

Reply Brief

7. Appellant's Reply Brief

The appellant's reply brief is the final brief of the appeal process. The reply brief is optional.

The appellant's only job in the reply brief is to challenge the legal arguments in the respondent's brief. The appellant does not need to file a reply brief if they believe there are no legal issues in the respondent's brief that must be addressed.

The appellant cannot raise new issues in the reply brief or repeat arguments from the opening brief.

Here's an overview of what to expect in this step of the appeal process and how to write an appellant's reply brief.

[See a sample respondent's brief](#)

Timeline of an Appellant's Reply Brief

The appellant files a reply brief and proof of service with the Court of Appeal within 20 days after the respondent's brief is filed.

The appellant must serve a copy of the reply brief to all parties in the case, the trial court judge, and the Supreme Court of California **BEFORE** filing the original reply brief with the Court of Appeal.

If the respondent does not file a respondent's brief then the appellant does not file a reply brief.

There is no default period and the appellant will not receive a notice from the court about the deadline to file a reply brief.

- ***If an appellant needs more time to file a reply brief***, they must give the Court of Appeal good cause and file a stipulation to extend time or file an application for an extension before the deadline to file the brief.
- ***If an appellant misses the deadline to file a reply brief***, they can file a request with the Court of Appeal for permission to file a late brief. In this situation the court may or may not allow the appellant to file a late brief.
- ***If the Court of Appeal returns a reply brief for corrections***, the court will give the appellant additional time to correct the brief, and to serve and file it again.

Cost of Filing an Appellant's Reply Brief

There is no additional cost to file an appellant's reply brief.

Preparing an Appellant's Reply Brief

The reply brief is the second and final brief written by the appellant.

The reply brief is very different from the appellant's opening brief. The reply brief has a limited purpose, so there are a limited number of sections. That means it will usually take the appellant less time to research and write the reply brief than it takes to complete the opening brief.

Before writing a reply brief, the appellant should carefully review the legal arguments and legal authorities in the respondent's brief. The appellant must:

1. decide which legal issues (if any) in the respondent's brief need to be addressed *and*
2. focus on those issues when researching and writing the reply brief.

The argument is the heart of the appellant's reply brief. The appellant should spend the most time making a persuasive legal argument against the specific legal issues they identified in the respondent's brief.

Outline of an Appellant's Reply Brief

Here is an overview of each section in the appellant's reply brief with a description of what it includes. **All of the sections are required.**

Choose a section to learn more

Cover

The cover of an appellant's reply brief must include basic information:

- the title of the brief (Appellant's Reply Brief)
- the case title, trial court case number, and Court of Appeal case number
- the name of the trial court and the name of the trial court judge
- the appellant's name, mailing address, telephone number, fax number (if available), and e-mail address (if available)
- if the appellant has a lawyer, the name and California State Bar number of each attorney helping to write the brief

If the appellant's reply brief is filed on paper, **the cover must be tan**. *The cover color rule does not apply to briefs filed electronically.*

See the full rules for a cover page [CRC 8.40\(c\)](#) and [8.204\(b\)\(10\)](#)

Table of Contents

The Table of Contents is a list of all the sections in the brief. Each section title is listed in order by the page number.

The Table of Contents tells the Court of Appeal where to find information in the brief. A judge should be able to get a good overview of the appellant's arguments by reading the Table of Contents.

Table of Authorities

The Table of Authorities is a list of all the legal authorities that the appellant discusses in the reply brief. Legal authorities are examples from the law that help prove a legal argument to the Court of Appeal.

The Table of Authorities is created when the brief is finished and all the page numbers are final. Each legal authority must include a page number where it can be found in the brief.

Argument

The argument is the most important part of the appellant's reply brief.

There are strict rules about what the appellant can write about in the reply argument.

What to include This is what the appellant **can do** in the argument:

- address legal issues and arguments raised in the respondent's brief
- show how the respondent did not successfully argue against the legal issues raised in the appellant's opening brief
- address new legal authorities included in the respondent's brief
- provide new legal authorities to try and prove that the respondent's legal arguments or authorities are not correct

This is what the appellant **cannot do** in the argument:

- raise new legal issues
- repeat arguments made in the opening brief

The Court of Appeal will ignore new legal issues and repeat arguments included in the appellant's reply brief.

How to organize the argument

It is best to begin the argument section with an **introduction**. This is a short, one paragraph summary of the reply argument.

Then the appellant should reply to specific legal issues in the respondent's

brief. The appellant can choose which legal issues to address. That means the appellant does not have to reply to all of the respondent's legal arguments. The appellant should focus on legal issues that are related to their argument for appeal.

