



Need to file an appeal? You don't have much time.

Need to appeal that pesky judgment or appealable order in California? Well you don't have much time. When considering whether to file an appeal, and after you've determined that the unfavorable judgment or order may be appealed, it is critical to know the procedural requirements and deadlines before beginning this process. Failure to satisfy all procedural requirements, within the prescribed time, may result in monetary sanctions or dismissal of the appeal.

To begin the appeal process, the appealing party (a.k.a. "Appellant") must file with the superior court a "Notice of Appeal," after a notice of entry of judgment or order is served. Beware, this is the most important undertaking in the appeal process. The notice of appeal gives the appellate court in the relevant district the jurisdiction to hear the issue on appeal. In doing so, it may divest the superior court from having jurisdiction over the case unless the appellate court grants permission depending on whether the order appealed is interlocutory¹ or a final judgment. Where the order appealed is interlocutory, the superior court retains jurisdiction to act on matters outside the issues that have been appealed.

Filing the Notice of Appeal within the prescribed time is absolutely critical. Failure to do so will terminate your opportunity to appeal, without any recourse. Depending on the type of civil case, limited (damages are under \$25,000) or unlimited (damages exceed \$25,000), the time to file the notice of appeal varies. Here, we will analyze appeals for unlimited cases.

A notice of appeal must be filed within 60 days after the notice of entry of judgment (or order) is served. (Cal. Rules of Court, rule 8.104(a)(1)(A)(B).) That's right, you only get 60 days to file the notice of appeal! That 60 days begins immediately after the notice of entry of judgment or order is served. The only exception? When no notice of entry of judgment/order is served, the deadline is extended to 180 days after entry of the judgment/order.

¹ Interlocutory order is a temporary order issued during the course of litigation. *Interlocutory*, Wex Law Dictionary (Legal Information Institute, Cornell University).

The time to file the notice of appeal is firm. Except as provided in Rule 8.66², no court may extend the time to file a notice of appeal. (Cal. Rules of Court, rule 8.104(b).) If a notice of appeal is filed late, the reviewing court must dismiss the appeal. *Id.* There are no exceptions to this rule unless a particular statute, such as Rule 8.66, provide an extension of time. The California Supreme Court has consistently observed the no exceptions policy. In the absence of statutory authorization, neither the trial nor appellate courts may extend or shorten the time for appeal, even to relieve against mistake, inadvertence, accident, or misfortune. (*Hollister Convalescent Hosp., Inc., v. Rico* (1975) 15 Cal.3d. 660, 666 (citing *Estate of Hanley* (1943) 23 Cal.2d 120, 123)). It is immaterial whether the misrepresentations concerning the date upon which the order was filed were willful or inadvertent, whether the reliance thereon was reasonable or unreasonable, or whether the parties seeking to dismiss are acting in good faith or not. *Id.* If that notice of appeal is untimely, the appeal will be dismissed.

A respondent does not even have to file a motion to dismiss in the appellate court when the appellant has filed an untimely notice of appeal. If it appears that the appeal was not taken within the 60-day period, the court has no discretion and must dismiss the appeal on its own motion, even if no objection is made. *Id.* at 667. Respondents should be vigilant of the deadlines for an appellant to file a notice of appeal because the appellate court may not realize a notice of appeal is untimely. If this happens, a respondent can file a motion to dismiss on the grounds that the notice of appeal is untimely at any time.

Dismissal for untimely appeal notices are mandatory because the appellate court lacks jurisdiction to hear the appeal. The first step, taking of the appeal, is not a procedural one; it vests jurisdiction in the appellate court and terminates the jurisdiction of the lower court." *Id.* at 666. The requirement as to the time for taking an appeal is mandatory, and the court is without jurisdiction to consider one which has been taken subsequent to the expiration of the statutory period. *Id.* at 667. Without jurisdiction, the appellate court has no authority to make rulings on any issue. In fact, the authority remains with the superior court, which has already issued its judgment or order. *Hollister* and *Hanley* both make it clear, the appellate court has no discretion and must dismiss untimely appeals.

Now that you know you have very limited time to file a notice of appeal, what comes next? First, you need to prepare the notice of appeal and have it served. The filing of the notice of appeal must also include a filing fee of \$775 to the appellate court. (Cal. Rules of Court, rule 8.100(b)(1).) Additionally, the appellant must deposit \$100 with the superior court clerk per Government Code section 68926.1. (Cal. Rules of Court, rule 8.100(b)(2).) Make sure you understand these payments are to two separate courts, the filing fee to the appellate court, and the deposit to the superior court. Failure to pay the filing fee at the time of filing the notice of appeal will result in the appellate court noticing a default, which will give the appellant 15 days to submit payment or have the appeal dismissed. (Cal. Rules of Court, rule 8.100(c).)

² Rule 8.66 tolls or extends time for filings due to some form of public emergency or public health crisis.

Likewise, if the appellant fails to pay the deposit to the superior court, the superior court clerk will notice the default and give the appellant 15 days to pay the deposit, or the superior court will notify the appellate court of the default which may result in dismissal of the appeal. (Cal. Rules of Court, rule 8.100(d).)

After you file a timely notice of appeal, paid the filing fee and deposit, there are still several additional procedural steps that must be taken to keep the appeal moving. First, the appellant must designate the record on appeal. The record on appeal must contain the record of written documents and oral proceedings from the superior court proceedings. (Cal. Rules of Court, rule 8.120.) Within 10 days after filing the notice of appeal, the appellant must file and serve the notice designating the record on appeal. (Cal. Rules of Court, rule 8.121(a).) The appellant must specify the date of the notice of appeal, and the written and oral records from the superior court proceedings the appellant elects to include on the record. (Cal. Rules of Court, rule 8.121(b)(1).) The respondent may also designate additional documents on the record by filing and serving a similar notice in the superior court within 10 days of appellant's service of the notice designating the record. (Cal. Rules of Court, rule 8.122(a)(2).)

After appellant has designated the record on appeal, the appellant has a few more procedural steps to undertake. Within 15 days from the date the superior court clerk sends the notification of the filing of the notice of appeal, the appellant must serve and file in the reviewing court a completed *Civil Case Information Statement* (form APP-004), attaching a copy of the judgment or appealed order that shows the date it was entered. (Cal. Rules of Court, rule 8.100(g)(1).) If the appellant fails to timely file a case information statement, the appellant court clerk will notify the appellant to file the statement within 15 days, and failure to do so may result in monetary sanctions or dismissal. (Cal. Rules of Court, rule 8.100(g)(2).) Within 30 days of respondent's designation of the record, or the deadline for respondent to have filed the designation of record if respondent waived this opportunity, the superior court clerk will notify appellant (and respondent if applicable) of the costs of the clerk's transcript of the written and oral records. (Cal. Rules of Court, rule 8.122(b).) Failure by either party to pay the deposit for the clerk's transcript may result in a default. (Cal. Rules of Court, rule 8.122(c)(4).) However, if the respondent fails to pay and is in default, the appeal will continue without the respondent's designated records.

Only after all of these procedural requirements are satisfied, the appellate court will issue a briefing schedule which will lay out the deadlines for appellant's brief, a responsive brief, and appellant's reply brief. As you may now realize, the process of initiating an appeal is daunting and fraught with opportunities to lose your appeal before the appellate court even hears your argument. The most important step you can take is to ensure that the notice of appeal is timely filed. Unlike the notice of appeal, failure to satisfy the other procedural requirements can usually be cured. If the notice of appeal is untimely, the superior court's ruling is final. Therefore, from the moment a notice of entry is filed, your countdown begins. Good luck.

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