

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF YUBA
215 FIFTH STREET, SUITE 200
MARYSVILLE, CA 95901-5737
(530) 749-7600**

**INFORMATION ON FILING APPEALS FROM DECISIONS
IN TRAFFIC, MISDEMEANOR OR LIMITED CIVIL CASES**

A party may file an appeal from an unfavorable decision in a traffic, misdemeanor or limited civil case to the Appellate Department of the Superior Court. The rules on appeal are technical; it is helpful to have the advice of an attorney but it is not required that an attorney be used. This notice explains some of the more important provisions about appeals.

NATURE OF AN APPEAL

An APPEAL IS NOT A RE-TRIAL. New evidence such as testimony and exhibits are not given to the Appellate Department. There are two main grounds for appeal:

1. The evidence in the trial court was insufficient to justify the verdict or judgment;
2. Errors of law were committed during or before the trial which harmed the appealing party.

As to the first ground (insufficiency of the evidence), the Appellate Department does not decide where the greater weight of evidence was or who was telling the truth; it only decides if there was any substantial evidence which supports the judgment. Parties often ask the Appellate Department to change the judgment because they should have been believed and their opponent disbelieved. This request seldom, if ever, works as it is beyond the power of the Appellate Department to re-try or re-decide the case by re-weighting the evidence.

As to the second ground (errors of law), the Appellate Department will listen and decide whether there has been any irregularity and whether any errors prejudiced or substantially harmed the appealing party. Most appeals are won or lost on these issues of error and law procedure.

APPEAL PROCEDURE

Reference is made in this notice to "Rules". These are the California Rules of Court and can be found in any law library and the internet at www.courtinfo.ca.gov/selfhelp (see Rules 8.750-8.773 and 8.782-8.793). These rules control many of the details of appeals to the Appellate Department and should be read and followed exactly.

Notice of Appeal: The most important act in an appeal is the timely filing of the written *Notice of Appeal* in the trial court (it will be forwarded to the Appellate Department by the clerk). The forms for filing the *Notice of Appeal* are available in the clerk's office. Generally, the notice must be filed within 30 days of the entry of the judgment. If the *Notice of Appeal* is not filed in time, the Appellate Department will not consider the appeal unless it grants a motion of the appellant (the party who is appealing) to set aside the untimeliness of the filing of the *Notice of Appeal*. Permission to file late is rarely given.

Record on Appeal: In order for the Appellate Department to understand what happened in the trial court, a record must be made. The trial court file is the source of much of this record. There are two types of records:

1. The clerk's transcript.
2. A report of the testimony presented.

In civil cases, the appellant must tell the clerk in writing what papers to include, such as pleadings, exhibits, instructions, etc. (see Rule 8.754). In traffic and criminal cases, the clerk will include most of the necessary papers (see Rule 8.784).

Testimony: In most appeals, it is necessary to have the testimony and statements made during trial presented to the Appellate Department. This can be done in several ways.

- A. In civil cases, the following may be used:
 1. Reporter's transcript (Rule 8.753)
 2. Agreed statement (Rule 8.755)
 3. Settled statement (Rule 8.756)

- B. In criminal cases, the following may be used:
 1. Reporter's transcript
 2. Settled statement (Rule 8.784)

Preparation of these statements requires close adherence to the Rules, including the time limits for doing each act. Without such a presentation of testimony, the Appellate Department cannot consider the question of insufficiency of evidence. The settled statement is the most frequently used way of presenting testimony. The proceedings of the trial and evidence are presented in narrative form in a draft prepared by appellant and signed by the judge after corrections are made. The statement should indicate what each witness testified to and, in criminal cases, the grounds on which the appeal is based. A settled statement is not as complete as a reporter's transcript and is harder to use if the trial judge's actions are the subject of the appeal.

Briefs: After the record is filed in the Appellate Department, you will receive a notice telling you when to file your brief. A brief is a statement of your argument on why you feel the trial court decision is right or wrong. It should be brief and concise, refer to the facts shown in the record, and state the law that should be applied. It should refer to the codes and cases that set forth the correct law, as well as to the places in the record that show the applicable facts.

