CHAPTER 9
APPELLATE DIVISION

9.01 JURISDICTION

A. Appellate jurisdiction.

The Appellate Division of the Superior Court of California, County of Monterey has appellate jurisdiction over all infraction, misdemeanor and limited civil cases heard in a Monterey County court. (Pen. Code, § 1466; Code of Civ. Pro., § 904.2.)

B. Writ jurisdiction.

The appellate division has jurisdiction to consider petitions for writ of mandamus, prohibition or certiorari in all traffic, misdemeanor, limited civil cases and all actions arising out of the small claims court. (Code of Civ. Pro., §§ 1085, 1103, 1068, 116.798, 116.820.)

The appellate division has jurisdiction to consider petitions for writ of error coramvobis (commonly mislabeled coram nobis) in all misdemeanor, traffic and limited civil cases that are already affirmed on appeal or currently pending appeal. (Pen. Code, § 1265; *People v. Haynes* (1969) 28 Cal.App.2d 442; *In re Dyer* (1948) 85 Cal.App.2d 394.)

The appellate division has jurisdiction to consider a petition for writ of supersedeas in all misdemeanor, traffic, limited civil and small claims cases arising out of the small claims court. (Cal. Rules of Court, rule 8.824; Code of Civ. Pro., § 923; see also *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400.)

(Adopted October 1, 1998; Amended July 1, 2003; Amended January 1, 2006; Amended January 1, 2010; Amended July 1, 2014; Amended July 1, 2017)

9.02 JUDICIAL ASSIGNMENT AND SESSIONS

A. Appellate division assignments.

The Chief Justice assigns four (4) judges to the Monterey County Superior Court Appellate Division, designating one (1) as the presiding appellate judge.

The presiding appellate judge shall supervise the business of the appellate division and may act on routine, procedural and administrative matters at his or her discretion. (Code of Civ. Pro., § 77.)

B. Panel review.

An appellate division panel is comprised of no more than three (3) judges. The presiding appellate judge shall designate which judges will participate on the panel for any given matter. Unless specified below, the entire panel shall participate in a hearing or decision. The concurrence of two (2) or more judges is necessary to render a decision in every case. (Code of Civ. Pro., § 77.)

C. Independent judicial review.

A single appellate division judge shall hear and decide all traffic appeals. A single appellate division judge shall decide all writ petitions arising out of the small claims court, other than a petition regarding the enforcement of judgement. (Code of Civ. Pro., §§ 77, 116.798.)

(Adopted October 1, 1998; Amended January 1, 2006; Amended January 1, 2010; Amended January 1, 2011; Amended July 1, 2013; Amended July 1, 2014; Amended July 1, 2017)

9.03 PROCEDURES, FILING AND FEES

A. Procedural rules.

General rules applicable to appellate division proceedings are set forth in the California Rules of Court, rule 8.800 et seq.

B. Filing notices, petitions, motions and applications.

Parties shall file all notices, petitions, motions and applications regarding matters within the appellate division's jurisdiction at the Salinas Courthouse.

Parties shall address all petitions, motions and applications to the presiding appellate judge.

C. Filing fee in criminal cases.

No filing fees are required for filing a notice of appeal in a criminal case.

No fee is required in a criminal case for filing a writ petition in the appellate division, although such a proceeding is civil in nature for some purposes. (Bravo v Cabell (1974) 11 C.3d 834, 840; see Cal. Code of Civ. Pro., §§ 22–23.)

D. Filing fee in civil cases.

The fee for filing a notice of appeal or a writ petition in a limited civil case is three hundred thirty dollars ($330) if the amount in controversy is more than ten thousand dollars ($10,000)

The fee for filing a notice of appeal or a writ petition in a limited civil case is two hundred five dollars ($205) where the amount in controversy is less than ten thousand dollars ($10,000). (Gov. Code, § 70621.)

E. Fee waivers in civil cases.

At the time of filing a notice of appeal or a petition for extraordinary relief, a party must file the required fee or a request to waive court fees.

