

# CHAPTER 4

## BRIEFING THE CASE

The briefs are written arguments put together by each party. If you are the appellant, your brief will explain why you believe the trial judge was wrong. If you are the respondent, your brief will tell the justices why the trial judge was right.

The briefs are the single most important part of the appellate process. While the record (the clerk's or appendix and reporter's transcripts) provides the court with a picture of what occurred at the lower court; it is the briefs that describe any error in those proceedings and explains whether it changed the outcome of the trial. The best briefs contain your entire argument, guiding the Court through the case and using the record and legal authority to justify your points.

There are three briefs:

1. The Appellant's Opening Brief (AOB) – The AOB tells the Court of Appeal (a) what judgments or orders the appellant is appealing, (b) why the appellant thinks the superior court acted incorrectly in making those judgments or orders, (c) what legal authority supports the appellants argument, (d) how the court's actions hurt the appellant, and (e) what the appellant wants the Court of Appeal to do if it finds the superior court acted incorrectly.
2. The Respondent's Brief (RB) – The RB responds to each of the issues raised in the appellant's opening brief, explaining both why the appellant's arguments are not correct and expressing support for the trial court's decision.
3. The Appellant's Reply Brief (ARB) – The ARB addresses the arguments made in the respondent's brief and shows how they do not overcome the arguments made in the appellant's opening brief. No new issues may be raised in the reply brief.

### **Appellant's Opening Brief (green)**

The appellant carries the burden of convincing the appellate court that the trial court made a prejudicial error – that is, an error that changed the outcome of the case. If you are an appellant, the AOB provides your first and best chance to

prove that error. The rest of this section will provide guidance that may be helpful in preparing that critical brief.

## **Time Limits**

There are two potential due dates for the AOB depending on whether the case is proceeding with a clerk's transcript or with an 8.124 appendix (for explanation of these components of the record, see [Chapter 2](#)):

- If the appellant chooses to have a clerk's transcript prepared, once the Court of Appeal receives the record on appeal (the clerk's and reporter's transcripts, or just the clerk's transcript), the clerk sends a notice to all parties that the record has been filed. Then the AOB is due **40 days** from the notice.
- If the appellant or the parties chose to prepare their own 8.124 appendix and did not request a reporter's transcript or chose to lodge the reporter's transcript directly with the Court of Appeal, the clerk's office **will not** send a notice. The appellant's opening brief and appendix are due **70 days** from the date appellant filed the rule 8.124 election in the superior court. (CRC, rule [8.212\(a\)\(B\)](#).)

## **Contents**

The appellant's opening brief is a single bound document that contains:

- Cover
- Table of contents
- Table of authorities
- Statement of the case
- Statement of appealability
- Statement of facts
- Argument
- Conclusion
- Certificate of compliance with length limitations
- Proof of service

(For a discussion of attachments to the brief, see "Important Things to Remember When Writing Your Briefs" later in this chapter.) A short example of an appellant's opening brief is included as [Sample Brief](#). In this example, we have used the facts from *Goldilocks and the Three Bears* as our case. There are only one or two items in our statement of authority and only one issue. We hope that this example from a familiar story will be helpful as you prepare your tables of contents and authorities and set out the facts and issues of your case. You may find it useful to follow along in this sample brief as you read about the various parts of a brief in the discussion that follows.

## Cover

The cover includes identifying information about the case. (See [Sample Brief](#).) The cover should be made out of stiff paper called "cardstock," and should be green. The back of the brief will be a blank page the same color as the front cover and made out of the same cardstock material. The rest of the brief should be bound within the cardstock covers. (See *General format requirements* later in this chapter.)

## Table of Contents and Table of Authorities

The **table of contents** lists the sections of the brief by page number (CRC, rule [8.204\(a\)\(1\)\(A\)](#)). The **table of authorities** lists the cases (in alphabetical order), the statutes and other authorities used in the brief, and the number of the page or pages on which each can be found in the brief. (CRC, rule [8.204\(a\)\(1\)\(A\)](#).) Don't put in the page numbers until the brief is completed, for only then will the final page numbers be known. (See [Sample Brief](#).)

## Statement of the Case

The statement of the case tells the Court of Appeal the procedural history of the case. You should explain what happened in the trial court, in chronological order beginning with the filing of the complaint through the final judgment. The statement of the case should tell about the motions, hearings, and orders that are relevant to the issues on appeal, including the date on which the complaint was filed and the date on which the *Notice of Appeal* was filed. (See [Sample Brief](#).) The appellant must show where this information can be found in the record by putting in the numbers of the pages in the clerk's or reporter's transcript where this information appears. The reference is set out in parentheses as **CT** (clerk's transcript) or **RT** (reporter's transcript) followed by the page number. For

example: “The complaint in this case was filed on December 25, 2000. (CT 1.)” The “(CT 1)” tells the court it can find the first page of the complaint (which will have the file-stamp on it) on page 1 of the clerk’s transcript.<sup>4</sup> The “statement of the case” differs from the facts of the case. The statement of the case refers to what happened to the case *within the court*. There will be a time to address the facts of the case later in the brief.

