

## CHAPTER 3

# *Preparing the Record on Appeal*

After filing the *Notice of Appeal*, the appellant next needs to pick out what items are to be in the **record on appeal**. This is called "designating the record" and must be done in every case. The record in an appeal is the official account of what went on at the hearing or the trial that is being appealed. A party designates the record by listing what items to include in a *Notice Designating Record on Appeal* form ([Sample Form F](#)). This notice must be served and filed at the superior court within 10 days of the filing of the *Notice of Appeal* (CRC rule 8.121). Because of the short time period between the filing of the *Notice of Appeal* and the *Notice Designating Record on Appeal*, **appellants often file both documents at the same time**. But the court does not require that they be filed together.

The record normally includes:

1. A **clerk's transcript** (CRC rule 8.122), and
2. A **reporter's transcript** (CRC rule 8.130).

The **clerk's transcript** can include any documents that are in the superior court file—the papers that were filed, the orders that were made, the things that were done, or a record of administrative proceedings. A clerk's transcript is prepared by the superior court based on what you listed in the *Notice Designating the Record on Appeal*. Instead of having the superior court prepare a clerk's transcript, you or you and the opposing party may prepare and file a CRC rule 8.124 appendix (discussed below) or another substitute. (The substitute can be a CRC rule 8.128 stipulation to use the superior court file, a CRC rule 8.134 agreed statement, or a CRC rule 8.137 settled statement.)

The **reporter's transcript** is a word-for-word record of everything that was said in court during the hearings or trial (the oral proceedings). It is taken down by a certified court reporter, who then types it out (transcribes it) for the appeal. A reporter's transcript is only needed if the oral proceedings relate to the issues you want to talk about on appeal. (The reporter's transcript may be substituted with a CRC rule 8.134 agreed statement or a CRC rule 8.137 settled statement.)

For a court-prepared clerk's transcript and/or a reporter's transcript, the appellant must identify the specific items to be included. What is to be included will depend on the issues the appellant is planning to talk about on appeal. These issues, in turn, will depend on which rulings the appellant believes were so wrong that the judgment or order should

be overturned. The appellant needs to think about the trial, what rulings may have been wrong, and what part of the record will best tell the Court of Appeal why these rulings were wrong. These are the items the appellant should "designate for the record."

The record is an extremely important part of an appeal. Think of the record as a package that contains all of the information that the justices might need to know about what happened in the trial court in order to review the case. You can only put into the package those items (filings, transcripts, orders, motions, minutes, etc.) that were part of the trial court proceedings. Furthermore, when writing your brief and conducting oral argument, you can only refer to parts of the trial court proceedings that are included in the package. The contents of the record limit the scope of issues and information that the parties can use in their arguments and that the Court of Appeal will consider as it reviews the case. Anything in the record can be examined and considered. For the purpose of appellate review, any parts of the superior court trial that are not included in the record *do not exist*, will not be examined or considered by the Court, and cannot be used by either party to support their case.

What you choose to include will depend on the issues that you are appealing. You need to think about the trial, what rulings may have been legally wrong, and what part of the record will best tell the Court of Appeal why these rulings were legally wrong. These are the items the appellant should put into the package and designate for the record.

The following section will tell you how to designate the record.

#### *Step 5. Getting the reporter's transcript*

**What is a reporter's transcript?** The reporter's transcript is a word-for-word typewritten record of everything that was said in court during the trial or hearing.

**When is it necessary?** The appellant should request a reporter's transcript if what was said at the trial or hearing relates to the issues the appellant wants to talk about on appeal. If what was said at the trial or hearing has nothing to do with the issues for the appeal and the appellant does not want it typed up, the appellant does not need to request a reporter's transcript.

**How soon do you have to ask for it?** Within 10 days after filing the *Notice of Appeal*, the appeals section of the superior court must be told whether the appellant does or does not want a reporter's transcript.

**What if the appellant is *not* requesting a reporter's transcript?** The appellant should notify the appeals section of the superior court in writing that no reporter's transcript is needed by checking the proper box under paragraph 2, on pages 1 and 2 of the *Appellant's Notice Designating Record on Appeal* ([Sample Form F](#)), under

the heading "RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT." This document must be served on the respondent. If the appellant does not ask for a reporter's transcript, the respondent may not ask for one, either. The Court of Appeal, however, may—on its own motion or on the motion of the respondent—order the preparation of the reporter's transcript in the interests of justice. The appellant is responsible for the cost of any reporter's transcript ordered by the Court of Appeal, unless the appellant obtains an order that it need not pay. (CRC rule 8.130(a)(4).)

