

## **BRIEF WRITING TIPS**

### **CIVIL APPELLATE SELF-HELP WORKSHOP**

A Joint Project of the California Court of Appeal, Fourth District, Division One; Legal Aid Society of San Diego; San Diego County Bar Association's Appellate Court Committee; and San Diego County Law Library

#### **I. TYPES OF APPELLATE BRIEFS**

- A. Opening Brief
- B. Respondent's Brief
- C. Reply Brief (Optional)

#### **A. OPENING BRIEF MUST DO CHECKLIST**

##### **Have You**

- Raised all issues to avoid waiving them? (If you raise an argument later in the briefing process, the court may decline to address it.)
- Cited the applicable standard of review? (The appellate court gives the trial court's decision a different level of deference depending on the type of error you raise on appeal.)
- Discussed the facts and cited to the record? (Arguments are not enough. You must identify facts and evidence that support your arguments, such as a declaration, an authenticated document, etc.; and you must cite where the court can look in the record to find those facts and evidence itself.)
- Discussed the applicable law and cited to legal authority? (If there is a case, statute, or regulation that supports you, cite to it and try to explain why it applies to your case.)
- Explained what relief you are seeking? (For example, if the trial court dismissed all your claims, do you want some or all of them reinstated?)

## **B. RESPONDENT’S BRIEF MUST DO CHECKLIST**

### **Have You**

- Responded to all issues raised in the opening brief? (If you do not respond to an issue, the appellate court may believe that you are conceding the point or agreeing with the other party on that issue.)
- Provided additional facts or law omitted in the opening brief? (Discuss any critical facts, evidence, or law that supports your position, especially if it was left out of the opening brief.)
- Referenced where in the case record the court can find the facts or evidence on which you are relying? (The appellate court is not required, and will not have time, to look through the parties’ filings in the trial court or the appellate court to find evidence supporting your arguments.)
- Explained why appellant should not get the requested relief? (In addition to explaining why the trial court’s decision is correct, you should explain what harm you would suffer if the appellate court agrees with your opponent.)

## **C. WHAT TO SAY IN A REPLY BRIEF**

### **Have you**

- Clarified, explained, or addressed something specific raised in respondent’s brief that you did not anticipate? (A reply brief is optional, so only file it to address something raised in the respondent’s brief that needs a response.)
- Avoided repeating the opening brief? (Repetition does not help; if anything, it signals that your position is weak or that you don’t think the court is smart enough to understand your argument the first time around.)

## II. GENERAL TIPS COMMON TO ALL APPELLATE BRIEFING

### A. DOs

- Draft an outline before you draft your brief. (Make a bullet point checklist of everything you want to raise, and the facts and law that support each issue.)
- Be brief and to the point. (For example: “My negligence claim is timely because the statute of limitations was tolled.”)
- Use active voice, not passive voice. (For example: Say “Defendant did not tell me the interest rate would increase after one year,” not “I was not told that the interest rate would increase after one year.”)
- Use short sentences. (Try to convey one main thought per sentence, instead of combining too much. For example: Say “Defendant did not object when this evidence was introduced. Moreover, the evidence is relevant and admissible,” not “Defendant did not object when this evidence was introduced, and, in any event, the evidence is relevant, properly authenticated, and admissible.”)
- Avoid unnecessary legal jargon. (Unless you are citing to a legal doctrine, such as “res judicata,” use plain English.)
- Avoid quoting at length from statutes or cases. (Just paraphrase, summarize, or explain in your own words the significance of a provision or a case, unless there are one or two sentences that can be quoted to strengthen your argument significantly.)
- Use simple, clear language. (For example: Say “If leave to amend had been granted, I could add recently-discovered facts about how defendant committed fraud,” not “If leave to amend had been

granted, defendant’s fraudulent conduct would be manifest from the additional facts that I only discovered notwithstanding defendant’s efforts to hide them.”)

- Avoid too many adjectives or adverbs, which are bolded in the example. (For example: Say “My claim is timely because I only learned about defendant’s fraud two years before filing this action,” not “Plaintiff’s **outrageous** argument that my claim is untimely is **clearly** incorrect because I only learned about defendant’s fraud two years before filing this action.”)
- Avoid describing the trial court’s decision or opposing counsel’s argument with inflammatory words (like those in italics below). (For example: Say “The trial court should not have dismissed my claim because the statute of limitations did not begin to run until I discovered the fraud,” not “The trial court *compounded* its *premature* dismissal of my action by adopting defendant’s *flawed* reasoning that the statute of limitations had expired before I *even* discovered the fraud.”)

B. DONTS

- Don’t repeat issues or arguments from one section to the next.
- Don’t criticize trial judge or opposing counsel.
- Don’t exaggerate facts or express emotion.
- Don’t refer to facts, documents or events that were not raised in the trial court or that are not relevant to the issues you are raising.
- Don’t bold, italicize, underline, put phrases in all capitals, or overly emphasize points; if you explain the facts and the point clearly, the court will understand that they are important.
- Don’t use exclamation points! Or emoticons such as 😊 or ☹.

**III. ADDITIONAL RESOURCES (internet access is available at the Law Library; an asterisk (\*) indicates the resource is not for the California Court of Appeal, Fourth District, Division One, which encompasses San Diego County)**

A. California Courts

- California Court of Appeal, Fourth District, Division One, Self-Help Manual -- <http://www.courts.ca.gov/8676.htm>
- California Court of Appeal, Fourth District, Division One, Self-Help Manual, Chapter Five, “Briefing the Case” -- <http://www.courts.ca.gov/documents/Chapter5.pdf>
- California Supreme Court Online Self-Help Center -- <http://www.courts.ca.gov/selfhelp.htm>

B. Treatises On Appeals in California

- B.E. Witkin, *et al.*, 9 California Procedure (5<sup>th</sup> Edition 2014) -- [http://www.witkin.com/pages/witkin\\_library\\_pages/outlines/PROC/Appeal.pdf](http://www.witkin.com/pages/witkin_library_pages/outlines/PROC/Appeal.pdf)
- Eisenberg, *et al.*, California Practice Guide: Civil Appeals and Writs (The Rutter Group 2014)

C. Ninth Circuit Court of Appeal (federal appellate court encompassing, among other federal district courts, those in California)

- Ninth Circuit Pro Se Instructions and Guidelines\* -- [www.ca9.uscourts.gov/open\\_case\\_prose/](http://www.ca9.uscourts.gov/open_case_prose/)
- The Appellate Lawyer Representatives Guide to Practice in the United States Court of Appeals for the Ninth Circuit\* (pages 6-8, Overview; pages 48-54, Writing the Brief) -- [www.ca9.uscourts.gov/content/view.php?pk\\_id=0000000705](http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000705)

This handout, and additional information, is available at the Civil Appellate Self-Help Workshop’s website, [www.sdcba.org/appellateworkshop](http://www.sdcba.org/appellateworkshop)