

# APPELLATE DEFENDERS, INC., APPELLATE PRACTICE MANUAL

APPELLATE DEFENDERS, INC.  
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## TABLE OF CONTENTS

|   |                                 |                              |
|---|---------------------------------|------------------------------|
| <b>CHAPTER 1: THE ABC'S OF PANEL MEMBERSHIP: Basic Information For Appointed Counsel</b>                  | <a href="#">Go to Chapter 1</a> | <a href="#">See Contents</a> |
| <b>CHAPTER 2: FIRST THINGS FIRST: What Can Be Appealed And How To Get an Appeal Started</b>               | <a href="#">Go to Chapter 2</a> | <a href="#">See Contents</a> |
| <b>CHAPTER 3: PRE-BRIEFING RESPONSIBILITIES: Record Completion, Extensions of Time, Release on Appeal</b> | <a href="#">Go to Chapter 3</a> | <a href="#">See Contents</a> |
| <b>CHAPTER 4: ON THE HUNT: Issue Spotting and Selection</b>   | <a href="#">Go to Chapter 4</a> | <a href="#">See Contents</a> |
| <b>CHAPTER 5: EFFECTIVE WRITTEN ADVOCACY: Briefing</b>  | <a href="#">Go to Chapter 5</a> | <a href="#">See Contents</a> |
| <b>CHAPTER 6: EFFECTIVE USE OF THE SPOKEN WORD ON APPEAL: Oral Argument</b>                               | <a href="#">Go to Chapter 6</a> | <a href="#">See Contents</a> |
| <b>CHAPTER 7: THE END GAME: Decisions by Reviewing Courts And Processes After Decision</b>                | <a href="#">Go to Chapter 7</a> | <a href="#">See Contents</a> |
| <b>CHAPTER 8: PUTTING ON THE WRITS: California Extraordinary Remedies</b>                                 | <a href="#">Go to Chapter 8</a> | <a href="#">See Contents</a> |
| <b>CHAPTER 9: THE COURTHOUSE ACROSS THE STREET: Federal Habeas Corpus</b>                                 | <a href="#">Go to Chapter 9</a> | <a href="#">See Contents</a> |
| <b>TABLE OF U.S. SUPREME COURT CASES: With Parallel Citations</b>   | <a href="#">Go to Table</a>     |                              |

**THE ABC'S OF PANEL MEMBERSHIP:  
BASIC INFORMATION FOR APPOINTED COUNSEL**

[Go to Chapter 1](#)

I. INTRODUCTION [§ 1.0]

This chapter describes some of the responsibilities of counsel appointed to represent indigent clients under the Appellate Defenders, Inc., program. It addresses the relationship between the panel attorney and the project (ADI), the duties of counsel during the course of a typical appeal, client relations, the use of associate counsel, classification of counsel and cases and the matching of counsel to specific cases, and compensation for appointed representation.

II. RELATIONSHIP BETWEEN PANEL AND PROJECT [§ 1.1]

- A. Project-Panel System [§ 1.1A]
- B. Panel Membership [§ 1.2]
  - 1. Conflicts interfering with panel membership [§ 1.2A]
  - 2. Differences with staff attorney; ultimate responsibility for case [§ 1.2B]
  - 3. Steps to take when attorney is unable to handle responsibilities of case [§ 1.2C]
  - 4. Duty to keep informed and in contact, to maintain active State Bar status [§ 1.2D]
  - 5. Professional liability insurance [§ 1.2E]
- C. Assisted Cases [§ 1.3]
- D. Independent Cases [§ 1.4]
- E. “Modified” Assisted or Independent Cases [§ 1.4A]

III. TYPICAL RESPONSIBILITIES OF APPOINTED COUNSEL [§ 1.5]

- A. Appropriate Administration of Office and Files [§ 1.6]
- B. Initial Contact with Client and Trial Counsel [§ 1.7]
- C. Record Review and Completion; Correction of Notice of Appeal Problems [§ 1.8]
  - 1. Transcripts [§ 1.9]
  - 2. Superior court file and exhibits [§ 1.10]
  - 3. Notice of appeal problems [§ 1.11]
- D. Remedies in Trial Court [§ 1.11A]
- E. Selection of Issues [§ 1.12]
- F. Preparation of the Opening Brief [§ 1.13]

- G. Later Filings [§ 1.14]
    - 1. Respondent’s brief [§ 1.15]
    - 2. Reply brief [§ 1.16]
    - 3. Non-appealing minor’s filing [§ 1.16A]
  - H. Oral Argument [§ 1.17]
  - I. Action on Receiving Court’s Decision [§ 1.18]
  - J. Post-Decision Responsibilities [§ 1.19]
    - 1. Rehearing [§ 1.20]
    - 2. Review [§ 1.21]
    - 3. Certiorari [§ 1.22]
  - K. Investigation of Collateral Matters and Petitions for Writ of Habeas Corpus [§ 1.23]
  - L. Representation When There Are No Arguable Issues (*Wende-Anders-Sade* C. Filings) [§ 1.24]
    - 1. Preliminary steps [§ 1.25]
    - 2. No-issues brief or letter brief [§ 1.26]
    - 3. Sending record to client [§ 1.27]
    - 4. Court’s responsibilities [§ 1.28]
      - a. First criminal or delinquency appeal as of right [§ 1.28A]
      - b. Other appointed appeals [§ 1.28B]
  - M. Representation When the Client Might Suffer Adverse Consequences from Appealing [§ 1.29]
  - N. Protecting the Client in Time-Sensitive Cases [§ 1.30]
    - 1. Release pending appeal [§ 1.31]
    - 2. Motion to expedite appeal [§ 1.32]
    - 3. Motion for summary reversal or stipulated reversal [§ 1.33]
    - 4. Stay of appeal to permit early relief in superior court [§ 1.33A]
    - 5. Writ petition on the merits [§ 1.34]
    - 6. Immediate finality or issuance of the remittitur [§ 1.35]
    - 7. Follow-through with custodial officials [§ 1.36]
  - O. Requests To Be Relieved [§ 1.37]
  - P. Handling Situations in Which Appeal Is Subject to Potential Termination Because of Jurisdictional Defects, Non-Appealability, Mootness, Death or Escape of Client, Etc. [§ 1.38]
- IV. CLIENT RELATIONS [§ 1.39]
- A. Communications [§ 1.40]
    - 1. Governing principles [§ 1.41]
    - 2. Initial communication [§ 1.42]
    - 3. Later communications [§ 1.43]

- a. Significant developments [§ 1.44]
      - b. Frequency [§ 1.45]
    - 4. Method of communication [§ 1.46]
      - a. Written correspondence [§ 1.47]
      - b. Telephone calls [§ 1.48]
      - c. Visits [§ 1.49]
    - 5. Literacy and language [§ 1.50]
    - 6. Family communications [§ 1.51]
  - B. Difficult Clients [§ 1.52]
    - 1. Mentally ill or developmentally disabled clients [§ 1.53]
    - 2. Demanding clients [§ 1.54]
    - 3. Threats against physical safety [§ 1.55]
  - C. Decision-Making Authority [§ 1.56]
    - 1. Attorney’s authority [§ 1.57]
    - 2. Client’s authority [§ 1.58]
    - 3. Pro per briefs by represented clients [§ 1.59]
  - D. Client Records [§ 1.60]
    - 1. Transcripts [§ 1.61]
      - a. Possession during appeal [§ 1.62]
      - b. Disposition after appeal [§ 1.63]
      - c. Sensitive and confidential materials [§ 1.64]
    - 2. Office file [§ 1.65]
      - a. Contents of file [§ 1.66]
      - b. Sending file to client [§ 1.67]
      - c. Storing file if not sent to client [§ 1.68]
  - E. Client Custody Issues [§ 1.69]
    - 1. Release pending appeal/avoiding excess time in custody [§ 1.70]
    - 2. Compassionate release [§ 1.71]
    - 3. Prison placement and other matters not directly related to the appeal [§ 1.72]
  - F. Post-Decision Responsibilities [§ 1.73]
    - 1. Rehearing and review [§ 1.74]
      - a. Rehearing [§ 1.75]
      - b. Review [§ 1.76]
    - 2. Federal filings [§ 1.77]
    - 3. Post-appeal contacts with clients [§ 1.78]
- V. RESPONSIBLE USE OF ASSOCIATE COUNSEL AND LAW CLERKS [§ 1.79]
  - A. Basic Principle of Personal Responsibility [§ 1.80]

