

# [Petition for Rehearing](#)

## 10. Petition for Rehearing

Any party – appellant or respondent – can challenge the Court of Appeal’s decision by filing a petition for rehearing.

A petition for rehearing asks the Court of Appeal to hear – or consider – the case again and correct a legal mistake in the court’s opinion. Generally, the court only agrees to a rehearing if the mistake is a major error of fact or law, or if an important argument was not included in the court’s decision.

Here’s an overview of what to expect in this step of the appeal process and what goes into a petition for rehearing.

[Learn the difference between a petition for rehearing and a request to reinstate the appeal](#)

### When to File a Petition for Rehearing

A party should file a petition for rehearing within 15 days after the Court of Appeal:

- files an opinion (decision) *or*
- files an order for publication of the opinion (decision) *or*
- issues an order modifying its opinion (decision) if the order changes the judgment *or*
- files a dismissal order

The petition for rehearing must be served to all parties in the case, the trial court, and the California Supreme Court **BEFORE** it is filed in the Court of Appeal.

The deadline to file a petition for rehearing is strict and there are **no extensions**.

The Court of Appeal only has jurisdiction – or legal authority – over a case for 30 days after it issues an opinion or order.

### Cost of a Petition for Rehearing

There is no additional court cost to file a petition for rehearing.

# Reasons Why a Party Can Petition for Rehearing

Petition for rehearing is a way for a party who lost the appeal to challenge the Court of Appeal's decision.

Petition for rehearing *is* an opportunity to:

- focus on specific legal mistakes in the Court of Appeal's decision
- discuss important factual or legal errors, or misstatements in the Court of Appeal's decision
- identify important arguments or issues that were discussed in the appeal but were not included in the Court of Appeal's decision
- argue that the trial court or the Court of Appeal did not have jurisdiction – or legal authority – to handle the case
- challenge a Court of Appeal's dismissal order
- challenge a Court of Appeal decision that was based on a legal issue that was not raised by any party or included in a brief during the appeal. (If this occurs, there is an automatic right to rehearing. However, the automatic right to rehearing is very limited. The Court of Appeal may disagree with a party about whether an issue was included in the appeal.)

Petition for rehearing *is not* an opportunity to:

- repeat arguments already made in the trial court or the Court of Appeal
- repeat information the Court of Appeal already received in the briefs or the record on appeal
- introduce new legal arguments or issues not previously raised in the appeal (except to challenge court jurisdiction or court use of a fact/legal issue not discussed by any party during the appeal)
- challenge a decision just because you do not like it

## Writing a Petition for Rehearing

A petition for rehearing should focus on the error or errors in the Court of Appeal's decision.

Here are some general guidelines about how to format and write a petition for rehearing.

Before writing a petition for rehearing, always check with your Court of Appeal to ask about any special rules and requirements.

How to format the petition for rehearing

There is no court form for a petition for rehearing. Basically it has two required parts:

1. a cover page that includes general information about the parties (like

contact information) and the appeal (like the case number)

2. a document that includes general information about the parties and the appeal, **and** an explanation of the reasons why a party is filing a petition for rehearing

The petition for rehearing must follow the same formatting rules as briefs. If filing a petition for rehearing on paper, **the cover page is orange.**

What to include in the petition for rehearing

The most important part of the petition for rehearing tells the Court of Appeal:

1. the reason why the court should hear the case again
2. information that supports the reason why there should be a rehearing, including any legal arguments, legal authorities, and references to the briefs or record on appeal
3. the legal arguments
4. how the Court of Appeal should have ruled in its opinion (affirm, reverse, or modify the trial court order or judgment) or order

The legal arguments in a petition for rehearing should include legal authorities and reference the record on appeal.

The petition for rehearing must prove to the Court of Appeal that the court made a legal mistake in its opinion. Here are examples of legal mistakes that a party can discuss in the petition for rehearing:

- a major misstatement of fact in the court's decision or dismissal order
- an error of law in the court's decision
- a major law or fact that was discussed in the appeal but was not included in the court's decision
- an important argument or issue that was discussed in the appeal but was not included in the decision
- a fact or argument that was not discussed in the appeal but was included in the court's decision

Remember, the petition for rehearing should focus on the Court of Appeal's mistake and the reason the court should consider the case again. The petition for rehearing *should not* repeat information and arguments discussed in the briefs or oral arguments.

## **Serving and Filing a Petition for Rehearing**

*Always check with your Court of Appeal to confirm the specific filing and service requirements in your case.*

**You must serve a copy of the petition for rehearing to all parties in the case, the trial court, and the California Supreme Court BEFORE the petition**

for rehearing can be filed in the Court of Appeal.

