Case No. \_\_\_\_\_\_\_\_\_\_\_\_

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION \_\_\_\_\_\_\_\_

**YOUR NAME**

[Plaintiff/Defendant/Petitioner/Respondent] &[Appellant/Respondent]

**vs.**

**THE OTHER PARTY’S NAME**

[Plaintiff/Defendant/Petitioner/Respondent] &[Appellant/Respondent]

**APPELLANT’S OPENING BRIEF**

Appeal from An Order of the [THE COUNTY WHERE YOUR CASE WAS ADJUDICATED] County Superior Court

Superior Court Case No. [YOUR SUPERIOR COURT CASE NUMBER]

The Hon.NAME OF *ALL* JUDGES INVOLVED IN THE CASE, Judge[s]

[YOUR NAME]

[YOUR Address]

[City, State, Zip]

[phone number--REQUIRED]

Appellant and Cross-Respondent, Self-Represented

PLACEHOLDER PAGE

*When the brief is printed, or is saved as a pdf, delete this page, and, unless you case is a family law, juvenile, guardianship or conservatorship case, insert Judicial Council Form APP-008, “Certificate Of Interested Entities Or Persons” in its place, which is a required part of every brief, except in family law, juvenile, guardianship or conservatorship cases (See Rule 8.208, California Rules of Court.)*

*The form is provided along with this template, or you can obtain it from the Appellate Courts Self-Help Resource Center, selfhelp.appellate.courts.ca.gov. On the Resource Center’s opening page, click on the “Prepare Your Documents For A Case” icon, just below the rolling photograph of the 9 Court of Appeal courthouses.*

PLACEHOLDER/SAMPLE PAGE

*This sheet provides you with a fillable table of contents. Before you print your brief, or save it as a pdf, create your own table of contents, using your own brief’s titles and subtitles, then delete this sheet and insert your table of contents in its place.*

TABLE OF CONTENTS

|  |  |  |
| --- | --- | --- |
| Table Of Authorities | |  |
| Introduction | |  |
| Factual And Procedural Background | |  |
| I. | Factual History (Events *before* the lawsuit was filed that caused the lawsuit) |  |
| II. | Procedural History (Events that occurred in court as part of the lawsuit, including documents that were filed and hearings that were held) |  |
| Arguments | |  |
| I |  |  |
| II. |  |  |
| Conclusion | |  |

PLACEHOLDER/SAMPLE PAGE

[*This sheet contains a sample table of authorities, taken from the same brief the sample table of contents is from. Before you print your brief, or save it as a pdf, create your own table of authorities, using the cases, statutes, and miscellaneous sources that you cite in your brief, then delete this page and insert your table of authorities in its place*.]

TABLE OF AUTHORITIES

CASES

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

STATUTES & COURT RULES

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
| MISCELLANEOUS AUTHORITIES |  |
|  |  |

**INTRODUCTION**

|  |  |
| --- | --- |
| *Rule 8.204(a)(2)(C) requires an AOB to “[s]tate the nature of the action, the relief sought in the trial court, and the judgment or order appealed from.” For example, if you are appealing a child custody and visitation order, you should say something like “This appeal challenges an order in a family law proceeding, granting full physical and legal custody of the child [NAME] to Appellant [NAME], the child’s mother, and granted Appellant [NAME], the father, only limited visitation.”*  *You are not required to say any more than that, but it is highly recommended that after telling the Court of Appeal what the challenged judgment does, you also tell the Court, as succinctly as possible, why the judgment is erroneous. For example, you might say, “In so entering judgment, the trial court erred because the court failed to consider Appellant’s evidence that Respondent physically abused the children on multiple occasions.” It is also recommended that you provide a summary of (a) the most important facts (both “factual” and “procedural”) in the case and (b) your most important arguments. If you do these two things, you ensure that the first thing the Court of Appeal sees about your case creates a vivid, favorable and lasting first impression. This part of your Introduction (Part B) can, and usually should, be left to do after you have written your complete narratives and arguments—Get those parts of the brief drafted in detail, then select the most important details for the Introduction.Your total introduction, including Part B, should be short—preferably 1 or 2 pages; 4 or 5 at most!*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  *This template was created in Microsoft Word. If you have Microsoft Word on your computer, and can use it to fill in the template, type your introduction below these italicized instructions. Then, when you have finished writing your introduction, delete these instructions.*  *If you do not have Microsoft Word on your computer, and/or cannot use it to fill in the template, print out the template, type or hand-write your introduction on separate sheets of paper, and insert those sheets behind the print-out of this sheet.* |  |

