

HANDBOOK FOR PRIVATE COUNSEL

APPOINTED BY THE

COURT OF APPEAL SECOND APPELLATE DISTRICT

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CALIFORNIA APPELLATE PROJECT
LOS ANGELES

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SECOND APPELLATE DISTRICT

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1. WELCOME

Welcome to the panel of attorneys who accept appointments to represent indigent clients in criminal, juvenile delinquency, juvenile dependency and certain other appeals in the Second Appellate District of the California Court of Appeal. This handbook explains the role of the California Appellate Project, Los Angeles Office (CAP/LA), in assisting the Court of Appeal and appointed counsel on these appeals. It also sets forth what is basically expected of appointed counsel, along with the current “Guidelines for Appointed Counsel Compensation.” We will notify you of any revisions to these Guidelines and will

post such changes on our website at www.lacap.com.

CAP's website and the websites of the other appellate projects are rich resources of information for panel attorneys and should be consulted often. Posted on these websites, for example, are new notices and instructions from the Courts of Appeal and from the appellate projects, along with other hot topics and helpful hints. The websites are, thus, one of the best ways to make sure you have up-to-date information. The addresses of the various appellate project websites are posted on CAP/LA's site in the "Links" section.

2. THE CALIFORNIA APPELLATE PROJECT, LOS ANGELES OFFICE

The California Appellate Project (CAP) is a non-profit corporation established in 1983 (the San Francisco office) by the State Bar to recruit private attorneys and to assist them in handling death penalty appeals and other criminal appeals and writs before the California Supreme Court. In 1986, the State of California entered into a second contract with CAP, establishing the Los Angeles office to perform similar services for indigent appellants in criminal, juvenile delinquency, and juvenile dependency cases in the Second Appellate District of the Court of Appeal.

Under its contract, CAP: (1) oversees the court-appointed counsel program in the Second District, which includes evaluating the complexity level of cases; maintaining the panel of attorneys qualified to take appointments as required under California Rules of Court, rule 76.5; making recommendations to the Court for appointment of counsel to each specific case; consulting with and assisting appointed counsel in varying degrees; and, finally, evaluating their claims for compensation; (2) directly represents the indigent appellants in a small percentage of the cases; and (3) performs various administrative functions for the Court and the Administrative Office of the Courts (AOC), including providing the statistical data necessary for the Judicial Council task force known as AIDOAC (Appellate Indigent Defense Oversight Advisory Committee) to conduct quarterly audits of the work and compensation of both court-appointed counsel and the appellate projects.

3. CLASSIFICATION OF CASES AND APPOINTMENT OF COUNSEL

When CAP/LA receives new cases, it first classifies them according to seriousness, difficulty, length, and any other relevant factors. For each case, except those to be retained in house, CAP/LA then ascertains the availability of and recommends to the Court the appointment of an appropriate panel attorney. After the Court makes the appointment, it sends to the client the name of appointed counsel. If the client calls CAP/LA or writes with questions, CAP/LA sends out the memo “Understanding Your Appeal.” (See [section 10](#), below.)

CAP/LA normally receives the record a few months after the court appoints counsel. Thereafter, the case is designated either “assisted” or “independent,” and the record is sent to the panel attorney. **Appointed counsel should read the record and review the superior court file as soon as possible, and then contact trial defense counsel to discuss potential issues.**

4. CASES APPOINTED ON AN “ASSISTED” BASIS

Generally, in cases appointed on an “assisted” basis:

- (1) Initially a CAP/LA attorney:
 - (a) reviews the record; and
 - (b) sends to appointed counsel a memo suggesting some (but not necessarily all) potential issues, some starting points for research, and any necessity to perfect the record, if it is incomplete.
- (2) The CAP/LA attorney remains available to the panel attorney throughout the appeal to discuss any aspect of the appeal, including:
 - (a) substantive issues;
 - (b) procedural issues, both standard and unusual or special;
 - (c) rules and norms of practice;
 - (d) formal and practical requirements for briefs and other documents; and
 - (e) resources, including brief bank materials and forms.
- (3) At least 10 days before the filing deadline (unless an alternative agreement has been made), appointed counsel must provide the CAP/LA

attorney with a draft of the Opening Brief (or Respondent’s Brief, if appropriate) that, aside from binding, is ready for filing in accordance with the California Rules of Court and the California Style Manual. This will allow the CAP/LA attorney sufficient time to review the brief and make appropriate suggestions, if any, for revision. Drafts should be prepared on a computer so that such revisions can be made easily. **The CAP/LA attorney will make suggestions but will not rewrite the brief. Appointed counsel remains responsible for the finished product.**

