

# 2005 Civil Appeals Study

## GENERAL CODING INSTRUCTIONS COURT OF LAST RESORT CODING FORM

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Thank you for agreeing to assist the National Center for State Courts (NCSC) and the Bureau of Justice Statistics (BJS) with this very important project. We cannot emphasize enough how crucial it is that you read and understand *all* of these instructions because many questions that may arise will be answered by the following information. Please be sure to code each case as accurately, consistently, and completely as possible. We have included two sample coding forms at the end of these instructions. They have been completed in a manner consistent with these instructions. Please refer to them as you read these instructions. To assure complete and accurate data, please abide by the following basic rules for coding:

- **Every case coded for this study *must* be an appeal of a general civil case (i.e., tort, contract, or real property) in which a verdict or judgment was entered in 2005.** If you discover a case on the list that was not appealed (i.e. no notice given to the appellate court), please make a note of the case name and number and notify the NCSC. If for any reason you cannot locate a case or if the case does not appear to fit the description of the sample (e.g., appeal from civil bench/jury trial in 2005), please notify the NCSC for further instructions.  
**Note:** if a case was dismissed for procedural error and a subsequent appeal was filed, we are interested in the subsequent appeal only if that resolved the case on the merits. If the subsequent appeal results in a second dismissal for procedural error, exclude the second appeal and only code the first appeal.
- **When in doubt about how to code something**, please call the National Center for State Courts (NCSC). *Please do not guess how to code something.* It is **strongly encouraged** that you code two or three appeals and then call your court liaison to discuss the coding process and ask any questions that arose. While coding, keep a list of questions (and the docket number that is affected), then call [Nicole Waters, Shauna Strickland, Ashley Mason, Chantal Bromage, or Deborah Saunders] toll-free at 1-800-616-6109 Monday through Friday, 8:30 a.m. to 5:00 p.m., Eastern Time.
- **Write CLEARLY!**
  - o Shape your numbers and letters CLEARLY and DISTINCTLY. This is a very important way to ensure that the data are entered, stored, and reported accurately.
  - o Use a PENCIL so you can erase and re-enter the data clearly, if necessary.
  - o See the "**SAMPLE CODING FORMS**" for examples.
- **Code each item accurately.**

- o If the item requires checking a box, be certain that you check the one that you intend to check.
  - o Be certain that you write the numbers for DATES in the correct order. For example, July 1, 2005 should be coded as: **7 / 1 / 05** (month/ day/ year). If this is coded 1 / 7 / 05, it will create an error of 6 months.
- **If the data item DID NOT OCCUR** (e.g., no reply briefs were filed), write “**DNO**” **in the blank**. However, **if the event DID OCCUR**, but you **DON'T KNOW** the answer (e.g., you know that the Supreme Court granted certiorari but do not know on what date the cert was granted), mark the “**DK**” (for “Don’t Know”) checkbox that is provided. Please use “DK” sparingly—make every attempt to find and enter the correct information.
  - **If there is something peculiar or particularly interesting about the case**, please include comments on the back of the coding form, including an explanation of how you determined codes for the case. This detail will assist the NCSC and BJS in analyzing the data that you provide about each appeal.

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## SPECIFIC DATA ITEMS

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In this study, we are *only* collecting information about civil trials that were included in the *2005 Civil Justice Survey of State Courts* and that were appealed. For the purpose of this study, do not include appeals of cases that are not included on the list provided to you by the NCSC. Furthermore, include only appeals of trial court judgments. Do not include interlocutory appeals (e.g. appeals of injunctions, collateral orders, etc.)

**1. Court of Last Resort Docket Number:** Write the number assigned to the appeal by the Court of Last Resort (**COLR**). Be sure to include the complete number, including any prefixes or suffixes. (The COLR docket number will be different than the Trial Court number recorded for your reference at the top of the form.)

**2. Petitioner (from Trial Court case):** Check the box next to the party, from the trial court, who filed this appeal of the trial court or IAC decision. Please note that both parties may appeal the same or different issues (e.g. the defendant may appeal an affirmance by the IAC, while the plaintiff may appeal a modification of the award amount).

**3. Cross-Appeal or Multiple Appeal:** If multiple parties appeal, you must complete separate forms – one for each party’s appeal. For ease in identifying cross-appeals (when the defendant and plaintiff from trial both appeal) and multiple appeals (when one trial litigant appeals more than once, e.g., the plaintiff appeals and then withdraws the appeal, but at a later date the plaintiff files a second appeal of the same verdict or judgment) please indicate this by checking the appropriate checkbox.

**4. Number of Parties:** Write the total number of petitioners and the total number of respondents who are participating in this appeal. We are primarily interested in counting the number of individuals or entities whose rights are threatened and who can win damages.