## **What the Parties Do During Petition for Rehearing**

The parties are not required to do anything while the Court of Appeal reviews the petition for rehearing – unless the court asks for something.

In some cases, the court does not request additional information from any of the parties during petition for rehearing.

In other cases, the court does request information from one or more of the parties, from either side of the case. The court may ask the party who files a petition for rehearing to answer questions in another brief or oral argument. The court may also ask other parties for opposition arguing against the petition.

If the court asks a party for information, the party must generally serve and file a response within 8 days after the petition for rehearing is filed. It is very important for all parties to track their case if a petition for rehearing is filed. All parties must pay close attention to any court order asking for answers to the petition for rehearing, because the time to file a reply can be less than 8 days.

A party must include the information requested by the Court of Appeal and follow the same formatting rules as the briefs. If filing a response on paper, **the cover is blue**.

## **What the Court of Appeal Does During Petition for Rehearing**

The Court of Appeal reviews the petition for rehearing and decides what to do.

*How much time does the court have to respond?*

The Court of Appeal has jurisdiction – or legal authority to make rulings – for 30 days after the date it issues an opinion or files a dismissal order.

*How can the court respond to the petition?*

The Court of Appeal can respond to a petition for rehearing in three ways:

- the court can decide not to respond and take no action *or*
- the court can deny the petition for rehearing *or*
- the court can agree there was a mistake that is important enough for the court to grant rehearing and hear the case again

Note that sometimes the court will deny a petition for rehearing but will modify the court's opinion to make a correction or other change.

Also, there is an automatic right to rehearing if the court makes a decision based on an issue that was not raised by any party during the appeal.

If the Court of Appeal agrees there was a mistake, the court ignores the old

decision and issues a new decision after rehearing the appeal. When the court issues a new decision, the 30-day period starts again and any party can file another petition for rehearing.

## What Happens Next

If the Court of Appeal takes no action within 30 days after it issues an opinion, jurisdiction over the case moves to the California Supreme Court for the next 30 days. If a party still wants to challenge the Court of Appeal's decision, the party has a limited amount of time to file a petition for review with the California Supreme Court. [Learn more about petition for review](#)

If the California Supreme Court takes no action within the 30 days it has legal authority over the case, the Court of Appeal opinion becomes final. Then the Court of Appeal issues a remittitur summarizing the decision and what the parties need to do. [Learn more about remittitur](#)

## Additional Resources

[Read the full California Rules of Court about court decisions](#)

[Read the full California Rules of Court about petitions for rehearing](#)

[Visit TrueFiling™, the court's online filing system](#)

## Common Questions:

Do I have to file a petition for rehearing before I can file a petition for review in the California Supreme Court?

No. You can petition for review in the California Supreme Court without petitioning for rehearing in the Court of Appeal. But you will need to wait until the Court of Appeal decision becomes final, which is generally 30 days after the court issues its opinion. And if the Court of Appeal made a legal mistake that you do not challenge with a petition for rehearing, the California Supreme Court will accept that the statement of facts and issues are correct in the Court of Appeal's decision.

How do I format a petition for rehearing or a response to a petition for rehearing?

Both a petition for rehearing and a response to a petition for rehearing must follow the same formatting rules as a brief.

**If you file on paper or electronically, you must follow the formatting instructions in [California Rule of Court 8.40](#) and [California Rule of Court](#)**

## **8.204.**

If you file on paper, the cover of a petition for rehearing is orange and the cover of a response to a petition for rehearing is blue.

**If you file electronically, you must follow additional formatting rules.** Be sure to review the [general Court of Appeal instructions for electronically filed documents \(pdf\)](#). You also need to check with your Court of Appeal to find out if your court has any special requirements.

What is the difference between a petition for rehearing and a request to reinstate the appeal?

The main differences are when they happen and why.

A petition for rehearing is generally **filed after there is a decision on the appeal**. A petition for rehearing asks the Court of Appeal to consider the case again because **you believe there was a legal mistake in the court's opinion and you want the court to correct the mistake**. The court's mistake could be a major error of fact or law, or if an important argument was not included in the court's decision.

A request to reinstate the appeal is **filed after there is a dismissal order**. The court regularly issues a dismissal order when a party in the appeal does not do what is required. The court calls this a procedural dismissal order, because a party did not follow the proper court procedure. A request to reinstate the appeal asks the Court of Appeal to consider the case again because **you made a mistake that caused the court to dismiss your appeal, and you want an opportunity to fix your mistake so the appeal can continue**. For example, maybe you missed the deadline to pay a fee or file paperwork, or maybe there was a problem when you designated the record.