The appellant's reply argument needs to:

- address the respondent's issues or arguments one at a time
- list each issue or argument under a separate heading or title
- create a title for each issue or argument that is short and summarizes the appellant's point
- list the legal issues in the same order as they are listed in the respondent's brief
- include a statement of law for each issue or argument to show why the respondent is wrong

Remember, the appellant should not introduce new legal issues or repeat legal arguments here that are already discussed in the opening brief.

Referencing the record on appeal

All briefs must follow the same rules about referencing the record on appeal:

- a brief can only discuss information that's in the record on appeal
- for every event or fact about the case that's included in the brief, the appellant must provide an exact location and page number where the court can find it in the record on appeal

Conclusion

This is usually one paragraph where the appellant:

1. briefly summarizes the reply argument and
2. tells the Court of Appeal what relief they are asking for. Basically, this means what the appellant is asking the court to do. For example, the appellant can ask that the order or judgment be reversed, or that a new trial be granted.

Note that no new arguments or issues should be addressed in the conclusion.

Certificate of Compliance OR Word Count

There are rules about how long a brief can be. Each brief must include a Certificate of Compliance saying that it meets the maximum length allowed by the court.

Briefs prepared on a **typewriter** cannot be more than **50 pages**.

Briefs prepared on a **computer** cannot be more than **14,000 words**. The word count *does include* footnotes but it *does not include* the cover, the

Certificate of Interested Entities or Persons, the Tables of Contents and Authorities, the Certificate of Compliance, any signature block, proof of service forms, or any attachments.

The appellant can attach a maximum of 10 pages of documents or exhibits to the end of the brief.

If needed, an appellant can ask the Court of Appeal to allow a longer brief. The appellant would file an "Application to File an Oversized Brief" with the Court of Appeal and serve a copy of the application to all other parties in the case. There is no court form for this application so the appellant types the application on a piece of paper.

The appellant must provide what the court calls "good cause" – which means a good reason – to file an oversized brief. The court may or may not say yes to the request.

[Read California Rules of Court 8.204\(c\) to learn more about the length limitations for briefs](#)

Proof of Service

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

Generally, you must serve a copy of the appellant's reply brief to all parties in the case, to the trial court judge, and to the Supreme Court of California **BEFORE** it can be filed with the Court of Appeal.

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

There are rules about who can serve a brief and how it can be served.

The appellant must give the Court of Appeal proof in writing that all of the required copies were delivered. Appellants are encouraged to use court form [APP-009](#) (delivery by mail or in person) or [APP-009E](#) (electronic delivery) to provide proof of service. This form tells the court who served the brief, who was served with the brief, how the brief was served, and the date it was served.

[The appellant must file one proof of service of service form for each brief that is delivered.](#)

Proof of service forms are included at the end of the appellant's reply brief, after the Certificate of Compliance.

Filing the Appellant's Reply Brief with the Court of Appeal

There are two ways to file a brief: 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 the appellant is self-represented – meaning they do not have a lawyer – then the appellant 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 brief **and** proof of service forms are always given to the Court of Appeal. Some courts also require the appellant to file extra copies of the brief.

The appellant keeps one copy of the brief. It's also a good idea to bring or mail an extra copy of the brief to the court clerk. The appellant 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.

Next Steps After the Appellant's Reply Brief

After all the briefs are filed and the Court of Appeal has had time to review them, the court will contact the parties to ask if they want to participate in oral arguments. All parties who file a brief that the Court of Appeal accepts will have an opportunity to make an oral argument. This is a chance for the parties to talk to the Court of Appeal justices in person and explain the arguments in their briefs.

Additional Resources:

Official appeal procedures for unlimited civil appeal cases ([Form APP-001](#))

[California rules of court for the Courts of Appeal](#)

Common Questions:

Can I talk about old and new legal issues in my reply brief?

You **cannot** introduce new legal issues that were not discussed in the respondent's brief.

But you **can** address new legal issues that the respondent wrote about. That means you can talk about legal issues that are in the respondent's brief that

are not in the appellant's opening brief.

Also you **can** address the respondent's arguments against the legal issues you discussed in your appellant's opening brief. For example, you can say that the respondent's legal authorities did not support their legal argument that the trial court decision was right.

Does the respondent always write a respondent's brief?

No. The respondent is not required to file a respondent's brief. If the respondent chooses not file a brief, they will not be able to speak directly – or present an oral argument – to the Court of Appeal. That means the Court of Appeal will consider the appellant's opening brief, the appellant's oral argument, and the record on appeal. Then the court will make a decision.

Does the respondent write another brief after the reply brief?

No. The respondent only writes one brief.

The law says that the Court of Appeal must assume the trial court decision was correct unless the appellant proves there was an error, which means the law favors the respondent. So the law gives the appellant an opportunity to write a second brief to address the arguments made in the respondent's brief. This is because the appellant has the burden of showing the Court of Appeal that the trial court made a mistake.

The appellant cannot make new legal arguments in the reply brief, so there is nothing new in the reply brief that the respondent needs to address.