5. CASES APPOINTED ON AN “INDEPENDENT” BASIS

Generally in cases appointed on an “independent ” basis:

- (1) No CAP/LA attorney is pre-assigned to the case. Thus, CAP/LA personnel do not generally review the record, prepare a preliminary memo, or review a draft of the Opening Brief (or other pleading) prior to its being filed with the Court.
 - (2) If appointed counsel needs guidance or input in any area (substantive or procedural, potential issues, new developments in the law, or any other aspect of the case) at any time, before or after the filing of a brief, counsel may consult with the “duty day” or any of the attorneys at CAP/LA. The particular CAP/LA attorney called then becomes the contact attorney and the person to whom all future calls on that case should be directed.
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6. APPLICABLE TO ALL APPOINTMENTS

For all cases, “assisted” and “independent”:

- (1) Appointed counsel should send to CAP/LA a copy of every pleading when it is filed, including motions, briefs, and petitions for rehearing or review.
- (2) Before filing a Wende brief (in a criminal case) or a Sade C. letter (in a juvenile dependency case), appointed counsel must call the CAP/LA assisting attorney or, if none is yet assigned, the “duty day” attorney to arrange for a pre-filing review. Appointed counsel should provide the record, a draft of the proposed pleading, and a summary of all issues that

have been rejected; counsel should not file the pleading until after receiving approval from the CAP/LA attorney.

- (3) CAP/LA has obtained professional liability insurance coverage for work done by panel attorneys on cases appointed and administered through CAP/LA. A copy of the terms of that policy is available upon request. Appointed counsel is required to notify CAP/LA of any lawsuit, claim, or potential claim immediately upon learning of it. A delay in communicating may result in refusal of coverage by the underwriter. Renewal of the policy and whether to seek reimbursement for the deductible remain within the sole discretion of CAP/LA.

7. MONITORING THE SKILL AND EXPERTISE OF PANEL ATTORNEYS

California Rules of Court, rule 76.5, subsections (a) and (b), set up a procedure for those wishing to join the panel of attorneys who may accept appointments from the Court of Appeal. “... [T]he court shall evaluate the attorney’s qualifications to represent appellants in criminal cases, and then place the attorney’s name on one or more lists to receive appointments to cases for which he or she is qualified.” Rule 76.5, subsection (c), requires the Court to review and evaluate “the performance of appointed counsel to determine whether counsel’s name should remain on the same appointment list, be placed on a different list, or be deleted.” The rule also states, in subsection (d), that where, as in the Second Appellate District, a special administrator [CAP/LA] is to provide the review and evaluation function set forth in the rule, the court “shall notify the administrator of superior or substandard performance by appointed counsel.”

Thus, counsel’s skill and experience is evaluated: (a) initially through a panel application process (which in the Second Appellate District includes submission of writing samples) in order to determine whether to admit counsel to the panel as well as what types of cases counsel should receive; and (b) through a review of counsel’s work on an ongoing basis in every case by both the Court of Appeal and CAP/LA to determine whether counsel should remain on the panel and, if so, what types of cases counsel should then receive. In

addition, counsel's work may be evaluated as part of the regular quarterly random-sampling audit by the California Judicial Council task force known as AIDOAC (Appellate Indigent Defense Oversight Advisory Committee).

8. COMPENSATION CLAIMS

California Penal Code section 1241 provides that appointed counsel shall receive a reasonable sum for compensation and necessary expenses in an amount to be determined by the Court. In most cases, in the Second Appellate District, the duty to review and evaluate compensation claims has been delegated to CAP/LA, under supervision of the AIDOAC, the Administrative Office of the Courts (AOC), and the Court of Appeal.

CAP/LA makes recommendations to the AOC for compensation of counsel and reimbursement of expenses in both "assisted" and "independent" cases. In an effort to provide uniform statewide standards, the Chief Justice and the Administrative Presiding Justices have approved the "[Guidelines](#)" that CAP/LA and the appellate projects in other appellate districts of California use as a basis for fee recommendations. A copy of these "[Guidelines](#)" is provided in section 9, below.

