

THE NOTICE OF APPEAL IN STATE COURT

By

DANIEL U. SMITH
SMITH & MCGINTY
220 16th Avenue, Suite 5
San Francisco, CA 94118
415.751.4182
dusmith@pacbell.net
www.appealsmith.com
Certified Appellate Specialist
State Bar Board of Legal Specialization

Disclaimer: The failure to file a timely notice of appeal is jurisdictional. This article discusses only general guidelines for a valid notice of appeal, each case has its own unique procedural history, and the law may change. For these reasons, this article is not a substitute for counsel's research of the relevant statutes, cases, and Rules of Court, to determine the timeliness of a notice of appeal.

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INTRODUCTION

This article reviews the requirements for a timely and sufficient notice of appeal in the California Superior Court.

The notice of appeal is a jurisdictional document whose defects will cause a failure to transfer jurisdiction from the superior court to the appellate court. CCP § 916; *Adoption of Alexander S.* (1988) 44 Cal.3d. 857, 864; *Hollister Convalescent Hosp. Comm. Inc. v. Rico* (1975) 15 Cal.3d. 660, 666.

A valid notice of appeal must meet three requirements:

1. The notice of appeal must be timely (under one of three time periods).
2. The notice of appeal must identify all appealable orders or judgments appealed from.
3. The notice of appeal must identify all appellants.

A suggested form of notice of appeal is set forth at the end of this article.

I.

THE NOTICE OF APPEAL MUST BE TIMELY.

Three possible deadlines govern the filing of a notice of appeal: (1) 60 days from notice of entry of judgment; (2) 30 days from denial of post-trial motions; or (3) 180 days from entry of judgment if the first two deadlines do not apply. The application of these three time periods is discussed in sections B, C, and D.

A. A timely notice is jurisdictional.

Because a timely notice of appeal is essential to transfer jurisdiction to the appellate court, an untimely notice requires dismissal of the appeal, either on the respondent's motion or the court's own motion. *Hollister Convalescent Hosp. Comm. Inc. v. Rico, supra*, 15 Cal.3d, at 666-667. Courts have *no authority* to excuse a tardy notice of appeal or to extend the time for appeal. Rule 8.104(b). Appellate jurisdiction cannot be conferred by consent, stipulation, estoppel, or waiver. *Hollister Convalescent Hosp. Comm. Inc. v. Rico* (1975) 15 Cal.3d 660, 666-667, 674.

There is no "constructive filing" excuse for an untimely notice of appeal. It is no excuse that the trial court may have acted improperly and lulled the appellant into filing an untimely notice of appeal is not an excuse. *Wenzoski v. Central Banking System Comm. Inc.* (1987) 43 Cal.3d. 539, 542 (tardy civil appeal not excused by trial court's agreement to hear jurisdictionally invalid second new trial motion).

But a clerk's error, however, in improperly rejecting a timely notice of appeal allows the notice to be deemed timely. *Rapp v. Golden Eagle Ins. Co.* (1994) 24 Cal.App.4th 1167, 1171-1173 (a timely notice, rejected by a clerk because not accompanied by a transcript deposit, is "deemed in law" to have been timely filed).

Where the notice of appeal is untimely, the appeal may not be treated as a writ because expiration of the appellate deadline also renders a writ untimely. *Adoption of Alexander S.* (1988) 44 Cal.3d. 857, 864-866. An appellate court has no discretion to treat an improper appeal as a petition for a writ where the order was appealable and thereafter became nonappealable because of the passage of time. *Marriage of Patscheck* (1986) 180 Cal.App.3d 800, 804.

Because an untimely notice bars appellate jurisdiction, where timeliness is questionable, that issue must be litigated, often with disappointing results for the appellant. *E.g., Kimball Avenue v. Franco* (2008) 162 Cal.App.4th 1224 (trial court's purported vacation and reentry of judgment of which appellant had no notice, did not extend time to appeal); *Citizens for Civil Accountability v. Town of Danville* (2008) 167 Cal.App.4th 1158 (clerk's email notice of judgment did not trigger appeal period); *Payne v. Rader* (2008) 167 Cal.App.4th 1569 (appeal deadline not extended by invalid CCP 663 motion to vacate demurrer ruling); *aaa*

B. The 60-day period from notice of entry of judgment or appealable order.

Absent post-trial motions, the deadline for filing the notice of appeal is 60 days after service by the clerk or any party of a document entitled "Notice of Entry of Judgment" or of a file-stamped copy of the judgment, showing the date of mailing. Rule 8.104(a)(1), (f).