## Statement of Appealability

Here, the appellant tells the court why this case is appealable. This may already be clear to the appellant, but for the person reading the brief for the first time, this is the statement that sets the stage. Remember in [Chapter 1](#) we discussed the problem of appealability and why it was so important. The case may be appealable because there is a judgment or order of dismissal (after demurrer or other motion) and the case is finished, *or* there may be an order (usually one after the judgment, or after a hearing in a family law or probate case), *or* there may be a non-final judgment. If you are appealing an order or a non-final ruling, you need to explain why it is appealable. (CRC, rule [8.204\(a\)\(2\)\(B\)](#); Code of Civil Procedure, section 904.1.) Generally, an appellant states the statute that gives him or her the right to appeal the case. (See [Sample Brief](#).)

## Statement of the Facts

Before starting on the facts, the appellant should read through the entire record (the reporter’s transcript, clerk’s transcript or appendix, and exhibits, if any). In preparing the statement of facts, the appellant may use only the information he or she designated to be included in the record. For every statement of fact you make in the brief, there must be a **citation** showing the page number where that information can be found in the record (the reporter’s transcript, clerk’s transcript or appendix, or exhibits).

Your statement of facts will depend on the nature of the proceedings in the trial court. If you are appealing after a full trial, you must remember that the Court of Appeal will not retry the case. The Court of Appeal does not change the facts that were found by the superior court judge or the jury in a trial, as long as there is sufficient evidence to support those findings. If the record includes conflicting

---

<sup>4</sup> Other sources that may be referenced are abbreviated as follows:

Appellant’s appendix – AA	Appellant’s reply appendix – ARA
Joint appendix – JA	Appellant’s opening brief – AOB
Respondent’s appendix – RA	Respondent’s brief – RB
Appellant’s reply brief – ARB	Superior Court file – SC file

facts (for example, one witness said the light was green, and the other said it was red), the Court of Appeal will presume the superior court's or the jury's findings on the facts are correct. The Court of Appeal does not change the judge's or jury's decision about whom to believe if the witnesses disagreed about what happened. This means that if you are appealing after a trial, you should assume that the Court of Appeal will resolve all evidentiary conflicts in favor of the judgment being appealed. In other words, you should state the facts in the way that supports the judgment, even if your witnesses or other evidence gave a different version of what happened. Of course, you also may tell your side of the story as well, but you should base it only on evidence or testimony presented to the judge or jury. (See [Sample Brief](#).)

Your statement of facts will be different if the case was dismissed without a trial. Demurrers and summary judgments are two common types of pretrial motions that may cause a case to be dismissed without a full trial. Because cases frequently are dismissed on demurrer or summary judgment, you must write the statement of facts differently than if the facts had already been established in the trial court proceedings. These concerns are discussed in [Appendix 6](#) which discusses demurrer and summary judgment.

## **Argument**

This is the part of the brief in which you discuss each of the errors you believe the superior court made. Without question, this is the most important part of the brief, if not of the entire appeal. Within this section, the appellant must show that the trial court committed what is called “prejudicial error.” It is not enough to show the trial judge made one or more mistakes. The error must be bad enough there is a very good chance it changed the outcome of the case. In order to show the trial court did something the appellate court will find to be legal error, it is necessary to have knowledge of the relevant legal authorities as they apply to the various decisions the trial judge made. This is the part of the brief that is hardest for self-represented parties.

You should discuss each issue separately in light of the facts and the law. The appellant has the burden of showing that there was an error (or errors) so serious that the court's decision must be reversed. In figuring out the issues, think about what happened at the trial or hearing where the alleged errors were made. Did these errors involve findings of fact, discretionary rulings by the judge, or questions of law? Do you think these rulings were really wrong? What did these rulings do to the outcome of your case? You will need to read some legal materials on the subject. Public law libraries are excellent resources for conducting legal

research, and law librarians are trained to help with legal research. See [Appendix 2](#) for information on library locations and hours. Look at books that are written about the area of law that your case involves. For example, if your case involves a possible breach of contract for work that was not done or work that was not done properly look in the area of contract law. Ask the librarian to suggest readings about contracts and breaches of contract. In books written about the law (“secondary sources”), you will find mention of appellate opinions previously decided in the area of contracts. You may want to read those cases because they may tell you which laws apply to your case. Based on this information and the facts of the case, the appellant should make a list of the issues he or she wants to raise—the issues the appellant thinks hurt his or her case in superior court the most or the ones that would help his or her case the most now.

After making a list of the issues, the appellant then needs to determine what **standard of review**<sup>5</sup> the court will apply to each issue. When the appellant argues that the superior court erred in its ruling, the Court of Appeal looks first at what the standard of review is for that particular issue. The three most common standards of review are (1) abuse of discretion, (2) substantial evidence, and (3) de novo review.

1. *Abuse of Discretion* – If the superior court’s decision is one that involved the exercise of its discretion, the “abuse of discretion” standard is used. Any decision for which the judge exercises his or her discretion, such as admissibility of evidence or issuance of restraining orders, comes under this standard. Abuse of discretion occurs when the superior court judge makes a ruling that is arbitrary or absurd—which does not happen very often. The Court of Appeal rarely reverses a superior court judge’s ruling using this standard.
2. *Substantial Evidence* – If you are appealing the factual findings of a judge or jury after trial, the “substantial evidence” standard is used. The Court of Appeal reviews the record to make sure there is substantial evidence to support the factual findings made by the court or jury. The Court of Appeal’s function is not to decide whether it would have reached the same factual conclusions as the judge or jury. Instead, the Court of Appeal merely decides whether a reasonable fact-finder could have come to this conclusion based on the facts in the record. If there is a conflict in the evidence, and a reasonable fact-finder could have resolved the conflict either way, the Court

---

<sup>5</sup> When the Court of Appeal reviews an issue, it needs some kind of rules or guidelines to determine whether the superior court made an error in its decision. Different kinds of rulings require different kinds of review guidelines. These guidelines are called **standards of review**.

of Appeal will affirm the decision. Because the judge or jury at the trial saw the witnesses and heard what the witnesses said, they are in a better position to decide what actually happened and who is telling the truth.