Compensation claims are randomly audited by AIDOAC. The quarterly audits can result in adjustments of awards upward or downward beyond the cuts or adjustments already made by CAP/LA. When AIDOAC authorizes a negative adjustment to a claim after payment of the final claim has already been made, counsel will be informed of the amount of and reason for the adjustment, and the adjustment amount will be deducted from counsel's next compensation claim.

(a) **Interim Claims** may be made after the Appellant's Opening Brief has been filed, except when the case involves a Wende brief or Sade C. letter. (See [below](#) under "Final Claims.") Usually, a case has only one interim and one final claim. However, when the record in a case is 7,500 pages or more, an interim claim may be filed after completion of record review, with a second one after the filing of the Opening Brief. Otherwise, special permission must be obtained before filing multiple interim claims in a case.

Interim claims are paid based on 95 percent of the approved attorney

hours plus 100 percent of the approved reimbursable expenses. The 5 percent hold-back on hours provides a “safety net” for the rare cases in which CAP/LA’s review of the final claim would result in a cut larger than the final claim itself.

(b) **Final Claims** should be submitted upon completion of services, usually after the opinion is filed, unless a petition for rehearing or review or other work is contemplated. A final claim may also be filed in cases where the attorney of record has been relieved. (See [Relieved Counsel](#), below.) Because the AOC’s statistics are based on cases that have been completed and closed, counsel needs to make sure to file a final claim promptly, and not later than 180 days following the Court of Appeal opinion. Otherwise, the case will be considered closed and further requests for payment for work performed in the Court of Appeal are not expected.

For a case in which a Wende brief or Sade C. letter has been filed, a single final claim is appropriate. The timing for such a claim must take into account the appellant’s right to file a letter brief on his or her own behalf (generally 30 days following the filing of the Wende brief or Sade C. letter). If the court asks for issues to be briefed, counsel may file a supplemental final claim thereafter. If counsel elects to file the claim before the court issues its opinion in such a case, time may not be claimed for reading the opinion or for any work done after the claim is filed unless the court requests supplemental briefing.

(c) **Relieved Counsel** may be compensated under certain conditions. For example, payment may be allowed if counsel was relieved for reasons beyond his or her own control, e.g., if the client died or unexpectedly retained counsel, or if the attorney suffered a catastrophic debilitating accident. However, if the reason was personal to the attorney and for his or her own benefit, e.g., taking a new job or decreasing his or her heavy caseload, usually no compensation is awarded. An exception may be made for work that has actually saved successor counsel time, such as an augment request that was granted, a draft statement of case and facts, or research notes provided to new counsel. The time saved is the measure of the award.

(d) **Supplemental Claims**, either interim or final, may be filed only after obtaining CAP/LA or Court permission upon a showing of good cause. An

example of good cause would be where counsel has had to perform substantial and unforeseeable services after the remittitur has issued.

(e) **Electronic Claims Over the Internet** may be possible at the CAP/LA website after March 1, 2002. CAP/LA's internet address is www.lacap.com. Claims may be prepared and filed on the internet only for cases in which no previous claim has been prepared by a different method.

(f) **Hourly Rates** are based on the following criteria:

Definitions:

“Upper tier” is reserved for cases assigned on an independent basis and that meet at least one of the following sets of characteristics:

1. Post-7/1/95 appointment + [murder](#) conviction + jury trial.
2. Post-10/1/95 appointment + LWOP sentence + jury trial.
3. Post-8/1/96 appointment + [specified sex crime](#) + jury trial.
4. Post-8/1/96 appointment + record of at least 3000 pages.

“Murder” refers to 1st or 2nd degree only, not manslaughter or attempted murder. A “specified sex crime” is one that is covered by Penal Code sections 208d, 220, 261-269, or 281-294. The filing of a Wende brief does not change the hourly rate.

Rates:

Pre-October 1, 1998 appointments:

1. “Upper tier” = \$75/hour.
2. All others = \$65/hour.

Post-October 1, 1998 appointments:

1. “Upper tier” = \$85/hour.
2. All others appointed on an independent basis = \$75/hour.
3. All appointed on an assisted basis = \$65/hour.

Clarification:

The proceedings underlying the current appeal control the rate. For example, if an upper tier appeal results in a remand for re-sentencing, a new appeal from that re-sentencing would not invoke the higher rate.

