



Judicial Council of California

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INVITATION TO COMMENT

SPR23-07

Title

Appellate Procedure: Notice of Appeal
Forms

Action Requested

Review and submit comments by May 12,
2023

Proposed Rules, Forms, Standards, or Statutes

Revise forms APP-002 and APP-102

Proposed Effective Date

January 1, 2024

Proposed by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

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Executive Summary and Origin

The Appellate Advisory Committee proposes revising *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) and *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to (1) include an item by which an attorney can join the appeal to challenge an order directing payment of sanctions by the attorney, (2) add an optional item by which the appellant can attach a copy of the judgment or order being appealed, and (3) on form APP-002 highlight the item requesting the date the order or judgment being appealed was entered so that it is not overlooked. This proposal originated in response to a recent California Supreme Court decision and suggestions by the Family Violence Appellate Project and committee members.

Background

Recent Supreme Court decision

In 2020, the Supreme Court in *K.J. v. Los Angeles Unified School District*¹ addressed whether a Court of Appeal has jurisdiction to review an order directing an attorney to pay sanctions when the notice of appeal only identifies the attorney's client as appellant. Relying on the rule of liberal construction of the notice of appeal,² the Supreme Court held that the Court of Appeal has appellate jurisdiction over the sanctions order, even if the attorney omitted themselves as an appellant on the notice of appeal, so long as it is "clear from the record that the omitted attorney

¹ (2020) 8 Cal.5th 875.

² Cal. Rules of Court, rule 8.100(a)(2).

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

intended to participate in the appeal and the respondent was not misled or prejudiced by the omission.”³ The Court noted, however, that to avoid any unnecessary litigation on this question, the “better practice is for the attorney to file a notice of appeal that expressly identifies himself or herself as an appealing party.”⁴

Date of entry of order or judgment

Under rule 8.104(a)(1) of the California Rules of Court, a notice of appeal must be filed on or before the earliest of: “(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled ‘Notice of Entry’ of judgment or a filed-endorsed copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled ‘Notice of Entry’ of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or [¶] (C) 180 days after entry of the judgment.” A timely filed notice of appeal is a jurisdictional prerequisite to an appeal.⁵

The current version of form APP-002 has a field for the appellant to enter the date the judgment or order being appealed was entered. The committee has received feedback from the Family Violence Appellate Project that a significant number of pro per litigants with whom they interact overlook this item on the form and do not fill it out, making it more difficult to determine if the appeal is timely.

The Proposal

Addition of item for attorneys to indicate they are joining the appeal

This proposal would revise forms APP-002 and APP-102 to add items (item 1d on APP-002 and item 3c on APP-102) by which by which an attorney could indicate that the judgment or order being appealed directed the attorney to pay sanctions and that the attorney is joining the appeal. The committee believes these items would avoid the problem of an “omitted attorney” by expressly prompting the attorney to indicate whether they are joining the appeal. By encouraging the “better practice” of the attorney expressly identifying themselves as an appealing party, these items would help obviate the need for the Court of Appeal to divine the attorney’s intent from the record.

Optional item for appellant to attach the order or judgment being appealed

This proposal would revise forms APP-002 and APP-102 to add optional items by which an appellant could indicate that they were attaching a copy of the order or judgment from which they are appealing. The committee believes that encouraging an appellant to attach the judgment or order to the notice of appeal would aid the court in determining the scope of the appeal. Similarly, the committee believes that if a litigant is not sure how to properly classify the order

³ *K.J. v. Los Angeles Unified School Dist.*, *supra*, 8 Cal.5th at p. 878.

⁴ *Id.* at p. 889.

⁵ See, e.g., *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113.

or judgment in item 2c (in form APP-002) or item 3b (in form APP-102), allowing the litigant to attach the order or judgment will prevent confusion.

Reformatting of item regarding date of entry of judgment or order

In its current form, item 1 of form APP-002 begins with a sentence that prompts the appellant to provide their name and the date on which the judgment or order being appealed was entered. The date field is at the end of this sentence and, as discussed above, some appellants may overlook this field.

To highlight the need to provide the date the judgment or order being appealed was entered (thus aiding the courts and parties in determining whether the appeal is timely), this proposal would reformat item 1 into subitems. In subitem a, appellants would provide their name. Subitem b asks for the date the order or judgment was entered. Subitem c is a list of statutes authorizing appeals from various orders and judgments, with check boxes for the appellant to indicate the type of order or judgment being appealed. Finally, item 1d, as discussed above, would permit attorneys to indicate that they are joining the appeal to challenge a judgment or order directing them to pay sanctions.

By having a separate subitem for the date of entry of the underlying judgment or order, the committee believes it will be more evident to appellants that this information must be provided.

Alternatives Considered

The committee considered taking no action, but rejected this option as it concluded the proposed revisions to form APP-002 and form APP-102 would aid both parties and the courts.

