

## UNDERSTANDING YOUR APPEAL

### Information for Defendants

This information letter will help explain what an appeal is all about. It answers some of the questions most often asked by our clients. It applies also to appeals from a juvenile delinquency adjudication. Your individual attorney will help you understand your own case.

#### “WHAT IS AN APPEAL?”

An appeal begins with the filing of a notice of appeal in the superior court from the decision being appealed. An appeal is not a new trial. The purpose of an appeal is for the Court of Appeal to review the proceedings in the trial court to see whether the court and parties followed the law and whether a remedy for any errors is available. A defendant is allowed only one appeal for a case, unless there are proceedings after the appeal is over.

An appeal can deal only with matters shown in the *transcripts*. The transcripts include: (1) the papers in the trial court files, which are prepared in the form of a clerk's transcript; and (2) a court reporter's word-for-word record of what happened in the courtroom, which is prepared in the form of a reporter's transcript. The Court of Appeal cannot consider facts outside of the transcripts. It hears no witnesses and takes no new evidence.

The Court of Appeal has **no power** to decide questions of *fact*, such as whether you are guilty or innocent, or whether a certain witness was lying, or what a particular piece of evidence proves. It has no power to say what sentence you should get, among those allowed by law. Decisions like those are only for the jury or trial judge, and the Court of Appeal cannot change them.

The Court of Appeal deals with *legal* questions. It decides whether the trial court proceedings followed the law. For example, it might decide whether certain evidence was correctly admitted, or whether the jury was properly instructed, or whether the trial judge gave adequate reasons for choosing a particular sentence, and other questions of those types.

If the Court of Appeal finds that the proceedings were conducted correctly, the judgment is “affirmed,” and your conviction and sentence will not change.

If the Court of Appeal finds some important mistake was made in the trial court, your case will probably be “reversed” (in part or in full) and sent back to the trial court for a new trial, or a new sentencing or disposition, or some other proceeding to correct the mistake. Some mistakes can be corrected by the Court of Appeal itself, without sending the case back.

## **“WHO WILL REPRESENT ME ON APPEAL AND WHAT DOES APPELLATE DEFENDERS, INC., DO?”**

A criminal defendant, who cannot afford to hire an attorney for appeal, may ask the court to appoint an attorney at state expense to represent him or her. You should receive forms for making such a request.

Appellate Defenders, Inc. (ADI), runs the system of court-appointed counsel on appeal for the Court of Appeal in the Fourth Appellate District. It is a firm of very experienced criminal defense attorneys.

In every case requiring appointment of an attorney on appeal, ADI finds an attorney with the necessary qualifications, considering length of the record, difficulty, and seriousness of penalty. It then recommends that attorney to the Court of Appeal, which makes the appointment and notifies the client of the attorney's name and contact information. The attorney will contact you directly.

In most cases, ADI recommends a private attorney from its panel of attorneys. In those cases, ADI does not represent you; the private attorney is your counsel on appeal. ADI reviews the attorney's work and sometimes may assist him or her. In some cases, an ADI staff attorney will be appointed, rather than a private attorney, and in that situation the staff attorney will notify you.

## **“WHAT CAN I EXPECT TO HAPPEN DURING THE APPEAL?”**

The usual steps in an appeal include:

**(1) Preparation of the Transcripts.** The trial court clerk and court reporter began preparing the transcripts in your case after the notice of appeal was filed. It is hard to guess how long it will take them. Sometimes the transcripts are done in less than a month, and sometimes they take several months or more, especially if the trial was long. The transcripts will be sent to your attorney. You are not entitled to them until the appeal is over. If the transcripts are incomplete, your attorney will work to fix them. And, in some cases, your attorney may need to augment the record with additional transcripts.

**(2) The Appellant's Opening Brief.** After the transcripts are filed, your attorney will study them and decide what issues should be presented to the Court of Appeal. These issues will be set out in the appellant's opening brief. Under the law, it is the attorney's responsibility and authority, not yours, to decide what issues to raise and how to argue them.

The brief will normally have several parts. First, it will describe the trial court procedures in a section called “Statement of the Case.” Then it will describe the prosecution's evidence in a section called “Statement of Facts.” (The brief may, of course, describe the *defense* evidence, too. But by strict rule, the *prosecution's* evidence must be presented as the “facts.”)

