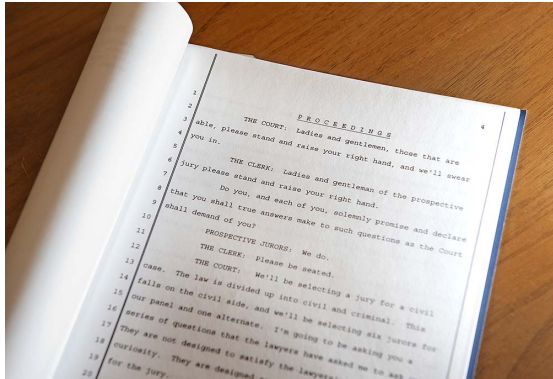
- ***First District Appellate Project*** in Oakland, for cases in the First Appellate District;
- ***California Appellate Project*** in Los Angeles, for cases in the Second Appellate District;
- ***Central California Appellate Program*** in Sacramento, for cases in the Third and Fifth Appellate Districts;
- ***Appellate Defenders, Inc.*** in San Diego, for cases in the Fourth Appellate District; and
- ***Sixth District Appellate Program*** in San Jose, for cases in the Sixth Appellate District.

The attorneys appointed to a case are either employed by one of the projects or private attorneys who accept such appointments free of charge to the client. Regardless, all are very experienced in criminal appeals. Each case is assigned to an attorney with the appropriate qualifications after the case is reviewed for its length, complexity, and the severity of the penalty. If a private attorney has been selected, a project staff 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 was filed. It is hard to guess how long it will take them. Sometimes transcripts are completed in under a month, while others may take six months or more, especially if the trial was lengthy.



After the transcripts are sent to your attorney, he or she will study them. Your attorney may discover that additional transcripts are necessary for your appeal and request them.

Once your transcripts are completed, your attorney will have about a month to review them. However, depending upon how complicated your case is or how lengthy the transcripts are, your attorney may ask for additional time. It is common for an attorney to receive multiple 30-day extensions to review the transcripts.

(2) The Appellant's Opening Brief: After reviewing your transcripts, your attorney will decide what issues should be presented to the Court of Appeal. These issues will be presented in the *appellant's opening brief*.

The brief typically consists of several parts. First, it will describe the trial court procedures in a section called "Statement of the Case." It will then describe the prosecution's evidence in a section called "Statement of Facts." (The brief may, of course, describe the *defense* evidence, too. But by strict rule, the *prosecution's* evidence must be presented as the "facts.")

The next part of the brief will be the "Argument." Your lawyer will argue how the trial court proceedings were illegal and what relief you are entitled to. An opening brief might contain one argument or multiple distinct arguments.

(3) The Respondent's Brief: About two to three months after the appellant's opening brief is filed, the Attorney General will file the prosecution's answer, called the *respondent's brief*. In it, the Attorney General will usually argue something like the following: 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 arguments. This is just the prosecution's argument and is not the Court of Appeal's decision.



(4) The Appellant's Reply Brief: In this brief, your lawyer will have a chance to answer the arguments made in the respondent's brief. It is due 20 days after the respondent's brief is filed. The reply brief is optional and will be filed only if your lawyer thinks it is necessary.

(5) Oral Argument: Usually, within a month or two after all the briefs are filed, the Court of Appeal will give both sides a chance to ask for oral argument. At oral argument, lawyers for both sides appear in court and present their cases in person, emphasizing key points and answering the justices' questions. Each side usually gets only about 15 minutes. You will not be there.

Oral argument is not held in every case. Your lawyer will ask for it only if he or she believes something needs to be said that was not already said in the briefs.

(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 (i.e., *justices*) will decide your case. They will read the briefs, review the transcripts, and hear oral argument (if requested). Then they will vote. It takes at least two justices voting the same way to reach a decision. One of the justices writes the opinion. One or both of the other justices may write separate opinions if they disagree with something the first justice wrote.

(7) Petition for Rehearing: If the decision is against you, your lawyer may decide to file a *petition for rehearing*, asking the Court of Appeal to reconsider. Respondent may also file a petition for rehearing. The petitions are due 15 days after the opinion is filed. Very few are granted. Requests for rehearing are not

normally filed since they must be based on very specific grounds, such as the court's misstatement of facts, misapplication of law, or failure to decide an issue raised.

(8) *Petition for Review in the California Supreme Court:* If you lose in the Court of Appeal, another possibility is for your lawyer to file a *petition for review*. In it, your lawyer asks the California Supreme Court to review the case to reach its own decision on one or more of the issues raised in the Court of Appeal. Your lawyer will file the petition if your case presents a legal issue of statewide importance. Respondent may also petition for review. The Supreme Court is not obligated to hear your case, and it rarely grants petitions for review.

The petition must be filed between 30 and 40 days after the Court of Appeal's opinion is filed. If the petition is denied, the Court of Appeal's decision stands and becomes *final*.

(9) *Other Matters:* Many other motions and papers can be filed in an appeal. Your lawyer will file them in your case if they are necessary. You will receive copies of all the briefs, the opinion, any filed petitions, and all other relevant papers.

In a few cases known as "People's appeals," the prosecution will appeal, asking the Court of Appeal to overturn a ruling of the trial court. In People's appeals, the prosecution will be the "appellant" and file the appellant's opening brief and the reply brief. The defendant will be the "respondent" and will file the respondent's brief.

In addition, there are a few cases in which the Court of Appeal will consider facts not presented in the transcripts; such facts are typically presented in a pleading called a petition for writ of habeas corpus. If you think that something important happened that was not presented in your trial, you should inform your attorney.

As you may be able to tell, most appeals take approximately a year from the time the notice of appeal is filed until the time the Court of Appeal's decision becomes final. Of course, your case may be shorter or longer, depending on the length of the transcripts, the number of issues raised, and many other factors.

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 or another. Your attorney will explain what is happening in your case and will try to answer any questions you may have.

While your attorney should regularly keep you informed of what is going on, please keep in mind that there are restrictions on the attorney's time. The attorney needs to spend most of his or her time preparing briefs and otherwise representing you. The Court of Appeal has established guidelines for the time allowed for client communication. Your attorney will get most of the information pertaining to your case from the transcripts. Please be patient and let your attorney put the time spent on your case to the best use on your behalf.