

CALIFORNIA CRIMINAL AND JUVENILE DELINQUENCY APPEALS

I. What is an appeal?

An appeal is a review of the lawfulness of the trial court proceedings. It is not a new trial to decide the facts all over again. It is limited to matters in the record on appeal (see section V, below). A criminal case can be appealed once the defendant is sentenced. (Penal Code, §§ 1237, subd. (a), 1237.5.) A juvenile delinquency case can be appealed once a dispositional order is made. (Welfare and Institutions Code, § 800.) Certain orders after judgment can also be appealed. (Penal Code, § 1237, subd. (b); Welfare and Institutions Code, § 800, subd. (a).)

II. Who is responsible for appealing?

A. Trial counsel: In general, the trial attorney is required to counsel you on whether an appeal should be taken. The attorney must file the notice of appeal – including any documents necessary to have appellate counsel appointed – if you ask to appeal or if you are indigent and the attorney believes an appeal would be in your best interest. The fact the attorney files the notice of appeal does not mean the attorney will handle the appeal unless the notice of appeal expressly says so. These obligations are set forth in Penal Code section 1240.1. (Penal Code, § 1240.1, subds. (a) & (b); see also *Roe v. Flores-Ortega* (2000) 528 U.S. 470.) Alternatively, you may file a notice of appeal on your own even if you are represented by an attorney.

B. Self-represented parties: If you are representing yourself in the trial court, you are responsible for starting your own appeal. Although you should receive advice from the judge as to when the notice of appeal is due, such advice is not required after a guilty plea or uncontested hearing. (Cal. Rules of Court, rules 4.305, 4.470, 5.585(d), 5.590.) It is your responsibility to make sure that the notice of appeal is timely filed and that a motion to appoint counsel on appeal is filed.

III. Where and when must the notice of appeal be filed?

A. Where: The notice of appeal should be filed in the superior court, not the Court of Appeal. (Cal. Rules of Court, rules 8.304(a)(1), 8.400(g)(2).)

B. When: The notice of appeal generally must be filed within 60 days following the sentencing or dispositional order or order after judgment being appealed (see Cal. Rules of Court, rules 8.308(a), 8.400(d)(1)), except that:

1. If one party timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the 60 days specified above or 30 days (criminal) or 20 days (juvenile) after the superior court clerk mails notification of the first appeal, whichever is later. (Cal. Rules of Court, rule 8.308(b), 8.400(e); see Penal Code, § 1238.5.)

2. If you are in custody, the notice of appeal is timely if, within the time allowed to file the notice, you deliver it to custodial officials for mailing. (*In re Jordan* (1992) 4 Cal.4th 116, 130; Cal. Rules of Court, rules 8.308(e), 8.400(f).)

3. In certain instances, the Court of Appeal may grant you relief from default for the late filing of a notice of appeal. (*In re Benoit* (1973) 10 Cal.3d 72; *Fisher et al.*, *Appeals and Writs in Criminal Cases* (Cont.Ed.Bar 2d ed. 2003) § 1B.7, p. 49) [constructive filing of the notice]; *Roe v. Flores-Ortega*, *supra*, 528 U.S. 470 [ineffective assistance of counsel for failure to consult with the client about appealing].) If the notice of appeal is rejected as late, a letter will be sent to you

and Appellate Defenders, Inc., stating that the notice of appeal was received but not filed. (Cal. Rules of Court, rules 8.308(d), 8.400(g)(2).) Please contact Appellate Defenders, Inc., regarding late-filing problems. (Contact information is in section VIII-B, item 8, below.)

IV. What is the required format of the notice of appeal?

A. General: Although no particular format is required, the preferred forms for criminal and juvenile delinquency appeals are attached to this handout. At a minimum, a notice of appeal should contain your name, case number(s), the date of the sentence or other judgment or order being appealed, and the court where the proceedings took place. (See Cal. Rules of Court, rules 8.304(a)(4), 8.400(c)(2).) You or your attorney must sign the notice of appeal. (Cal. Rules of Court, rules 8.304(a)(3), 8.400(c)(1).) In a criminal appeal, the notice of appeal should specify whether the appeal is following a trial or a guilty plea; other requirements for a notice of appeal apply in a criminal case in which the defendant pled guilty (next section).