The next part of the brief will be the “argument.” In this part your lawyer will show how the trial court proceedings did not follow the law and will argue why you should be given a new trial, another sentence, or some other relief.

The opening brief is due 40 days after the transcripts are filed. In most cases, however, one or more 30-day extensions of time are needed.

**(3) The Respondent's Brief.** About two to three months after the appellant's opening brief is filed, the Attorney General will file the prosecution's answer, called the "respondent's brief." In it, the Attorney General will usually argue something like: no mistakes were made in the trial court; or any mistakes were unimportant and did not hurt you; or a particular issue cannot be raised on appeal; or something else in answer to your arguments. This is just the prosecution's argument and is *not* the Court of Appeal's decision.

**(4) The Appellant's Reply Brief.** In this brief, your lawyer will have a chance to answer the arguments made in the Attorney General's brief. It is due 20 days after the Attorney General's brief is filed. The appellant's reply brief is optional and will be filed only if your lawyer thinks it will help.

**(5) Oral Argument.** Usually within a month or two after all the briefs are filed, the Court of Appeal will give both sides a chance to ask for oral argument. In oral argument, the lawyers for both sides go to court and argue in person. It usually takes only a few minutes. You will not be there.

Oral argument is not held in every case. Your lawyer will ask for it only if he or she believes something needs to be said that was not already said in the briefs.

**(6) The Opinion.** After the briefs are filed and any oral argument is held, three justices of the Court of Appeal will decide your case. It takes at least two justices voting the same way to reach a decision.

The Court of Appeal will give its decision in a written "opinion." The opinion explains why the court decided each issue as it did. One of three justices who decided the case writes the opinion. One justice, or both of the other justices, may write separate opinions if they disagree with something the first justice said.

The opinion will be filed sometime after oral argument is held or waived. It may be only a few days later, or as much as three to four months later.

**(7) Petition for Rehearing.** If the decision is against you in some way, your lawyer may decide to file a petition for rehearing asking the Court of Appeal to reconsider. The Attorney General may also file a petition for rehearing if the decision is against the prosecution. The petitions are due 15 days after the opinion is filed. Very few are granted.

**(8) Petition for Review in the California Supreme Court.** Another possible step to take, if you lose in the Court of Appeal, is to file a petition for review. In it, your lawyer would ask the California Supreme Court to reach its own decision on one or more of the issues raised in the Court of Appeal. Your lawyer will file the petition if he or she believes there is a reasonable chance of having it granted.

The Attorney General may also petition for review if the prosecution has lost in the Court of Appeal.

Your attorney will tell you if he or she does not intend to petition for review and give you instructions on how to do it yourself.

The petition must be filed no earlier than 30 days, and no later than 40 days, after the Court of Appeal's opinion is filed. If the petition is denied, the decision of the Court of Appeal is left standing and becomes "final." Very few petitions are actually granted.

**(9) Other Matters.** Many other motions and papers can be filed in an appeal. Your lawyer will file them in your case if they are necessary. You will get copies of all the briefs, the opinion, any petitions filed, and all other important papers.

In a few cases known as "People's appeals," the *prosecution* will be appealing, asking the Court of Appeal to change some ruling of the trial court. In People's appeals, the prosecution will be the "appellant" and file the appellant's opening and reply briefs. The defendant will be the "respondent" and will file the respondent's brief.

Most appeals take at least a year from the time the notice of appeal is filed until the time the decision of the Court of Appeal becomes final. Of course, your case may be shorter or longer, depending on how long the transcripts are, how many issues are raised, and many other things.

### **"HOW CAN I FIND OUT MORE ABOUT MY APPEAL?"**

This letter is intended only to give you a general idea what to expect in your appeal if it is like the "usual" one. Your own case may be different from the "usual" case in some way or another. Your attorney will explain what is happening in your case and will try to answer any questions you may have.

While your attorney will keep you informed of the significant developments in your case, please keep in mind there are restrictions on the attorney's time. The attorney needs to spend most of his or her time preparing briefs and otherwise representing you. The Court of Appeal has adopted guidelines for the time to be allowed for client communication. Your attorney will get most of the information pertaining to your case from the transcripts. Please be patient and let your attorney put the time spent on your case to the best use on your behalf.

***APPELLATE DEFENDERS, INC.***