§ 1704. Settlement of case and return on appeal.

(a) 1. When an appeal has been taken, the stenographer's original transcript of minutes, if such minutes were taken, must be furnished to the clerk within ten days after the fees therefor have been paid. If testimony was given but stenographic minutes were not taken, the clerk shall prepare minutes of the proceedings within thirty days after the filing of the notice of appeal, such minutes to consist of a statement sufficiently descriptive of the testimony to make possible appellate review. Immediately upon receipt or preparation of the 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. If the clerk has prepared the minutes, he or she also shall cause copies thereof to be served upon the attorneys for the appellant and the respondent, or upon the appellant and the respondent if they do not appear by attorney.

2. (i) If minutes were taken by a stenographer, within fifteen days of receipt of a copy of the stenographic transcript of the minutes, 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 receipt of such service, the respondent or the respondent's attorney shall make any objections to the amendments proposed by the appellant and make such further proposed amendments to the transcript as are deemed necessary, and cause them to be served on the attorney for the appellant, or on the appellant if he or she has not appeared by attorney.

(ii) If the clerk prepared the minutes, within fifteen days after the date of receipt of a copy of such minutes, the attorneys for the appellant and the respondent, or the appellant and the respondent if they have not appeared by attorney, shall forward to the court any proposed amendments to the minutes.

3. 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 justice who tried the

case. The clerk shall thereupon prepare a return, which shall contain the summons or notice of petition, pleadings, evidence, judgment or order, notice of appeal, opinion of the court, if any, and all other papers necessary for appellate review of the judgment or order appealed from. Within five days after the return day of the notice to settle the case, the justice shall settle the same and indorse his or her settlement on the return. In lieu of the justice settling the case and indorsing his or her settlement on the return, the parties may stipulate that the transcript (or the minutes prepared by the clerk, if appropriate) together with the proposed amendments, if any, and all other elements of the return are correct. The clerk shall thereupon cause the return to be filed with the clerk of the appellate court.

(b) Where no testimony was taken, the return shall be filed with the clerk of the appellate court within ten days after the filing of the notice of appeal. Such return shall consist of the same papers and proceedings specified in subdivision (a), except for the minutes therein described. The authenticity of such papers shall be certified by the clerk.

(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 minutes of the trial, as described in subdivision (a), shall be included in the return and the provisions of that subdivision shall apply to such an appeal.