9. THE GUIDELINES

The state-wide [Guidelines](#) set forth below may be changed from time to time. The latest version should be on CAP/LA's internet site: www.lacap.com.

The Guidelines are just that, simply guidelines. Every case is different; the difficulty of a specific task will determine whether compensation will be above or below the "ordinary range" of the Guidelines.

Here are some helpful standards related to claims:

- (1) No line-item guideline results in an automatic right to compensation of the guideline amount. The underlying question addressed by those evaluating claims is, "How much time would a reasonably experienced appellate attorney require to complete the tasks necessary in the particular case?"
- (2) If the amount claimed for a specific line-item exceeds the guideline for that task, counsel must supply an explanation; without such an explanation, counsel is unlikely to be paid above the guideline for that task.
- (3) Counsel must claim compensation only for hours actually worked and expenses actually incurred, even if the resulting claim is under the amount of the accumulated guidelines.
- (4) Since the claim is treated as a pleading and is made under penalty of perjury, counsel must keep track of the hours actually spent on all tasks.
- (5) Use of associate counsel on an "assisted" case requires pre-approval by CAP/LA; work on an appointed appeal is considered personal to the attorney appointed and is evaluated as such. If associate counsel is used, follow the specific instructions regarding associate counsel included with the claim.

THE "GUIDELINES FOR APPOINTED COUNSEL COMPENSATION"

BEGIN ON THE NEXT PAGE

GUIDELINES FOR APPOINTED COUNSEL COMPENSATION

“Prima Facie Allowance” = the guidelines for barely adequate work. Less time may be given for less than adequate work.
 “Ordinary Range” = the guidelines for most claims where work is of good quality.
 Excellent work and an exceptionally complex case may result in an allowance greater than the “Ordinary Range.”

HOURS ITEMS	PRIMA FACIE ALLOWANCE	ORDINARY RANGE
1. COMMUNICATIONS WITH APPELLANT AND/OR TRIAL COUNSEL Includes letters, calls, interviews. Consultation with CAP should be included in Item 21, below, and communications with the Court or the Attorney General's Office, etc. should be included in Item 22 - 24, below. Communications with other persons (such as family members) may be compensable (in Item 1) if reasonably necessary for handling of the case.	2.5 hours	3.5 hours
2. TIME REQUIRED TO REVIEW RECORD Includes time spent reading and reviewing the record and taking notes on facts and issues.	1.0 hour for each 60 pages of record	1.0 hour for each 60 pages of record
3. EXTENSION(S) OF TIME	0.3 hours	0.5 hours
4. MOTIONS TO AUGMENT Indicate the reason if multiple motions to augment are necessary. Include 35(e) letters in Item 5, below. Check local rules.	0.5 hours	1.5 hours
5. OTHER MOTIONS	reasonable time	reasonable time
6. OPENING BRIEF Usually 1.0 hour is recommended for preparation of a <i>Wende</i> brief in addition to compensation for the Statement of the Case and Facts.	Statement of Case and Facts 1/3 of time to review record, up to 7.0 hours	1/2 of time to review record, up to 10.0 hours
<i>Factors considered in evaluating the complexity level of an issue include:</i> (a) <i>whether the issue involves legal or factual complexities, novel or unsettled law, or conceptual intricacies;</i> (b) <i>the number of necessary cited authorities;</i> (c) <i>the length of the argument; and</i> (d) <i>the level of complexity found by the respondent and/or Court.</i>	Low Simple < 2.5 hours Simple 2.5 hours Simple to Average > 2.5 to < 5.5 hours Average 5.5 hours Average to Complex > 5.5 to < 9.0 hours Complex 9.0 hours	< 4.0 hours 4.0 hours > 4.0 to < 8.0 hours 8.0 hours > 8.0 to < 13.5 hours 13.5 hours
7. UNBRIEFED ISSUES Describe each issue in sufficient detail to assist the evaluator in assessing complexity.	Low Simple < 0.2 hours Simple 0.2 hours Simple to Average > 0.2 to < 0.5 hours Average 0.5 hours Average to Complex > 0.5 to < 2.5 hours Complex 2.5 hours	< 0.5 hours 0.5 hours > 0.5 to < 2.5 hours 2.5 hours > 2.5 to < 5.0 hours 5.0 hours
8. REPLY BRIEF	1/3 of hours awarded for AOB	1/3 of hours awarded for AOB
9. SUPPLEMENTAL BRIEF Include letter briefs.	same as Opening Brief	same as Opening Brief