3. *De Novo* – *De novo* is a Latin phrase meaning “from the beginning.” In de novo review, the Court of Appeal does not defer to the decisions made in superior court. Instead it looks at the issues as if the superior court had never ruled on it. This type of review is generally limited to issues involving questions of *law*. If the issues involve questions of law—for example, the interpretation of a contract or a statute—the Court of Appeal does not assume the superior court’s ruling is correct but looks at the issue “from the beginning,” exercising its independent judgment. A trial court’s ruling granting a demurrer or motion for summary judgment is also reviewed under the de novo standard of review. For this reason, reversals happen more often when what is being appealed is a trial court’s decision to grant a demurrer or a summary judgment rather than when you are appealing after a full trial of the case.

Once you determine which standard of review applies to the issue, you must point out why you think the court made the wrong decision and why you are entitled to reversal under that standard of review. Explain why this incorrect decision harmed your case so much that the error should cause the superior court’s order or judgment to be reversed.

For every statement of law you make in the brief, there must be a citation to an appellate court opinion, a statute, a rule, or legal treatise that sets out that proposition. This is where legal research will be required in the writing of your brief. Citations usually appear at the end of the sentence in parentheses. For more information on legal citations, see [Appendix 3](#).

Think of the argument section of your brief as a book in which each issue is a separate chapter. Set off each issue with a heading similar to a chapter title, and subheadings if needed, describing the arguments that will follow. (CRC, rule [8.204\(a\)\(1\)\(B\)](#) and [Sample Brief](#).)

## **Conclusion**

After you have discussed each issue, you should briefly restate your position in a **conclusion** and tell the court what you want it to do. (See [Sample Brief](#).) Be specific in your directions to the court, detailing how you think the court should rule on the matter.

## **Certificate of Compliance and Proof of Service**

If the opening brief is produced on a computer, it must also include a certificate of compliance with the length limitations. (See [Sample Brief](#).) If the brief is produced on a typewriter, it cannot exceed 50 pages in length. In all cases, the brief must include a [Proof of Service](#).

## **Respondent's Brief (yellow)**

The respondent's brief gives the respondent an opportunity to reply to the arguments that the appellant makes in the appellant's opening brief and to explain why the Court of Appeal should *not* reverse the trial court.

### **Time Limits**

The respondent's brief is due 30 days after the appellant's opening brief is filed. (CRC, rule [8.212\(a\)\(2\)](#).)

### **Contents**

The respondent's brief should follow the same general format as the appellant's opening brief, with a cover (for a respondent's brief the cover is yellow), table of contents, table of authorities, statement of the case, statement of facts, argument, conclusion, certificate of compliance, and proof of service. (For a discussion of attachments to the brief, see *Attachments to briefs* later in this chapter.)

The facts are already set out in the appellant's opening brief. However, remember the decision is in the respondent's favor and the facts must be set out to support the winning side of the case. Make sure the facts, as stated by the appellant, are accurate and any conflicts in the facts have been resolved to support the decision. You may end up including a shorter version of the facts. Or, if you totally agree with the way the appellant has set out the facts, you can ask to adopt those facts as yours. As with the appellant's opening brief, you need to make a reference to the record for every fact and for every legal statement, and provide headings and subheadings for each point. (CRC, rule [8.204\(a\)](#).)

As the respondent, you will want to address the facts and legal issues raised in the appellant's opening brief. First, make sure (1) there is a final judgment, if the appeal is from a judgment; or (2) the order is appealable, if the appeal is from an order; and (3) the *Notice of Appeal* was filed on time, or "timely filed." If there



is a problem with the appeal, you may file a motion to dismiss the appeal and/or argue in your respondent's brief that the appeal should be dismissed.

The respondent has the burden of responding to the issues raised by the appellant and showing that the ruling of the trial court was correct. If the court's ruling was incorrect, you, as respondent, must show that the mistake the court made was so small that there was no prejudice. You should not rely on the legal references made by the appellant in his or her opening brief. You probably will need to do some reading on the subject and conduct your own legal research. Go to the county public law library (see [Appendix 2](#)) and research the case law and statutes that relate to the issues on appeal. Reread the court's statement of decision, if there is one, or the orders and judgment set out in the minutes of the court. Be sure to respond to each and every issue raised in appellant's opening brief. Deal with each issue separately, with headings and subheadings that match the ones used by the appellant.

Check the record and make sure that an objection or motion was made to challenge the ruling in the trial court at the time the ruling was made. If no objection or motion was made, the appellant may have waived (given up) the error. Tell the court in your brief if you believe there was a waiver. If the Court of Appeal believes the appellant has waived the issue, it may decide to not even consider the issue the appellant has raised. (But ordinarily you should also argue why it was not error, even if it looks like the appellant waived it. The Court of Appeal may decide the issue was not waived, after all.)

