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Research Guide

Appeals from Limited Civil, Small Claims, Misdemeanor and Infraction Cases, and from Appellate Division of the Superior Court Rulings

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What is an Appeal?

An appeal is a request to a higher court to review a decision made by a lower court. An appeal is not a retrial or rehearing and new evidence cannot be introduced. The reviewing court can only determine if the lower court erred in rendering its decision.

Small Claims appeals are the exception. These appeals are scheduled for a new trial.

Small Claims and Limited Civil appeals are filed within 30 days from the date of mailing of the *Notice of Entry of Judgment*.

Infractions and Misdemeanor appeals are filed within 30 days after the order or judgment.

The Initial Appeal

Small Claims Cases

Judgments in small claims cases are initially appealed to the regular civil division of the superior court (not the appellate division), which retries the case “de novo,” or from scratch. Rules relating to the right to appeal a small claims judgment can be found in California Code of Civil Procedure §§ 116.710 – 116.795. These appeals are governed by California Rules of Court 8.900 – 8.916.

- For a discussion of small claims appeals to the superior court, see the *Consumer Law Sourcebook: Small Claims Court Law and Procedure*, chapter 15 (KFC 976 .R47 2005).
- *Everybody's Guide to Small Claims Court in California, 17th edition*, chapter 23 by Nolo Press (KFC 976 .W3 2008).
- The California Courts Online Self-Help Center has a section on appealing small claims cases at <http://www.courtinfo.ca.gov/selfhelp/smallclaims/appeal.htm>.

The judgment of the superior court is final and not appealable. California Code of Civil Procedure §116.780. The California Court of Appeal has accepted writ petitions, however, where appellate review is necessary “to secure uniformity in the operations of the small claims courts and uniform interpretation of the statutes governing them.” *Linton v. Superior Court* (1997) 53 Cal.App.4th 1097, 1099.

- For instructions on when and how to file a writ petition, see *California Civil Writ Practice*, chapters 1 and 7, by Continuing Education of the Bar (KFC 1075 .C34 2005).

“Limited Civil” Cases

Rulings in “limited civil” cases (in general, those in which the amount of money at issue is \$25,000 or less) cannot be appealed directly to the California Court of Appeal. Instead, these cases must be appealed to the appellate division of the superior court. California Code of Civil Procedure § 904.2. These appeals are governed by California Rules of Court 8.700 through 8.773.

- For instructions and filing deadlines for civil appeals in the appellate division of the superior court, see *California Practice Guide: Civil Appeals and Writs*, Chapter 16, by the Rutter Group (KFC 1075 .E47 1989 v.2), and *California Forms of Pleading and Practice*, vol. 30, chapter 345A, by Matthew Bender (KFC 1010 .A65 C3).
- For sample formats of briefs, see *California Civil Appellate Practice*, vol. 1, chapter 10, by Continuing Education of the Bar (KFC 1075 .C3 2005).

Misdemeanor and Infraction Cases

Misdemeanor and infraction convictions are typically first appealed to the appellate division of the superior court, and not directly to the California Court of Appeal. These appeals are governed by California Rules of Court 8.700 through 8.709 and 8.780 through 8.793.

- For a discussion of misdemeanor and infraction appeals to the appellate division of the superior court, see *Fight Your Ticket & Win in California*, chapter 16, by Nolo Press (KFC 477 .Z9 B76 2005).
- Sample briefs for appealing a misdemeanor or infraction conviction are available in *California Criminal Law Forms Manual*, chapter 41, by Continuing Education of the Bar (KFC1155.A65 C343); and *Fight Your Ticket in California*, chapter 16, by Nolo Press (KFC 477.Z9 B76 2005).
- Common grounds for appealing a traffic-related conviction are discussed in the book *Fight Your Ticket & Win in California*, chapter 16, by Nolo Press (KFC 477.Z9 B76 2007).

Appealing the Appellate Division Rulings

If you are dissatisfied with the ruling of the appellate division of the superior court, your options for having that decision reviewed by a higher court are very limited. For rules on transferring cases from the superior court appellate division to the Court of Appeal see California Rules of Court 8.1000 through 8.1018. The appellate division of the superior court may certify a case for transfer to the Court of Appeal on its own motion or on a party's application. California Rule of Court 8.1005(a)(1).

- For a discussion of transfer on certification by the superior court, see *California Forms of Pleading and Practice*, vol. 30, chapter 345A, section 345A.72, by Matthew Bender (KFC 1010.A65 C3).
- A sample Application for Certification to Transfer Appeal Pending in Appellate Division of Superior Court of Appeal is available in *California Forms of Pleading and Practice*, vol. 30, chapter 345A, sec. 345A.125, by Matthew Bender (KFC 1010.A65 C3).
- For an example of a Petition for Supreme Court Review, see *California Practice Guide: Civil Appeals and Writs*, vol. 2, chapter 13, form 13A, by the Rutter Group (KFC 1075.E47 1989).

Please note that because a petitioner must show that transfer to the Court of Appeal is “necessary to secure uniformity of decision or to settle an important question of law,” and not simply that the judge made a mistake or was unfair, certification or transfer to the Court of Appeal is rarely granted. The decision of the appellate division of the superior court is usually final and unappealable.