**What if the appellant is requesting a reporter's transcript?** Make a list of the dates (and whether it was a full or partial day), departments, nature of proceedings, and names of the court reporters for each day or partial day that is to be typed up (transcribed). Check the box to show whether a certified transcript was previously prepared. Information on the reporters, dates, times, and departments can be found in the minutes located in the superior court file. This list must be filed with the clerk of the appeals section of the superior court. Paragraph 5 of the form *Appellant's Notice Designating Record on Appeal* ([Sample Form F](#)), under the heading "NOTICE DESIGNATING THE REPORTER'S TRANSCRIPT," may be used for this purpose. If only a portion of a witness's testimony is needed, the opposing parties (respondents) must agree, or stipulate to that, and the stipulation (agreement)<sup>1</sup> must be filed with the superior court appeals section. (CRC rule 8.130(e).) In addition, you must set out the issues that you intend to raise on appeal. (CRC rule 8.130(a)(2).)

The *Appellant's Notice Designating Record on Appeal* must be served on the respondent(s) and all known court reporters. The original must be filed with the superior court appeals section within 10 days after filing the *Notice of Appeal*. It must have with it a *Proof of Service* on respondent(s) and reporter(s), a \$50 fee, and a deposit to pay for the reporter's transcripts. (CRC rules 8.121(a), 8.130(b).)

If the appellant does not provide everything needed in the *Appellant's Notice Designating Record on Appeal*, the superior court sends a notice to the appellant asking him or her to provide what is needed or correct the problem.

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<sup>1</sup> A stipulation is a written agreement between the parties about something they are going to do. In this context, it is an agreement that only parts of the testimony will be considered in the appeal. It is signed by all counsel and self-represented parties. If you want or need a stipulation, call or write counsel or a self-represented party and ask whether he or she is willing to agree to what you propose. If he or she is agreeable, prepare a written statement that "The parties agree (stipulate) to . . ." setting out what has been agreed to. Add a separate signature line for each counsel or self-represented party to sign, with the person's name typed under the signature line and a place for the date on which the document was signed.

If, after being served with the *Appellant's Notice Designating Record on Appeal*, the respondent wishes to designate additional parts of the transcript, a respondent's designation or *Respondent's Notice Designating Record on Appeal* ([Sample Form W](#)) must be served and filed with the superior court appeals section within 10 days of the service of the appellant's designation. (CRC rule 8.130(a).)

**How much does the reporter's transcript cost?** The appellant must pay both a deposit and a \$50 fee to get the reporter's transcript. The cost of the reporter's transcript depends on (1) how many days or hours the reporter is asked to transcribe, and (2) if the reporter has already prepared a certified transcript of some of the proceedings. The \$50 fee and the deposit of the transcript's approximate cost must be paid at the same time the *Appellant's Notice Designating Record on Appeal* is filed. (CRC rule 8.130(b).) The appellant can ask the reporter to give him or her a written estimate in advance and pay that amount, or pay the deposit.

For proceedings not previously transcribed, the rate is \$650 per day for each day in which there were more than three hours of proceedings, plus \$325 per day for each day in which there were less than three hours of proceedings. If the reporter's estimate does not end up covering all of the days, the appellant needs to deposit \$650 or \$325 for any day not covered.

For proceedings that were previously transcribed, the rate is \$160 per day for each day in which there were more than three hours of proceedings, plus \$80 per day for each day in which there were less than three hours of proceedings.

If the court reporter has given the appellant a written waiver of the deposit, the appellant can submit the waiver instead of a money deposit. If the appellant has already had some or all of the proceedings transcribed, a certified copy of the transcript can be substituted for the deposit. The transcript(s) must comply with CRC rule 8.144. The appellant should be sure to keep a copy of this transcript for writing the brief.

