

FIRST DISTRICT APPELLATE PROJECT

**APPELLATE REPRESENTATION
TRAINING SEMINAR
APRIL 26, 2024**

**A GUIDE TO DEPENDENCY PRACTICE IN
THE FIRST DISTRICT**

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Staff Attorneys
First District Appellate Project**

A GUIDE TO DEPENDENCY PRACTICE IN THE FIRST DISTRICT

FDAP Annual Seminar
April 26, 2024
Amy Grigsby and Louise Collari

First District Counties – Trial attorneys

Alameda County

ACPC – <https://www.acparentscounsel.org/>
info@acparentscounsel.org
Dawn McMahan dmmcmahan@dnmlegal.com
Cheryl Smith - debcher1@aol.com

Contra Costa County

Contra Costa Juvenile Advocates
<http://www.cc-courts.org/juvenile/juvenile-dependency.aspx>

Lake, Marin, Mendocino, Solano, Sonoma Counties

Dependency Legal Services <https://dependencyls.com/>
John Passalaqua - 300law@att.net

Humboldt County

Independent attorneys

San Francisco County

SF Bar Juvenile Dependency Law Panel

San Mateo County

Private Defender Program
Ron Reyes, Managing Attorney - ronr@smcba.org

Napa County

Independent attorneys

Del Norte County

Independent attorneys

Superior court contact info; service information

<https://www.fdap.org/resource/legal-institutional-directories/>

Alameda County Superior Court

1225 Fallon Street, #G4

Oakland, CA 94612

510-891-6001

E-service: County Counsel: occappeals/eservice@acgov.org

Contra Costa County Superior Court

725 Court Street (P.O. Box 911)

Martinez, CA 94553

925-608-1000

E-service: County Counsel: steven.rettig@cc.cccounty.us

Del Norte County Superior Court

450 H Street, Room 209

Crescent City, CA 95531

707-464-8115 ext. 113

Humboldt County Superior Court

825 Fifth Street

Eureka, CA 95501

707-445 -7256

E-service: County Counsel: countycounsel@co.humboldt.ca.us

Lake County Superior Court

255 North Forbes Street

Lakeport, CA 95453

707-263-2374 ext. 2526

Marin County Superior Court

P.O. Box 4988

San Rafael, CA 94913

415-444-7000

Mendocino County Superior Court

100 North State Street

Ukiah, CA 95482

707-468-2029

E-service: County Counsel: cocosupport@co.mendocino.ca.us

Superior court: appeals@mendocino.courts.ca.gov

Napa County Superior Court

825 Brown Street

Napa, CA 94559

707-299-1236

E-service: County Counsel: cocodependency@countyofnapa.org

San Francisco County Superior Court

400 McAllister Street

San Francisco, CA 94102

415-551-3891

E-service: County Counsel: sfcatty.juv.dependency@sfgov.org

San Mateo County Superior Court

222 Paul Scannell Drive

San Mateo, CA 94402

650-261-5100 ext. 8

E-service: County Counsel: smc-countycounsel@smcgov.org

Solano County Superior Court

600 Union Avenue

Fairfield, CA 94533

707-207-7345

E-service: County Counsel: solanocountycounsel@solanocounty.com

Sonoma County Superior Court

600 Administration Drive

Santa Rosa, CA 95403

707-521-6572

Communicating with the client

Letters/emails to client throughout the appellate process

- At appointment
Introduction and explanation of the process
- When briefs are filed
Explaining issues raised and next steps
- When opinion issues
Include information regarding other options available to client (i.e. Petition for review, after termination of parental rights)
Provide client with record.
- When filing a No Issues Statement
Being specific about time frame to file their own letter and providing client with the record.

Motion Practice

<https://www.fdap.org/resource/forms/>

Record Omission Letter v. Request to Augment (Rule 8.410, 8.416)

Contents of normal record on appeal is set forth in Rule 8.407.

