

Appellate Tips for Trial Lawyers

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Appeals can be a minefield for those who don't regularly practice in the appellate courts. This series of short articles, provided by members of the Association's Appellate Courts Committee, will help you find your way. Although the articles focus primarily on California state court appeals, much of the guidance will apply in any appellate court.

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Briefing Deadlines and Extensions in the Court of Appeal

by Karen M. Bray

This article discusses general briefing deadlines that govern party briefs in appeals to the California Courts of Appeal, compliance with which is crucial for success. The basic briefing deadlines that follow do not cover writ proceedings or special situations such as amicus curiae briefs or cases granted calendar preference.

The deadline to file the opening brief varies depending upon the type of record designated for appeal. If the appellant designated a clerk's transcript and a reporter's transcript, the brief is due 40 days after these transcripts are filed in the court of appeal. If the appellant elected to proceed by way of an appendix in lieu of a clerk's transcript, the brief and appendix are due 40 days after the reporter's transcript is filed. Cal. R. Ct. 8.212(a)(1)(A). If no reporter's transcript has been designated, the brief and appendix are due 70 days after the appellant filed the notice of election to proceed by appendix. Cal. R. Ct. 8.212(a)(1)(B).

The respondent's brief is due 30 days after the opening brief is filed. Cal. R. Ct. 8.212(a)(2). The method of service does not affect briefing deadlines. Deadlines run from the date the triggering document is *filed* in the court.

The appellant's reply brief is due 20 days after the respondent's brief is filed. Cal. R. Ct. 8.212(a)(3). Again, the method by which the respondent's brief is served does not affect this deadline.

When a case involves an appeal and cross-appeal, the parties must submit a proposed briefing sequence to the court of appeal within 20 days after the second notice of appeal is filed. Cal. R. Ct. 8.216(a)(1). In the typical briefing sequence, the opening is due as noted above; the combined respondent's brief/cross-appellant's opening brief is due 30 days thereafter; the combined cross-respondent's brief/appellant's reply brief within 30 days after that; and, finally, the cross-appellant's reply brief 20 days later. Cal. R. Ct. 8.212(a), 8.216(b).

If a deadline falls on a weekend or holiday, it is extended to the next business day. Cal. Civ. Proc. Code §§10, 12a(a), 12b (West 2006). A brief is timely if it is received by the court of appeal by the due date. A brief is *deemed* timely if it is mailed to the court by priority or express mail on or before the due date or has been delivered to a carrier promising overnight delivery. Cal. R. Ct. 8.25(b)(3).

Extensions of Deadlines

There are three methods for extending the filing deadlines for appellate briefs. First, the California Rules of Court have a built-in grace period that applies to opening and respondent's briefs. Cal. R. Ct. 8.220(a), (b). Under Rule 8.220, when the deadline for an opening brief or respondent's brief passes and the brief is not filed, the court will issue a notice advising the party that it has 15 days within which to file the brief or sanctions may be imposed. For an appellant, the court may dismiss the appeal; for a respondent, "the court may decide the appeal on the record, the opening brief, and any oral argument by the appellant." Cal. R. Ct. 8.220(a). The grace period does not apply to reply briefs other than a reply brief that is combined with a cross-respondent's brief. Cal. R. Ct. 8.220(a), (b).

Second, the parties may stipulate to extensions of time of up to a total of 60 days for each brief. Cal. R. Ct. 8.212(b)(1). Any stipulation must be filed before the brief's due date. A copy of any stipulation must be served on all parties. Cal. R. Ct. 8.60(f). In addition, counsel must either certify in the stipulation that they provided the stipulation to their client or include their client in the proof of service for the stipulation (the address may be omitted). Cal. R. Ct. 8.60(f), 8.212(b)(1).

Third, if a party will not be able to file its brief within the grace period allowed by Rule 8.220, cannot obtain a stipulated extension, or has already obtained a 60-day stipulated extension but needs more time, the party may file an application for an extension. Cal. R. Ct. 8.50(a), 8.212(b)(3), (4). Any application must 1) be filed before the brief is due, 2) identify the current deadline, 3) specify the additional time requested, 4) identify any prior extensions of time (for example, whether the parties already stipulated to the maximum 60-day period or whether it would have been futile to seek such an extension), and 5) demonstrate good cause. Cal. R. Ct. 8.60(c), 8.63(b), 8.212(b)(3). To demonstrate good cause, a party must file a declaration addressing the factors identified in Rule 8.63(b) of the Rules of Court that may justify an extension, including 1) the length of the record, 2) the number and complexity of issues raised, 3) whether the client requires extra time to review a draft of the brief, 4) whether the opposing party consents or objects to the extension request, and 5) the degree of prejudice to any party from the grant or denial of the extension request. Cal. R. Ct. 8.60(c), 8.63(b). The application must be served on all parties and a copy must be provided to the applicant's client. Cal. R. Ct. 8.60(c)(1), (f)(1).

A party may find it helpful to use Judicial Council form APP-006 to apply for an extension of time, as it covers all of these points. If more space is needed than the space allotted on the form at question five to explain the grounds demonstrating good cause for an extension, counsel may attach a declaration and indicate in question five that a declaration is attached.

Deadlines Following the Court's Decision

If a party wishes to seek rehearing, it must file a petition for rehearing within 15 days after the date of the court's decision. Cal. R. Ct. 8.268(b)(1)(A). This deadline is not subject to extension because the court of appeal loses jurisdiction over the case 30 days after it files its decision, and thus any rehearing petition must be resolved by that time. Cal. R. Ct. 8.264(b)(1), 8.268(a)(2). The opposing party may not file an answer to a petition for rehearing unless the court requests one. If the court requests an answer, it will set the filing deadline (generally within eight days). Cal. R. Ct. 8.268(b)(2).

A petition for review to the California Supreme Court is due within 10 days after the court of appeal's decision becomes final, which is generally 30 days after the court of appeal issues its decision. Cal. R. Ct. 8.264(b)(1), 8.500(e)(1). From there, a whole new set of rules governs the filing deadlines.

Although the deadlines and procedures outlined above apply in the vast majority of appeals, there are always potential variables. Counsel should always carefully review the California Rules of Court or consult with appellate counsel concerning any briefing deadlines.



Contributed by Karen M. Bray, a partner at Horvitz & Levy LLP, the largest firm in the nation focusing on appellate litigation.

Readers are advised that changes in the law may affect the accuracy of this publication or the functionality of links after the publication date.