

APPELLATE DEFENDERS, INC., APPELLATE PRACTICE MANUAL

APPELLATE DEFENDERS, INC.
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**THE ABC'S OF PANEL MEMBERSHIP:
BASIC INFORMATION FOR APPOINTED COUNSEL**

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I. INTRODUCTION [§ 1.0]

This chapter describes some of the responsibilities of counsel appointed to represent indigent clients under the Appellate Defenders, Inc., program. It addresses the relationship between the panel attorney and the project (ADI), the duties of counsel during the course of a typical appeal, client relations, the use of associate counsel, classification of counsel and cases and the matching of counsel to specific cases, and compensation for appointed representation.

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FIRST THINGS FIRST: WHAT CAN BE APPEALED AND WHAT IT TAKES TO GET AN APPEAL STARTED

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PART ONE: GENERAL

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This chapter examines the scope of appellate review in criminal and juvenile cases – what judgments and orders are appealable, who can appeal, and what issues can be raised in various kinds of appeals. It will also review the nuts and bolts of getting an appeal started – what has to be filed, where, and when, and what can be done if the process goes astray.

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**PRE-BRIEFING RESPONSIBILITIES:
RECORD COMPLETION, EXTENSIONS OF TIME, RELEASE ON
APPEAL**

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I. INTRODUCTION [§ 3.0]

This chapter addresses three critical responsibilities of appellate counsel before the opening brief is filed. First, counsel must ensure the record is complete. Second, if it is not possible to complete research and briefing in the time permitted, counsel must seek one or more extensions. Third, if the client wants and is eligible for bail or other form of release pending appeal, then counsel should investigate that possibility and take needed action.

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ON THE HUNT: THE SCIENCE AND ART OF ISSUE SPOTTING AND SELECTION

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I. INTRODUCTION [§ 4.0]

Issue spotting is the most important function of appellate lawyering. An attorney may perform a masterful job of research, analysis, and briefing, but if an issue that would win for the client is overlooked, the attorney has probably rendered constitutionally ineffective assistance. Appellate counsel must therefore work assiduously to develop strong issue-spotting skills and must put maximum effort in every case into ensuring all potential issues have been identified and properly evaluated. Counsel also has a duty to spot “negative” issues – those that could put the client in a worse position after the appeal than before. Sometimes helping the client avoid the adverse consequence trap is the most valuable service appellate counsel can offer.

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EFFECTIVE WRITTEN ADVOCACY: BRIEFING

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The brief is the foundation of appellate advocacy. It is the most important and often (when oral argument is waived) the only medium for reaching the court. Counsel's responsibility is to ensure all briefs are accurate, professional, and persuasive. This responsibility is especially acute in criminal and juvenile appeals: the attorney must lend credibility to the client's cause in order ultimately to convince the court of the need to grant relief.

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EFFECTIVE USE OF THE SPOKEN WORD ON APPEAL: ORAL ARGUMENT

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I. INTRODUCTION [§ 6.0]

Oral argument plays an important role in the appellate process. While secondary to briefing in most courts, especially intermediate appellate courts, it can and occasionally does make a difference in the result. It is counsel’s last opportunity to persuade the court before it makes a final decision, to answer the court’s questions, to look the judges in the eye and assess their reactions to the issues, make midstream adjustments, dispel doubts, and “nail” crucial points. This chapter is intended to help counsel use oral argument more effectively. It is a guide to oral argument practice in the California courts.

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THE END GAME: DECISIONS BY REVIEWING COURT AND PROCESSES AFTER DECISION

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I. INTRODUCTION [§ 7.0]

This chapter discusses decisions by the reviewing courts and proceedings after decision. It addresses the requirements for appellate opinions in California. It gives an overview of the doctrine of stare decisis and the implications, as well as processes, of publication. The chapter also covers what happens after the Court of Appeal files its decision. It examines the rules governing finality of decisions and offers general guidance on seeking rehearing in the Court of Appeal and review in the California Supreme Court. It discusses basic procedures for handling cases in which the California Supreme Court has granted review. Finally, the chapter looks at the process of seeking review by certiorari in the United States Supreme Court.

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**PUTTING ON THE WRITS:
CALIFORNIA EXTRAORDINARY REMEDIES**

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THE COURTHOUSE ACROSS THE STREET: FEDERAL HABEAS CORPUS

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I. INTRODUCTION [§ 9.0]

This chapter provides basic information about federal habeas corpus law and procedure. The focus is on post-appeal review of noncapital California state convictions – a remedy of last resort for those who have failed to achieve relief in state courts. An attorney appointed to a California appeal has the responsibility, in appropriate cases, to preserve federal issues and advise the client about pursuing federal habeas corpus in pro per. Further, many state appellate practitioners will at some time or another find themselves in federal court on a habeas corpus matter, and in that case thorough familiarity with the governing law is essential.

The chapter addresses custody and mootness issues, time limitations, grounds, exhaustion of state remedies and procedural default, successive petitions, and basic habeas corpus procedures.

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