There may be additional issues not mentioned in the appellant's brief—for example, concerning the statute of limitations or other defenses—that may result in a decision in your favor. You should discuss these issues in your respondent's brief even though the appellant did not bring them up.

## **Appellant's Reply Brief (tan)**

Because the appellant has the burden of showing the Court of Appeal that the trial court erred, the appellant is given the opportunity to answer arguments in the respondent's brief. The appellant's reply brief is optional, however.

### **Time Limits**

The reply brief is due 20 days after the respondent's brief is filed. (CRC, rule [8.212\(a\)\(3\)](#).)

## Contents

No new issues may be raised in the reply brief, because the respondent will not have any opportunity to respond to the reply brief. In the reply brief the appellant should:

- show how the respondent has not countered the appellant’s claims stated in the opening brief;
- address the cases and the arguments raised in the respondent’s brief; and
- respond to any new issues the respondent raises in its brief. The cover for an appellant’s reply brief should be tan.

## Important Things to Remember When Writing Your Briefs

1. *Table of contents and table of authorities* – When you have finished your brief, copy each heading and subheading into a table of contents (which will be page i of your brief.) (See [Sample Brief](#).) The person reading your brief should be able to get a good overview of the case by skimming the table of contents. Then go through the brief and write down all of the cases you cited, then all the statutes, then all the rules of court, then all the other books and articles. List the cases alphabetically, the statutes alphabetically by code and numerically by section number within each code, and the books and articles alphabetically by author. Type these lists—cases, statutes, and “other authorities”—and note on which page or pages each item is found in the brief. (See [Sample Brief](#) and CRC, rule [8.204\(a\)](#).) The table of contents and table of authorities should have a different set of numbers from the rest of the brief using small Roman numbers. For example, the tables could be pages i-iv, then you would start with page 1 for the text of your brief.
2. *Certificate of compliance with length limitations* – Every brief produced on a computer must include a certificate of compliance stating the number of words in the brief. A brief produced on a computer must not exceed 14,000 words, including footnotes. A brief produced on a typewriter must not exceed 50 pages. The table of contents and table of authorities are not counted in computing the number of pages or words. (CRC, rule [8.204\(c\)](#).) You may rely on the word count of the computer program used to prepare the brief. ([Sample Brief](#).)

3. *Attachments to briefs* – You should be very careful about including attachments to your brief. Improper attachments can cause your brief not to be filed, or to be stricken or returned to you for corrections. (CRC, rule [8.204\(e\)](#).) Before including attachments, you should carefully consult CRC, rule [8.204\(d\)](#).

You may attach to your brief copies of exhibits or other materials already contained in the existing record on appeal. The attachments must not exceed 10 pages, unless you get permission from the court. (CRC, rule [8.204\(d\)](#).)

If you include any attachments to your brief, you must file a declaration stating whether the material is part of the record and, if not, why each attachment is permissible under the rules.

4. *General format requirements* – CRC, rule [8.204\(b\)](#) describes the format requirements for briefs. Briefs should be:

- Typed or prepared on a word processor or computer;
- On 8-1/2-by-11 inch recycled, plain white paper of at least 20-pound weight (except for the cardstock front and back covers) -- do not use legal or pleading paper with numbered lines;
- One-and-a-half or double spaced, with single-spaced headings and footnotes. Both sides of paper may be used unless you prepared the brief on a typewriter;
- Bound on the left side of the pages. If stapled, the staples must be covered by tape (most briefs, however, are Velobound);
- Printed with a type size of at least 13 points or prepared on a standard pica typewriter (not elite) with type size no smaller than 10 characters per inch;
- Side margins of 1-1/2 inches, and upper and lower margins of 1 inch; and
- Pages must be consecutively numbered.

The cover colors are standardized, per CRC, rule [8.40\(b\)](#), as follows:

Appellant's opening brief – green  
Respondent's brief – yellow  
Appellant's reply brief – tan  
Appellants Appendix – green

Respondents Appendix – yellow  
Joint appendix – cream or white  
Petition for rehearing (discussed later) – orange  
Answer to Petition for Rehearing – blue  
Petition for review (discussed later) – white  
Answer to Petition for Review – blue

The pages should be bound in pamphlet or book style. On the cover you should put the title of the case, the superior court and Court of Appeal case numbers, the name of the superior court judge and county, the type of brief (for example, “Appellant’s Opening Brief,” “Respondent’s Brief,” or “Appellant’s Reply Brief” (see [Sample Brief](#)), and your name, address, and daytime telephone number. (CRC, rule [8.204\(b\)\(10\)](#).) The court heading should be centered at the top of the brief cover.