This requirement was not met (and the appeal period was not triggered) by the clerk's mailing of a statement of decision and a minute order where no "Notice of Entry" was mailed and the appealable minute order was not file-stamped. *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894 (Reversing the Court of Appeal's dismissal of the appeal as untimely).

Entry constitutes either: (1) the date of entry in the judgment book or the date of filing (if the county does not maintain a judgment book); or (2) the date of entry of an appealable order in the minutes or the date of filing if the minute order expressly directs that a written order be prepared, signed and filed; or (3) the filing of an appealable order that is not entered in the minutes; or (4) the date of entry of a decree of distribution in a probate proceeding at length in the judgment book or other permanent court record. Rule 8.104(d).

If both the clerk and a party give Notice of Entry of Judgment, the earlier notice commences the 60-day period, and the second notice is ineffective. *Filipescu v. California Housing Finance Agency* (1995) 41 Cal.App.4th 738, 742. The proof of service of notice of entry need not be filed. Service can be established through the affidavit or declaration of the party that gave notice of entry, CCP § 2009, or by motion

to augment the record on appeal to include a declaration of service. *National Advertising Co. v. City of Rohnert Park* (1984) 160 Cal.App.3d 614, 618-619. The copy of the judgment or order need not specify the date of entry so long as it shows the date of filing. *Estate of Crabtree* (1992) 4 Cal.App.4th 1119, 1123.

The 60-day period begins on the date of *service* of the Notice of Entry of Judgment, not its receipt or filing with the court clerk. Mailed service is complete at the time of deposit in the mail. CCP Section 1013(a). The sender does not have the burden of showing that the notice was actually received. Therefore the 60-day period to file the notice of appeal commences even though the appellant never received the mailed notice of entry. *Sharp v. Union Pac. R.R. Co.* (1992) 8 Cal.App.4th 357, 360.

The time for appeal is *not* extended 5-days for mailing under CCP Section 1013. Rule 45(c); *Casado v. Sedgwick, Detert, Moran & Arnold* (1994) 22 Cal.App.4th 1284, 1286.

When the deadline to appeal falls on a Saturday or Sunday or a holiday, it is extended to the next day that is not a weekend day or a holiday. CCP Section 12, 12a.

C. The 30-day period after denial of post-trial motions.

1. Motion for new trial.

If a timely post-trial motion is denied, the time to appeal the judgment for all parties (not just the party who filed the new trial motion) is extended 30 days from either the denial by operation of law (no ruling within 60 days) or from the date of service of the denial order.

First, the post-trial motion may be denied by an order in the minutes. If so, the 30-day extension runs from the mailing by the clerk or service by a party of the minute order denying the motion. Rule 8.108(b)(1)(A).

Second, denial can also occur by operation of law when the trial court fails to rule timely within the earliest of 60 days after service of notice of entry of judgment by a party or a clerk or (if no such service occurred) 60 days after filing of the first notice of intention to move for a new trial. CCP § 660. Where the trial court fails to rule on the motion within this 60-day period, the motion is denied by operation of law. CCP § 660.

In such a case, the 30-day appeal period runs *from the date of that "deemed denial."* Rule 8.108(b)(1)(B). *Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1486-1487.

Withdrawal of a motion for a new trial is the equivalent of a denial of the motion for the purpose of commencing the 30-day extension period in Rule 3(a). *O'Donnell v. Municipal Ct. (Watson)* (1989) 207 Cal.App.3d 714, 717-718.

A second new trial motion may not be considered after the denial of the first new trial motion. Thus, a second motion does not extend the appeal period. *Wenzoski, supra*, 43 Cal.3d at 541-542.

If the new trial motion was not valid because it was not timely, then the additional 30-day is not available. In such a case, the appeal period expires either 60 days after notice of entry of judgment or, if no notice of entry was given, 180 days after judgment. *Ramirez v. Moran* (1988) 201 Cal.App.3d 431, 435-437; *Marriage of Patscheck* (1986) 180 Cal.App.3d 800, 802.