Fiscal and Operational Impacts

The committee anticipates that fiscal and operational impacts of this proposal on courts will be minimal. Brief education of court staff and judicial officers on the revised forms may be required.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should similar changes be made to other notice of appeal forms?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms APP-002 and APP-102, at page 5-8

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">03.13.2023</h2> <h2 style="margin: 0;">Not approved</h2> <h2 style="margin: 0;">by Judicial</h2> <h2 style="margin: 0;">Council</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<input type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER:

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that:

- a. (Name): _____ appeals from a judgment or order in this case.
- b. The order or judgment was entered on (date): _____
- c. The appeal is from the following order or judgment:
 - Judgment after jury trial
 - Judgment after court trial
 - Default judgment
 - Judgment after an order granting a summary judgment motion
 - Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
 - Judgment of dismissal after an order sustaining a demurrer
 - An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
 - An order or judgment under Code of Civil Procedure, § 904.1(a)(3)-(13)
 - Other (describe and specify code section that authorizes this appeal): _____
- d. The judgment or order being appealed directs payment of sanctions by an attorney for a party. The attorney (name): _____ appeals.

2. For cross-appeals only:

- a. Date notice of appeal was filed in original appeal:
- b. Date superior court clerk mailed notice of original appeal:
- c. Court of Appeal case number (if known):

3. The judgment or order being appealed is attached (optional).

Date:

 (TYPE OR PRINT NAME) ▶ _____
 (SIGNATURE OF PARTY OR ATTORNEY)

Clerk stamps date here when form is filed.

DRAFT
03.29.2023
Not approved
by Judicial
Council

Instructions

- This form is only for appealing in a **limited civil case**. You can get other forms for appealing in unlimited civil cases at any courthouse or county law library or online at www.courts.ca.gov/forms.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- You must serve and file this form **no later than 30 days** after the trial court or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in the number below

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

Check here if more than one appellant and attach a separate page or pages listing the other appellants and their contact information. At the top of each page, write “APP-102, item 1a.”

b. Appellant’s contact information (*skip this if the appellant has a lawyer for this appeal*):

Street address: _____

Mailing address (*if different*): _____

Phone: _____ Email: _____

c. Appellant’s lawyer (*skip this if the appellant does not have a lawyer for this appeal*):

Name: _____ State Bar number: _____

Street address: _____

Mailing address (*if different*): _____

Phone: _____ Email: _____

Fax: _____



Trial Court Case Name: _____

2 This is (check a or b):

- a. The first appeal in this case.
- b. A cross-appeal (an appeal filed after the first appeal in this case (complete (1), (2), and (3))).
- (1) The notice of appeal in the first appeal was filed on (fill in the date that the other party filed its notice of appeal in this case): _____
- (2) The trial court clerk served notice of the first appeal on (fill in the date that the clerk served the notice of the other party's appeal in this case): _____
- (3) The appellate division case number for the first appeal is (fill in the appellate division case number of the other party's appeal, if you know it): _____

3 Judgment or Order You Are Appealing

I am/My client is appealing (check a or b):

- a. The final judgment in the trial court case identified in the box on page 1 of this form.
The date the trial court entered this judgment was (fill in the date): _____
- b. Other:
- (1) An order made after final judgment in the case.
The date the trial court entered this order was (fill in the date): _____
- (2) An order changing or refusing to change the place of trial (venue).
The date the trial court entered this order was (fill in the date): _____
- (3) An order granting a motion to quash service of summons.
The date the trial court entered this order was (fill in the date): _____
- (4) An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.
The date the trial court entered this order was (fill in the date): _____
- (5) An order granting a new trial.
The date the trial court entered this order was (fill in the date): _____
- (6) An order denying a motion for judgment notwithstanding the verdict.
The date the trial court entered this order was (fill in the date): _____
- (7) An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.
The date the trial court entered this order was (fill in the date): _____
- (8) An order appointing a receiver.
The date the trial court entered this order was (fill in the date): _____



Trial Court Case Name: _____

3 (continued)

(9) Other action (please describe and indicate the date the trial court took the action you are appealing):

c. The judgment or order being appealed directs payment of sanctions by an attorney for a party. The attorney (name): _____ appeals.

d. The order or judgment being appealed is attached (optional).

4 Record Preparation Election

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.

If you are filing the first appeal in this case, you must serve and file a notice in the trial court designating the record on appeal. You may use Appellant’s Notice Designating Record on Appeal (Limited Civil Case) (form APP-103). Check a or b:

a. I will serve and file a notice designating the record on appeal together with this notice of appeal.

b. I will serve and file a notice designating the record on appeal later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal, and that if I do not file the notice designating the record on time, the court may dismiss my appeal.

REMINDER: Except in the very limited circumstances listed in Cal. Rules of Court, rule 8.823, you must serve and file this form no later than (1) 30 days after the trial court clerk or a party serves either a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment, or (2) within 90 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.

Date: _____

Type or print your name

▶ _____
Signature of appellant/cross-appellant or attorney

Date: _____

Type or print your name

▶ _____
Signature of appellant/cross-appellant or attorney

Date: _____

Type or print your name

▶ _____
Signature of appellant/cross-appellant or attorney