Record Omission Letter – Letter to superior court clerk

Rule 8.410(a): If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or order requires to be included, without the need for a motion or court order, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript and the clerk must promptly send the document or transcript-as an augmentation of the record-to all those who are listed under 8.409(e)

Local Rule 4 (b) -Augmentations of the Record:

<https://www.courts.ca.gov/1954.htm>

Local Rule 11 – Extensions of Time for Filing Briefs: When a record omission letter is filed, the deadline for filing the party's brief shall be **automatically extended by 15 days** from the date the omitted part of the letter is filed.

Request to Augment – Motion to Court of Appeal

Rule 8.410(b): (b) Augmentation or correction by the reviewing court

- (1) On motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155(a) and (c).

Motion “shall be submitted on the earliest date practicable” but no later than 30 days after the record has been filed. (Local Rule 4(c))

However, in fast-track cases, the motion to augment must be filed within 15 days after receiving the record. (Rule 8.416(d), Local Rule 4(c).)

Local Rule 4 – Augmentations of the Record:

<https://www.courts.ca.gov/1954.htm>

Extension of Time Requests

[Form JV-817](#) – New version effective January 1, 2024. CCAP has “unlocked” versions of the forms on their website.

Rule 8.63(b) factors in determining good cause for EOT request

- (1) The degree of prejudice, if any, to any party from a grant or denial of the extension. A party claiming prejudice must support the claim in detail.
- (2) In a civil case, the positions of the client and any opponent with regard to the extension.
- (3) The length of the record, including the number of relevant trial exhibits. A party relying on this factor must specify the length of the record.
- (4) The number and complexity of the issues raised. A party relying on this factor must specify the issues.
- (5)...
- (6) Whether the case is entitled to priority.
- (7) Whether counsel responsible for preparing the document is new to the case.
- (8) Whether other counsel or the client needs additional time to review the document.

(9) Whether counsel responsible for preparing the document has other time-limited commitments that prevent timely filing of the document. *Mere conclusory statements that more time is needed because of other pressing business will not suffice.* Good cause requires a specific showing of other obligations of counsel that:

(A) Have deadlines that as a practical matter preclude filing the document by the due date without impairing its quality; or (B) Arise from cases entitled to priority.

(10) Illness of counsel, a personal emergency, or a planned vacation that counsel did not reasonably expect to conflict with the due date and cannot reasonably rearrange.

(11) Any other factor that constitutes good cause in the context of the case.

Rule 8.416(f): A showing of *exceptional* good cause is required in appeals from all terminations of parental rights.

Using default time

In the First District, do not file a request for an extension of time if the brief will be filed within the time allotted by the California Rules of Court, which provides an additional 30 days after the official due date in most juvenile cases (rule 8.412(b)(5)) and an additional 15 days in dependency appeals from the termination of parental rights (rule 8.416(g)). If, however, the attorney believes that he or she will not be able to file the brief within the additional time provided by rules 8.412, 8.416, and 8.360, the attorney should file an EOT request .

Last minute extension requests are strongly disfavored. Avoid filing the request less than a week prior to the current due date.

***Marsden* transcripts**

Obtaining *Marsden* transcript

Check docket to see if Court of Appeal received transcript

If COA does not have transcript, send omission letter

If COA has transcript, file an application to view confidential transcript - Rule 8.45(d)

Using *Marsden* transcript in briefing

Rules 8.46 and 8.47

Filing an application requesting permission to file under seal

Rule 8.47(b)(3)(C) - Redacted and unredacted briefs

Abandonment (Rule 8.411)

Abandonment must be authorized by appellant and signed by either the appellant or the appellant's attorney of record. If the child is the appellant, the abandonment must be authorized by the child or, if the child is not capable of giving authorization, by the child's GAL.

Per FDAP: In all cases, whether independent or assisted, appointed counsel must consult with FDAP before filing an abandonment of the appeal. <https://www.fdap.org/panel-attorneys/policies-procedures/>

If record has not yet been prepared, the appellant must file the abandonment in the superior court.

If the record has been prepared, the appellant must file the abandonment in the Court of Appeal.

Consolidation motions

No rule of court that expressly governs requests to consolidate appeals. The granting or denying of a motion to consolidate appeals is entirely in the discretion of the reviewing tribunal. (*Sampson v. Sapoznik* (1953) 117 Cal.App.2d 607, 609.)