HOURS ITEMS (continued)	PRIMA FACIE ALLOWANCE	ORDINARY RANGE
10. REVIEW OF OPPOSING BRIEF After substantive brief	1.0 hours	2.5 hours
Includes briefs of Attorney General and all other adverse parties where appropriate. Each must be identified. Include review of co-appellants' briefs in Item 22, 23, or 24, below.	After <i>Wende</i> brief	0.0 hours
11. PETITION: HABEAS CORPUS	8.0 hours	12.0 hours
Issues will be evaluated using the standards in Item 6, above.		
12. PETITION: REHEARING	4.0 hours	6.0 hours
13. PETITION: REVIEW (OR ANSWER)	5.5 hours	10.0 hours
Little compensation will be approved for a petition for review that simply "recycles" all or part of the AOB. (See Cal. Rules of Court, rules 28-29.)		
14. PETITION: OTHER	reasonable time	reasonable time
Issues will be evaluated using the standards in Item 6, above. Compensation for petitions for writ of certiorari may require pre-approval from the project. Check with the project.		
15. PETITION: READ RESPONSE	reasonable time	reasonable time
16. PETITION: REPLY TO RESPONSE	1/3 of hours awarded for petition	1/3 of hours awarded for petition
17. ORAL ARGUMENT	5.0 hours	7.5 hours
Includes letters waiving or requesting argument, preparation, actual time in argument before the Court, and necessary waiting time in the courtroom. Indicate if argument is telephonic or video-conferenced.		
18. TRAVEL		
Time is compensable where the distance exceeds 25 miles one-way from counsel's office, and where counsel cannot reasonably work on the case while traveling. Travel to see clients must be pre-approved. Compensation is based on the most economic means of travel reasonably available. Indicate destination, purpose, and time.		
19. REVIEW OPINION After substantive brief	1.0 hours	1.5 hours
	After <i>Wende</i> brief	0.2 hours
20. REVIEW SUPERIOR COURT FILE	1.0 hours	2.0 hours
Includes review of exhibits.		
21. CONSULT WITH PROJECT On "assisted" case	1.0 hours	4.0 hours
	On "independent" case	0.5 hours
22. - 24. OTHER	reasonable time	reasonable time
Itemization is required.		

EXPENSE ITEMS ARE ON THE NEXT PAGE

EXPENSES ITEMS	STANDARDS
<p>1. PHOTOCOPY Do not include time spent or cost of copying cases or statutes (including in-house, through a computer service, or at a library). Copying of the file and/or transcripts for the client is normally not compensable, except for short transcripts in <i>Wende</i> cases. Check with the project.</p>	actual cost, up to \$0.10 per page
<p>2. BRIEF BINDING, ETC.</p>	actual cost, if reasonable
<p>3. POSTAGE/DELIVERY Include actual cost of ordinary means of delivery. Explain any unusual circumstances in the case, other than appointed counsel's personal needs, that justify use of express mail, messenger or attorney service, personal delivery, or any other extraordinary means of delivery.</p>	actual cost, if reasonable
<p>4. TELEPHONE Do not include regular service charges or local calls.</p>	actual long distance cost; if reasonable
<p>5. TRAVEL EXPENSES Based on State rates. The State will compensate for the least expensive means of travel for long distances. Do not include travel or parking that is related to library visits or other research sites. Consult with project in advance about overnight expenses.</p>	<p>actual necessary expenditures, with the following limitations:</p> <ul style="list-style-type: none"> – up to \$.31 per mile for use of personal car prior to 1/1/02; up to \$.34 per mile after 1/1/02 (the 25-mile minimum does not apply) – up to \$110 (or \$140 in Alameda, San Francisco, San Mateo, and Santa Clara counties after 1/1/02) + tax and fees per evening for lodging – up to \$6.00 for breakfast (if necessary to be on the road before 7:00 a.m.) – up to \$10.00 for lunch (if related to a necessary overnight stay) – up to \$18.00 for dinner (if necessary to be on the road after 7:00 p.m.)
<p>6. COMPUTER RESEARCH For work performed after November 1, 1999, includes only cost of research that "requires access to unique materials that are outside a basic fee plan (California and U.S. Supreme Court cases) and is supported by documentation." Include explanation of need. Do not include regular monthly fees for on-line computer research service.</p>	actual cost for necessary extraordinary research
<p>7. PARALEGAL/CLERKS Itemize hours, hourly rate, and activity. Paralegal and law clerk work is expected to reduce the time an attorney must spend. Thus, if attorney time is over Guidelines for a specific activity, no paralegal or law clerk expense for that activity will be approved.</p>	\$25 per hour
<p>8. TRANSLATOR/INTERPRETER Translator or interpreter fees may require pre-approval by the project. Check with the project. Do not include costs of translating briefs or other pleadings, for which the Court does not compensate.</p>	actual cost, up to local prevailing rate
<p>9. MISCELLANEOUS Itemize and explain costs of experts, investigators, certification fees, courts fees, etc. Do not include administrative or overhead costs such as secretarial work or library upkeep. Payment for experts and investigators may require pre-approval by either the project or the Court. Check with the project.</p>	reasonable cost