5. *Service* – The original and three copies, and either a scan ready or electronic copy of the brief must be filed with the Court of Appeal, showing service on all the parties (CRC, rule [8.25\(a\)](#)), the Clerk of the superior court (for delivery to the judge in the case). (CRC, rule [8.212\(c\)\(1\)](#)). Filing of an electronic copy with the Court of Appeal satisfies the requirement to serve the California Supreme Court. You must also serve any public officer or agency required to be served by CRC, rule [8.29](#).
6. *Extensions of time* – If you need more time to file the appellant’s opening brief, the respondent’s brief or the appellant’s reply brief, you and opposing counsel can stipulate (agree in writing to allow extra time, see [Chapter 2](#), footnote 4) up to a maximum of 60 days for each brief. Stipulations to extend time (see [Stipulation for Extension of Time to File Brief](#)) must be filed in the Court of Appeal before the date the brief is due. If you need more time and have already stipulated to 60 days or if you are unable to get opposing counsel to agree to a stipulated extension, you must file a motion or application for extension of time with the Court of Appeal. (CRC, rules [8.212\(b\)](#), [8.50](#), [8.60](#), [8.63](#).) (See [Application for Extension of Time](#).) Do not delay when requesting an extension of time to file a brief. It is wise to do so as early as possible and before any deadlines. For a more detailed description of applications/stipulations for extension of time, see [Chapter 5](#).

If the appellant’s opening brief is late, a notice (under CRC, rule [8.220\(a\)](#)) will be sent that gives the party 15 more days to file the brief. If the appellant’s opening brief is not filed within the 15-day grace period, the appeal may be dismissed. If the respondent’s brief is not filed on time, a notice (CRC, rule [8.220\(a\)](#)) will be sent. If the brief is not filed within the 15

day grace period, the court will decide the case on the appellant's opening brief, the record, and any oral argument by the appellant. (CRC, rule [8.220\(a\)\(2\)](#).) The respondent will not be allowed to make an oral argument to the court. Within the 15-day period, a party may apply for an extension of that time for good cause. If a brief is not filed after the extension is granted, the court may dismiss the appeal. (CRC, rule [8.220\(d\)](#).)

7. *Exhibits* – In some superior courts, exhibits are lodged with the court. Since they were **lodged**, the superior court returns the exhibits to the parties at the end of the case. A party who wishes to have the Court of Appeal consider an original exhibit must file a notice (which designates the exhibits to be sent) in superior court within 10 days after the respondent's brief is filed. A copy of the notice must be sent to the Court of Appeal. Ten days after the notice is filed in superior court, any other party wishing to have the Court of Appeal consider additional exhibits may also file a notice in the Superior court. Under CRC, rule [8.224\(b\)](#), the superior court puts the designated exhibits in its possession into numerical or alphabetical order. The exhibits are sent to the Court of Appeal along with two copies of the list of exhibits being sent. If the trial court has returned the exhibits to the parties who lodged them, a party can transmit exhibits directly to the Court of Appeal. The party prepares a Notice of Lodging of Exhibits. The notice identifies each exhibit being transmitted to the Court of Appeal. The listed exhibits are placed in numerical or alphabetical order. The exhibits are sent to the Court of Appeal with an original and one copy of the Notice of Lodging of Exhibits. Since exhibits are lodged with the Court of Appeal, they will be returned at the end of the case.
8. *Non-compliant briefs* – If the brief is not done properly— for example has no table of authorities or no citations to the record—the Court may decline to file it. Or at the request of the opposing party or on its own motion, the court may strike the brief and return it to the party for corrections and changes. In making these corrections, generally it is necessary to prepare a new document, which must be served on all the parties and filed with the court. If the incorrect or omitted items have been redone properly, the court files the corrected document. If the items have not been redone properly, the court may dismiss the case if it is an appellant's opening brief, or let the appeal proceed on the record and the appellant's opening brief if it is the respondent's brief. (CRC, rule [8.204\(e\)](#).)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION [Insert division#]

THE THREE BEARS,

Plaintiffs and Respondents,

v.

GOLDILOCKS,

Defendant and Appellant.

Court of Appeal No. \_\_\_\_\_

(Super. Ct. No. \_\_\_\_\_)

Appeal From a Judgment **[or Order]**  
Of The Superior Court, County of \_\_\_\_\_  
Hon. \_\_\_\_\_, Judge  
**[Superior Court Judge]**

APPELLANT'S OPENING BRIEF

**Your name**  
**Your Address**  
**Your Phone Number During the Day**

**Appellant [or Respondent]**  
**Self-Represented**

**If Appellant's Opening Brief, this cover page is green.**

**If Respondent's Brief, this cover page is yellow.**

**If Appellant's Reply Brief, this cover page is tan.**

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
STATEMENT OF APPEALABILITY	1
STATEMENT OF FACTS	1
ARGUMENT	
I.    GOLDBLOCKS WAS GIVEN IMPLIED CONSENT TO ENTER THE HOUSE AND THUS HER ENTRY WAS NOT "WRONGFUL"	2
A. The Standard of Review	2
B. Elements of the Action	2
C. No Evidence of Wrongful Entry	3
CONCLUSION	4
CERTIFICATE OF COMPLIANCE	5

## TABLE OF AUTHORITIES

### CASES

---

	Page
Gallin v. Poulou (1956) 140 Cal.App.2d 638.	3
Miller v. National Broadcasting Co. (1986) 187 Cal.App.3d 1463.	3
Williams v. General Elec. Credit Corp. (1946) 159 Cal.App.2d 527.	3
Williams v. Wraxall (1995) 33 Cal.App.4th 120.	2

### STATUTES (if any)

---

### OTHER

---

Restatement 2nd of Torts, section 167.	3
5 Witkin, Summary of California Law (9th ed. 1988)	3



## STATEMENT OF THE CASE

The Three Bears filed a complaint in August 2001 alleging Goldilocks had trespassed on their property by entering their home when they were not at home, consuming a meal and falling asleep in a bed. The complaint alleged that Baby Bear had suffered physical and mental damages as a result of being frightened upon discovering Goldilocks. (CT 1-4.) After a civil trial on the matter over a period of two days, the court found that Goldilocks had committed trespass. (CT 25.) The court entered a final judgment in favor of the Three Bears in the amount of \$50,000. (CT 27.)

