

# INSTRUCTIONS ON APPEAL PROCEDURES FOR MISDEMEANORS

The following information will assist you with the general guidelines on appeal procedures. It is not intended to be comprehensive in nature, but to act as an overview. You are advised to thoroughly read California Rules of Court, rules 101 through 108 and rules 180 through 191. The court clerk's cannot assist you. You should direct any questions you have to an attorney of your own choosing.

## 1. NATURE OF AN APPEAL

A party may appeal an unfavorable decision made in the trial court to the Appellate Division of the Superior Court. The appeal must be directed towards errors of law only. An appeal is not a retrial, and you will not be permitted to introduce new evidence.

## 2. PARTIES

The party filing the appeal is called the APPELLANT. The party against whom the appeal is brought (People of the State of California) is called the RESPONDENT.

## 3. NOTICE OF APPEAL

You must file your Notice of Appeal with the clerk of the trial court within 30 CALENDAR DAYS after the date of sentencing. (Cal. Rules of Court, rule 182.) No extensions of this time limit is allowed.

## 4. PROPOSED STATEMENT

a. WITHIN 15 DAYS after filing the Notice of Appeal, you should file a Proposed Statement on Appeal. (Cal. Rules of Court, rule 184(d).) The Proposed Statement should contain all of the following:

- (1) Grounds of appeal—a statement of the legal errors you believe were committed by the trial court. (Cal. Rules of Court, rule 184(b).)
- (2) A statement of the evidence or trial procedures relevant to each of your grounds of appeal. (Cal. Rules of Court, rule 184(b).)

**NOTICE: The filing of a Proposed Statement is required in order to prepare a Settled Statement. Although it is technically possible for an appeal to proceed in the absence of a Settled Statement, as a practical matter in almost all cases such a statement will be necessary for the Appellate Division to meaningfully review the appeal. The Proposed Statement must be filed with the clerk of the trial court.**

- b. If you have decided to proceed with your appeal by way of a Settled Statement, the document should be TYPED and conform to Cal. Rules of Court, rule 201. If a transcript is not available, a Settled Statement is necessary.
- c. In addition to filing the original Proposed Statement with the court, a copy of your Proposed Statement must be mailed to the District Attorney or City Attorney where the case was tried.
- d. You may request and pay for a certified transcript.

## 5. SETTLING THE PROPOSED STATEMENT

- a. The District Attorney/City Attorney has the right to file proposed amendments to your Proposed Statement within 15 days after it's filed. (Cal. Rules of Court, rule 185.) After the District Attorney/City Attorney has filed proposed amendments, or the time for filing has passed, a hearing will be set by the clerk before the judge who decided your case for the purpose of settling the Proposed Statement. (Cal. Rules of Court, rule 187.)
- b. The trial judge may correct, alter, or rewrite the statement so that it fairly and truly sets forth the evidence and proceedings, and may direct you to prepare a revised statement for his or her signature. However, your statement of grounds of appeal cannot be eliminated from the Settled Statement. (Cal. Rules of Court, rule 187.)
- c. After the revised statement is prepared, the judge will certify to its correctness.

## 6. TRANSFER OF APPEAL

- a. After a record of the trial court's proceedings has been prepared, it will be sent to the Appellate Division of the Superior Court. The Superior Court will then mail you a notice stating the date your opening brief is due. You must file an opening brief by the date set by the court. Failure to do so may result in the dismissal of your appeal. (Cal. Rules of Court, rule 190.)
- b. The preparation and filing of briefs is governed by California Rules of Court, rule 105. You should read this rule thoroughly and comply with it accordingly.

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- c. If the District Attorney/City Attorney files a Respondent's Brief, you may file a reply brief, however, one is not required. (Cal. Rules of Court, rule 105(a).)

**7. PAYMENT OF YOUR FINE**

The filing of an appeal does NOT postpone the payment of your fine or any other condition of the sentence. If the fine is not paid by the date or any condition ordered by the court is not met, a warrant may be issued for your arrest or a civil collections process may be instituted against you. (Pen. Code, §1467.)

**8. ABANDONMENT OF APPEAL**

Should you decide not to proceed with your appeal, you must file an Abandonment of Appeal.

## **TIME CHART ON APPEALS OF MISDEMEANORS**

<b>Document or Proceeding</b>	<b>Time Limitations</b>
Notice of Appeal	Must be filed with the court clerk of the trial court within 30 days after rendition of judgment. (Cal. Rules of Court, rule 182.)
Appellant's Proposed Statement on Appeal	Must be served on respondent and filed with the clerk of the trial court within 15 days after Notice of Appeal is filed. (Cal. Rules of Court, rule 184(d).)
Transcript on Appeal (optional)	If mentioned in the Proposed Statement on Appeal, Reporter's Transcript must be filed within 15 days after filing of the Proposed Statement, or any lawful extension thereof. (Cal. Rules of Court, Rule 184(d).)
Respondent's amendments to the Proposed Statement on Appeal or Reporter's Transcript	Must be served and filed within 15 days after service of a copy of the Proposed Statement on Appeal or Notice of Filing of Reporter's Transcript. (Cal. Rules of Court, rule 185.)
Hearing on settlement of Proposed Statement on Appeal or Reporter's Transcript	The trial judge shall set a hearing to settle the Proposed Statement on Appeal or Reporter's Transcript on the court's calendar that will allow at least 5 days' notice to all parties. (Cal Rules of Court, rule 187.)
Engrossed Statement on Appeal	Must be presented to the judge for certification within 5 days after settlement, or any lawful extension thereof. (Cal. Rules of Court, rule 187.)
Certification by judge	No time limit. Ordinarily completed upon receipt of the Engrossed Statement on Appeal, or at the conclusion of the hearing on settlement, if engrossment not ordered. (Cal. Rules of Court, rule 187.)
Extension of time (optional)	By the trial court: up to 15 days for the doing of any act except the filing of the Notice of Appeal. (Cal. Rules of Court, rule 186(a).)  By the Superior Court Appellate Division: same as above except no time limit. (Cal. Rules of Court, rule 186(a).)
Relief from default	The Superior Court Appellate Division may for good cause relieve a party from default, except for failure to give timely Notice of Appeal. (Cal. Rules of Court, rule 183(b).)
Transmittal of the Record on Appeal	By the clerk immediately after the appeal record has been perfected. (Cal. Rules of Court, rule 183(b).)

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