Where can I get help writing my brief?

[Form APP-001](#) has full instructions on appeal procedures, including what needs to be in a brief.

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 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.

Can I include new information or new evidence in my brief?

No. An appeal is not a new trial. You cannot introduce new information, new evidence, or new witnesses during the appeal process. The Court of Appeal will only consider what's included in the record on appeal.

Can I include confidential information in my brief?

No. Briefs are generally filed publicly, and publicly filed documents must not disclose confidential or sealed material.

If you need to refer to confidential or sealed material in your brief, please carefully review the procedure described here in [CRC 8.46\(f\)](#) and [CRC 8.47](#).

How do I reference sources from the record on appeal?

For every event or fact about the case that you include in your brief, you must provide an exact location and a page number where the court can find it in the record on appeal.

Here's a list of places information can be found in the record on appeal:

- Appellant's appendix-AA
- Appellant's opening brief-A0B
- Appellant's reply appendix-ARA
- Appellant's reply brief-ARB
- Augmented clerk's transcript-Aug CT
- Augmented reporter's transcript-Aug RT
- Clerk's transcript-CT
- Joint appendix-JA
- Reporter's transcript-RT
- Respondent's appendix-RA
- Respondent's brief-RB
- Superior court file-SC file
- Supplemental clerk's transcript-SCT
- Supplemental reporter's transcript-SRT

Each case is different. Some cases have all of these sources in the record on appeal, and some cases only have a few of these sources.

In your brief, you will support each event or fact with a reference to a page number in one of the sources in this list. You will use the abbreviation that matches the source to tell the Court of Appeal where to look for the information. The court will check each reference to make sure it supports your version of the story.

For example, say you want to tell the court a fact about the case that's on page one of the clerk's transcript. Here's what you would write in the brief: "Appellant filed a civil complaint on January 3, 2018. (CT 1)"

If there is more than one volume of the clerk's transcript or reporter's

transcript, you'll need to write the volume number, then CT or RT, and then the page number. For example: (1 CT 3) or (2 RT 150).

If there is more than one augmented clerk's transcript, include the transcript date. For example: (1/3/18 Aug CT 2).

How do I research and find legal authorities?

You can research and find legal materials at a [public law library](#). Look for books that are written about the area of law that the case involves. For example, search in the area of contract law if a case involves a possible breach of contract for work that was not done or work that was not done properly. A librarian can suggest books to read about different areas of law.

Books written about the law—also called “secondary sources”—will include cases previously decided in all areas. Based on the legal information gathered and the facts of the case, the appellant can make a list of the issues he or she wants to raise. These can be issues the appellant thinks hurt his or her case in superior court the most, or the issues that will help his or her case in the appeal.

What are common mistakes in briefs?

Here is a list of common mistakes made in briefs:

- not citing the record on appeal (giving the court the exact place in the record to look) for a fact that you put in your brief
- including information and sources that are not in the record on appeal
- not citing the law (giving the court the name and place in a published court decision, statute, or other law) for what you say is the law in your brief
- using improper citations that are not legal authorities, like a blog post or an unpublished court decision
- improper or unprofessional tone (don't use curse words or say bad things about people)
- not proofreading (the brief has typos and other obvious errors)
- not clearly telling the court what you want

What are the formatting rules for briefs?

Briefs filed on paper and briefs filed electronically must follow the formatting instructions in [California Rule of Court 8.40](#) and [California Rule of Court 8.204](#).

If you e-file, 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.

Can I include attachments or exhibits with my reply brief?

Attachments should only be included with a brief if they are absolutely necessary. Improper attachments can cause a brief not to be filed, or to be rejected and returned for corrections.

Copies of exhibits or other materials may only be attached if they are already in the existing record on appeal, or in relevant local, state, or federal rules or regulations. The attachments must not be more than a combined total of 10 pages, unless the court grants you permission to break this rule.

If you need to file more than 10 pages of attachments, you can ask the Court of Appeal for permission. You may file a "Request to Attach Additional Exhibits" with the Court of Appeal and serve a copy of the request to all other parties in the case. There is no court form so you type the request on a piece of paper. You must provide what the court calls "good cause" – which means a good reason – to attach additional exhibits. The court may or may not say yes to your request.

Instead of including a lot of attachments, it may be easier to simply make a reference in your brief to any legal authorities, or to exhibits already in the record on appeal.

Before including attachments you should carefully review [CRC rule 8.204\(d\)](#).

How can I check the deadline to file my brief?

You can contact the clerk at your Court of Appeal if you have questions about the deadline to file your brief.

What if I need more time/an extension to file my reply brief?

If you need more time to file your appellant's reply brief, you can agree – or "stipulate" – with the other parties to extend the deadline up to a maximum of 60 days. An extension or stipulation should be filed in the Court of Appeal before the date the brief is due. Stipulations must be signed by all parties and served to all parties.