**STATEMENT OF APPEALABILITY**

This appeal is from [THE NATURE OF THE JUDGMENT, E.G., A JUDGMENT AFTER A NON-JURY TRIAL]. It is appealable under Code of Civil Procedure section 904.1[THE SUB-SECTION THAT APPLIES—For further information, see the “Appealable Judgments and Orders flyer that accompanies this template].

**FACTUAL AND PROCEDURAL BACKGROUND**

**I. Factual History**

|  |
| --- |
| *The “Factual History” is the story of what happened out in the “real” world (the world outside of court) that caused a lawsuit to be filed. Rule 8.204 requires you to summarize the facts involved in the case “limited to matters in the record” (Rule 8.204(a)(2)(C), and also to support all of those matters “by a citation to the volume and page number of the record where the matter appears.” (Rule 8.204(a)(1)(C).) The “record” consists of the Clerk’s Transcript (“CT”) and Reporter’s Transcript (“RT”) that you directed the clerk of the Superior Court to prepare for you in your Notice Designating Record On Appeal. Therefore, if the CT and RT have been prepared and sent to you, you should make sure to find the page and volume for every statement you make about a fact, and should include citations to those pages and volumes, following the instructions and the sample record citations that are provided along with this template. If your CT and RT have not yet been provided to you, go ahead and begin drafting your factual narrative—your side of the story underlying the case—without record citations. BUT KEEP IN MIND that you will eventually need to provide record citations, and don’t include in your narration any facts that you are not reasonably certain are supported somewhere in the CT or RT.*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  *If you have Microsoft Word on your computer, and can use it to fill in the template, type your Factual History below these instructions. When you have finished writing your factual history delete these instructions.*  *If you do not have Microsoft Word on your computer, and/or cannot use it to fill in the template, print out the template, type or hand-write your Factual History on one or more separate sheets of paper, and insert those sheets behind the print-out of this page.* |

**II. Procedural History**

|  |
| --- |
| *The “Procedural History” is the story of what happened in the course of the court proceedings. It includes (a) a description of all the written pleadings that were filed by the parties [Section A, “The Pleadings,” below], (b) an account of what happened at the critical hearings, including the trial if there was one [Section B, “The Hearing(s) And/Or /Trial” below], and (c) a separate section for the trial judge’s judgment or order, together with any explanation the judge may have given for the judgment or order [Section C, “The Trial Court’s Judgment/Order,” below].*  *Rule 8.204 requires you to summarize the procedural, as well as the “real-world” facts of the case “limited to matters in the record” (Rule 8.204(a)(2)(C)), and also to support all of those matters “by a citation to the volume and page number of the record where the matter appears.” (Rule 8.204(a)(1)(C).) Therefore, if the CT and RT have been prepared and sent to you, you should make sure to find the page and volume for every statement you make about a pleading, hearing or the judgment/order, and should include citations to those pages and volumes, following the sample record citations that are being provided along with this template. If your CT and RT have not yet been provided to you, go ahead and begin drafting your procedural history without record citations, but keep in mind that you will eventually need to provide them, and don’t include in your narration any facts that you are not reasonably certain are supported somewhere in the CT or RT.*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  *If you have Microsoft Word on your computer, and can use it to fill in the template, type each section of your case’s Procedural History under the appropriate heading below. When you have finished writing the Procedural History, delete these instructions.*  *If you do not have Microsoft Word on your computer, and/or cannot use it to fill in the template, print out the template, and type or hand-write each section of your case’s procedural history on one or more separate sheets of paper and insert them behind the sheet with the appropriate heading.* |