- B. Specific Responsibilities of Appointed Counsel [§ 1.81]
  - 1. Reviewing the entire record, completing it, and selecting issues [§ 1.81A]
  - 2. Filing appropriate briefs and other pleadings [§ 1.81B]
  - 3. Reviewing all filings by others [§ 1.81C]
  - 4. Making personal appearances [§ 1.81D]
  - 5. Engaging in proper communication with the client, court, project, and others [§ 1.81E]
- C. Compensation [§ 1.82]

## VI. CLASSIFICATION AND MATCHING OF CASES AND ATTORNEYS [§ 1.83]

- A. Case Screening and Classification [§ 1.84]
- B. Attorney Screening and Classification [§ 1.85]
  - 1. Attorney ranks [§ 1.86]
  - 2. Determination of rank [§ 1.87]
- C. Selection of an Attorney for a Particular Case [§ 1.88]
  - 1. Assisted vs. independent decision [§ 1.89]
  - 2. Choice of attorney rotation [§ 1.90]
  - 3. Choice of individual attorney within rotation [§ 1.91]
  - 4. Special request for appointment outside the normal rotation [§ 1.9]
  - 5. Offer of case [§ 1.93]
- D. Evaluations of Attorney Performance [§ 1.94]
  - 1. Issues – selection and definition [§ 1.95]
    - a. Identifies standard issues [§ 1.96]
    - b. Identifies subtle issues [§ 1.97]
    - c. Identifies current issues [§ 1.98]
    - d. Evaluates issues properly [§ 1.99]
    - e. Defines issues clearly [§ 1.100]
  - 2. Research [§ 1.101]
    - a. Performs thorough research [§ 1.102]
    - b. Selects appropriate authority [§ 1.103]
    - c. Cites authority accurately [§ 1.104]
    - d. Checks current validity of authority [§ 1.105]
  - 3. Argumentation [§ 1.106]
    - a. Organizes argument [§ 1.107]
    - b. Covers all points essential to position [§ 1.108]
    - c. Handles authority skillfully [§ 1.109]
    - d. Demonstrates proficiency in advocacy skills [§ 1.110]

- e. Is consistently professional in manner [§ 1.111]
- 4. Style and form [§ 1.112]
  - a. Writes fluently [§ 1.113]
  - b. Uses correct grammar, diction, spelling, capitalization, and punctuation [§ 1.114]
  - c. Presents statement of the case properly [§ 1.115]
  - d. Presents statement of facts properly [§ 1.116]
  - e. Uses correct citation form [§ 1.117]
  - f. Follows rules and good practice on form and technical aspects of pleadings [§ 1.118]
- 5. Responsibility [§ 1.119]
  - a. Makes sure record is adequate [§ 1.120]
  - b. Makes use of opportunities for reply briefs and/or oral argument [§ 1.121]
  - c. Is reliable and cooperative in working with [§ 1.122]
  - d. Observes deadlines [§ 1.123]
- 6. Relationship with client [§ 1.124]
  - a. Communicates reliably [§ 1.125]
  - b. Faithfully pursues client’s interests [§ 1.126]
- E. Feedback to Attorneys [§ 1.127]

## VII. COMPENSATION OF APPOINTED COUNSEL [§ 1.128]

- A. Standards for Assessing Claims [§ 1.129]
  - 1. Services [§ 1.130]
  - 2. Expenses [§ 1.131]
- B. Submitting Claims [§ 1.132]
  - 1. Timing [§ 1.133]
  - 2. Form and content of claim [§ 1.134]
- C. Procedures for Reviewing Claims [§ 1.135]
  - 1. Project’s recommendation [§ 1.136]
  - 2. Transmission to Judicial Council services [§ 1.137]
  - 3. Holdback at interim stage [§ 1.138]
  - 4. Payment for cases not completed [§ 1.139]
  - 5. AIDOAC audits [§ 1.140]
  - 6. More information [§ 1.141]

## APPENDICES: [§ 1.142]

Appendix A: “Understanding Your Appeal: Information for Defendants” [§ 1.143]

Appendix B: Sample Client Letters [§ 1.144]

Initial Contact Letter [§ 1.145]

Letter Notifying Client of Probable No-Issue Brief [§ 1.145A]

Letter To Accompany Appellant’s Opening Brief [§ 1.146]  
Letter To Accompany Respondent’s Brief and Appellant’s Reply Brief [§ 1.147]  
Letter re Setting of Oral Argument [§ 1.148]  
Post-Oral Argument Letter [§ 1.149]  
Letter To Accompany Adverse Opinion (if counsel has decided not to take further action) [§ 1.150]  
Letter To Accompany Adverse Opinion (if counsel intends to file petition for review) [§ 1.151]  
Letter To Accompany Petition for Review [§ 1.152]  
Letter After Denial of Petition for Review [§ 1.153]  
Appendix C: Summary of Filing and Service Requirements [§ 1.154]  
Preliminary Notes [§ 1.155]  
Briefs in the Court of Appeal [§ 1.156]  
Petitions for Review, Answers, and Replies [§ 1.157]  
Non-Capital Briefs on the Merits and Petitions for Rehearing in California Supreme Court [§ 1.158]  
Non-Capital Habeas Corpus Proceedings in Appellate Courts [§ 1.159]  
Applications, Motions, and Miscellaneous Documents [§ 1.160]

## FIRST THINGS FIRST: WHAT CAN BE APPEALED AND WHAT IT TAKES TO GET AN APPEAL STARTED

[Go to Chapter 2](#)

### **PART ONE: GENERAL**

#### I. INTRODUCTION [§ 2.0]

This chapter examines the scope of appellate review in criminal and juvenile cases – what judgments and orders are appealable, who can appeal, and what issues can be raised in various kinds of appeals. It will also review the nuts and bolts of getting an appeal started – what has to be filed, where, and when, and what can be done if the process goes astray.

- A. Basic Authority Governing the Right to Appeal and Appellate Jurisdiction [§ 2.1]
  - 1. Constitutions [§ 2.2]
  - 2. Statutes [§ 2.3]
  - 3. Rules [§ 2.4]
- B. Priority on Appeal [§ 2.4A]
- C. Limitations on Right To Appeal [§ 2.5]
  - 1. Jurisdiction [§ 2.6]
  - 2. Mootness and ripeness [§ 2.7]
  - 3. Review by writ [§ 2.8]
  - 4. Standing [§ 2.9]
  - 5. Waiver of right to appeal [§ 2.9A]
  - 6. Forfeiture for failure to raise issue properly below [§ 2.10]
  - 7. Motions requiring renewal at later stage [§ 2.11]
  - 8. Invited error [§ 2.12]
  - 9. Credits and fees or fines issues – Penal Code sections 1237.1 and 1237.2 [§ 2.13]
  - 10. Fugitive dismissal doctrine [§ 2.14]
  - 11. Previous resolution of matter [§ 2.15]
- D. Advisability of Appealing [§ 2.16]



## PART TWO: CRIMINAL AND DELINQUENCY APPEALS

- II. APPEAL BY A CRIMINAL DEFENDANT AFTER TRIAL [§ 2.17]
  