Note: The parties cannot stipulate to extend the time if the court has already granted an extension to file the brief.

If an appellant needs more time to file and has already stipulated to 60 days or if the parties are unable to agree to an extension, a motion or application for extension of time may be filed with the Court of Appeal. The court may or may not grant the extension for more time.

If an appellant misses the deadline to file a reply brief and did not file a stipulation or extension application before the deadline, he or she can still

file a request with the Court of Appeal for permission to file a late brief. In this situation the court may or may not allow the appellant to file a late brief.

[Get a blank form APP-006 application for extension of time to file a brief](#)

[Get a blank form APP-012 stipulation for extension of time to file a brief](#)

Who needs to receive a copy of my reply brief? How do I serve my brief to other parties or courts?

Always check with your court to confirm the specific filing and service requirements in your case. Not all courts allow electronic filing.

Serving a document means delivering a copy of the document to another party, or delivering a copy to a different court than the one where you are filing the document.

Generally, you must serve a copy of the brief to all parties in the case, to the trial court judge, and to the Supreme Court of California **BEFORE** it can be filed with the Court of Appeal.

- **Serving documents to other parties.** There are three ways to serve a document to another party: by mail, in person, or electronically. If you want to serve a document electronically, you will first need to get the recipient to agree.

A party to the case can serve a brief electronically. The court has rules about who can serve a document 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 document by mail or in person to another party. If the other party *has a lawyer*, then the document is served to the lawyer. If the other party *does not have a lawyer*, then the document is served to the other party.

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

- **Serving documents to the trial court.** The trial court may be served by mail and some trial courts may be served electronically. Always check with your trial court to see if they accept electronically served documents.
- **Serving documents to the California Supreme Court.** The Supreme Court may be served either by mail or electronically. If a brief is served on paper, the Supreme Court must receive 4 copies. If a document is filed electronically through TrueFiling™, it automatically fulfills the service requirements for the California Supreme Court.

What's proof of service?

You need a proof of service form for each person or court who receives a copy of the document. 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 document must complete and sign a proof of service form when they deliver the document. The court requires this form as proof that the document was delivered to all parties in the appeal and the necessary courts.

The original proof of service forms should be attached as the last pages of the original document that you file in the court.

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

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

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 my brief with the Court of Appeal?

There are two ways to file documents with a court: electronically file (e-file) on the computer or file on paper at the court.

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

If filing electronically, the Court of Appeal does not need or require paper copies.

If filing on paper in the Court of Appeal, the original document **and** proof of service forms are always given to the Court of Appeal. Some courts also require you to file extra copies of the documents.

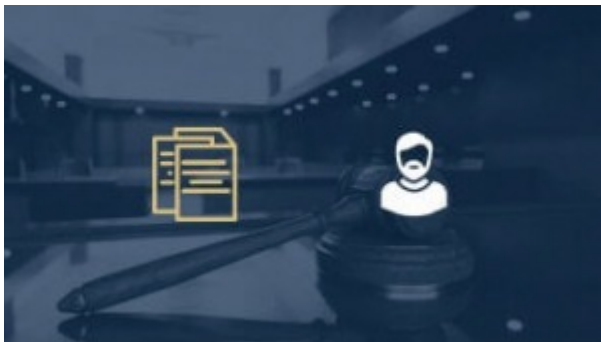
You should always keep one copy of all documents you file with the court. It's a good idea to bring or mail an extra copy of the document to the court clerk. You can ask the clerk to stamp "filed" on the extra copy to show that the original was filed, and keep the extra copy as proof.

What happens if a party files a cross-appeal?

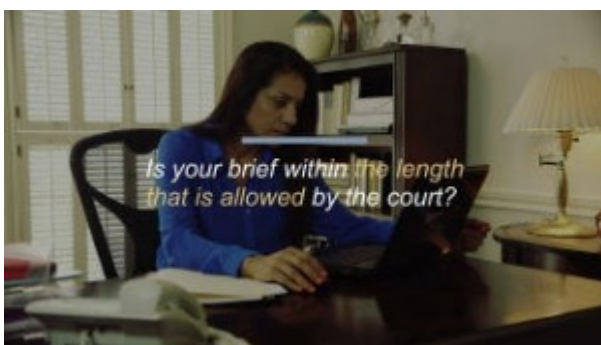
If one of the parties files a cross-appeal, then the briefing contents and briefing schedule are different.

In the event of a cross-appeal, the opposing parties must try to agree on a briefing schedule. The parties must either submit a joint briefing schedule or submit separate briefing schedules for the court to consider and make a final decision.

See [CRC 8.216](#) to learn about the procedures for submitting a briefing schedule in a cross-appeal.



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FORMS

Documents you will need for your case.