If the appellant does not include the money deposit, waiver of deposit or certified copy of the transcript with the *Appellant's Notice Designating Record on Appeal*, the clerk will file the notice and issue a notice of default giving the appellant an opportunity to correct the problem within 15 days from the date the notice of default is mailed. (CRC rules 8.130(d)(3), 8.140.) If the deposit runs short, the reporter contacts the appellant about how much more is needed. (CRC rule 8.130(b).)

Please note that a *waiver of deposit* is merely that. It waives only the need for the deposit, not the cost of the reporter's transcript or \$50 fee. It may occur when the appellant has paid the reporter for part or all of the transcript in advance and there is no need for the deposit.

**What if the appellant has no money?** The appellant may apply to the Superior court for a waiver of the reporter's fees. ([Sample Forms D & E](#).) You will need to fill out the *Request to Waive Court Fees* ([Sample Form D](#)) and a portion of the

*Order on Court Fee Waiver (Superior Court)* ([Sample Form E](#)). Follow the instructions provided for each of these samples. Waivers of reporter's transcript fees are rarely granted. **The Court of Appeal has the power only to waive its own filing fee of \$775.** (See [Sample Forms D & E](#) for information on fee waivers.)

Financial assistance is provided through the Transcript Reimbursement Fund established by section 8030.2 and following sections of the Business and Professions Code. However, it is not discussed here since it is available only for indigent persons *with counsel*. (CRC rule 8.130(c); Bus. & Prof. Code, § 8030.4 (a).)

**How long does it take to get the transcript?** Generally, it takes 30 to 60 days after the reporter is notified to get the transcript. The Court of Appeal may grant extensions of time for the reporter if he or she is unable to complete the transcript on time. (CRC rule 8.130(f).)

**Is there a cheaper way to go?** Not really. However, use of "agreed" or "settled" statements are authorized under the CRC.

#### *Using a Settled Statement Instead of a Reporter's Transcript*

A settled statement is a summary of the superior court proceedings approved by the superior court. (CRC rule 8.137(a).) The requirements are set out in CRC rules 8.130(h), 8.134, and 8.137. See [APP-001-INFO](#) for more information about a settled statement.

An appellant may choose to use a settled statement in your *Appellant's Notice Designating Record on Appeal* if either you did not have a court reporter prepare a reporter's transcript, or you have an order waiving your court fees and costs. (CRC rule 8.137(a)(1).)

If neither of those apply, you must serve and file a motion along with your notice designating the record on appeal. You may use the optional forms (*Appellant's Motion to Use a Settled Statement (Unlimited Civil Case)*, form [APP-025](#), *Order on Appellant's Proposed Settled Statement (Unlimited Civil Case)*, form [APP-022](#) or use [Sample Form X](#) for a motion .)

You are encouraged to file your proposed settled statement on the optional form *Proposed Statement on Appeal (Unlimited Civil Case)* (see [forms APP-014-INFO, APP-014](#)). The court may order you to use form [APP-014](#). (CRC rule 8.137(c)(2).)

#### *Using an Agreed Statement Instead of a Reporter's Transcript*

An **agreed statement** is a statement that the parties agree upon and sign, which recites the facts needed to decide the appeal. (CRC rule 8.134.) An agreed statement may be used instead of a reporter's transcript (and also instead of a clerk's transcript). The statement "must explain the nature of the action, the basis of the reviewing court's jurisdiction, and how the superior court decided the points to be

raised on appeal." (CRC rule 8.134(a)(1).) See [APP-001-INFO](#) for more information about an agreed statement.

It may take more of your time to prepare an agreed statement than to use a reporter's transcript, if a transcript is available, so you should carefully consider choosing this option.

To use an agreed statement, the appellant must file with its *Notice Designating the Record on Appeal* either an agreed statement, or a **stipulation** stating that the parties are attempting to agree on a statement. (CRC rule 8.134(b)(1).)

If the parties can agree on an agreed statement of facts, it must be filed within 40 days after filing the *Notice of Appeal*. (CRC rule 8.134(b)(1).) If the appellant had filed a stipulation but the parties could not agree on a statement, the appellant must file a new *Notice Designating the Record on Appeal* (CRC rule 8.121) within 50 days after filing the *Notice of Appeal*.

