

Appellate Clinic for Self-Represented Litigants

Second District of the Court of Appeal

Appellate Division of any Superior Court within the Second District

The Notice Of Appeal And When It MUST Be Filed - BASIC LAW

INTRODUCTION

The usual deadline to file a Notice of Appeal is set by Rule 8.104(a) of the California Rules Of Court. Unless certain unusual exceptions exist, the deadline is 60 days after either:

- (1) The Superior Court clerk sends a document entitled “Notice Of Entry” of the judgment or appealable order to the parties, or sends a file-stamped copy of the judgment or order itself to the parties, showing the date of mailing of either of those documents; or
- (2) Any party sends a document entitled “Notice Of Entry” of the judgment or appealable order to the other parties, or sends a file-stamped copy of the judgment or order itself to the parties, accompanied by a formal proof of service.

If no Notice of Entry or file-stamped copy is sent by either the clerk or a party, the deadline to file a Notice of Appeal is 180 days from entry of the judgment—NOT six months, but 180 days *exactly*; there’s sometimes a difference, so if you’re in this situation, count the days.

WARNING—The deadline to file a Notice of Appeal is absolute. There are no exceptions or extensions. This is stated in subdivision (b) of Rule 8.104, and the California Supreme Court has also made clear over and over that the deadline to file a notice of appeal is a “jurisdictional” deadline. (See., e.g. (*Van Beurden Ins. Servs., Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56, in which the Supreme Court states that “[t]he time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal.”)

THE LAW “STRAIGHT FROM THE HORSE’S MOUTH”

CALIFORNIA RULES OF COURT

Rule 8.100. Filing The Appeal

(a) Notice of appeal

(1) To appeal from a superior court judgment or an appealable order of a superior court, other than in a limited civil case, an appellant must serve and file a notice of appeal in that superior court. The appellant or the appellant’s attorney must sign the notice.

(2) The notice of appeal must be liberally construed. The notice is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which

the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(3) Failure to serve the notice of appeal neither prevents its filing nor affects its validity, but the appellant may be required to remedy the failure.

(b) Fee and deposit

(1) Unless otherwise provided by law, the notice of appeal must be accompanied by the \$775 filing fee under Government Code sections 68926 and 68926.1(b), an application for a waiver of court fees and costs on appeal under rule 8.26, or an order granting such an application. The fee may be paid by check or money order payable to "Clerk/Executive Officer, Court of Appeal"; if the fee is paid in cash, the clerk must give a receipt. The fee may also be paid by any method permitted by the court pursuant to rules 2.258 and 8.78.

(2) The appellant must also deposit \$100 with the superior court clerk as required under Government Code section 68926.1, unless otherwise provided by law or the superior court waives the deposit.

(3) The clerk must file the notice of appeal even if the appellant does not present the filing fee, the deposit, or an application for, or order granting, a waiver of fees and costs.

(c) Failure to pay filing fee

(1) The reviewing court clerk must promptly notify the appellant in writing if:

(A) The reviewing court receives a notice of appeal without the filing fee required by (b)(1), a certificate of cash payment under (e)(5), or an application for, or order granting, a fee waiver under rule 8.26;

(B) A check for the filing fee is dishonored; or

(C) An application for a waiver under rule 8.26 is denied.

(2) A clerk's notice under (1)(A) or (B) must state that the court may dismiss the appeal unless, within 15 days after the notice is sent, the appellant either:

(A) Pays the fee; or

(B) Files an application for a waiver under rule 8.26 if the appellant has not previously filed such an application.

(3) If the appellant fails to take the action specified in a notice given under (2), the reviewing court may dismiss the appeal, but may vacate the dismissal for good cause.

(d) Failure to pay deposit

(1) If the appellant fails to pay the deposit to the superior court required under (b)(2), the superior court clerk must promptly notify the appellant in writing that the reviewing court may dismiss the appeal unless, within 15 days after the notice is sent, the appellant either:

(A) Makes the deposit; or

(B) Files an application in the superior court for a waiver of fees and costs if the appellant has not previously filed such an application or an order granting such an application.

(2) If the appellant fails to take the action specified in a notice given under (1), the superior court clerk must notify the reviewing court of the default.

(3) If the superior court clerk notifies the reviewing court of a default under (2), the reviewing court may dismiss the appeal, but may vacate the dismissal for good cause.

(e) Superior court clerk's duties

- (1) The superior court clerk must promptly send a notification of the filing of the notice of appeal to the attorney of record for each party, to any unrepresented party, and to the reviewing court clerk.
- (2) The notification must show the date it was sent and must state the number and title of the case and the date the notice of appeal was filed. If the information is available, the notification must include:
 - (A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;
 - (B) The name of the party each attorney represented in the superior court; and
 - (C) The name, address, telephone number and e-mail address of any unrepresented party.
- (3) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the superior court clerk.
- (4) The sending of a notification under (1) is a sufficient performance of the clerk's duty despite the death of the party or the discharge, disqualification, suspension, disbarment, or death of the attorney.
- (5) With the notification of the appeal, the superior court clerk must send the reviewing court the filing fee or an application for, or order granting, a waiver of that fee. If the fee was paid in cash, the clerk must send the reviewing court a certificate of payment and thereafter a check for the amount of the fee.
- (6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

(f) Notice of cross-appeal

As used in this rule, "notice of appeal" includes a notice of cross-appeal and "appellant" includes a respondent filing a notice of cross-appeal.

(g) Civil case information statement

- (1) Within 15 days after the superior court clerk sends the notification of the filing of the notice of appeal required by (e)(1), 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.
- (2) If the appellant fails to timely file a case information statement under (1), the reviewing court clerk must notify the appellant in writing that the appellant must file the statement within 15 days after the clerk's notice is sent and that if the appellant fails to comply, the court may either impose monetary sanctions or dismiss the appeal. If the appellant fails to file the statement as specified in the notice, the court may impose the sanctions specified in the notice.