Local Rule 7: Motions to consolidate appeals must include a statement indicating whether the other party or parties agree with the proposed consolidation. <https://www.courts.ca.gov/1954.htm>

Considerations for consolidation:

Parties are identical.

Records are largely identical.

Issues are intrinsically entwined.

Separate briefing of the two appeals would be unnecessarily cumbersome and duplicative.

Consolidated briefing will promote judicial economy.

Consolidation would conserve judicial resources.

Most efficient way for parties to brief the facts and issues.

Briefing Guidelines

<https://www.fdap.org/resource/forms/>

Contents of brief (Rule 8.412)

Length, service requirements

Format of electronic documents (Rule 8.74)

Font

Court prefers Century Schoolbook
13-point, including footnotes

Spacing

Lines of text must be 1.5 spaced, excluding footnotes, headings, subheadings, and quotations which may be single spaced.

Margins 1.5 inches on each side

Rule 8.401 – Confidentiality

Using first name and last initial of the child, unless “the first name is unusual or other circumstances would defeat the objective of anonymity.” In those situation, use initials for first and last names.

Citing to the record

If there is more than one volume of the clerk’s transcript or reporter’s transcript, the Court prefers the volume number, then CT or RT, and then the page number. For example: (1 CT 3), (2 RT 150).

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

Supplemental clerk’s transcript—SCT

Supplemental reporter’s transcript—SRT

Statements of case and facts

Integrated statements

The First District permits/prefers integrated statements.

(“[W]e encourage all counsel who file briefs in dependency cases to write an integrated statement, rather than preparing separate statements of the procedural history and the facts, which suggest that the real world events involving the parents and children

somehow took place apart from the dependency litigation which dominated the lives of the family over a period of many months.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522, n.2.)

As a project preference, we like to see a separate ICWA statement following the statement of facts.

For brief with only an ICWA issue

Statement should be focused on ICWA-related facts

For No Issues Statement

Remember the main audience is your client.

The Court of Appeal can ask for supplemental briefing

Phoenix H. v. Sade C.

We ask attorneys to file the No Issues Statement in a motion format rather than the *Phoenix H.* brief format used in the 2DCA. <https://fdapnew.wpenginepowered.com/wp-content/uploads/2021/09/Phoenix-H..pdf>

Declaration should state that the attorney has informed the client they have 30 days to file their brief/letter.

Oral Argument

Fast-track cases

In fast-track cases, counsel is supposed to request argument within 15 days of the ARB or oral argument is considered waived. Rule 8.416 (h) Oral argument and submission of the cause (1) Unless the reviewing court orders otherwise, counsel must serve and file any request for oral argument no later than 15 days after the appellant's reply brief is filed or due to be filed. Failure to file a timely request will be deemed a waiver.

The Advisory Committee Comments note that subdivision (h)(1) recognizes certain reviewing courts' practice of requiring counsel to file any request for oral argument within a time period **other than 15 days** after the appellant's reply brief is filed or due to be filed. The reviewing court is still expected to determine the appeal "within 250 days after the notice of appeal is filed."

Local Rule 13 <https://www.courts.ca.gov/1954.htm>

Overview of option to waive, notice and procedures, time, sharing argument time, oral argument dates, recording and streaming of oral argument, and continuances.

Requesting oral argument

[https://www.courts.ca.gov/documents/Request for OA form.pdf](https://www.courts.ca.gov/documents/Request%20for%20OA%20form.pdf)
[https://www.courts.ca.gov/documents/Request for OA appearance type .pdf](https://www.courts.ca.gov/documents/Request%20for%20OA%20appearance%20type.pdf)

If request oral argument and then Court issues a tentative opinion, counsel needs to re-request oral argument. Follow directions on Court's tentative.