When filing a notice of appeal, a party is not required to submit a new application for waiver of court fees if the trial court previously issued a waiver, and the waiver remains in effect, that included all appellate fees. Otherwise, a party must submit a request for a fee waiver on the *Request to Waive Court Fees* (form FW-001).

To request a fee waiver in a writ proceeding, a party must submit a *Request to Waive Court Fees* (form FW-001). (Cal. Rules of Court, rule 8.818.)

(Adopted July 1, 2017)

9.04 RECORD ON APPEAL

A. Record of written documents.

The court elects to use the original trial court file in lieu of a clerk's transcript. (Cal. Rules of Court, rules 8.833, 8.863, 8.914.)

B. Statement on appeal.

The trial court judge shall not order the preparation of a transcript as the record of oral proceedings in lieu of correcting a proposed statement on appeal. (Cal. Rules of Court, rules 8.837(d)(6)(B), 8.869(d)(6)(B), 8.916(d)(6)(B).)

C. Transcript costs in criminal cases.

An appellant may elect to use a reporter's transcript or a transcript of the official electronic recording of the proceedings as the oral record on appeal. Transcripts are prepared at court cost where the appellant is the People, a defendant represented by appointed counsel in the trial court, or the trial court determines that the defendant is indigent and orders that he or she receive the transcript without cost. All other appellants must remit payment after receiving a cost estimate from the court clerk before a transcript is prepared.

D. Transcripts in criminal appeals.

Before a transcript is prepared at court cost, the trial court shall hold a hearing and determine what portion of the oral record is required for meaningful consideration of the potential issues on appeal. (Cal. Rules of Court, rule 8.865(b).)

California Rules of Court, rules 8.867 or 8.920, set forth the limited record normally necessary when a party appeals a pre-trial ruling on a motion to suppress evidence under Penal Code section 1538.5, a demurrer, probation conditions, or any other appealable order other than a ruling on a new trial motion.

When appealing a final judgment of conviction, unless the trial court orders otherwise at the hearing or the parties file a stipulation, the oral record shall include the following:

1. The oral proceedings on the entry of any plea other than a not guilty plea;

2. The oral proceedings on any motion in limine;

3. The oral proceedings at trial, excluding voir dire examination of jurors and any opening statement;

4. Any jury instructions given orally (misdemeanors only);

5. Any oral communication between the court and the jury or any individual juror (misdemeanors only);

6. Any oral opinion of the court;

7. The oral proceedings on any motion for new trial;

8. The oral proceedings at sentencing, granting or denying probation, or other dispositional hearing;

    a. If the appellant is the defendant, the reporter's transcript must also contain:

    b. The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge;

    c. Any closing arguments; and

    d. Any comment on the evidence by the court to the jury (misdemeanors only). (Cal. Rules of Court, rules 8.865, 8.866, 8.918, & 8.919.)

(Adopted October 1, 1998; Amended January 1, 2006; Amended January 1, 2007; Amended January 1, 2010; Amended July 1, 2010; Amended January 1, 2011; Rule 9.03 renumbered to Rule 9.04 and amended July 1, 2017)

9.05 BRIEFS

Any party filing an original brief must also submit three (3) copies.

(Amended January 1, 2007; Amended January 1, 2009; Amended January 1, 2010; Rule 9.04 renumbered to 9.05 and amended July 1, 2017)

9.06 ORAL ARGUMENT/HEARINGS

Appellate division hearings are set on the first Thursday of every month at 4:00 pm in Department 3 unless otherwise ordered.

Any party who has not returned the waiver form sent with the notice setting the date for the appellate hearing within the specified time frame is deemed to have waived oral argument.

Any party who is not present at calendar call is deemed to have waived oral argument unless the party has advised the clerk in advance of a delay.

(Adopted October 1, 1998; Amended January 1, 2007; Amended January 1, 2010; Rule 9.05 renumbered to Rule 9.06 and amended July 1, 2017)