#### *Step 6. The clerk's transcript*

**What is the clerk's transcript?** The clerk's transcript is a "book" that includes copies of papers filed in the superior court case file that have to do with the issues being raised on appeal. If you ask the superior court to prepare these papers, the result is a **clerk's transcript**. If you prepare them yourself, the result is called an **appellant's appendix**. If the parties agree and the court permits, you can use a substitute for a clerk's transcript. Each of these options is discussed below.

**What is in the clerk's transcript?** The papers you designated on your *Appellant's Notice Designating Record on Appeal* are arranged chronologically—that is, in the order in which they were filed in the superior court, beginning with the first papers filed in the case and ending with the last papers filed in the case. After the papers are arranged in order, they are numbered in sequence. The clerk prepares two indexes and inserts them at the beginning of the transcript. One index lists the papers in the order they were filed, and the second index lists the papers in alphabetical order. Each index includes the page numbers and, if there is more than one volume, the volume number where the papers can be found in the transcript. A cover is prepared, and everything is then bound in book form.

**Who puts together the clerk's transcript?** The clerk of the superior court creates the clerk's transcript. The documents to be included, as specified in CRC rule 8.122, must be listed (designated) on the *Appellant's Notice Designating Record on Appeal* form ([Sample Form F](#)). The cost to the appellant depends on the number of pages and the number of volumes.

**What if you want to prepare an appellant's appendix?** If the appellant does not want the superior court clerk to prepare the clerk's transcript, he or she gives notice to the superior court that he or she wants to prepare an appellant's appendix. Instructions for preparing the appendix are set out in CRC rule 8.124.

**How do you let others know which kind of record you have selected?** Prepare an *Appellant's Notice Designating Record on Appeal* ([Sample Form F](#)). The four most common choices for the type of record are: (1) appendix and reporter's transcript, (2) appendix only (no reporter's transcript), (3) clerk's and reporter's transcripts, and (4) clerk's transcript only (no reporter's transcript). Check the appropriate box on the form. If you choose to have the superior court prepare a clerk's transcript, fill out paragraph 4 on pages 2 and 3 of the *Appellant's Notice Designating Record on Appeal*, under the heading "NOTICE DESIGNATING CLERK'S TRANSCRIPT." This paragraph is where you list the documents from the superior court file that you want included in the clerk's transcript, as described in a later section. If you choose to have a reporter's transcript prepared, fill out paragraph 5 on pages 3 and 4 of the *Appellant's Notice Designating Record on Appeal* as noted earlier. The original *Appellant's Notice Designating Record on Appeal* is filed in the appeals section of the superior court. It must be accompanied by a *Proof of Service* ([Sample Form C](#)) showing that all counsel and self-represented parties were served. If a reporter's transcript has been requested, the court reporter needs to be served.

**How soon does the notice need to be served and filed?** The *Appellant's Notice Designating Record on Appeal* with *Proof of Service* must be served on all counsel, self-represented parties, and reporters if a reporter's transcript has been requested. It is filed with the appeals section of the superior court within 10 days after filing the *Notice of Appeal*.

**What if the respondent also wishes to designate the record?** Within 10 days after the appellant has filed his or her notice designating the clerk's transcript, the respondent may serve and file a notice in superior court a *Respondent's Notice Designating Record on Appeal* designating any additional documents the respondent wants included in the transcript ([Sample Form W](#)). (CRC rule 8.122(a).)

*Option 6a: Having the superior court prepare the clerk's transcript*

**How much does it cost?** If the superior court is preparing the clerk's transcript, the cost depends on how many pages there are. The superior court charges a copying fee based on the number of pages designated, and a volume fee based on the number of volumes in the clerk's transcript. Unless the court waives appellant's filing fees (\$775 for the appeal and a \$100 deposit for the clerk's transcript), the appellant made a \$100 deposit toward the cost of the clerk's transcript at the time he or she filed the *Notice of Appeal*. The deposit is used first. If the total cost ends up being more than \$100, the superior court gives all parties a written estimate. The appellant and any party wishing to have its own copy of the clerk's transcript must pay the cost within 10 days. A person who is unable to pay for the clerk's transcript can file with the superior court an application for a waiver of the clerk's transcript fees. (CRC rule 8.122(c).)

The appellant pays the entire cost of the clerk's transcript.