- III. APPEAL BY A CRIMINAL DEFENDANT AFTER GUILTY PLEA [§ 2.18]
  - A. General: Waiver of Most Issues and Procedural Limitations [§ 2.19]
  - B. Exception to General Limitations: “Slow Plea” [§ 2.20]
  - C. Exception to Waiver: Matters Arising After Entry of the Plea [§ 2.21]
    - 1. Attacks on sentence [§ 2.22]
      - a. Sentences not incorporated into plea agreement [§ 2.23]
      - b. Negotiated sentence limitations [§ 2.24]
      - c. Credits issue and fines or fees issue limitation [§ 2.25]
    - 2. Procedural defects in hearing motion to withdraw plea [§ 2.26]
    - 3. Non-compliance with terms of bargain by People or court [§ 2.27]
      - a. Remedies [§ 2.28]
      - b. Certificate of probable cause [§ 2.29]
      - c. Prejudice [§ 2.30]
  - D. Exception to Waiver: Fourth Amendment Suppression Issues [§ 2.31]
    - 1. Statutory authorization to appeal [§ 2.32]
      - a. Policy basis [§ 2.33]
      - b. Type of issues preserved [§ 2.34]
    - 2. Need to make or renew motion after information filed [§ 2.35]
      - a. “Proceedings” as used in section 1538.5(m) [§ 2.36]
      - b. Method of renewing [§ 2.37]
  - E. Exception to Waiver: Issues Going to the Validity of the Plea [§ 2.38]
    - 1. Preliminary caveat for counsel: need to warn client about consequences of challenging the plea [§ 2.39]
    - 2. Procedural standards and requirements in attacking plea [§ 2.40]
      - a. Adequate appellate record [§ 2.41]
      - b. Motion to withdraw plea [§ 2.42]
      - c. Certificate of probable cause [§ 2.43]
    - 3. Validity issues concerning the entry of the plea [§ 2.44]
      - a. Violation of right to effective assistance of counsel [§ 2.45]
      - b. Inadequate advice on constitutional rights [§ 2.46]
      - c. Inadequate advice on consequences of plea [§ 2.47]
      - d. Erroneous advice on appealability of issue [§ 2.48]
      - e. Involuntary plea or incompetence of defendant [§ 2.49]
    - 4. Validity issues concerning the proceedings as a whole [§ 2.50]
      - a. Jurisdictional defects [§ 2.51]

- b. Prior proceedings involving the same offenses as bar to current litigation [§ 2.52]
- c. Flaws in the initiation of the proceedings [§ 2.53]
- d. Statute of limitations [§ 2.54]
- 5. Validity issues concerning the substance of the plea [§ 2.55]
  - a. Bargained-for sentences and convictions unauthorized by law or unconstitutional [§ 2.56]
  - b. Bargain attempting to confer fundamental jurisdiction [§ 2.57]
  - c. Terms of bargain contrary to public policy [§ 2.58]
  - d. Plea to a legally invalid count or non-existent crime [§ 2.59]

IV. APPEAL BY A CRIMINAL DEFENDANT FROM ORDERS AFTER JUDGMENT [§ 2.60]

- A. Orders Related to Probation [§ 2.61]
  - 1. Terms and conditions of probation [§ 2.62]
  - 2. Revocation [§ 2.63]
  - 3. Review of matters occurring before probation grant [§ 2.64]
  - 4. Review of sentence [§ 2.65]
  - 5. Orders after grant of probation affecting underlying conviction [§ 2.66]
- B. Resentencing [§ 2.67]
  - 1. Correction of unauthorized sentence [§ 2.68]
  - 2. Sentence recall under Penal Code section 1170(d)(1) [§ 2.69]
  - 3. Resentencing under other laws [§ 2.69A]
  - 4. Sentencing after remand [§ 2.70]
- C. Credits Calculations and Fines or Fees [§ 2.71]
- D. Other Post-Judgment Rulings [§ 2.72]
  - 1. Quasi-appeal from judgment [§ 2.73]
  - 2. Ruling on writ petition [§ 2.74]
  - 3. Penal Code section 1016.5 motion [§ 2.75]
  - 4. Penal Code section 1473.6 or 1473.7 motion [§ 2.76]

V. APPEAL BY MINOR AFTER DELINQUENCY FINDING [§ 2.77]

- A. Judgment [§ 2.78]
- B. Pre-judgment orders [§ 2.79]

- C. Inapplicability of special procedural requirements for criminal appeals [§ 2.80]
    - 1. Certificate of probable cause [§ 2.81]
    - 2. Custody credits and fines or fees [§ 2.82]
  - D. Transfers [§ 2.83]
- VI. PEOPLE’S APPEALS [§ 2.84]
- A. People’s Appeals in Criminal Cases [§ 2.84A]
    - 1. General authority for People to appeal [§ 2.85]
    - 2. Appeal after grant of probation [§ 2.85A]
    - 3. Prosecution issues raised in defendant’s appeal [§ 2.86]
      - a. Issues likely to appear on remand [§ 2.87]
      - b. Issues supporting affirmance [§ 2.88]
      - c. Limits to Penal Code section 1252 review [§ 2.89]
  - B. People’s Appeals in Delinquency Cases [§ 2.89A]
- VII. PROCEDURAL STEPS FOR GETTING CRIMINAL OR DELINQUENCY APPEAL STARTED [§ 2.90]
- A. Advice to Defendant by Court [§ 2.91]
  - B. Responsibilities of Trial Counsel as to Initiating Appeal [§ 2.92]
    - 1. Duties under Penal Code section 1240.1 [§ 2.93]
      - a. Advising defendant about appeal [§ 2.94]
      - b. Filing notice of appeal on request [§ 2.95]
      - c. Filing notice of appeal without defendant request [§ 2.96]
      - d. Trial counsel representation on appeal [§ 2.97]
    - 2. Federal constitutional duties [§ 2.98]
      - a. Filing appeal if defendant requests [§ 2.99]
      - b. Advising defendant about appeal [§ 2.100]
  - C. Notice of Appeal [§ 2.101]
    - 1. Court in which to file [§ 2.102]
    - 2. Signature [§ 2.103]
    - 3. Contents of notice of appeal following trial [§ 2.104]
    - 4. Notice of appeal and certificate of probable cause after guilty plea [§ 2.105]
      - a. Certificate appeals [§ 2.106]
      - b. Noncertificate appeals [§ 2.107]
      - c. Mixed appeals [§ 2.108]

- D. Time Frames [§ 2.109]
  - 1. Notice of appeal [§ 2.110]
  - 2. Certificate of probable cause [§ 2.111]
  - 3. Filing date [§ 2.112]
- E. Remedies for Untimely or Defective Filing of Appeal [§ 2.113]
  - 1. Application to amend notice of appeal [§ 2.114]
  - 2. Constructive filing doctrine [§ 2.115]
    - a. Reasonable reliance on counsel to file: *Benoit* [§ 2.116]
    - b. Other constructive filing [§ 2.117]
    - c. Procedures [§ 2.118]
  - 3. Ineffective assistance of counsel [§ 2.119]
  - 4. Mandate from denial of certificate of probable cause [§ 2.120]
  - 5. Motion for relief from default or habeas corpus for failure to obtain timely certificate of probable cause [§ 2.121]

APPENDIX TO PART TWO [§ 2.122]

- List of Common Issues Waived by Guilty Plea [§ 2.123]

**PART THREE: DEPENDENCY APPEALS**

VIII. DEPENDENCY APPEALS [§ 2.124]

- A. Appealable Judgments and Orders [§ 2.125]
  - 1. Juvenile dependency proceedings [§ 2.126]
  - 2. Family Code section 7800 appeals [§ 2.127]
- B. Reviewability Considerations [§ 2.128]
  - 1. Standing [§ 2.129]
    - a. Parents [§ 2.130]
    - b. De facto parents and relatives [§ 2.131]
    - c. Minors [§ 2.132]
    - d. County Counsel appeals [§ 2.133]
  - 2. Mootness and ripeness [§ 2.134]
  - 3. Waiver and forfeiture [§ 2.135]
    - a. Waiver [§ 2.136]
    - b. Forfeiture [§ 2.137]
    - c. Exceptions to waiver and forfeiture [§ 2.138]
  - 4. Reviewability by hearing [§ 2.139]
    - a. Dispositional order [§ 2.140]

- b. Status review hearings [§ 2.141]
- c. Hearings on section 388 and other motions [§ 2.142]
- d. Termination of reunification services [§ 2.143]
- e. Termination of parental rights [§ 2.144]
- f. Post-permanency planning hearings [§ 2.145]

IX. PROCEDURAL STEPS FOR STARTING DEPENDENCY REVIEW  
PROCESS [§ 2.146]

A Appeal [§ 2.147]

- 1. What orders can be appealed [§ 2.148]
- 2. Who can file a notice of appeal [§ 2.149]
- 3. Where to file notice of appeal [§ 2.150]
- 4. When to file notice of appeal [§ 2.151]
- 5. Content of notice of appeal [§ 2.152]

B. Writ Petition to Review Orders at Hearing Setting Section 366.26  
Proceeding or at Post-Termination Child Placement Hearing [§ 2.153]

- 1. Statutory writ requirement [§ 2.154]
- 2. Who may file notice of intent [§ 2.155]
- 3. When to file notice of intent [§ 2.156]
  - a. From hearing setting section 366.26 hearing [§ 2.157]
  - b. From post-termination child placement order [§ 2.158]

C. Special Issues with Family Code Appeals [§ 2.159]

- 1. Terminations of parental rights [§ 2.160]
  - a. Termination of parental rights in stepparent adoptions [§ 2.161]
  - b. Proceedings freeing child from parental custody and control [§ 2.162]
- 2. Issues of parentage/paternity [§ 2.163]

**PRE-BRIEFING RESPONSIBILITIES:  
RECORD COMPLETION, EXTENSIONS OF TIME, RELEASE ON  
APPEAL**

[Go to Chapter 3](#)

I. INTRODUCTION [§ 3.0]

This chapter addresses three critical responsibilities of appellate counsel before the opening brief is filed. First, counsel must ensure the record is complete. Second, if it is not possible to complete research and briefing in the time permitted, counsel must seek one or more extensions. Third, if the client wants and is eligible for bail or other form of release pending appeal, then counsel should investigate that possibility and take needed action.