A new trial motion may be filed before "entry" of the judgment (CCP § 659; *Wenzoski, supra*, 43 Cal.3d at 541), but the motion is premature and void if it is filed before there has been a "decision," such as by a verdict or by the rendition of judgment or a dispositive order in a court trial. A void motion does not extend the time for appeal. *Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 151-152.

Filing a notice of appeal does not deprive the superior court of jurisdiction to determine a new trial motion, but may bar rulings on a motion for judgment NOV, or to vacate the judgment. *Foggy v. Ralph F. Clark & Associates, Inc.* (1987) 192 Cal.App.3d 1204, 1212-1213 (court retains jurisdiction); *Weisenburg v. Molina, supra*, 58 Cal.App.3d at 486 (court does not retain jurisdiction).

2. Motion to vacate judgment.

After motion to vacate judgment, the notice of appeal must be filed by the earliest of:

(1) 30 days after the clerk's mailing or a party's service of an order denying the motion. *Hollister Convalescent Hosp. Comm., supra*, 15 Cal.3d at 664; *Rolen v. Rhine* (1981) 117 Cal.App.3d 23, 26.

(2) 90 days after filing the first notice of intention to move to vacate the judgment.

(3) 180 days after entry of judgment. Rule 8.108(c).

This extension is not available if the motion to vacate was not valid because it was not based on a statutory ground under CCP §§ 473 or 663, or on extrinsic fraud or mistake. *Lamb v. Holy Cross Hosp.* (1978) 83 Cal.App.3d 1007, 1010.

3. Motion for judgment NOV.

The time to appeal from the judgment is extended by the filing of a timely motion for judgment NOV to either 30 days after the clerk's mailing or a party's service of the order of denial or notice thereof, or 180 days after entry of judgment. Rule 8.108(c).

The time to appeal the denial of a motion for JNOV is 60 days after the clerk's mailing or a party's service of the order or notice of the order. Rule 8.104(a),(f).

If judgment NOV is reversed on appeal, the original judgment is reinstated and the time to appeal from that judgment begins to run upon issuance of the appellate court's remittitur. *Lippert v. AVCO Community Developers, Inc.* (1976) 60 Cal.App.3d 775, 779.

D. The 180-day period if no notice of entry or post-trial motion.

The third possible deadline for filing a notice of appeal is 180 days after the entry of judgment where no timely post-trial motion is filed and neither the clerk nor any party gives proper notice of the entry of judgment or appealable order. Rule 8.104(c). *Marriage of MacFarlane & Lang* (1992) 8 Cal.App.4th 247, 253; *Hughey v. City of Hayward* (1994) 24 Cal.App.4th, 206, 210 (180-day period applied because clerk's mailing of notice of entry was defective where the document was neither entitled "Notice of Entry" nor file stamped).

The date of "entry" of the judgment is determined under Rule 8.104(d). A judgment is "entered" for appeal purposes on the date of its entry in the judgment book or on the date it is filed with the superior court clerk. CCP 668.5; Rule 8.104(d); *Filipescu, supra*, 41 Cal.App.4th at 741; *Ten Eyck v. Industrial Forklifts* (1989) 216 Cal.App.3d 540, 543-545.

For an appealable order, the date of "entry" is either (1) the date entered in the minutes or (2) the date a signed order is filed. Rule 8.104(d). However, a court's express direction of a written order does not change the effective date of the denial, which occurs upon entry in the minutes of the minute order denying a new trial motion. CCP § 660.

E. Premature notice of appeal.

A notice of appeal filed after rendition of judgment but before its entry is valid as a matter of law and is deemed to have been filed immediately after entry of judgment. Rule 8.104(e)(1); *County of Alameda v. Johnson* (1994) 28 Cal.App.4th 259, 261.

A notice of appeal filed after the announcement of an intended ruling but before rendition of Judgment is not per se invalid. For "good cause" the appellate court has discretion to validate the appeal by treating the notice as if it was filed immediately after entry of the judgment. Rule 8.104(e)(2); *Stonewall Ins. Co. v. City of Palos Verdes Estates* (1996) 46 Cal.App.4th 1810, 1827-1828.

F. Amended judgments.

If, after entry of judgment, the trial court *substantially modifies* the judgment (e.g. on motion for new trial or motion to vacate and enter a different judgment), the amended judgment becomes the appealable judgment. A new appeal period starts to run from notice of entry or entry of the amended judgment. *Neff v. Ernst* (1957) 48 Cal.2d 628, 634; *Dickens v. Lee* (1991) 230 Cal.App.3d, 985, 987.