Hearing: The case will be set for oral argument and the clerk will notify you of that date, time and place. The notice regarding the hearing date will include in it the time requirements for filing briefs. At the hearing, you should stress the most important parts of your case, while realizing that the judges have read the record and your brief. After the hearing, the judges will make their decision and the clerk will mail the results of the appeal to you. By law, the judges have 90 days from the date of the hearing to render their decision.

Filing Fees:

Civil Cases: At the time of filing the *Notice of Appeal* or within 10 days thereafter, you must provide to the clerk a non-refundable filing fee in the amount of \$50.00 (made payable to Yuba County Superior Court). If you have filed a fee waiver and your circumstances have not changed in 120 days, you may use your existing fee waiver. If you qualify for a fee waiver, you may obtain a fee waiver packet at the Clerk's Office free of charge.

Criminal Cases: There are no filing fees for filing a *Notice of Appeal* in a criminal case.

Traffic Cases: At the time of filing the *Notice of Appeal*, the defendant must pay the fine amount as an appeal bond, which is placed in the Court's trust account. If the defendant wins the appeal, the fine amount is returned. If the defendant loses the appeal, the fine amount is forfeited. Fee waivers do not cover this fine amount.

CRUCIAL TIMES TO BE OBSERVED

Civil Cases:

- Filing *Notice of Appeal*: Within 30 days of service of *Notice of Entry of Judgment*.
- Filing *Notice to Prepare Clerk's Transcript*: Within 10 days after filing *Notice of Appeal*.
- Filing *Notice to Prepare Reporter's Transcript/Settled Statement*: Within 10 days after filing *Notice of Appeal*.
- Filing *Proposed Statement on Appeal*: Within 20 days after notice of proceeding by way of settled statement.
- Filing *Agreed Statement*: Within 30 days after filing *Notice of Appeal*.

Criminal Cases:

- Filing *Notice of Appeal*: Within 30 days of rendition of judgment or order.
- Filing of *Proposed Statement on Appeal*: Within 15 days after filing *Notice of Appeal* (must contain the grounds of appeal).
- Filing notice that reporter's transcript will be used: 15 days after filing *Notice of Appeal* (appellant must contact the court reporter.)
- Filing reporter's transcript: 15 days after filing notice of use of reporter's transcript.

NOTE: There are many time limits set forth in the California Rules of Court covering appeals. The above are some of the most important, but you should look up the California Rules of Court to be sure that you meet the time limits for every

step. Failure to meet these time limits may result in dismissal of your appeal. All papers filed with the court must be served on the opposing party and/or his/her lawyer and must have proof of such service attached.

EFFECT ON JUDGMENT OF FILING AN APPEAL

Filing a *Notice of Appeal* does not stop the enforcement of the trial court judgment. Thus, in a civil case, if the plaintiff has obtained a judgment for money or to evict a tenant, the plaintiff may attempt to collect the money or remove the tenant even if an appeal has been filed. In a criminal case, a fine must be paid or probation order followed or jail time served even though an appeal is filed.

However, there are several ways in which the judgment may be stayed (not be enforceable) while the appeal is awaiting hearing. In civil cases, a bond or cash may be filed in the trial court, generally in an amount that is one and one-half or two times the judgment amount (see Code of Civil Procedures §§ 916-917.9 and 1176). The purpose of a bond is to insure payment of the judgment if the judgment is upheld on appeal. Trial judges may also stop enforcement of civil judgments for up to 40 days after notice of entry of judgment (Code of Civil Procedure §§ 918.)

In criminal cases, the defendant is entitled to deposit bail or be released on his/her own recognizance until the appeal is decided. The defendant first must make an application to the trial court judge to be released. If the defendant is not satisfied with the release decision of the trial court, the application may be made to the Appellate Department to reduce the bail or to be released without bail.