II. ENSURING AN ADEQUATE RECORD [§ 3.1]

- A. Introduction [§ 3.2]
- B. Normal Record in Criminal Case [§ 3.3]
  - 1. Normal clerk’s transcript [§ 3.4]
  - 2. Normal reporter’s transcript [§ 3.5]
  - 3. Exhibits as part of normal record [§ 3.6]
- C. Normal Record in Juvenile Case [§ 3.6A]
  - 1. Normal clerk’s transcript [§ 3.6B]
  - 2. Normal reporter’s transcript [§ 3.6C]
  - 3. Exhibits as part of normal record [§ 3.6D]
- D. Confidential Matters in Records [§ 3.7]
  - 1. Juvenile records [§ 3.7A]
  - 2. *Marsden* and related transcripts [§ 3.8]
  - 3. Other confidential records and in camera proceedings from which one or more parties were excluded in the superior court [§ 3.9]
  - 4. Sealed records [§ 3.9A]
  - 5. Improper inclusion of juror identification information and other confidential matters in record [§ 3.10]
- E. Request for Additional Record Before Certification to the Reviewing Court [§ 3.11]
- F. Correcting/Completing and Augmenting Record After It Is Filed in Reviewing Court [§ 3.12]
  - 1. Correcting omissions from normal record [§ 3.13]
    - a. Examples of often omitted materials [§ 3.14]
    - b. Correction procedure [§ 3.15]

- c. Changes in judgment or other new orders made during appeal [§ 3.16]
    - 2. Augmenting the record after it is filed in reviewing court [§ 3.17]
      - a. Timing of request [§ 3.18]
      - b. Identification of materials in request [§ 3.19]
      - c. Explanation of need for materials [§ 3.20]
      - d. Concurrent request for extension of time [§ 3.21]
      - e. Formal requirements [§ 3.22]
      - f. Changes in judgment or other new orders made during appeal [§ 3.23]
    - 3. Combining requests for correction and augmentation [§ 3.24]
  - G. Getting Exhibits Before the Reviewing Court [§ 3.25]
    - 1. Attachment to brief [§ 3.26]
    - 2. Transmission under rule 8.224 [§ 3.27]
  - H. Agreed and Settled Statements and Motion for New Trial [§ 3.28]
    - 1. Agreed statement [§ 3.29]
    - 2. Settled statement [§ 3.30]
    - 3. Motion for new trial under Penal Code section 1181, subdivision 9 [§ 3.31]
- III. REQUESTS FOR EXTENSION OF TIME [§ 3.32]
- A. Number of Extensions [§ 3.33]
  - B. Grounds for Extension [§ 3.34]
  - C. Extensions Pending Augmentation or Correction of the Record [§ 3.35]
  - D. Contents and Form of Extension Request [§ 3.36]
- IV. RELEASE PENDING APPEAL [§ 3.37]
- A. Standards [§ 3.38]
    - 1. Eligibility for release [§ 3.39]
    - 2. Considerations for court in exercising discretion whether to grant release pending appeal [§ 3.40]
      - a. Defendant is not likely to flee [§ 3.41]
      - b. Defendant poses no danger [§ 3.42]
      - c. Appeal is good-faith and substantial [§ 3.43]
  - B. Procedures [§ 3.44]
    - 1. Initial application in superior court [§ 3.45]
    - 2. Application in the appellate court [§ 3.46]
  - C. Considerations in Deciding Whether To Seek Release Pending Appeal [§ 3.47]

## ON THE HUNT: THE SCIENCE AND ART OF ISSUE SPOTTING AND SELECTION

[Go to Chapter 4](#)

### I. INTRODUCTION [§ 4.0]

Issue spotting is the most important function of appellate lawyering. An attorney may perform a masterful job of research, analysis, and briefing, but if an issue that would win for the client is overlooked, the attorney has probably rendered constitutionally ineffective assistance. Appellate counsel must therefore work assiduously to develop strong issue-spotting skills and must put maximum effort in every case into ensuring all potential issues have been identified and properly evaluated. Counsel also has a duty to spot “negative” issues – those that could put the client in a worse position after the appeal than before. Sometimes helping the client avoid the adverse consequence trap is the most valuable service appellate counsel can offer.

### II. THE FUNDAMENTALS [§ 4.1]

- A. Approaching the Case [§ 4.2]
- B. Going to the “Horse’s Mouth” [§ 4.3]
  - 1. Trial counsel [§ 4.4]
  - 2. Client [§ 4.5]
- C. Knowing the Legal Landscape [§ 4.6]
  - 1. Legal resources [§ 4.7]
  - 2. Potentially important pending cases [§ 4.8]
  - 3. Networking with colleagues [§ 4.9]
  - 4. Personal reference system [§ 4.10]

### III. REVIEWING THE RECORD FOR ISSUES [§ 4.11]

- A. Ensuring an Adequate Record [§ 4.12]
  - 1. Augmentation and correction [§ 4.13]
  - 2. Superior court records [§ 4.14]
  - 3. Proceedings not in transcripts [§ 4.15]
  - 4. Improper material in record [§ 4.16]
- B. The Initial Review of the Record [§ 4.17]
  - 1. Clerk’s transcript [§ 4.18]
  - 2. Reporter’s transcript [§ 4.19]



- C. Spotting Potential Issues [§ 4.20]
  - 1. Issues litigated at trial [§ 4.21]
  - 2. Jury instructions [§ 4.22]
    - a. Court’s selection of instructions to be given [§ 4.23]
    - b. Oral rendition of instructions [§ 4.24]
    - c. Printed instructions sent into jury room [§ 4.25]
    - d. Reasonable doubt [§ 4.26]
    - e. Response to jury request for additional instruction [§ 4.27]
  - 3. Sentencing [§ 4.28]
  - 4. Uncommon but “big” issues [§ 4.29]
  - 5. Recent and potential changes in the law [§ 4.30]
  - 6. Checklist [§ 4.31]
  - 7. Issues that may hurt the client [§ 4.32]
- IV. ASSESSMENT AND SELECTION OF ISSUES [§ 4.33]
  - A. Reviewability [§ 4.34]
    - 1. Jurisdiction [§ 4.35]
    - 2. Mootness and ripeness [§ 4.36]
    - 3. Review by writ [§ 4.37]
    - 4. Standing [§ 4.38]
    - 5. Forfeiture or waiver [§ 4.39]
    - 6. Motions requiring renewal at later stage [§ 4.40]
    - 7. Invited error [§ 4.41]
    - 8. Credits and fines or fees issues – Penal Code sections 1237.1 and 1237.2 [§ 4.42]
    - 9. Fugitive dismissal doctrine [§ 4.43]
    - 10. Previous resolution of matter [§ 4.44]
  - B. Standard of Review – Degree of Deference to Findings Below [§ 4.45]
    - 1. Abuse of discretion [§ 4.46]
    - 2. Substantial evidence [§ 4.47]
    - 3. De novo [§ 4.48]
    - 4. Mixed standards [§ 4.49]
  - C. Standard of Prejudice [§ 4.50]
    - 1. Prejudicial per se [§ 4.51]
    - 2. Reversible unless lack of prejudice is shown beyond a reasonable doubt (*Chapman*) [§ 4.52]
    - 3. Not reversible unless the appellant shows it is reasonably probable error affected the outcome (*Watson*) [§ 4.53]