But if the amendment merely corrects clerical error and does not involve the exercise of judicial discretion, the original judgment remains the only appealable final judgment and the amendment does not create a new judgment from which an appeal may be taken. *Mulder v. Mendo Wood Products, Inc.* (1964) 225 Cal.App.2d 619, 635.

If the amended judgment is subsequently declared void, e.g. because the trial court failed to follow proper procedures on a new trial motion, the original judgment is reinstated and a new appeal period commences from the date of reinstatement. *Marriage of Micalizio* (1988) 199 Cal.App.3d 662, 671-672.

The safest course with respect to modified or amended judgments is to appeal timely from each judgment and also from each modification or amendment.

G. Reconsideration.

A "valid" motion for reconsideration extends the time for appeal by the earliest of (1) 30 days after the clerk's mailing or a party's service of the order of denial (or notice of entry); (2) 90 days after the first motion to reconsider is filed, or 180 days after entry of the appealable order. Rule 8.108(e); *Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043 (motion for reconsideration was invalid for lack of an affidavit and so did not extend time to appeal).

For orders that lead to entry of judgment, a motion for reconsideration is not proper and does not extend the time to appeal at all. *Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1606; *Crotty v. Trader* (1996) 50 Cal.App.4th 765;

Thus, a judgment—including a summary judgment— should be challenged in the trial court only by statutory post-trial motions, not by a motion for reconsideration.

In unusual circumstances, an untimely appeal may be reviewed as a writ petition. *Drum v. Superior Court* (2006) 139 Cal.App.4th 845.

H. Effect of post-trial motions in multi-party litigation.

An order denying a new trial motion extends the time to appeal for *all parties* in the action. Rule 8.108(b). But an order granting a new trial gives no party extended time to appeal from the original judgment. Thus, a judgment-loser should either file or join in the new trial motion to get the extension or file a "protective" notice of appeal within the time period in Rule 2(a) while the new trial motion is pending.

The rules are not definitive on whether the same risk is created for a party who does not join in a motion to vacate or motion for judgment NOV that is granted as to only one of several co-parties. Therefore, the safest approach is to join in those motions or file a notice of appeal within the period of Rule 8.108.

I. 20-day extension to appeal or cross-appeal after a prior timely appeal.

If any party files a timely notice of appeal, the deadline for all other parties to file a subsequent notice of appeal is extended for 20 days after the superior court clerk mails notification of the first appeal. Rule 8.108(f). This 20-day extension is triggered only by the first notice of appeal, and only if the first notice of appeal was timely. *Alioto Fish Co., Ltd. v. Alioto* (1994) 27 Cal.App.4th 1669, 1680. The 20-day extension applies even if the first appellant lacked standing. *Light v. County of Los Angeles* (1990) 218 Cal.App.3d 1287, 1295-1298.

If a party files a timely appeal from an order granting a new trial or an order granting, within 150 days of entry of judgment—a motion to vacate or a JNOV, the time for any other party to file a protective cross-appeal from the judgment or an order denying JNOV is extended for 20 days after the superior court clerk mails notification of the first appeal. Rule 8.108(f). This extension applies only if the initial notice of appeal was itself timely filed.

Because a cross-appeal may embrace only the order or judgment initially appealed from, the 20-day extension of time for cross-appeal does not extend the time to appeal from an order or judgment that was not the subject of a prior appeal. *Fundamental Investment Growth Shelter Realty Fund I= 1973 v. Gradow* (1994) 28 Cal.App.4th 966, 976-979. Thus, a post-judgment order enforcing a judgment is not cross-appealable after an appeal from the judgment. *Aheroni v. Maxwell* (1988) 205 Cal.App.3d 284, 295.

II.

NAME THE APPEALABLE ORDERS AND JUDGMENTS FROM WHICH THE APPEAL IS TAKEN.

A. Specify all appealable orders and judgments.

A notice of appeal must specify each appealable order or judgment appealed from and must be signed by the appellant or the attorney. Rule 8.100(a).

The notice of appeal need not specify a nonappealable order because nonappealable orders are reviewable on appeal from the final judgment. Identification of non-appealable orders does not invalidate the remainder of the notice of appeal. *Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 279.