- If there is an executor of an estate, this is one party. (e.g., if two parents are suing on behalf of a deceased child, this should be counted as 2 parties. Both parents presumably could win damages. However, if there is a child who is alive and the two parents are suing on behalf of the child, this is counted as just 1 – since the child is the plaintiff and the parents are simply representing the child as would a lawyer or guardian ad litem.)
- Code an estate as 1 party. Even if the estate and the executor (a.k.a., executrix, administrator, or estate representative) are listed as separate litigants, code as 1 party.
- If the party is listed as an individual name and listed as d/b/a (“doing business as”) count 2 parties.

**5. Appeal Milestones:** Write the date that each of the following events occurred. If the event has not yet occurred or if the appeal was withdrawn, abandoned, dismissed or otherwise terminated before the event was necessary, enter “**DNO**” to indicate the event did not occur. While it is likely that these events will occur chronologically in the order they appear on the coding form, they will not necessarily occur in this order.

**a) *Appeal requested:*** write the date on which the Petitioner filed a request for certiorari or review of a trial court or an IAC decision.

**b) *Appeal granted/denied:*** write the date on which the COLR granted or denied the Petitioner’s request for certiorari or review.

**c) *Initiated Documentation:*** if this court utilizes docketing statements, write the date on which the docketing statement was filed. A docketing statement is a form filed by the petitioner and often used by the court for scheduling and assignment purposes. Some courts use other names for these forms, such as “case information sheet” or “statement of the case.” If this court does not use such forms, write the date on which the petitioner filed a notice of appeal with the appropriate court. Most states require petitioners to file the notice of appeal with the trial court; however, some states require petitioners to file with the court of appeals directly. If the petitioner mistakenly filed the notice of appeal with the wrong court and the notice of appeal was forwarded to the proper court, write the date on which the appropriate court received the notice. This date will identify when the appellate court first initiated documentation for the appeal.

**d) *Record filed:*** write the date on which the complete trial court and/or IAC record was filed with the COLR (excluding the transcript). If the parties filed a joint statement of the case (or some other abbreviated record) in lieu of a complete trial record, note the date on which this statement was filed. At times

there may be multiple record submissions. If this is the case, use the latest date to indicate when the COLR received the full record.

**e) Transcript filed:** write the date on which the complete transcript was received by the COLR. If the transcript is not recorded separately, but is part of the record, use the date the court received the record.

**f) Petitioner brief filed:** write the date on which the Petitioner filed its brief with the COLR. For this question, we are interested only in briefs on the merits of the appeal. Do not include briefs supporting or opposing any preliminary motions, such as motions for temporary stays of the trial court or IAC decision.

**g) Respondent brief filed:** write the date on which the Respondent filed its response brief with the COLR. For this question, we are interested only in briefs that respond to the Petitioner's brief on the merits of the appeal. Do not include briefs supporting or opposing any preliminary motions, such as motions for temporary stays of the trial court or IAC judgment. If there is more than one respondent, and thus more than one respondent brief submitted, enter the date for the submission of the last respondent brief.

**h) Reply briefs:** write the dates on which any reply briefs were filed with the COLR. Check either "Petitioner" or "Respondent" next to the date to indicate which party filed the reply brief. If the parties filed more than one reply brief, indicate the filing date and filing party on the back of the coding form, labeling each clearly as reply briefs. If a reply brief is filed and you know the date, but do not know which party filed the brief, enter the date and mark the "DK" box. Likewise, if you know that the petitioner filed the brief, but you do not know the date of the brief, mark the "DK" box.

**i) Briefing Completed:** write the date on which all briefs were submitted to the COLR in preparation for oral arguments or decision. If there are different dates for fully briefed and submitted, please use the latest date to indicate when all documents are submitted to the appellate court.

**j) Oral argument:** write the date on which oral arguments were held before the COLR. If the court did not hear oral arguments but instead considered the case on the briefs alone, check "none." Write "DNO" in this space (do not check "none") if no oral arguments were held because the appeal was withdrawn, dismissed or otherwise terminated before oral arguments were necessary. If there are multiple dates listed in which oral arguments were heard, list the latest date on record.

**k) Decision/disposition:** write the date on which the COLR issued a final decision for the appeal OR the date on which the petition was dismissed. Do not include the dates on which the court decided motions or preliminary issues.

**6. Total # of issues presented in the petitioner's initial brief** Indicate the total number of issues raised on appeal by the appellant in the appellant's initial brief. We are only interested in issues that were actually briefed. This information should therefore be obtained from the briefs only; do not tally the number of errors assigned by the appellant in the notice of appeal or other preliminary documents.