## STATEMENT OF APPEALABILITY

This appeal is from the judgment of the San Diego County Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1).

## STATEMENT OF FACTS

Papa Bear lives in Los Angeles, California with his wife, Mama Bear and son, Baby Bear. (RT 1.) Appellant Goldilocks lives a few miles away on the other side of the forest. (RT 25.) The Bears' neighbor, Gloria Gardner, watched what happened from her garden next door. (RT 15.)

Gardner testified she saw the Bear family leave their house without shutting the front door about 8:00 a.m. and saw Goldilocks enter the house at about 8:30. At about 9:30 a.m. she heard screams and saw Goldilocks run from the Bears' house. (RT 17.)

The Bears testified that when they returned from the walk, they saw they had left the front door open. (RT 3.) Food was missing from the dining room table. (RT 4.) Baby Bear found Goldilocks asleep in his bed. (RT 6.) Terrified, Baby Bear screamed and woke up Goldilocks. (RT 9.) Startled and confused, Goldilocks ran from the Bears' house. (RT 30.)

An expert bear cub psychologist, Dr. Dramatic, who has done extensive research in the phobias of young bears, testified to the traumatic effects when a bear cub comes in contact with a human child. Baby Bear had physical symptoms of blackouts stemming from his encounter with Goldilocks as well as mental anguish requiring therapy. (RT 21-24.)

Goldilocks testified she was looking for a boarding facility to take a rest, the Bears' house was very large, there was no fence to indicate this was private property, the door of the house was left open and there was a mat at the front door that said "WELCOME". (RT 25-26.) She thought this was a commercial boarding establishment, as large amounts of food were set out as if for guests; she looked for someone to ask about spending the night and saw several sets of chairs and beds all in different sizes. (RT 27-28.) She sat down on a bed and fell asleep. (RT 29.)

#### ARGUMENT

#### I. GOLDBLOCKS WAS GIVEN IMPLIED CONSENT TO ENTER THE HOUSE AND THUS HER ENTRY WAS NOT "WRONGFUL"

A. The Standard of Review. The trial court erred in finding that Goldilocks trespassed on the Bears' property as there is no substantial evidence to support that finding. On review, the appellate court looks to the record to see if there are facts to support the trial court or jury's findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict in favor of the party who won in the trial court. (*Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 132.)

B. The Elements of the Action. A trespass occurs when a person intentionally, recklessly or negligently enters land in the possession of another. (*Gallin v. Poulou* (1956) 140 Cal.App.2d 638, 645.) The intent to enter is the only intent needed. (*Miller v. National*

*Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1480.) However, consent or permission to enter upon the property is a defense. (*Williams v. General Elec. Credit Corp.* (1946) 159 Cal.App.2d 527, 532; 5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706; Rest.2d Torts, § 167.)

C. No Evidence of Wrongful Entry. Here, Goldilocks did not intend to enter on private property. She thought the Bears' house was a public, commercial boarding house. Although her actual intent is not a legal defense, her actual intent reinforces her argument that she had consent to enter the building. The door was open, the WELCOME mat was out, the food was on the table, and there were many beds and chairs about. All of this points to the conclusion the Bears were prepared for and awaiting the arrival of numerous persons and supports Goldilocks' belief this was a boarding house and there was no reason for her not to enter. At a minimum the house was prepared and open for an "open house". No evidence points to any indication the house was closed, off-limits to outsiders, or limited in the types of persons who would be admitted. There is no evidence to support a finding Goldilocks' entry was wrongful. The judgment must be reversed.

CONCLUSION

Goldilocks submits the Three Bears have failed to meet their burden of proving that her entry into their house was wrongful and, thus, a trespass. All of the evidence supports a finding that the Bears by their conduct consented to Goldilocks' entry. Goldilocks respectfully asks that this Court reverse the decision of the trial court and vacate the award of damages.

Respectfully submitted,

DATED:

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Your name-printed or typed)

SAMPLE BRIEF

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains \_\_\_\_\_ words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By \_\_\_\_\_  
(Your Signature)

**An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties.**

SAMPLE

# COURTS AND PUBLIC LAW LIBRARIES

## COURTS

### **Superior Courts in the Second District**

You must file all *Notices of Appeal* and Designations of the Record accompanied by appropriate *Proofs of Service* at any filing window at any branch in the county in which your superior court case occurred. For a listing of the superior court locations in your county, please refer to the court's website at [www.courts.ca.gov/superiorcourts](http://www.courts.ca.gov/superiorcourts). It is highly recommended that you file these documents at the appeals section of the superior court in your county. Those locations are as follows.