**What happens if fees are not paid?** If fees are not paid, the superior court sends a notice (called a *Notice of Default*) telling the appellant to pay within 15 days or the appeal may be dismissed. (CRC rule 8.140(a).) If the fees are not paid within 15 days, the superior court sends a *Notice of Failure to Clear Default* to all parties and to the Court of Appeal. The Court of Appeal may then dismiss the appeal.

**How does one designate the clerk's transcript?** To designate the clerk's transcript, prepare an *Appellant's Notice Designating Record on Appeal*. The designation must include a list of the documents the superior court clerk is to copy for the clerk's transcript ([Sample Form F](#), paragraph 4, pages 2-3). This list should include the exact title of each document and the date it was filed or lodged with the superior court. If the date on which the document was filed is unknown, use the date the document was signed. The appellant does not have to individually designate each jury instruction or minute order. You can list "all" jury instructions and "all" minutes.

All exhibits, whether admitted into evidence, lodged, or refused, are considered part of the record. If some or all of the exhibits are needed in the appeal, the ones to be used are designated, and most often transmitted to the Court of Appeal under CRC rule 8.224, after the respondent's brief is filed. However, if a party wants a copy of one or more exhibits put in the clerk's transcript to be available while the briefs are being written, the exhibits to be included must be noted by number or letter in the *Appellant's Notice Designating Record on Appeal*. If a trial exhibit is something other than a standard size piece of paper, you should transmit the exhibit to the Court of Appeal under CRC rule 8.224.

Within 10 days after service of appellant's designation, the respondent may provide a list of additional items to be included in the clerk's transcript ([Sample Form W](#)). (CRC rule 8.122(a).) This list must also be specific as to the title of each document and the date it was filed. After the *Respondent's Notice Designating Record on Appeal* is filed, or the time to file has passed, the superior court appeals clerk locates the documents listed by both the appellant and the respondent and determines the cost of preparing the clerk's transcript. The superior court appeals clerk then notifies the appellant of the estimated cost of the clerk's transcript and, upon payment, begins to prepare it. The appellant pays the entire cost even when the respondent has designated items to be included. Whether designated or not, the clerk's transcript includes:

- The Notice of Appeal and the Appellant's Notice Designating the Record on Appeal;
- The judgment or order being appealed and any notice of entry;
- Any notice of intention to move for new trial, to vacate the judgment, for judgment notwithstanding the verdict, or for motion for reconsideration and rulings on those items; and



- The register of actions or docket.

**How does the respondent get the record?** The respondent does not automatically get a copy of the record. If he or she wants a copy of the clerk's and/or reporter's transcript, the request must be made promptly. The superior court appeals clerk will provide the respondent with an estimate of the cost to prepare the clerk's transcript. (CRC rule 8.122(c).) The respondent has 10 days to pay. If the respondent wants a copy of the reporter's transcript, he or she should contact the reporter personally to arrange payment.

If the respondent does not wish to have to pay for his or her own copy, he or she may borrow the appellant's copy after notifying the appellant no more than 20 days after the record is filed in the Court of Appeal. The record is lent to the respondent when the appellant's opening brief is served and returned to appellant when the respondent's brief is served. (CRC rule 8.153.)

**When is the record sent to the Court of Appeal?** Within 30 days after the appellant deposits money for costs or the court files an order waiving costs, the clerk's transcript should be ready. The superior court clerk should then send a copy of the transcript to the Court of Appeal and the appellant; in practice, the clerk sends a copy to the court and notifies the parties that the clerk's transcripts and the reporter's transcripts (if requested) are complete. The notice tells the appellant and any other party who paid for a copy of the record to pick up their transcripts. (CRC rules 8.122(d), 8.150(a).)

#### *Option 6b: Preparing an appellant's appendix*

If any party elects to prepare an appendix instead of asking the superior court to prepare a clerk's transcript, the appeal proceeds by "appendix." If the other party wants a clerk's transcript, that party must file a motion in superior court contesting the choice of an appendix. The motion must be filed within 10 days after the *Appellant's Notice Designating Record on Appeal* is served and filed. (CRC rule 8.124(a).)

**How much does it cost?** If the appellant is preparing his or her own appendix (CRC rule 8.124), there will be copying and binding costs.