- 4. “Boutique” tests of prejudice [§ 4.54]
  - a. Ineffective assistance of counsel [§ 4.55]
  - b. Prosecutorial suppression of evidence [§ 4.56]
  - c. Defense counsel conflict of interest [§ 4.57]
  - d. Juror misconduct [§ 4.58]
- 5. Cumulative error [§ 4.59]
- 6. Arguing prejudice [§ 4.60]
  - a. Errors inherently carrying a high probability of prejudice [§ 4.61]
  - b. Prominence of error [§ 4.62]
  - c. Closeness of the case [§ 4.63]
  - d. Evidence linking error to verdict [§ 4.64]
- D. Appellate Tests and Presumptions [§ 4.65]
  - 1. General principles of review [§ 4.66]
  - 2. Viewing the evidence [§ 4.67]
- E. Final Selection of Issues [§ 4.68]
  - 1. Selectivity versus inclusiveness [§ 4.69]
  - 2. Context [§ 4.70]
  - 3. Potential for adverse consequences [§ 4.71]
  - 4. Practical benefit from remedy [§ 4.72]
- V. WHAT TO DO WHEN COUNSEL CANNOT FIND ANY ISSUES [§ 4.73]
  - A. What Is Meant by an “Arguable” Issue [§ 4.73A]
  - B. Pre-Briefing Procedure [§ 4.74]
    - 1. Completion and additional review of record [§ 4.75]
    - 2. Project approval [§ 4.76]
  - C. *Wende-Anders-Sade C.* Filing [§ 4.77]
    - 1. Facts [§ 4.78]
    - 2. Description of issues [§ 4.79]
    - 3. Withdrawal of counsel [§ 4.80]
    - 4. Sending record to client [§ 4.81]
    - 5. Declaration of counsel [§ 4.82]
  - D. Appellate Court Responsibilities [§ 4.83]
    - 1. Independent review of record [§ 4.84]
    - 2. Pro per brief [§ 4.85]
    - 3. Briefing by counsel of arguable issue that court finds [§ 4.86]
    - 4. Decision [§ 4.86A]

- E. Choice Between Brief on the Merits and No-Issue Treatment [§ 4.87]
  - 1. Sure loser [§ 4.88]
  - 2. Weak but not frivolous issue [§ 4.89]
  - 3. Meritorious but trivial issue [§ 4.90]
  
- VI. ADVERSE CONSEQUENCES: POTENTIAL RISKS OF APPEALING [§ 4.91]
  - A. General California Rule Against Greater Sentence After Appeal: *People v. Henderson* [§ 4.92]
  - B. Unauthorized Sentence as Exception to *Henderson* Rule [§ 4.93]
    - 1. Risk to defendant from appealing [§ 4.94]
    - 2. Nature of unauthorized sentence [§ 4.95]
    - 3. Exceptions [§ 4.96]
      - a. Limits on prosecution’s right to challenge unauthorized sentence on appeal [§ 4.97]
      - b. Remaining potential for adverse consequences [§ 4.98]
  - C. Sentence After Withdrawal of Guilty Plea as *Henderson* Exception [§ 4.99]
    - 1. Loss of benefits of plea bargain [§ 4.100]
    - 2. Possibility court may void bargain on own initiative [§ 4.101]
    - 3. Argument alleging breach of plea bargain [§ 4.102]
  - D. Added Charges After Appeal [§ 4.103]
    - 1. Additional charges initially not tried because of original conviction [§ 4.104]
    - 2. Removal of *Kellett* barrier [§ 4.105]
  - E. Non-Penal Dispositions as Exceptions to *Henderson* Rule [§ 4.106]
    - 1. Victim restitution [§ 4.107]
    - 2. Confinement upon finding of incompetence to stand trial [§ 4.108]
    - 3. Confinement upon finding of not guilty by reason of insanity [§ 4.109]
    - 4. Waiver of attorney-client confidentiality [§ 4.110]
    - 5. Personal detriment [§ 4.111]
  - F. Federal Limitations on Greater Sentences After Appeal [§ 4.112]
    - 1. Statement of reasons for greater sentence [§ 4.113]
    - 2. Presumption of vindictiveness [§ 4.114]
      - a. How presumption may be rebutted [§ 4.115]
      - b. When presumption does not apply [§ 4.116]

- G. Counsel’s Responsibilities Upon Spotting Potential Adverse Consequence [§ 4.117]
1. Weighing the magnitude and likelihood of potential benefits from the appeal against the magnitude and likelihood of risks [§ 4.118]
  2. Taking into account the possibility the error would be discovered and corrected even if the appeal were abandoned [§ 4.119]
  3. Leaving the ultimate decision to the client [§ 4.120]

## APPENDICES:

## Appendix A [§ 4.121]

## Checklist of Some Common Issues Raised on Criminal Appeals [§ 4.122]

- Charge [§ 4.123]
- Demurrer [§ 4.124]
- Statute [§ 4.125]
- Pleadings and proof [§ 4.126]
- Subject matter, personal, and territorial jurisdiction [§ 4.127]
- Change of venue [§ 4.128]
- Statute of limitations [§ 4.129]
- Bars to relitigation [§ 4.130]
- Multiple prosecutions and convictions [§ 4.131]
- Speedy trial [§ 4.132]
- Severance and consolidation [§ 4.133]
- Discovery [§ 4.134]
- Competence to stand trial [§ 4.135]
- Admonition and waivers of rights [§ 4.136]
- Representation [§ 4.137]
- Jury selection [§ 4.138]
- Trial process and conditions [§ 4.139]
- Motions [§ 4.140]
- Evidentiary errors [§ 4.141]
- Prosecutorial misconduct [§ 4.142]
- Jury instructions [§ 4.143]
- Jury deliberations [§ 4.144]
- Rendering of verdict [§ 4.144A]
- Sufficiency of the evidence [§ 4.145]
- Motion for a new trial (Pen. Code, § 1181) [§ 4.146]
- Sentencing [§ 4.147]

- Correspondence of charge, conviction, and sentence [§ 4.148]
- Custody credits [§ 4.149]
- Fines and fees [§ 4.149A]

#### Appendix B [§ 4.150]

##### Examples of Unauthorized Sentences [§ 4.151]

- Failure to either impose sentence or dismiss a charge for which the defendant was convicted [§ 4.152]
- Sentence on uncharged lesser offense without the defendant's consent. [§ 4.153]
- Sentence not specified in the applicable statute [§ 4.154]
- Probation granted although prohibited by law [§ 4.155]
- Mandatory consecutive sentence error [§ 4.156]
- Failure to sentence on enhancement [§ 4.157]
- Dismissing a strike in violation of statute [§ 4.158]
- Penal Code section 654 error [§ 4.159]
- Failure to impose mandatory fines or fees [§ 4.160]
- Mistake in awarding custody credits [§ 4.161]
- Failure to impose mandatory condition of probation [§ 4.162]

#### Appendix C [§ 4.163]

##### Checklist of Some Common Issues Raised on Dependency Appeals [§ 4.164]

- General: timeliness of hearings [§ 4.165]
- General: potential issues for every hearing [§ 4.166]
- Detention hearing [§ 4.167]
- Jurisdictional hearing [§ 4.168]
- Dispositional hearing [§ 4.169]
- Welfare and Institutions Code section 388 petition [§ 4.170]
- Review hearing [§ 4.171]
- Subsequent petition [§ 4.172]
- Supplemental petition [§ 4.173]
- Welfare and Institutions Code section 366.26 hearing [§ 4.174]
- Parentage determinations [§ 4.175]
- ICWA issues [§ 4.176]
- Non-minor dependents [§ 4.177]

Appendix D [§ 4.178]

Checklist of Some Common Issues Raised on Delinquency Appeals [§ 4.179]

- Capacity [§ 4.180]
- Deferred entry of judgment [§ 4.181]
- Dual jurisdiction [§ 4.182]
- Informal probation. [§ 4.183]
- Admissions. [§ 4.184]
- Pre-trial issues. [§ 4.185]
- Same judge for admission and disposition [§ 4.186]
- Procedural options [§ 4.187]
- Probation conditions [§ 4.188]
- Commitment [§ 4.189]
- Restitution fines [§ 4.190]
- Other fines [§ 4.191]
- Money judgment [§ 4.192]
- Sealing records [§ 4.193]

## EFFECTIVE WRITTEN ADVOCACY: BRIEFING

[Go to Chapter 5](#)

### I. INTRODUCTION [§ 5.0]

The brief is the foundation of appellate advocacy. It is the most important and often (when oral argument is waived) the only medium for reaching the court. Counsel's responsibility is to ensure all briefs are accurate, professional, and persuasive. This responsibility is especially acute in criminal and juvenile appeals: the attorney must lend credibility to the client's cause in order ultimately to convince the court of the need to grant relief.