Tentative opinions and focus letters – Local Rule 15

Tentative opinions - Panels may, in their sole discretion, issue tentative opinions in cases scheduled for oral argument. Any such tentative opinion will be issued before the argument, and the parties will be notified that the court is prepared to rule along the lines indicated in the tentative opinion. *When a tentative opinion is issued, oral argument will be held only if a party that originally requested oral argument notifies the court, opposing counsel, and unrepresented parties, that they still wish to proceed with oral argument.* If such a notification is given, oral argument will proceed as scheduled, and the views expressed in the tentative opinion will be subject to change. If no such notification is given, oral argument will not be held, and the court's final opinion will reflect the substance of the tentative opinion.

Focus letters - Panels may issue focus orders or letters in cases scheduled for oral argument. These orders or letters are issued before argument, and they notify the parties about particular issues the panel is interested in discussing.

New authorities letter– Rule 8.254 and Local Rule 16

Local Rule 16 -Parties submitting a letter of new authorities prior to oral argument under California Rules of Court, rule 8.254 must submit the letter when the authorities become available and as far in advance of any scheduled oral argument as possible. No argument or further discussion of those authorities is permitted in the letter.

Compensation Claims

Statewide claims manual

https://www.capcentral.org/wp-content/uploads/2022/06/statewide_claims_manual.pdf

Unbriefed issues – line 7

“A compensable unbriefed issue is not a mere question the attorney thought about briefly and rejected. It must be sufficiently substantial that an experienced attorney would reasonably research or investigate it.”

Counsel should use care not to argue against the client or disclose a potential adverse consequence in describing unbriefed issues on the claim form; if it is necessary to discuss information possibly harmful to the client, do so in a confidential memorandum to the project attorney and describe the issue as “Confidential as discussed with project.”

Appendix D of statewide claims manual – Guideline for Billing Unbriefed Issues

Line 23 v. 24

Line 23 – Other Communications

- Opposing counsel (below and on appeal)
- Client’s GAL (if they have one)
- Court clerks (trial and appellate)
- Custodial officials
- Client relatives
- Co-appellate counsel
- Probation or parole officers
- ICWA representatives
- Amici
- Translators

Line 24 – Other Services

- Reviewing co-appellant’s briefs
- Reviewing opposing party motions and oppositions to motions
- Reviewing trial counsel’s file
- Appearing in trial court

Reviewing court orders
Reviewing client court filings (e.g. supplemental Wende brief or pro per writ)
Reviewing record, opinion, and filings from prior related appeal
Registering for online docket notifications and checking the docket
Researching legal matters outside of the appeal when necessary
Locating client
Reviewing CDCR file (or other institutional records)
Filling out forms for custodial client visit
Redacting record or briefs

Interim claims/Second interim claims

There are four types of interim claims that may be submitted.

1. Pre-AOB: An interim claim may be submitted before the filing of the opening brief under two circumstances: (1) where the record length exceeds 1,500 pages, or (2) where counsel has been waiting for an augmented or corrected record longer than 90 days. For these types of early interim claims, counsel will only be compensated for time spent on record review (Line 2). All other categories of work and expenses can and should be billed on the interim claim submitted after the AOB is filed.

2. Post-AOB: An interim claim may be submitted for all hours and expenses incurred after the opening brief is filed, including unbriefed issues.

3. Post-ARB: An additional interim claim may be submitted after the reply brief is filed. The only additional time billed should be for time spent on drafting the reply brief itself (Line 8) and for reviewing the opposing brief (Line 10). No additional time or expenses may be claimed with this claim.

4. Exceptional Circumstances: In exceptional circumstances, the JCC/ACS may approve other early claims on the project director's recommendation on a case-by-case basis. The normal justification for an exception would be a long, unavoidable delay between appointment and the claim, causing substantial hardship to the attorney.

Claims for No Issues Statement

Only a final claim may be filed in no-issue cases.

However, a panel attorney may file a final claim either:

- (1) 30 days after filing the no-issue brief, or
- (2) after the opinion/dismissal, whichever comes first.

If the final claim was submitted prior to issuance of the opinion or dismissal order, an attorney waives any claim for later services, such as reading the opinion or communicating with the client, unless the court orders supplemental briefing. If the court does so, counsel may file a second final claim after the opinion issues.