

RESOLUTION 12-04-04

DIGEST

Criminal Appeal: Form of the Notice

Amends California Rules of Court to require certain entities to make notice of appeal forms available to defendants.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No prior resolutions found.

Reasons:

This resolution amends California Rules of Court, rule 30, to require certain entities to make notice of appeal forms available to indigent defendants. This resolution should be approved because it would provide a simple form that would accomplish the court's purpose.

Availability of an approved form would clear the confusion caused by the number of notice of appeal forms in circulation and the inconsistent treatment of the notices by the trial courts. This resolution would prohibit the rejection of a notice of appeal that conforms to the requirements of the court rules, although not on the proper form, and would allow courts and counsel to address the substance of the appeal rather than grapple with the issue of which form should have been used.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that the Judicial Council amend California Rules of Court, rule 30, to read as follows:

- 1 Rule 30
- 2 (a) Notice of appeal
- 3 (1) To appeal from a judgment or an appealable order of the superior court in a
- 4 felony case-other than a judgment imposing a sentence of death-the defendant or the
- 5 People must file a notice of appeal in that superior court. To appeal after a plea of guilty
- 6 or nolo contendere or after an admission of probation violation, the defendant must also
- 7 comply with (b).
- 8 (2) As used in (1), "felony case" means any criminal action in which a felony is
- 9 charged, regardless of the outcome. It includes an action in which the defendant is charged
- 10 with:
- 11 (A) a felony and a misdemeanor or infraction, but is convicted of only the
- 12 misdemeanor or infraction;
- 13 (B) a felony, but is convicted of only a lesser offense; or
- 14 (C) an offense filed as a felony but punishable as either a felony or a misdemeanor,
- 15 and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b).

16 (3) If the defendant appeals, the defendant or the defendant’s attorney must sign the
17 notice of appeal. If the People appeal, the attorney for the People must sign the notice.

18 (4) The notice of appeal must be liberally construed. Except as provided in (b), the
19 notice is sufficient if it identifies the particular judgment or order being appealed. The
20 notice need not specify the court to which the appeal is taken; the appeal will be treated as
21 taken to the Court of Appeal for the district in which the superior court is located. The
22 clerk of the superior court, all correctional institutions, and any court-appointed counsel,
23 public agency, or organization contracting with a public agency representing indigent
24 persons in criminal matters that may be appealed to the Court of Appeal must make
25 available to defendants notice of appeal forms approved by the Court of Appeal for the
26 district. A notice of appeal in another form may not be rejected for filing if it otherwise
27 conforms to the requirements of this rule.

28 (b) Appeal after plea of guilty or nolo contendere or after admission of probation
29 violation

30 (1) Except as provided in (4), to appeal from a superior court judgment after a plea
31 of guilty or nolo contendere or after an admission of probation violation, the defendant
32 must file in that superior court-in addition to the notice of appeal required by (a)-the
33 statement required by Penal Code section 1237.5 for issuance of a certificate of probable
34 cause.

35 (2) Within 20 days after the defendant files a statement under (1), the superior court
36 must sign and file either a certificate of probable cause or an order denying the certificate.

37 (3) If the defendant does not file the statement required by (1) or if the superior
38 court denies a certificate of probable cause, the superior court clerk must mark the notice
39 of appeal “Inoperative,” notify the defendant, and send a copy of the marked notice of
40 appeal to the district appellate project.

41 (4) The defendant need not comply with (1) if the notice of appeal states that the
42 appeal is based on:

43 (A) the denial of a motion to suppress evidence under Penal Code section 1538.5,
44 or

45 (B) grounds that arose after entry of the plea and do not affect the plea’s validity.

46 (5) If the defendant’s notice of appeal contains a statement under (4), the reviewing
47 court will not consider any issue affecting the validity of the plea unless the defendant also
48 complies with (1).

49 (c) Notification of the appeal

50 (1) When a notice of appeal is filed, the superior court clerk must promptly mail a
51 notification of the filing to the attorney of record for each party, to any unrepresented
52 defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter
53 or reporting supervisor. If the defendant also files a statement under (b)(1), the clerk must
54 not mail the notification unless the superior court files a certificate under (b)(2).

55 (2) The notification must show the date it was mailed, the number and title of the
56 case, and the dates the notice of appeal and any certificate under (b)(2) were filed. If the
57 information is available, the notification must also include:

58 (A) the name, address, telephone number, and California State Bar number of each
59 attorney of record in the case;

60 (B) the name of the party each attorney represented in the superior court; and

61 (C) the name, address, and telephone number of any unrepresented defendant.

62 (3) The notification to the reviewing court clerk must also include a copy of the
63 notice of appeal, any certificate filed under (b), and the sequential list of reporters made
64 under rule 980.4.

65 (4) A copy of the notice of appeal is sufficient notification under (1) if the required
66 information is on the copy or is added by the superior court clerk.

67 (5) The mailing of a notification under (1) is a sufficient performance of the clerk's
68 duty despite the discharge, disqualification, suspension, disbarment, or death of the
69 attorney.

70 (6) Failure to comply with any provision of this subdivision does not affect the
71 validity of the notice of appeal.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

Existing Law: Existing law provides no means for an indigent defendant to obtain a form for the purpose of filing a notice of appeal. Additionally, existing law provides little guidance to both defendants and attorneys on the required form and content for a notice of appeal from a criminal matter.

This Resolution: Would require courts, prisons and organizations assisting indigent criminal defendants to make notice of appeal forms available to defendants. It would further prohibit the rejection of notices of appeal which do not use these forms but which otherwise conform to the requirements of the court rules.

The Problem: Many trial attorneys and presumably most defendants are not very knowledgeable about certificates of probable cause. Trial courts, too, are exceedingly uneven in their understanding and application of the certificate of probable cause requirement. Currently, there are several notice of appeal forms in circulation that seek (a) to inform trial counsel, defendants, and the courts of the certificate of probable cause requirements and (b) to elicit needed information on the form itself. This resolution, together with its companion resolutions concerning filing notices of appeal in felony criminal matters, would dramatically reduce the frequency of mistakes involving filing legally sufficient notices of appeal and certificates of probable cause. The use of such forms has been recommended by the California Supreme Court. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1102, fn. 11.)

IMPACT STATEMENT

This resolution does not amend any other rule, statute, or law.

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