10. INFORMATION FOR THE CLIENT: “UNDERSTANDING YOUR APPEAL”

CAP/LA sends the following document to many of the appellants whose cases are appointed through this office. The document is also instructive on some the expectations the clients may have of appointed counsel. If you have clients who have not received the document and who have questions, you may forward copies to them.

THE “UNDERSTANDING YOUR APPEAL” DOCUMENT

BEGINS ON THE NEXT PAGE

UNDERSTANDING YOUR APPEAL

-- Information for Appellants --

This information letter will help explain what an appeal is about. It answers some of the general questions most often asked by our clients. Your individual attorney will help you understand your specific case.

“WHAT IS AN APPEAL?”

An appeal is not a new trial. The purpose of an appeal is to check over the proceedings in the trial court to see if the law was followed.

An appeal can deal only with matter shown in the transcripts. The transcripts include: (1) the papers in the trial court files and (2) a court reporter’s word-for-word record of what happened in the courtroom. The Court of Appeal cannot consider facts outside the transcripts. It hears no witnesses and takes no new evidence.

The Court of Appeal has no power to decide “questions of fact,” such as whether you are guilty or innocent, or whether a certain witness was lying, or what a particular piece of evidence proves. Decisions like those are made only by the jury or trial judge. It has no power to say what sentence you should get as long as the sentence you actually received is one allowed by law. The Court of Appeal cannot change simply change it.

The Court of Appeal deals with legal questions. It decides whether the trial court proceedings followed the law. For example, it might decide whether certain evidence was correctly admitted, or whether the jury was properly

instructed, or whether the trial judge gave adequate reasons for choosing a particular sentence, and other questions of those types.

If the Court of Appeal finds that the proceedings were conducted correctly, the judgment is “affirmed,” which means your conviction and sentence will not change.

Even if the Court of Appeal finds a legal error was made in the trial court, your judgment will be affirmed unless the court finds “prejudice” – that the error made a difference in the trial. If there is “error” and “prejudice” your case will be “reversed” (in part or in full) and sent back to the trial court for a new trial, a new sentencing, or some other proceeding to correct the error. Some mistakes can be corrected by the Court of Appeal itself, without sending the case back.

“WHO WILL REPRESENT ME ON APPEAL?”

The California Appellate Project, Inc. (CAP), is a firm of defense attorneys who specialize in appeals. CAP helps manage criminal, juvenile dependency, and juvenile delinquency cases in the Second Appellate District of the Court of Appeal.

In every case requiring appointment of an attorney on appeal, CAP normally finds a private attorney to handle the case. Occasionally one of CAP’s own staff attorneys handles the case.

Your case has been checked for length, difficulty, and seriousness and has been assigned to an attorney with appropriate qualifications.

If a private attorney has been selected, a California Appellate Project staff attorney will be available to assist the private attorney at every stage of the appeal.

“WHAT CAN I EXPECT TO HAPPEN DURING THE APPEAL?”

The usual steps in an appeal include:

(1) **Preparation of the Transcripts.** The trial court clerk and reporter began preparing the transcripts in your case after the notice of appeal was filed. It is hard to guess how long it will take them to finish (if they have not finished already). Sometimes the transcripts are done in less than a month, and sometimes they take six months or more, especially if the trial was long.

(2) **The Appellant’s Opening Brief.** After the transcripts are filed, your attorney will study them and decide what issues should be presented to the Court of Appeal. These issues will be presented in the appellant’s opening brief.