Rule 8.104. Time To Appeal

(a) Normal time

- (1) Unless a statute or rules 8.108, 8.702, or 8.712 provides otherwise, a notice of appeal must be filed on or before the earliest of:

(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, showing the date either was served;

(B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or

(C) 180 days after entry of judgment.

(2) Service under (1)(A) and (B) may be by any method permitted by the Code of Civil Procedure, including electronic service when permitted under Code of Civil Procedure section 1010.6 and rules 2.250-2.261.

(3) If the parties stipulated in the trial court under Code of Civil Procedure section 1019.5 to waive notice of the court order being appealed, the time to appeal under (1)(C) applies unless the court or a party serves notice of entry of judgment or a filed-endorsed copy of the judgment to start the time period under (1)(A) or (B).

(b) No extension of time; late notice of appeal

Except as provided in rule 8.66 [extension if court is closed due to a public emergency], no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal.

(c) What constitutes entry

For purposes of this rule:

(1) The entry date of a judgment is the date the judgment is filed under Code of Civil Procedure section 668.5, or the date it is entered in the judgment book.

(2) The entry date of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes. But if the minute order directs that a written order be prepared, the entry date is the date the signed order is filed; a written order prepared under rule 3.1312 or similar local rule is not such an order prepared by direction of a minute order.

(3) The entry date of an appealable order that is not entered in the minutes is the date the signed order is filed.

(4) The entry date of a decree of distribution in a probate proceeding is the date it is entered at length in the judgment book or other permanent court record.

(5) An order signed electronically has the same effect as an order signed on paper.

(d) Premature notice of appeal

(1) A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry of judgment.

(2) The reviewing court may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment.

(e) Appealable order

As used in (a) and (d), "judgment" includes an appealable order if the appeal is from an appealable order.

Rule 8.108. Extending the time to appeal

(a) Extension of time

This rule operates only to extend the time to appeal otherwise prescribed in rule 8.104(a); it does not shorten the time to appeal. If the normal time to appeal stated in rule 8.104(a) is longer than the time provided in this rule, the time to appeal stated in rule 8.104(a) governs.

(b) Motion for new trial

If any party serves and files a valid notice of intention to move for a new trial, the following extensions of time apply:

(1) If the motion for a new trial is denied, the time to appeal from the judgment is extended for all parties until the earliest of:

(A) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;

(B) 30 days after denial of the motion by operation of law; or

(C) 180 days after entry of judgment.

(2) If the trial court makes a finding of excessive or inadequate damages and grants the motion for a new trial subject to the condition that the motion is denied if a party consents to the additur or remittitur of damages, the time to appeal is extended as follows:

(A) If a party serves an acceptance of the additur or remittitur within the time for accepting the additur or remittitur, the time to appeal from the judgment is extended for all parties until 30 days after the date the party serves the acceptance.

(B) If a party serves a rejection of the additur or remittitur within the time for accepting the additur or remittitur or if the time for accepting the additur or remittitur expires, the time to appeal from the new trial order is extended for all parties until the earliest of 30 days after the date the party serves the rejection or 30 days after the date on which the time for accepting the additur or remittitur expired.

(c) Motion to vacate judgment

If, within the time prescribed by rule 8.104 to appeal from the judgment, any party serves and files a valid notice of intention to move-or a valid motion-to vacate the judgment, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;

(2) 90 days after the first notice of intention to move-or motion-is filed; or

(3) 180 days after entry of judgment.

(d) Motion for judgment notwithstanding the verdict

(1) If any party serves and files a valid motion for judgment notwithstanding the verdict and the motion is denied, the time to appeal from the judgment is extended for all parties until the earliest of:

(A) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;

(B) 30 days after denial of the motion by operation of law; or

(C) 180 days after entry of judgment.

- (2) Unless extended by (g)(2), the time to appeal from an order denying a motion for judgment notwithstanding the verdict is governed by rule 8.104.

(e) Motion to reconsider appealable order

If any party serves and files a valid motion to reconsider an appealable order under Code of Civil Procedure section 1008, subdivision (a), the time to appeal from that order is extended for all parties until the earliest of:

- (1) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;
- (2) 90 days after the first motion to reconsider is filed; or
- (3) 180 days after entry of the appealable order [i.e., the order of which the motion sought reconsideration].

(f) Public entity actions under Government Code section 962, 984, or 985

If a public entity defendant serves and files a valid request for a mandatory settlement conference on methods of satisfying a judgment under Government Code section 962, an election to pay a judgment in periodic payments under Government Code section 984 and rule 3.1804, or a motion for a posttrial hearing on reducing a judgment under Government Code section 985, the time to appeal from the judgment is extended for all parties until the earliest of:

- (1) 90 days after the superior court clerk serves the party filing the notice of appeal with a document entitled "Notice of Entry" of judgment, or a filed-endorsed copy of the judgment, showing the date either was served;
- (2) 90 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or
- (3) 180 days after entry of judgment.

(g) Cross-appeal

(1) If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is extended until 20 days after the superior court clerk serves notification of the first appeal.

(2) If an appellant timely appeals from an order granting a motion for new trial, an order granting—within 150 days after entry of judgment—a motion to vacate the judgment, or a judgment notwithstanding the verdict, the time for any other party to appeal from the original judgment or from an order denying a motion for judgment notwithstanding the verdict is extended until 20 days after the clerk serves notification of the first appeal.

(h) Service; proof of service

Service under this rule may be by any method permitted by the Code of Civil Procedure, including electronic service when permitted under Code of Civil Procedure section 1010.6 and rules 2.250–2.261. An order or notice that is served must be accompanied by proof of service.