Where several judgments or orders occurring close in time are separately appealable (such as a judgment and a later order awarding attorneys' fees), each appealable judgment and order must be identified in a single notice of appeal or multiple notices of appeal. *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46-47 (appeal from judgment did not constitute appeal from order denying motion to tax costs); *Robinson v. City of Yucaipa* (1994) 28 Cal.App.4th 1506, 1517; *Polster, Inc. v. Swing* (1985) 164 Cal.App.3d 427 (appeal from judgment did not include post-judgment order for attorney fees); *Russell v. Foglio* (2008) 160 Cal.App.4th 653 (appeal from costs ruling failed to perfect appeal from SLAPP ruling).

Hence, where the appeal period from the judgment expires before the next appealable order is entered, separate notices of appeal must be filed.

A separate notice of appeal is not required for costs or attorneys' fees if the judgment awards unspecified costs and attorneys' fees "incidental" to the judgment (such as routine costs of suit under sections 1032 and 1033.5), leaving for later determination only the amounts. *Grant v. List & Lathrop* (1992) 2 Cal.App.4th 993, 998. But post-judgment award of discretionary costs that are not "incidental to the judgment," such as CCP Section 998 expert witness fees, must be separately appealed. *Fish v. Guevara* (1993) 12 Cal.App.4th 142, 147-148.

If the notice of appeal identifies only a portion of the judgment, then the remaining unspecified portions of the judgment are not subject to appellate review. *Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 624-625 (notice of appeal specifying judgment of nonsuit on tenth cause of action did not permit appellate review of judgment on pleadings on eighth cause of action). Partial appeals are dangerously limiting and should be avoided. The specifications of prejudicial error can await the drafting of the opening brief.

B. The notice must specify an appealable order.

The notice must specify appealable orders and judgments, which are listed in CCP § 904.1. Other appealable orders are defined by the collateral order doctrine, which renders appealable a judgment or order if (1) it is final as to the collateral matter, (2) the subject of the judgment or order is collateral to the general subject of the litigation and (3) the judgment or order directs the payment of money by the appellant or the performance of an act by or against the appellant.

If the only order identified in the notice of appeal is not appealable, then the appeal will likely be dismissed unless (1) the nonappealable order (e.g., an order granting a motion for summary judgment) led to the entry of an appealable final judgment (e.g., the summary judgment itself), and (2) the appellate court in its discretion deems the appeal to be taken from the subsequently entered judgment. *Compare Allabach v. Santa Clara County Fair Assn.* (1996) 46 Cal.App.4th 1007 (appeal from order granting motion permitted) and *Francis v. Dun & Bradstreet, Inc.* (1992) 3 Cal.App.4th 535 (same), with *Jordan v. Malone* (1992) 5 Cal.App.4th 18 (declining to follow *Francis*). Counsel should not rely on the appellate court's discretion, but rather should always appeal from the appealable judgment. See *Currie*

v. O'Connor Hospital (1993) 25 Cal.Rptr. 758 (depublished). ("We are wearying of 'appeals' from clearly nonappealable orders") (appeal dismissed).

If an order is not appealable and an appealable order will not issue soon enough to provide effective appellate review, then the aggrieved party must file a writ petition.

C. Rule of liberal construction for sufficiency of notice.

Because public policy favors review on the merits, the notice of appeal is "liberally construed" in favor of its sufficiency. Rule 8.100(a)(2); *D'Avola v. Anderson* (1996) 47

Cal.App.4th 358, 361. However, this policy of liberality cannot salvage an *untimely* notice of appeal.

III.

NAME ALL APPELLANTS.

A notice of appeal must identify the appellant. Rule 8.100(a)(1).

To the extent that an appeal is purportedly taken by a party not named in the notice of appeal, that portion of the appeal may be dismissed because the judgment is considered final as to the nonappealing parties. *Estate of McDill* (1975) 14 Cal.3d 831, 840.

However, one case permitted an "amendment" to the notice of appeal to permit review of the judgment against an employee where the original notice named only the employer as the appellant. *Beltram v. City of Los Angeles* (1977) 66 Cal.App.3d 711.

IV.

STEPS FOR FILING THE NOTICE OF APPEAL AND DESIGNATION OF RECORD.

A. File in person with the superior court clerk.

The notice of appeal is filed with the *superior court* clerk, not the court of appeal. Rule 8.100(a)(1).