#### Los Angeles County:

Clerk, Appeals Section  
Los Angeles Superior Court  
Stanley Mosk Courthouse  
111 North Hill St., Room #111  
Los Angeles, CA 90013  
(213) 974-5238

#### Ventura County:

Clerk, Appeals Division  
Ventura Superior Court  
800 S. Victoria Ave., Room #210 (Window 13)  
(If mailing filing, P.O. Box 6489)  
Ventura, CA 93006  
(805) 654-2269

#### San Luis Obispo County:

Clerk, Appeals Division  
1050 Monterey St., Room #220  
San Luis Obispo, CA 93408  
(805) 781-5677

#### Santa Barbara County:

1100 Anacapa, 2nd Floor  
Santa Barbara 93010  
(805) 568-2220

## **California Court of Appeal**

For filing documents in the Court of Appeal, the address is:

Clerk, Court of Appeal  
300 South Spring St., Room # 2217  
Los Angeles, CA 90013

## **California Supreme Court**

For filing documents in the California Supreme Court the address is:

California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102  
(415) 865-7000

## **PUBLIC LAW LIBRARIES**

All four counties in Division Two have County public law libraries. Some, like Los Angeles County, have multiple branch locations. Below is a listing of the main locations for the law libraries, along with their websites from which other locations can be identified. Many of the libraries' websites contain links to other helpful legal research sites.

Los Angeles County:

301 West First Street  
Los Angeles, CA 90012  
(213) 629-3531  
<http://www.lalawlibrary.org/>

Ventura County:

800 S. Victoria Ave.  
Ventura, CA. 93009  
(805) 642-8982  
<http://www.vencolawlib.org/>

San Luis Obispo County:

County Government Center, Room 125

1050 Montgomery St.

San Luis Obispo, CA 93405

(805) 781-5855

<http://www.sloccl.org/>

Santa Barbara County:

Santa Barbara County Courthouse

1100 Anacapa

Santa Barbara, California 93101

(805) 568-2296

<http://www.countylawlibrary.org/info.htm>



## CITING YOUR SOURCES OF INFORMATION

Every statement of law in your brief must be supported by a citation to a case, statute, rule, constitutional provision, treatise, law review article or other source that supports the statement you are making. The citation is usually contained in parentheses at the end of the sentence. (See [Sample Brief](#).) For example, your brief might state: "The elements of a cause of action for negligence are: duty, breach of duty, legal cause, and damages. (*Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463.)"

The California Style Manual is the manual followed by California courts for citation form. You can find the California Style Manual in any law library. However, if you follow the general guidelines in this Appendix, you will probably not need to consult the California Style Manual. The court is mainly interested in finding out where you got the information you have included in the brief. Your brief will be accepted as long as the citations are clear enough to identify your reference sources.

Here are some simple guidelines for proper citation form:

### CASES:

You should include the name of the case you are citing, the year it was decided, the volume and page number of the official reporter where the case appears, and the page number in the case that specifically supports the proposition of law you are stating. For example, a California Supreme Court case would be cited as follows: *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1351. The "30 Cal.4th" refers to volume 30 of the fourth series of Official California Reports, which is the official reporter for California Supreme Court opinions. The "1342" refers to the page in volume 30 where the case starts. The "1351" is the page number of the case you are referring to in your brief. Similarly, a California Court of Appeal case would be cited as follows: *Albertson's, Inc. v. Young* (2003) 107 Cal.App.4th 106, 113. The "107 Cal.App.4th" refers to volume 107 of the fourth series of Official California Appellate Reports, which is the official reporter for California Court of Appeal opinions.

Federal court citations follow the same general format. United States Supreme Court cases can be found in three separate reporters: the United States Supreme Court Reporter (abbreviated U.S.), the Supreme Court Reporter (abbreviated S.Ct.), or the Lawyer's Edition Reporter (abbreviated L.Ed.). You may cite to any of these reporters. For example: *Montana v. United States* (1981) 450 U.S. 544, 551. For other federal courts, your citation should identify which

federal circuit or district court decided the case. Federal circuit court cases are cited as follows: *Clicks Billiards, Inc. v. Sixshooters, Inc.* (9th Cir. 2001) 251 F.3d 1252, 1257. "9th Cir." indicates that the case was decided by the Ninth Circuit Court of Appeals, and "F.3d" refers to the third series of the Federal Reporter. Federal district court cases are cited as follows: *Plute v. Roadway Package System, Inc.* (N.D. Cal. 2001) 141 F.Supp.2d 1005, 1010. "N.D.Cal." indicates that the case was decided by the United States District Court for the Northern District of California, and "F.Supp.2d" refers to the second series of the Federal Supplement Reporter.

For cases from other states, you will need to cite to the National Reporter System regional reporter or the state's official reporter. Identify which state court decided the case in your citation. Here is an example: *In re Gatti* (Ore. 2000) 8 P.3d 966, 972-973. "P.3d" refers to the third series of the Pacific regional reporter. Here is another example: *Fischer v. Governor* (N.H. 2000) 749 A.2d 321, 326. "A.2d" refers to the second series of the Atlantic regional reporter.

#### **STATUTES:**

For a California statute, give the name of the code and the section number. For example, "Code of Civil Procedure, section 1011" or "Family Code, section 3461." For a federal statute, cite to the United States Code (abbreviated U.S.C.). For example, "28 U.S.C. section 351."

#### **RULES:**

For rules, identify the body of rules you are citing and the specific rule number. For example, "Cal. Rules of Professional Conduct, rule 3-500" or "Cal. Rules of Court, rule 8.220(a)."