**6a thru 6f: Issue on appeal (use codes):** Using the attached list of codes, indicate the category that accurately captures the legal issue presented in the appellant's brief. There are nine primary categories for "issue on appeal." The first digit reflects the general category of the issue and the second digit indicates a more detailed sub-category. If Issue code 90 ("Other trial court error") is used, be sure to explain the error on the back of the page. These codes will be the same codes used for categorizing "issues addressed" by the court in Question 9, but note that the issues raised in the briefs may or may not be the same issues that are addressed by the court in the opinion.

The total number of issues entered **must match** the number coded for Question 6(a) thru 6(f), **unless** the appellant raises more than six issues on appeal. For this question, we are interested only in the **first six** issues raised (listed in the order they appear in the brief). If the party's brief raises more than six issues, code only the first six issues. For example, if there are 3 issues on appeal, write "3" in Question 6 and list 3 codes for Questions 6a, 6b, and 6c. If there are 7 issues on appeal, write "7" in Question 6 but list only the first 6 codes for Questions 6a through 6f.

**7. Appellate court disposition:** Check the manner in which the appeal was resolved at the COLR. While it is possible that only one option will apply to a case, the options listed are not necessarily mutually exclusive; please check all options that apply. Please be thorough and precise when coding the dispositions. If the appeal is still pending, skip to Question 11 and check the box marked "pending."

**a. Certiorari/review/transfer not granted due to:**

***Appeal improvidently granted*** – the appeal was initially accepted by the court, but it was later determined that the appeal should have been rejected for some reason. Typically this code will be used for appellate courts with discretionary review.

***Lack of jurisdiction*** – the appeal was dismissed because it was filed in the wrong court or because this court has no jurisdiction over the case's subject matter or there is a lack of jurisdiction because the trial court has issues pending and thus still have jurisdiction over the case.

***Denied (discretionary review)*** – the court has discretionary jurisdiction over the appeal and the court denies review.

**Procedural error** – a procedural error prevents COLR review of the issues raised. For example, the petitioner missed the deadline for filing a notice of appeal. This option also includes appeals that are extinguished by the filing of a timely post-verdict motion in the trial court.

**No valid question on appeal** – the notice of appeal did not allege a reviewable error. Trial court and IAC decisions may only be appealed if the errors were prejudicial, were preserved during trial, and were identified and explained in an appellate brief. If a notice of appeal fails to allege that the error was prejudicial, or if the errors alleged were not objected to during trial, then the appeal fails to present a “valid question” – thus there are “no valid questions on appeal.”

**Unknown** – the appeal was not accepted, but the reason underlying the rejection is not apparent.

**b. Appeal withdrawn before decision:**

**By petitioner** – the petitioner withdrew the appeal before the COLR issued an opinion.

**By stipulation of parties** – the parties agreed to end the appeal (likely after settlement) and requested that the court dismiss the appeal.

**Unknown** – the appeal was clearly withdrawn and is no longer pending, but the withdrawing party is unknown.

**c. Motion on the merits granted:** the court granted a party’s motion on the merits. Do not check this box if a motion on the merits was made but denied by the court. This code is similar to a trial court’s ruling on a summary judgment; no oral arguments are necessary and the appellate court rules based on the issues presented in the brief or petition.

**d. Affirmed in whole:** the COLR affirmed the entire trial court decision or judgment.

**e. Reversed in part:** the COLR reversed only part(s) of the trial court decision or judgment. This is also referred to as “affirmed in part/reversed in part.” Include here any judgments that are “vacated in part.”

**f. Reversed in whole:** the COLR reversed the entire trial court decision or judgment. Include here any judgments that are “vacated in whole.”

**g. Remanded:** the court sent the case back to the lower court for additional proceedings. Check this even if the lower court will revisit only some of the issues. **Be sure to explain the effect of the remand in the space below.** Do

not include the court's *reasons* for remanding the case; include only the *effect* of the remand, (e.g., Remand to the trial court for a new trial, in light of the improper jury verdict forms.) If the court reversed the trial court decision in part or in full and remanded the case, check both (g) remanded and (e) or (f).

***h. Verdict/Judgment modified:*** This option is applicable if the COLR modified the trial court's resolution of at least one issue without remanding the case. A separate issue may be remanded and coded as such. **Be sure to explain the effect of the modification, below.** Do not include the court's *reasons* for modification here; include only the *effect* of the modification, (e.g., Judgment reduced from \$160,000 to \$51,000). If the court reversed the trial court decision in part or in full and modified the verdict or judgment, check both (h) modified and (e) or (f).

## 8. Type of Decision:

***Full Opinion:*** The appellate court produces an expansive discussion and elaboration of the merits of the case or the defect or procedural error. The elaboration may include statements of fact, issues, and the court's reasoning.

***Memorandum:*** The appellate court produces a limited discussion of the merits of the case or the procedural determination. The discussion will only include some statements of fact, issues, or the court's reasoning.