### II. APPELLANT'S OPENING BRIEF [§ 5.1]

- A. General Structure [§ 5.2]
- B. Cover of Brief [§ 5.3]
- C. Tables [§ 5.4]
  - 1. Topical index [§ 5.5]
  - 2. Table of authorities [§ 5.6]
- D. Introduction [§ 5.7]
- E. Statement of Appealability [§ 5.8]
  - 1. Criminal appeal after a trial [§ 5.9]
  - 2. Criminal appeal from an order after judgment [§ 5.10]
  - 3. Criminal appeal after a guilty plea [§ 5.11]
  - 4. Juvenile law or family law appeal [§ 5.12]
  - 5. Appeal from civil commitment [§ 5.13]
  - 6. Other [§ 5.14]
- F. Statement of the Case [§ 5.15]
- G. Statement of Facts [§ 5.16]
  - 1. State the facts in the light most favorable to the judgment [§ 5.17]
  - 2. Do not inject opinion into the statement of facts [§ 5.18]
  - 3. Tell a short, readable story; do not simply repeat the testimony [§ 5.19]
  - 4. Be meticulously accurate [§ 5.20]
  - 5. Observe the confidentiality of certain records and respect the privacy of participants [§ 5.21]
- H. Argument: Preliminaries [§ 5.22]
  - 1. Order of arguments [§ 5.23]

2. Headings [§ 5.24]
  3. Defining the issue at the outset [§ 5.25]
  4. Setting the procedural and factual context of the issue before reviewing the applicable law in depth [§ 5.26]
  5. Addressing questions of potential waiver or forfeiture [§ 5.27]
  6. Identifying the standard(s) of review [§ 5.28]
    - a. Abuse of discretion [§ 5.29]
    - b. Substantial evidence [§ 5.30]
    - c. De novo review [§ 5.31]
    - d. Mixed standard of review [§ 5.32]
  - I. Legal Analysis [§ 5.33]
    1. Setting forth the law: analogy and analysis [§ 5.34]
    2. Purposes and policies behind the law [§ 5.35]
    3. Shakespeare versus ABC's [§ 5.36]
    4. Adverse law and significant counter-arguments [§ 5.37]
    5. Use of quotations [§ 5.38]
  - J. Prejudice [§ 5.39]
    1. Standards [§ 5.40]
    2. Establishing prejudice in the case [§ 5.41]
  - K. Federalization [§ 5.42]
    1. Issues that might be federalized [§ 5.43]
    2. Method of federalizing an issue in the brief [§ 5.44]
    3. Follow-through needed to exhaust state remedies [§ 5.45]
  - L. Protecting Confidentiality [§ 5.45A]
  - M. Joinder with Other Parties' Arguments [§ 5.45B]
  - N. Conclusion to the Brief [§ 5.46]
  - O. Attachments [§ 5.47]
- III. RESPONDENT'S BRIEF [§ 5.48]
- A. Importance [§ 5.49]
  - B. Formal Considerations [§ 5.50]
  - C. Formulation of Issues [§ 5.51]
    1. Restating the appellant's contentions [§ 5.52]
    2. Developing issues of procedural default [§ 5.53]
  - D. Appellate Presumptions and Principles [§ 5.54]
  - E. Primary Focus: Salient Points in the Case [§ 5.55]
  - F. Concessions [§ 5.56]
  - G. Steadfast Professionalism [§ 5.57]



- IV. APPELLANT’S REPLY BRIEF, NON-APPEALING MINOR’S BRIEF, AND SUPPLEMENTAL BRIEFS [§ 5.58]
  - A. Appellant’s Reply Brief [§ 5.59]
    - 1. Importance of reply briefs [§ 5.60]
    - 2. Restriction against raising new issues [§ 5.61]
    - 3. Preparing a reply brief [§ 5.62]
      - a. Aim for conciseness [§ 5.62A]
      - b. Take tactical advantage of omissions in respondent's brief or attempts to water down the issues [§ 5.62B]
      - c. Follow commonsense rules for answering the opponent's points [§ 5.62C]
  - B. Non-Appealing Minor’s Brief [§ 5.63]
    - 1. Appointment of appellate counsel [§ 5.63A]
    - 2. Briefs and other filings [§ 5.63B]
    - 3. Position on appeal [§ 5.63C]
  - C. Supplemental Brief [§ 5.64]
    - 1. Leave of court required [§ 5.64A]
    - 2. Filing as a matter of right [§ 5.64B]
      - a. Supreme Court remand [§ 5.64C]
      - b. New authority – supplemental letter in Court of Appeal [§ 5.64D]
      - c. New authority – supplemental brief in Supreme Court [§ 5.64E]
- V. RESEARCH AND CITATIONS [§ 5.65]
  - A. Citation Form [§ 5.66]
  - B. Updating Cited Authorities [§ 5.67]
- VI. BRIEFING FORMALITIES [§ 5.68]
  - A. Form of the Brief [§ 5.69]
    - 1. Paper [§ 5.70]
    - 2. Type [§ 5.71]
    - 3. Line spacing [§ 5.72]
    - 4. Margins and alignment [§ 5.73]
    - 5. Page numbering [§ 5.74]
    - 6. Bookmarks [§ 5.74A]
    - 7. Copying [§ 5.75]
    - 8. Binding [§ 5.76]
    - 9. Length and size [§ 5.77]
    - 10. Signature [§ 5.78]

- B. Filing and Service [§ 5.79]
  - 1. Time [§ 5.80]
  - 2. Number of copies [§ 5.81]
  - 3. Service [§ 5.82]
  
- VII. PERSUASIVENESS [§ 5.83]
  - A. Credibility [§ 5.84]
    - 1. Accuracy [§ 5.85]
    - 2. Objectivity [§ 5.86]
    - 3. Reasonableness and sound judgment [§ 5.87]
    - 4. Professionalism [§ 5.88]
  - B. Forceful and Effective Use of the Written Word [§ 5.89]
    - 1. Simplicity – to a point [§ 5.90]
    - 2. Knowledge of the audience(s) [§ 5.91]
    - 3. Re-re-revision [§ 5.92]
    - 4. Confidence [§ 5.93]
    - 5. Using the tools of the language for maximum impact [§ 5.94]
      - a. Strong, vivid language [§ 5.95]
      - b. Use of emphasis [§ 5.96]
      - c. Effective transitions [§ 5.97]
  - C. Technical Proficiency [§ 5.98]
    - 1. Proofreading [§ 5.99]
    - 2. Compliance with court rules [§ 5.100]
    - 3. Conscientious conformity to good style [§ 5.101]
      - a. Run-on sentences [§ 5.102]
      - b. Non-parallel sentence structure [§ 5.103]
      - c. Random commas [§ 5.104]
      - d. Abused apostrophes [§ 5.105]
      - e. Errant diction [§ 5.106]
      - f. Misplaced and misused modifiers [§ 5.107]
      - g. Mismatches in number (singular vs. plural) [§ 5.108]
      - h. Wrong case (*I* vs. *me*) [§ 5.109]
      - I. Overuse of *that* [§ 5.110]
      - j. Careless capitalization [§ 5.111]
  
- VIII. CONCLUSION [§ 5.112]

## EFFECTIVE USE OF THE SPOKEN WORD ON APPEAL: ORAL ARGUMENT

[Go to Chapter 6](#)

### I. INTRODUCTION [§ 6.0]

Oral argument plays an important role in the appellate process. While secondary to briefing in most courts, especially intermediate appellate courts, it can and occasionally does make a difference in the result. It is counsel’s last opportunity to persuade the court before it makes a final decision, to answer the court’s questions, to look the judges in the eye and assess their reactions to the issues, make midstream adjustments, dispel doubts, and “nail” crucial points. This chapter is intended to help counsel use oral argument more effectively. It is a guide to oral argument practice in the California courts.