#### **CONSTITUTIONS:**

For constitutions, identify whether you are referring to California or United States Constitution and refer to the specific constitutional provision you are relying on. For example, "California Constitution, article IX, section 2" or "United States Constitution, Fourteenth Amendment."

#### **TREATISES:**

For legal treatises, you should indicate the volume number of the treatise you are citing (if it has more than one volume), the author of the treatise, the title, edition and year, and the section and page number that supports the proposition of law you are stating. For example, "5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706." This is a citation to volume 5 of a treatise by author

Witkin entitled Summary of California Law, and the specific portion of the treatise cited is section 607 of the Torts chapter on page 706.

### **LAW REVIEWS AND JOURNALS:**

For law review or journal articles, you should identify the author, title of the article, year it was printed, name of the law review or journal, volume and page number, and the specific page number of the article you are citing to. For example: Volokh, *The Mechanics of the Slippery Slope* (2003) 116 Harv. L.Rev. 1026, 1033. The abbreviation "Harv. L.Rev." stands for Harvard Law Review, and this article appears in volume 116 of the Harvard Law Review at page 1026. If you do not know the proper abbreviation, you may spell out the entire journal name in your citation.

### **OTHER SOURCES:**

If you are citing any other source, do your best to identify the source as accurately as possible, so that someone reading your brief could easily find it and look it up. As a general rule, you should identify the author, title, year, volume,

## SUMMARY JUDGMENT AND DEMURRER

Demurrers and summary judgments represent special circumstances that necessitate slightly different procedural requirements throughout the appellate process. The three most important differences occur in determining the appealability of your appeal, identifying the order or judgment from which you can appeal, and in identifying the facts in the process of writing the brief. Those differences are discussed below.

### APPEALABILITY

#### Demurrer Sustained Without Leave to Amend

If a plaintiff files a case in superior court and the facts in the complaint do not state a cause of action (that is, they give no legal basis for the defendant to be held responsible for any damages claimed by the plaintiff), the defendant may bring a **demurrer** asking that the case be dismissed. If a cause of action has been stated, the superior court overrules the demurrer and the case continues on. If no cause of action has been stated but the court believes there may be more facts that will enable the plaintiff to state a cause of action, the court sustains the demurrer "with leave to amend," in which case the plaintiff can restate his or her case in an amended complaint.

If the court believes the complaint does not state a cause of action and cannot be amended to state a cause of action, the court will sustain the demurrer without leave to amend and the case is dismissed. The demurrer ruling is an order which, by statute, may not be appealed. (Code of Civil Procedure, section 581d.) In order to appeal this decision, the order sustaining the demurrer without leave to amend must say the case is dismissed or a separate judgment of dismissal must be entered by the trial court (for more information, refer back to [Chapter 1.](#))

#### Summary judgment

In a summary judgment, one party may contend there are no facts that need to be decided, or the parties may agree on what the facts are. Either side (and sometimes both sides) may bring a motion for summary judgment arguing that they are entitled to a judgment in their favor without a trial. Unless the parties agree that there is no genuine dispute about material facts in the case, the court must determine whether there are any such disputed facts. Unlike a demurrer, the court is not limited to the allegations of the complaint, and it will review sworn statements or other evidence submitted by the parties in writing. The court will then decide if there is conflicting evidence in the record as to the material facts.

Where the court finds that there is a genuine dispute as to material facts, the summary judgment motion will be denied because the evidentiary conflict must be resolved in a trial. Where there is a genuine issue of material fact, the court will

grant summary judgment in favor of one of the parties. For example, if all the evidence shows that the light was green, the court does not need to hold a trial to determine whether the light was red or green.

A trial court's order granting a motion for summary judgment is not appealable. A party seeking to appeal the ruling must first get a final judgment based on that ruling (again, for more information, refer back to [Chapter 1](#).) Once a final judgment is entered, an appeal may be taken to review both the judgment and the summary judgment order.

## **STATEMENT OF THE FACTS IN THE BRIEF**

Your statement of facts will be different if the case was dismissed or judgment was entered without a trial. In such a case, the facts have not yet been established by the trial court. Demurrers and summary judgments are two types of pretrial motions that may cause a case to be decided without a full trial. Because cases are commonly decided by sustaining a demurrer or granting a motion for summary judgment, we shall explain a little about how to write the statement of facts when appealing from such a dismissal.

### **Demurrer Sustained Without Leave to Amend**

The only issue in an appeal after dismissal from a demurrer sustained without leave to amend is whether the trial court erroneously found that the complaint failed to state a cause of action for which relief could be granted. On appeal, the Court of Appeal looks only at the complaint and assumes all of the factual allegations are true in order to rule on whether the complaint states a cause of action. Thus, the Statement of Facts in the opening brief should be based on and should emphasize the facts as alleged in the complaint and why they are a sufficient basis on which to seek relief in the court.

### **Summary judgment**

In looking at the facts on appeal after a summary judgment, the question is exactly the same as the issue before the trial court: “Is there a genuine dispute as to material facts that must be resolved at a trial?” If there is such a factual dispute, summary judgment should not have been granted, the judgment should be reversed, and the case should go back to the trial court for a trial.

Thus, if you are the appealing party, your Statement of Facts should emphasize the evidence in the record that you believe conflicts with the trial court's ruling. You should point out the evidence which demonstrates there is a factual conflict that must be resolved in a trial. Your arguments should be supported by appropriate page number citations to the record.