§ 1704. Settlement of case and return on appeal.

(a) When an appeal has been taken, the stenographer's original transcript of minutes must be furnished to the clerk within ten days after the fees therefor have been paid. Immediately upon receiving such minutes the clerk shall cause notice of that fact to be sent to the attorney for the appellant, or to the appellant if he or she has not appeared by attorney. Within fifteen days after receiving the transcript from the clerk, or from any other source, the appellant or the appellant's attorney shall make any proposed amendments and cause them to be served, together with a copy of the transcript, on the attorney for the respondent, or on the respondent if he or she has not appeared by attorney. Within fifteen days after such service, the respondent or the respondent's attorney shall make any proposed amendments to the transcript or objections to the proposed amendments of the appellant and cause them to be served on the appellant's attorney or on the appellant if he or she has not appeared by attorney. The appellant or his or her attorney shall then procure the case to be settled on a written notice of at least four days to the clerk and to the attorney for the respondent or to the respondent if he or she has not appeared by attorney, returnable before the judge who tried the case. The clerk must thereupon make a return to the appellate court, which must contain the summons or notice of petition, pleadings, evidence, judgment and all other necessary papers and proceedings, and have annexed thereto the opinion of the court, if any, and the notice of appeal. The judge before whom the case was tried shall within five days from the date of the submission to the court of the case on appeal, settle the case and indorse his or her settlement on the return. In lieu of the judge settling the case and indorsing his or her settlement on the return, the parties may stipulate that the transcript together with the proposed amendments, if any, and all other elements of the return are correct. The clerk must thereupon cause the return to be filed with the clerk of the appellate court. After a judge is out of office he or she may settle the case in any action or proceeding tried before him or her and may be compelled by the appellate court so to do.

(b) Where no testimony was taken and a settlement of a case is not required, the return shall be made by the clerk forthwith upon filing the notice of appeal. Such return shall contain the judgment or order

appealed from and all the original papers upon which the judgment or order was rendered or made, duly authenticated by the certificate of the clerk having the custody thereof, or copies thereof duly certified by such clerk, and shall have annexed thereto the opinion of the court, if any, and the notice of appeal.

(c) Upon an appeal from an order granting or denying a motion for a new trial, upon the ground of fraud or newly discovered evidence, the stenographer's minutes of the trial shall be included in the return of the clerk and the provisions of subdivision (a) of this section shall apply to such an appeal.