- A. Views of Oral Argument [§ 6.1]
- B. Functions of Oral Argument [§ 6.2]

### II. LAW PERTAINING TO ORAL ARGUMENT [§ 6.3]

- A. Right to Oral Argument [§ 6.4]
- B. Rules Governing Oral Argument [§ 6.5]
  - 1. Argument in the Court of Appeal [§ 6.6]
  - 2. Argument in the California Supreme Court [§ 6.7]

### III. COURT PROCEDURES AS PART OF THE DYNAMICS OF ORAL ARGUMENT [§ 6.8]

- A. Traditional Procedures [§ 6.9]
- B. Tentative Opinion [§ 6.10]
  - 1. Notice of opportunity to request oral argument [§ 6.11]
    - a. “Argument is available but unlikely to be useful” notice [§ 6.12]
    - b. “Argument will be set” notice [§ 6.13]
  - 2. Uses of tentative opinion [§ 6.14]

### IV. REQUESTING AND WAIVING ORAL ARGUMENT [§ 6.15]

- A. “To Argue or Not To Argue” – That Is the First Question [§ 6.16]
  - 1. Factors suggesting the need for argument [§ 6.17]
  - 2. Responsible waiver of argument [§ 6.18]

- 3. When in doubt [§ 6.19]
- B. Requesting Argument [§ 6.20]
  - 1. General thrust of argument [§ 6.21]
  - 2. Time estimate [§ 6.22]
  - 3. Remote argument [§ 6.23]
- V. PREPARATION FOR ORAL ARGUMENT [§ 6.24]
  - A. Approaches to Preparation [§ 6.25]
    - 1. Main focus [§ 6.26]
    - 2. Review of materials [§ 6.27]
    - 3. Outline of argument [§ 6.28]
    - 4. Rehearsal [§ 6.29]
  - B. Coordination with Other Counsel [§ 6.30]
  - C. Members of Panel Deciding the Case [§ 6.31]
  - D. Late Waiver of Argument [§ 6.32]
- VI. DELIVERY OF ORAL ARGUMENT [§ 6.33]
  - A. Preliminary Mechanics [§ 6.34]
    - 1. Calendar formalities [§ 6.35]
    - 2. Formalities at the lecturn [§ 6.36]
  - B. Tone [§ 6.37]
    - 1. Respect [§ 6.38]
    - 2. Conversation [§ 6.39]
    - 3. Humor [§ 6.40]
    - 4. Candor [§ 6.41]
  - C. Dialogue with the Court [§ 6.42]
    - 1. Process of give and take [§ 6.43]
    - 2. “Softballs” [§ 6.44]
    - 3. Loaded questions [§ 6.45]
    - 4. “Off the wall” questions [§ 6.46]
    - 5. Concessions and other damaging answers [§ 6.47]
    - 6. Supplemental briefing [§ 6.48]
  - D. Concluding Oral Argument [§ 6.49]
    - 1. Watching the clock [§ 6.50]
    - 2. Cues that it is time to conclude [§ 6.51]
    - 3. Strong ending [§ 6.52]
  - E. Rebuttal [§ 6.53]

## THE END GAME: DECISIONS BY REVIEWING COURT AND PROCESSES AFTER DECISION

[Go to Chapter 7](#)

### I. INTRODUCTION [§ 7.0]

This chapter discusses decisions by the reviewing courts and proceedings after decision. It addresses the requirements for appellate opinions in California. It gives an overview of the doctrine of stare decisis and the implications, as well as processes, of publication. The chapter also covers what happens after the Court of Appeal files its decision. It examines the rules governing finality of decisions and offers general guidance on seeking rehearing in the Court of Appeal and review in the California Supreme Court. It discusses basic procedures for handling cases in which the California Supreme Court has granted review. Finally, the chapter looks at the process of seeking review by certiorari in the United States Supreme Court.

### II. REQUIREMENTS FOR REVIEWING-COURT OPINIONS [§ 7.1]

A. “In Writing with Reasons Stated” [§ 7.2]

B. Time Frame [§ 7.3]

### III. STARE DECISIS, PUBLICATION, AND CITABILITY [§ 7.4]

A. Doctrine of Stare Decisis As It Applies in California [§ 7.5]

1. Vertical stare decisis [§ 7.6]

2. Horizontal stare decisis [§ 7.7]

3. Holdings versus dicta [§ 7.7A]

4. Law of the case [§ 7.7B]

B. How Publication Status Affects Stare Decisis and Citability [§ 7.8]

1. California cases cited to California courts [§ 7.9]

a. In general: rule 8.1115(a) [§ 7.10]

b. Exceptions: rule 8.1115(b) and similar situations [§ 7.11]

c. Depublished cases [§ 7.12]

d. Cases not yet final [§ 7.13]

2. Non-California opinions and proceedings cited to California courts [§ 7.14]

3. Unpublished California cases cited to non-California courts [§ 7.15]

4. Federal courts and other jurisdictions with selective publication [§ 7.16]

- C. What Gets Published and How [§ 7.17]
    - 1. Standards for publication of Court of Appeal opinions [§ 7.18]
    - 2. Publication of opinions not originally ordered published [§ 7.19]
      - a. Court order [§ 7.20]
      - b. Request for publication [§ 7.21]
  - D. What Gets Depublished and How [§ 7.22.]
    - 1. California Supreme Court opinions [§ 7.23]
    - 2. Court of Appeal opinions [§ 7.24]
      - a. Rehearing or review [§ 7.25]
      - b. Order of Supreme Court [§ 7.26]
      - c. Request for depublication [§ 7.27]
- IV. DISPOSITION AND POST-DECISION PROCESSES IN COURT OF APPEAL [§ 7.28]
- A. Disposition [§ 7.28A]
  - B. Finality of Decision as to Rendering Court [§ 7.29]
    - 1. Time of finality [§ 7.30]
    - 2. Change in judgment or publication status [§ 7.31]
    - 3. Modification of finality date [§ 7.32]
  - C. Rehearing [§ 7.33]
    - 1. Grounds for rehearing [§ 7.34]
    - 2. Rule 8.500(c): petition for rehearing required in order to raise errors or omissions in Court of Appeal opinion as grounds for petition for review [§ 7.35]
    - 3. Formal requirements for petition for rehearing [§ 7.36]
      - a. Time limits [§ 7.37]
      - b. Format [§ 7.38]
      - c. Filing and service [§ 7.39]
    - 4. Substantive content and tone [§ 7.40]
    - 5. Answer [§ 7.41]
    - 6. Disposition [§ 7.42]
  - D. Remittitur [§ 7.43]
    - 1. Issuance [§ 7.44]
    - 2. Recall [§ 7.45]

- V. PETITIONS FOR REVIEW IN THE CALIFORNIA SUPREME COURT  
[§ 7.46]
- A. Grounds for Review and Factors Relevant to the Discretionary Decision  
[§ 7.47]
1. Uniformity of decision [§ 7.48]
  2. Important questions of law [§ 7.49]
  3. Other grounds under rule 8.500(b) [§ 7.50]
  4. Considerations apart from rule 8.500(b) listed grounds [§ 7.51]
- B. Formal Requirements for Petition [§ 7.52]
1. Time limitation [§ 7.53]
    - a. 30-day finality cases [§ 7.54]
    - b. Immediate finality cases [§ 7.55]
    - c. Habeas corpus denial on same day as opinion in related appeal [§ 7.56]
    - d. Premature petition [§ 7.57]
    - e. Extending time [§ 7.58]
  2. Format [§ 7.59]
  3. Length [§ 7.60]
  4. Filing and service [§ 7.61]
- C. Purpose and Substantive Content [§ 7.62]
1. Purpose of petition [§ 7.63]
  2. Content [§ 7.64]
    - a. Issues presented [§ 7.65]
    - b. Required attachments [§ 7.66]
    - c. Argument [§ 7.67]
    - d. Depublication request [§ 7.68]
    - e. Alternative remedies [§ 7.69]
- D. Abbreviated Petition To Exhaust State Remedies [§ 7.70]
- E. Answer and Reply [§ 7.71]
- F. Amicus Curiae [§ 7.72]
- G. Disposition of Petition [§ 7.73]
1. Preliminary screening process [§ 7.74]
  2. Decision [§ 7.75]
    - a. Denial [§ 7.76]
    - b. Grant of full review [§ 7.77]
    - c. Grant and hold [§ 7.78]
    - d. Grant and transfer [§ 7.79]
    - e. Order affecting publication status [§ 7.80]