***Summary/Dispositional Order:*** The appellate court produces a document that has no discussion of the facts or merits of the case, or no discussion of the defect or error, and gives no reasons for the court's decision (e.g., "Affirmed. No opinion." Or "Denied. No opinion.")

***Other Opinion:*** if the type of decision is not listed above. Use this sparingly.

**9. Additional opinions:** In addition to the primary opinion, indicate the number of concurring and dissenting opinions (not the number of judges participating in a separate opinion), if any, which were issued by members of the court.

**10. Total # of issues addressed by Opinion:** Indicate the total number of issues addressed by the court in the dispositive opinion. Mark the "OPINION PENDING" checkbox if the appeal is currently awaiting the release of the final opinion. If the opinion is released at a later date, please return to this question to complete the coding.

**1. *Issue Addressed:*** Using the attached list of codes, indicate the category that accurately captures the legal issue addressed by the court. There are nine primary categories for "issue on appeal." The first digit reflects the general category of the issue and the second digit indicates a more detailed sub-category. If Issue code 90 ("Other trial court error") is used, be sure to explain

the error on the back of the page. These issues may or may not be the same issues presented in the appellant's brief as listed in Question 6.

The total number of issues entered **must match** the number coded for Question 9(a) thru 9(f), **unless** the opinion addresses more than six issues on appeal. For this question, we are interested only in the **first six** issues raised (listed in the order they appear in the opinion). If the opinion addresses more than six issues, code only the first six issues. For example, if there are 3 issues on appeal, write "3" in Question 9 and list 3 codes for Questions 9a(1), 9b(1), and 9c(1). If there are 7 issues on appeal, write "7" in Question 9 but list only the first 6 codes for Questions 9a through 9f.

2. **Resolution:** Enter the appropriate resolution using the attached list of five codes for each of the "issues addressed" by the court. Code the court's resolution only for opinions that are dispositional in nature. If Resolution code 4 ("Other or unknown resolution on the merits) is used, be sure to explain the other resolution on the back of the page.

**11. Alternative Dispute Resolution (ADR) Programs (court-sponsored only):** Only complete these questions if the appellate court has an ADR program that is court-sponsored (or court-annexed). **DO NOT** code data for programs in which the appellate court requires petitioners to use private ADR programs or private parties in the community.

- a. **Referred:** Check this box if the file indicates that the appellate court referred petitioners to an ADR program to resolve any issues on appeal. If the materials do not indicate any ADR activity, check the "No Referral" box and skip to Question 12.
- b. **Returned to regular docket:** If the appeal was referred to ADR, but returned to the regular docket for further proceedings, check this box.

**12. Present status of appeal:** Indicate whether the appeal has been closed (for any reason) or is still pending. An appeal is considered closed only if the court has issued a final order or opinion dismissing or resolving the appeal. This includes appeals that are dismissed at the request of either party. If the appeal is STILL PENDING, skip to Question 15.

**13. Request to reconsider/rehear:**

- a. If applicable, write the *first* date on which either party requested that the COLR reconsider or rehear the issues. If no request was made, check "none" and skip to question 14. Do not answer this question if the COLR has not yet issued a decision for this case or if the deadline to move for reconsideration or rehearing has not yet expired (a motion could still be filed).



- b. **Reconsideration/rehearing granted:** if you recorded a date for part a, indicate whether the COLR granted the request to rehear or reconsider the appeal. If a decision was made, but you are unsure of the results, mark the “DK” box to indicate you “don’t know”. If no request for reconsideration/rehearing was made, do not check either box. If the court modified its original judgment after rehearing or reconsideration, please note the effect of the modification on the back of this coding form.

**14. Any further appeal?:** Identify the court and status, if known, of any additional appeals initiated by either party.

**15. Petitioner’s counsel:** Write the name, address, and telephone number of the Petitioner’s counsel for the COLR appeal. If the Petitioner has more than one attorney simultaneously, write the name and contact information that appears first in the COLR record. If the Petitioner changed counsel during the COLR appeal, write the name and contact information of the most recent attorney. If the Petitioner does not have counsel, check “pro se / pro per” and complete the blanks with the Petitioner’s contact information. An attorney representing his or her self is not considered pro se (in this situation, write the name and contact information of the Petitioner).

**16. Respondent’s counsel:** Indicate whether the respondent was pro se or pro per on appeal (self-represented). An attorney representing him or herself is NOT considered pro se.

**Please use the back of this form to state additional comments about this case, including any deviations from typical appeal processing:** On the back of the coding form, please list any additional information that might be useful in understanding the appeal, particularly any unique processing events.

**Coder’s initials & date:** Please print initials and date each coding form as it is completed.