**A. The Pleadings**

|  |
| --- |
| *In this section, list all of all the written pleadings that were filed by the parties, and give a short description of each one. (If there were many, many pleadings, list only those that led directly to the judgment or order you are challenging in your appeal.)* |

**B. The Hearing(s) And/Or /Trial**

|  |
| --- |
| *Here, provide an account of what happened at all the hearings that impacted the final result, including the trial if there was a trial.* |

**C. The Trial Court’s Judgment/Order**

|  |
| --- |
| *Here, quote or accurately and objectively summarize the trial judge’s judgment or order, and also quote or summarize any explanation the judge may have given of the reasons for the judgment or order* |

**ARGUMENT**

I.**Legal Framework**

**A. The Governing Principles Of Law**

[*If necessary after undertaking some research on your own, qualifying litigants may request an appointment with the Appellate Clinic to discuss your brief.*]

**1. Standard Of Review**

[*The Court provides an explanation of the standards of review here: https://www.courts.ca.gov/12431.htm*]

**2. Law Governing The Case**

[*This is where you include any law applicable to your case.*]

**II. Discussion: Application Of The Law To The Facts**

[*This is where you apply the law to the facts of your case and make your full argument.*]

**III. The Alleged Trial Error Resulted In A Miscarriage Of Justice**

[*In this section, use the following language exactly, and delete these instructions after doing so.*] An error committed by a trial judge compels reversal of a judgment or order if the error caused a miscarriage of justice. (California Constitution, Art. VI, Sec. 13.) A miscarriage of justice has occurred if the appellant challenging the error can show it is reasonably likely they would have achieved a better result in the proceeding if the error had not been made. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *Cassim v. Allstate Ins. Co*. (2004) 33 Cal.4th 780, 801.)

In this case [*Here, explain how the errors you are alleging by the court below affected the outcome of your case, and how the result would have been different without those errors.*]

For the foregoing reason, the court’s error resulted in a miscarriage of justice, compelling reversal.

II. [or III or IV] [*Use the structure above for each separate argument* (*or “point,” to use the language of Rule 8.*204) .that *you wish to make.*]

**CONCLUSION**

For the reasons discussed above, the judgment must be reversed.

|  |  |
| --- | --- |
| Respectfully submitted, |  |
| Dated: | YOUR NAME  Respondent, In Pro Per |

**CERTIFICATE OF WORD COUNT**

(Cal. Rules of Court, Rule 8.204(c)(1))

The foregoing Respondent’s Brief is produced using 13-point Roman type, including all footnotes, and consists of words. Appellant relies on the word count generated by the word-processing program used to generate the brief.

Dated:

Respondent, In Pro Per

[*This certification is needed only if you created your brief by filling in this template in Microsoft Word or if you created your brief in another word processing program, using this template as a* *sample. If you used a hard copy of pages in the template and filled your material in between those pages, using a different word processing program and printing out what you wrote, or using a typewriter, or handwriting pages, all you need to do is add page numbers to the bottom of all the pages (including both the pages printed out from the template and all pages that you added) when the brief is complete. This will enable the clerk of the court to readily see whether the brief is within the 50-page limit set by Rule 8.204(c)(2)*.]

PLACEHOLDER PAGE

When the brief is printed, or is saved as a pdf, delete this page, and insert a filled-in Judicial Council Form APP-009, “Proof Of Service (Court of Appeal)” in its place. If you need instructions for using the Proof of Service, read form APP—009-Info, “Information Sheet For Proof of Service (Court of Appeal),” which is available at the Appellate Courts Self-Help Resource Center.)

PLEASE NOTE that when filing a *brief,* unlike when filing other documents in the Court of Appeal, you must serve the California Supreme Court and the trial judge, as well as serving the other party, or parties, to the appeal.