B. Notice of appeal in guilty plea case: If the appeal is from a judgment after a guilty plea in a criminal case, the grounds for appeal are limited. The notice of appeal must comply with rule 8.304(b) of the California Rules of Court and state one or more of the allowable grounds for appeal.

1. Sentencing error or other matters occurring after entry of the plea, which do not challenge its validity. (Cal. Rules of Court, rule 8.304(b)(4)(B).)
2. The denial of a Penal Code section 1538.5 motion for suppression of evidence because of an allegedly illegal search or seizure. (Cal. Rules of Court, rule 8.304(b)(4)(A).)
3. A challenge to the validity of the plea. In a criminal case (but not a juvenile one), a certificate of probable cause is required if the appeal is challenging the validity of the plea. Examples include challenging the denial of a motion to withdraw the plea or seeking a remedy that will require the plea be vacated (e.g., *People v. Panizzon* (1986) 13 Cal.4th 68 [challenge to a stipulated sentence]).

An application for a certificate of probable cause signed under penalty of perjury must be filed in addition to the notice of appeal within the same time limits as the notice of appeal. The application must include a statement of reasons for the challenge to the plea, indicating reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. (Cal. Rules of Court, rule 8.304(b)(1) & (5); Penal Code, § 1237.5.)

The trial judge will then decide whether to issue you a certificate of probable cause. (Cal. Rules of Court, rule 8.304(b)(2) & (5); Penal Code, § 1237.5.) If the court denies it, no issue challenging the plea may be raised on appeal. If the court denies it and the challenge to the plea is the only ground for appeal mentioned on the notice of appeal, the appeal will be dismissed.

V. What is included in the normal record on appeal, how do I request additional material?

A. Automatic normal record: Unlike civil appeals, in criminal and juvenile delinquency appeals, there is a “normal” record, which is prepared in every case without any specific request. The contents of the normal record are set out in the rules. (Cal. Rules of Court, rules 8.320, 8.404.) In general, the normal record contains a clerk's transcript with most of the papers filed in the case and a reporter's transcript of most in-court oral proceedings.

B. Additions to record: A request for additions to the normal record can be filed in the superior court with the notice of appeal or as soon as possible afterwards. (Cal. Rules of Court, rules 8.324, 8.404(c).) After the record is filed in the Court of Appeal, a party can request that the

Court of Appeal augment the record to include relevant material. (Cal. Rules of Court, rule 8.155(a).) If a part of the normal record is missing after the record is filed, a request to complete the record can be filed with superior court clerk. (Cal. Rules of Court, rules 8.340(b), 8.408(e).) Additions and augmentations are limited to documents and proceedings that were before the trial court.

C. Exhibits: Exhibits are part of the record, but are not included in the transcripts prepared and filed under rules 8.320 and 8.404. Exhibits will be transmitted to the Court of Appeal if the court or a party requests them under rule 8.224(a) and (b) of the California Rules of Court. (Cal. Rules of Court, rules 8.320(e), 8.404(f).)

VI. Who will represent me on appeal?

A. Obtaining counsel: Unless you can afford to hire your own attorney, you must file a request for court-appointed counsel. The attached notices of appeal have such a request with them. If you did not fill out a request, Appellate Defenders, Inc. (ADI) will send you the necessary forms. Once you submit the request, ADI will select an attorney qualified to handle your appeal. To ensure you get all necessary communications, please keep your attorney and ADI informed of your current address at all times.

B. No self-representation: There is no federal constitutional right to self-representation on appeal. (Martinez v. Court of Appeal of Cal., Fourth Appellate Dist. (2000) 528 U.S. 152, 163-164.) If you are represented by counsel, you may not file your own appellate brief or motions unless the court specifically grants you permission to do so. (In re Barnett (2003) 31 Cal.4th 466, 472-473.)

VII. What if, after a notice of appeal is filed, I decide I no longer want to appeal?

You may abandon your appeal if you decide you do not want to appeal. If the record has not yet been filed in the Court of Appeal, you or your attorney must file an abandonment in the superior court. If the record has already been filed, you or your attorney must file the abandonment in the Court of Appeal. (Cal. Rules of Court, rule 8.316(b).) You should always check with ADI or your appellate attorney before filing an abandonment.