The brief normally will have several parts. First, it will describe the trial court procedures in a section called “Statement of the Case.” Then it will describe the prosecution’s evidence in a section called “Statement of the Facts.” (The brief will describe the defense evidence, too. But by strict rule the prosecution’s evidence must be presented as the “facts.”)

The next part of the brief will be the “argument.” In this part your lawyer will show how the trial court proceedings did not follow the law, and will argue why you should be given a new trial, another sentence, or some other relief.

The opening brief is due 30 days after the transcripts are filed. In most cases, however, one or more 30-day extensions of time are needed.

(3) **The Respondent’s Brief.** About a month or two after the appellant’s opening brief is filed, the Attorney General will file the prosecution’s answer, called the “respondent’s brief.” In it, the Attorney General will usually argue something like: no mistakes were made in the trial court; or any mistakes were

unimportant and did not hurt you; or a particular issue cannot be raised on appeal; or something else in answer to your issues. This is just the prosecution's argument and is not the Court of Appeal's decision.

(4) The Appellant's Reply Brief. In this brief, your lawyer will have a chance to answer the arguments made in the Attorney General's brief. It is due 20 days after the Attorney General's brief is filed. The appellant's reply brief is optional and will be filed only if your lawyer thinks it will help.

(5) Oral Argument. Usually within a month or two after all the briefs are filed, the Court of Appeal will give both sides a chance to ask for oral argument. In oral argument, the lawyers for both sides go to the court and argue in person. It usually takes only a few minutes. You will not be there.

Oral argument is not held in most cases. Your lawyer will ask for it only if he or she believes something needs to be said that was not already said in the briefs.

(6) The Opinion. The Court of Appeal will give its decision in a written "opinion." The opinion explains why the court decided each issue as it did.

The opinion will be filed sometime after oral argument is held or waived. It may be only a few days later, or as much as three months later.

Three judges of the Court of Appeal will decide your case. They will read the briefs, look at the transcripts, and hear oral argument (if it has been requested). Then they will vote. It takes at least two judges voting the same way to reach a decision. One of the judges writes the "opinion." One or both of the other judges may write separate opinions if they disagree with something the first judge said.

(7) Petition for Rehearing. If the decision is against you, your lawyer may decide to file a petition for rehearing, asking the Court of Appeal to reconsider. The Attorney General may also file a petition for rehearing, if the decision is against the prosecution. The petitions are due 15 days after the opinion is filed. Very few are granted.

(8) Petition for Review in the California Supreme Court. Another possible step to take, if you lose in the Court of Appeal, is to file a petition for review. This petition might be appropriate if any of the issues in your case involved important questions of law or if the opinion in the Court of Appeal created a conflict with the opinion of some other courts in California. Your lawyer will file the petition if he or she believes there is a reasonable chance of having it granted. The Attorney General also may petition for review if the prosecution has lost in the Court of Appeal.

The petition must be filed no earlier than 30 days, and no later than 40 days after the Court of Appeal's opinion is filed. If the petition is denied, the decision of the Court of Appeal is left standing and becomes "final." Very few petitions are granted.

* * * *

Other motions and papers can be filed in an appeal. Your lawyer will file them in your case if they are necessary. You will get copies of all the briefs, the opinion, any petitions filed, and all other important papers.

In a few cases known as "People's appeals," the prosecution will be appealing, asking the Court of Appeal to change some ruling of the trial court that may have been in your favor. In People's appeals, the prosecution will be the "appellant" and will file the appellant's opening and reply briefs. The defendant will be the "respondent" and will file the respondent's brief.

Most appeals take about a year from the time the notice of appeal is filed, to the time the decision of the Court of Appeal becomes final. Of course, your case may be shorter or longer, depending on how long the transcripts are, how many issues are raised, and many other things.

“HOW CAN I FIND OUT MORE ABOUT MY APPEAL?”

This letter is intended only to give you a general idea of what to expect in your appeal. Your own case may be different from the “usual” case in some way or another. Your attorney will explain what is happening in your case and will try to answer any questions you may have.

IF YOU HAVE RECEIVED THE RECORD (TRANSCRIPT) OF YOUR TRIAL PLEASE SEND IT IMMEDIATELY TO YOUR LAWYER, WHO WILL NEED IT TO PREPARE THE OPENING BRIEF. YOUR LAWYER WILL RETURN THE RECORD TO YOU WHEN HE OR SHE NO LONGER NEEDS IT.