**How does one designate an appellant's appendix?** Within 10 days of filing the *Notice of Appeal*, the appellant must file his or her intention to proceed under "rule 8.124," along with a *Proof of Service* on each of the other parties. The appellant gives notice of his or her intention by checking box "1(b)" on the first page of the *Appellant's Notice Designating the Record on Appeal* form ([Sample Form F](#)) under the heading "RECORD OF THE DOCUMENTS FILED IN THE TRIAL COURT."

**What is included in an appellant's appendix?** The appendix must include the following items:

- A chronological index of all of the items in the appendix ([Sample Form H](#)).

- An alphabetical index of all of the items in the appendix ([Sample Form I](#)).
- All documents necessary for the consideration of issues in the appeal.
- The judgment or order being appealed and any notice of its entry, any notice of intention to move for a new trial; any motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration and the rulings thereon; and any order on such motion and any notice of its entry.
- The *Notice of Appeal*; the notice to prepare the clerk's and reporter's transcripts, or the settled statement, or *Appellant's Notice Designating Record on Appeal* form; any notice of election to proceed by an appendix under CRC rule 8.124 and, for a joint appendix, the stipulation designating its contents; any stipulation to proceed by agreed statement under CRC rule 8.134, along with the agreed statement; and any settled statement approved by the court under CRC rule 8.137.

All exhibits admitted in evidence, lodged or rejected are considered as part of the record even if they are not physically included in the bound volumes of the appendix. (CRC rule 8.124(b).) They can later be lodged with the Court of Appeal by transmitting them under CRC rule 8.224.

If a party wants the appendix to contain a document or exhibit in the possession of another party, the party preparing the appendix must first ask the party who has the document or exhibit to provide a copy or lend it for copying. If that does not work, the party may serve and file a request for that document or exhibit in the Court of Appeal. Those procedures are described in CRC rule 8.124(c).

A party can refer to (also called incorporate by reference) all or part of the record from another pending appeal or a prior appeal in the same case so that those materials will be considered as part of the appendix. (CRC rule 8.124(b)(2).) The party must follow the procedures for identifying the other appeal set forth in CRC rule 8.124(b)(2).

If you are the respondent, you may elect to use an appendix on appeal *only if* the appellant has not received a waiver of the fee for a clerk's transcript and there is no court order otherwise. The *Respondent's Notice Electing to Use an Appendix* ([Sample Form W](#)) must be served and filed within 10 days after the notice of appeal is filed. (CRC rule 8.124(a).)

### **How does one put together an appendix?**

1. Make copies of the documents that are related to the appeal. Photocopy on one side only, on recycled paper.
2. Arrange the documents in the order in which they were filed in the superior court (chronologically), and number the pages one after the other, beginning with page 1.

3. Make a chronological index of all documents by listing them in the order filed, with the first page number for each document and, if there is more than one volume, the volume number. ([Sample Form H.](#))
4. Make an alphabetical index of all the documents by listing them in alphabetical order, with the first page number of each document and, if there is more than one volume, the volume number. ([Sample Form I.](#))
5. If filed in paper form, prepare a green-colored cover for an appellant's appendix, a yellow cover for a respondent's appendix, a tan cover for an appellant's reply appendix and a white cover for a joint appendix ([Sample Form G](#)). The cover should state the case title and superior court case number, the Court of Appeal number, the name of each of the participating Superior court judges, the names and addresses of appellate counsel for each party or any self-represented party, the volume number, and the inclusive page numbers (for example, 1-246) of that volume. It should be titled *Appellant's Appendix* (if prepared by the appellant), or *Joint Appendix* (if prepared jointly by appellant and respondent), *Respondent's Appendix* (if prepared by respondent), or *Appellant's Reply Appendix*. (CRC rules 8.124(c), 8.144(a),(b), (c).)
6. Put the materials together: cover, chronological index, alphabetical index, and documents in chronological order.
7. If filed in paper form, make the necessary number of copies (one for each party, one for the court, and one for yourself). Provide the court with one copy of the appendix that is unbound, without any tabs and with a white cover. The appendix may not be bound with the brief.