The notice of appeal should be filed either in person or electronically to ensure timeliness and to obtain a file-stamped copy showing the date of filing. Filing by mail may create potentially fatal confusion if the notice is file-stamped on a date later than its receipt by the clerk. *Pacific Southwest Airlines v. Dowty-Rotol, Ltd.* (1983) 144 Cal.App.3d 491, 493 (deemed "filed" when received by clerk). The date of placement of the notice in the mail is not the date of filing. *In re Gary R.* (1976) 56 Cal.App.3d 850, 852.

Appellant must serve the notice of appeal on all other parties. Rule 1(a).

It is safest to file the designation of clerk's transcript or joint appendix and the designation of reporter's transcript at the same time as the notice of appeal to satisfy the 10-day requirement for designating the record and avoid inadvertently going into default. Rule 8.121(a).

B. Pay filing and court reporter fees.

Appellant must present to the superior court clerk a filing fee of \$655, payable to "Clerk, Court of Appeal," Gov. Code § 68926, *and* a \$100 processing deposit payable to the superior court clerk. Gov. Code § 68926.1. Rule 8.100(b). Verify the filing fees in advance by calling the superior court clerk.

For the reporter's transcript, Rule 8.130(b) requires the appellant to make a deposit: \$325/day for proceedings up to three hours; \$650/day for proceedings over three hours. But if the reporter will accept payment upon completion, appellant may file with the record designation the court reporter's declaration waiving the daily deposits for the reporter's transcript.

**SAMPLE NOTICE OF APPEAL AND DESIGNATION OF RECORD
FROM THE SUPERIOR COURT TO THE CALIFORNIA COURT OF APPEAL
YOUR LAW OFFICE**

Attorney for [Plaintiff/Defendant] and Appellant

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF _____

JOHN DOE,
Plaintiff,

v.

BLACK AND WHITE COMPANY,
Defendant /

Superior Ct. No. _____

NOTICE OF APPEAL;
DESIGNATION OF REPORTER'S
TRANSCRIPT; ELECTION OF
APPENDIX IN LIEU OF CLERK'S
TRANSCRIPT.

NOTICE OF APPEAL

PLEASE TAKE NOTICE that plaintiff and appellant _____ [name each appellant] hereby appeals from the judgment [and/or appealable order] [and/or order granting/denying judgment notwithstanding the verdict] filed on ____ [name each appealable order and judgment and give its date of entry], of which notice of entry was served on ____ [date]. [If applicable: The time to file this notice of appeal was extended under Rule 3 by the denial of timely post-trial motions to ____ [date]. The order dated _____ denying the plaintiff's motion for judgment notwithstanding the verdict is separately appealable within 60 days of notice of its entry.]

Appellant herewith provides a check for \$655 payable to the Clerk, Court of Appeal.

DESIGNATION OF REPORTER'S TRANSCRIPT

The Court Reporter is requested to transcribe the following proceedings: [the appellant should designate the entire trial, except that voir dire may be omitted if appellant makes no claim of jury misconduct. List the proceedings by date and courtroom. Consider including pretrial motions (including motions on the pleadings or for partial summary adjudication that limited the plaintiff's theories); opening statements; the testimony of all witnesses; closing arguments; motions and conferences heard outside the presence of the jury; jury instructions read to the jury; depositions read to the jury; jury deliberations; the return of the verdict; argument on post-trial motions. Be comprehensive. It is better to designate too much than not enough.]

Appellant hereby pays to the superior court clerk a \$100 processing fee.

Appellant hereby deposits \$325/day for proceedings up to three hours in a day and \$650/day for proceedings over three hours in a day. [If the court reporter will accept payment upon completion, in lieu of deposits appellant may file with this designation a declaration by the court reporter waiving the daily deposits for the reporter's transcript.]

ELECTION OF JOINT APPENDIX IN LIEU OF CLERK'S TRANSCRIPT

Plaintiff elects to prepare an appendix in lieu of clerk's transcript. [The joint appendix is less expensive than a clerk's transcript and allows counsel to present to the appellate court exhibits and depositions read to the jury but not transcribed. Counsel should include in the appendix the court minutes, the instructions submitted and given.]

Dated:

Respectfully submitted,

LAW OFFICE OF

By _____

Attorney for [Plaintiff/Defendant]

[Proof of Service]