**Note:** In some Courts of Appeal, you may be able to file a petition for rehearing if your appeal was dismissed because of a non-appealable order or untimely appeal.

If you file before the deadline, the Court of Appeal will always consider a request to rehear the case or reinstate the appeal, but the court is generally not required to rehear or reinstate the case.

Who needs to receive a copy of the petition for rehearing? When do I serve the petition for rehearing?

*Always check with your Court of Appeal to confirm the specific filing and service requirements in your case.*

**You must serve a copy of the petition for rehearing to all parties in the case, the trial court, and the California Supreme Court BEFORE the petition for rehearing can be filed in the Court of Appeal.**

If the other party *has a lawyer*, then the petition is served to the lawyer. If the other party *does not have a lawyer*, then the petition is served to the other party.

You *may* be required to serve the petition to a public officer or agency that is not a party to the case, or to the California Attorney General. For example, if you are arguing that a California statute is unconstitutional, you must serve a copy of the petition to the Attorney General.

How do I serve a petition for rehearing? What's proof of service?

Serving a petition for rehearing means delivering a copy of the petition to someone.

There are three ways to serve a petition for rehearing: by mail, in person, or electronically. If you want to serve a petition electronically, you will first need to get the recipient to agree.

The court has rules about who can serve a petition for rehearing by mail or in person. It must be a person who is over 18 and lives in the county where they are serving. A party to the case cannot serve a petition for rehearing by mail or in person.

**You need a proof of service form for each person or court who receives a copy of the petition. You are encouraged to use form [APP-009 \(serve by mail or in person\)](#) or [APP-009E \(serve electronically\)](#) for proof of service.**

The person who is serving a petition for rehearing must complete and sign a proof of service form when they deliver the petition. The court requires this form as proof that the petition was delivered to all parties in the appeal, the trial court, and the California Supreme Court.

If the other party *has a lawyer*, then the petition is served to the lawyer. If the other party *does not have a lawyer*, then the petition is served to the other party.

If you submit your petition electronically, there's an option to have TrueFiling™ serve your petition electronically to the other parties before your brief is filed with the Court of Appeal. TrueFiling™ will automatically attach an electronic proof of service to any documents you electronically file (e-file).

The Supreme Court may be served either by mail or electronically. If a petition is filed electronically through TrueFiling™, it automatically fulfills the service requirements for the California Supreme Court.

The original proof of service forms should be attached as the last pages of the original petition for rehearing that you file in the Court of Appeal.

A copy of the proof of service forms must be attached as the last pages of each copy of the petition for rehearing that you serve to other parties.

[Get a blank proof of service form APP-009](#) (mail or in person)

[Get a blank proof of service form APP-009E](#) (electronic)

[See the instructions sheet for the proof of service form](#)

[See detailed proof of service information from the California Courts](#)

Read the California rules of court on proof of service requirements [CRC 8.25\(a\)](#), [8.212\(c\)\(1\)](#), and [CRC 8.29, 8.212\(c\)\(3\)](#).

[Visit TrueFiling™, the court's online filing system](#)

How do I file a petition for rehearing with the Court of Appeal?

There are two ways to file a petition for rehearing: electronically file (e-file) on the computer or file on paper at the Court of Appeal. *Always check with your Court of Appeal to confirm the specific filing requirements and copy requirements in your case.*

The Court of Appeal requires lawyers and people who have a lawyer to file electronically. If a party is self-represented – meaning they do not have a lawyer – then the party can choose to file electronically or file on paper.

If filing electronically, the court does not need or require paper copies.

If filing on paper, the original petition for rehearing **and** proof of service forms are always given to the Court of Appeal. Some courts also require a party to file extra copies of the petition for rehearing.

The party who is filing the petition for rehearing keeps one copy of the petition. It's also a good idea to bring or mail an extra copy of the petition to the court clerk. The party can ask the clerk to stamp "filed" on the extra copy to show that the original was filed, and keep the extra copy as proof.

[Visit TrueFiling™, the court's online filing system](#)

Where can I get legal help?

[Form APP-001](#) has full instructions on appeal procedures.

Each Court of Appeal has [self-help resources online](#). You can also contact your local Court of Appeal to see if they have a self-help center at the court.

You can also visit a [law library](#) to do legal research.

The California Courts website has a lot of [information about lawyers and legal help](#).



If you need help finding a lawyer, the California Bar Association website can connect you to a [lawyer referral service](#) in your area.

## **FORMS**

Documents you will need for your case.