**When does the appendix need to be ready?** A **joint appendix** is prepared jointly by the parties, *or* the appellant and respondent may each prepare his or her own appendix. A joint appendix or an appellant's appendix must be served on the respondents and filed with the court at the same time as the appellant's opening brief. A respondent's appendix, if any, must be served on the appellants and filed with the court at the same time as the respondent's brief. An appellant's reply appendix, if any, must be served on the respondent and filed with the court at the same time as the appellant's reply brief. In filing an appendix, you are certifying that the papers included are true and correct copies of documents filed or lodged with the superior court. (CRC rule 8.124(d), (g).)

*Option 6c: Using the superior court file*

**When can the superior court file be used in place of a clerk's transcript?** If the reviewing court permits it (you can call the clerk's office at the Court of Appeal and ask), the parties may agree (stipulate) to use the superior court file instead of the usual clerk's transcript by filing the stipulation (see footnote 1 in this chapter) in the appeals section of the superior court with the *Appellant's Notice Designating Record on Appeal* under CRC rule 8.121. The Court of Appeal in San Diego permits the

use of the superior court file. The appellant and respondent must both sign the stipulation to use the superior court case file. (CRC rule 8.128(a).)

Within 10 days of filing the stipulation, the superior court will notify you of how much it will cost to put the file in chronological order, number the pages, and prepare a chronological index. You must pay within 10 days of receiving the estimate.

If the parties stipulate to use the superior court file instead of the clerk's transcript, the superior court file is sent to the Court of Appeal. The appellant and respondent will receive only an index of the documents in the file. (CRC rule 8.128(a), (b).)

#### *Option 6d: Using an Agreed Statement Instead of a Clerk's Transcript*

An **agreed statement** is a statement that the parties agree upon and sign, which recites the facts needed to decide the appeal. (CRC rule 8.134.) An agreed statement may be used instead of a clerk's transcript.

To use an agreed statement, the appellant must file with its *Notice Designating the Record on Appeal* either an agreed statement, or a **stipulation** stating that the parties are attempting to agree on a statement. (CRC rule 8.134(b)(1).)

The statement "must explain the nature of the action, the basis of the reviewing court's jurisdiction, and how the superior court decided the points to be raised on appeal." (CRC rule 8.134(a)(1).) The appellant must include in the statement copies of the documents listed in CRC rule 8.122(b)(1), showing the date necessary to determine the timeliness of the appeal. (CRC rule 8.122(b)(2).) The appellant can also put in the agreed statement copies of other documents that a clerk's transcript may include under CRC rule 8.122(b)(3) and (4).

#### *Record problems*

**What happens if you do not pay costs on time?** If you have not made the required payments, the superior court will notify you by sending you a notice of default.

**What is a notice of default?** A notice of default says that someone did not do what the CRC said to do. Generally something was not done on time or was done incorrectly. The notice gives the responsible person a certain number of days from the date of the notice to do what needs to be done. Notices may be sent by the superior court or the Court of Appeal, depending on what the problem is. Examples of defaults in the superior court having to do with record preparation are: failing to file an *Appellant's Notice Designating Record on Appeal*, failing to pay the costs of

the clerk's and/or reporter's transcript, and failing to correct the designation after notice was sent to the party by the superior court. (CRC rule 8.140.)

**What if the default is not corrected?** A party has 15 days from the date of the notice to resolve the problem. If the things to be fixed are still unresolved after the 15 days, the superior court sends a *Notice of Failure to Clear Default* to all parties and to the Court of Appeal. If the appellant is the party who has not complied with the rules, the appeal may be dismissed by the Court of Appeal; if the respondent is the party that has not complied on time, the appeal may go forward on the appellant's record alone. (CRC rule 8.140(b).)

**What if something is missing from the record?** In working with the record, a party may discover things that are missing or things that were overlooked in the designation or in the preparation of the clerk's or reporter's transcript. If the clerk or reporter omitted a required or requested item, serve on the parties and file in the superior court a *Notice of Correction* requesting that the omitted matter be prepared and sent to the Court of Appeal and all parties which received a copy. (CRC rule 8.155(b).) If the item was not listed in the designation of record, a motion to augment will be needed. (See the section on motions in [Chapter 6](#).)

Filings in the Court of Appeal may be submitted in person or by mail, unless you have chosen to file your documents electronically. The addresses can be found in [Appendix 3](#).