- f. Dismissal of review [§ 7.81]
        - g. Retransfer [§ 7.82]
  - VI. PROCEEDINGS IN REVIEW-GRANTED CASES [§ 7.83]
    - A. Appointment of Counsel [§ 7.84]
    - B. Briefing on the Merits [§ 7.85]
      - 1. Opening brief on the merits [§ 7.86]
      - 2. Answer brief on the merits [§ 7.87]
      - 3. Reply brief [§ 7.88]
      - 4. Supplemental brief [§ 7.89]
      - 5. Amicus curiae brief [§ 7.90]
      - 6. Judicial notice [§ 7.91]
    - C. Oral Argument [§ 7.92]
    - D. Decisions and Post-Decision Proceedings in the Supreme Court [§ 7.93]
      - 1. Disposition [§ 7.94]
      - 2. Finality of decision [§ 7.95]
      - 3. Rehearing [§ 7.96]
      - 4. Remittitur [§ 7.97]
        - a. Issuance [§ 7.98]
        - b. Recall [§ 7.99]
- VII. CERTIORARI IN THE UNITED STATES SUPREME COURT [§ 7.100]
  - A. Uses of Certiorari [§ 7.101]
    - 1. Last step in direct appeal from state judgment [§ 7.102]
    - 2. Criteria for certiorari [§ 7.103]
    - 3. Federal habeas corpus as additional or alternative remedy [§ 7.104]
      - a. Advantages of habeas corpus [§ 7.105]
      - b. Advantages of certiorari [§ 7.106]
      - c. Use of both remedies [§ 7.107]
  - B. Jurisdiction [§ 7.108]
    - 1. Legal authority [§ 7.109]
    - 2. Exhaustion of state remedies [§ 7.110]
    - 3. Finality of state decision [§ 7.111]
    - 4. Dispositive federal issue [§ 7.112]



- C. Certiorari Petitions [§ 7.113]
    - 1. Counsel’s membership in the United States Supreme Court Bar [§ 7.114]
    - 2. Time for filing [§ 7.115]
    - 3. Procedures for filing in forma pauperis [§ 7.116]
    - 4. Formal requirements for certiorari petition [§ 7.117]
    - 5. Contents of certiorari petition [§ 7.118]
      - a. Required sections [§ 7.119]
      - b. Argument [§ 7.120]
  - D. Other Filings [§ 7.121]
    - 1. Opposition and reply [§ 7.122]
    - 2. Amicus curiae briefs in support of or in opposition to petition for certiorari [§ 7.123]
  - E. When Certiorari Is Granted . . . [§ 7.124]
- POSTSCRIPT ON U.S. SUPREME COURT RULE NUMBERING [§ 7.125]

**PUTTING ON THE WRITS:  
CALIFORNIA EXTRAORDINARY REMEDIES**

[Go to Chapter 8](#)

I. INTRODUCTION [§ 8.0]

This chapter primarily addresses post-conviction writs of habeas corpus in non-capital criminal cases. It also briefly discusses other uses of state habeas corpus and other state writ remedies.

- A. Uses of Habeas Corpus Often Encountered in Criminal and Juvenile Appellate Practice [§ 8.1]
- B. ADI’s Expectations [§ 8.2]
  - 1. Pursuit of Writs When Appropriate [§ 8.3]
  - 2. Consultation with ADI Before Pursuing Writ Remedy [§ 8.4]

II. BASIC REQUIREMENTS FOR AND LIMITATIONS ON STATE HABEAS CORPUS TO CHALLENGE CRIMINAL CONVICTION [§ 8.5]

- A. Custody and Mootness [§ 8.6]
  - 1. Custody requirements [§ 8.7]
  - 2. Mootness issues [§ 8.8]
  - 3. Alternatives to habeas corpus if custody requirement is not met [§ 8.9]
- B. Successive Petitions [§ 8.10]
- C. Availability of Appeal [§ 8.11]
- D. Timeliness [§ 8.12]

III. HABEAS CORPUS PROCEDURES [§ 8.13]

- A. Where and When To File [§ 8.14]
  - 1. Venue [§ 8.15]
    - a. “Territorial” question [§ 8.16]
    - b. “Vertical” question [§ 8.17]
  - 2. Timing [§ 8.18]
- B. Petition [§ 8.19]
  - 1. Purpose: establishing prima facie cause for relief [§ 8.20]
  - 2. Formal petition [§ 8.21]
    - a. Format [§ 8.22]
    - b. Facts and law [§ 8.23]
    - c. Conclusion and prayer for relief [§ 8.24]
    - d. Verification [§ 8.25]

- 3. Points and authorities [§ 8.26]
- 4. Declarations, exhibits, and other supporting documents [§ 8.27]
- C. Initial Response by Court of Appeal to Petition [§ 8.28]
  - 1. Summary denial [§ 8.29]
  - 2. Summary denial without prejudice to refile in superior court [§ 8.30]
  - 3. Request for informal response [§ 8.31]
  - 4. Issuance of writ of habeas corpus or order to show cause [§ 8.32]
    - a. Legal pleadings without fact-finding [§ 8.33]
    - b. Return before superior court [§ 8.34]
    - c. Reference to superior court [§ 8.35]
    - d. Court of Appeal as trier of fact [§ 8.36]
- D. Return [§ 8.37]
- E. Traverse [§ 8.38]
- F. Evidentiary Hearing [§ 8.39]
- G. Argument in the Court of Appeal [§ 8.40]
- H. Decision on the Merits [§ 8.41]
  - 1. Effect of prior habeas corpus writ or order to show cause [§ 8.42]
  - 2. Factual findings [§ 8.43]
  - 3. Burden of proof [§ 8.43A]
  - 4. Form of relief [§ 8.44]
- I. Proceedings in Superior Court After Habeas Corpus Petition Is Filed [§ 8.45]
  - 1. Initial ruling on petition [§ 8.46]
  - 2. Informal response [§ 8.47]
  - 3. Later proceedings [§ 8.48]
- J. Review of Habeas Corpus Decision [§ 8.49]
  - 1. Filing in Court of Appeal after superior court decision [§ 8.50]
  - 2. Factual findings [§ 8.51]
  - 3. Supreme Court review [§ 8.52]
- IV. OTHER APPLICATIONS OF STATE HABEAS CORPUS [§ 8.53]
  - A. Late or Defective Notice of Appeal [§ 8.54]
  - B. Release Pending Appeal [§ 8.55]
  - C. In-Prison Conditions and Administrative Decisions, Parole, and Other Issues Arising After Judgment [§ 8.56]
  - D. Contempt [§ 8.57]
    - 1. Procedures for reviewing contempt order [§ 8.58]
    - 2. Jurisdiction [§ 8.59]
    - 3. Standards of review [§ 8.60]
  - E. Civil Commitments [§ 8.61]

- F. Reinstatement of Appeal [§ 8.62]
  - G. Dependency and Family Law Applications [§ 8.63]
  - H. Other Applications [§ 8.64]
- V. OTHER EXTRAORDINARY WRITS IN CALIFORNIA CRIMINAL AND JUVENILE APPELLATE PRACTICE [§ 8.65]
- A. Writs of Error *Coram Nobis* and Error *Coram Vobis* [§ 8.66]
    - 1. *Coram nobis* as motion to vacate judgment [§ 8.67]
    - 2. *Coram nobis* as motion to withdraw guilty plea [§ 8.68]
    - 3. Appeal of *coram nobis* denial [§ 8.69]
    - 4. *Coram vobis* [§ 8.70]
  - B. Mandate, Prohibition, and Certiorari [§ 8.71]
    - 1. Basic purpose [§ 8.72]
      - a. Mandate [§ 8.73]
      - b. Prohibition [§ 8.74]
      - c. Certiorari [§ 8.75]
    - 2. Petition and informal opposition, reply [§ 8.76]
    - 3. Court response and return or opposition, reply [§ 8.77]
      - a. Summary denial [§ 8.78]
      - b. Alternative writ or order to show cause [§ 8.79]
      - c. Peremptory writ in the first instance [§ 8.80]
      - d. Disposition [§ 8.81]
  - C. Supersedeas [§ 8.82]
  - D. Statutory Writs [§ 8.83]

APPENDIX A: Requirements for Habeas Corpus Petitions Filed by Counsel in Court of Appeal [§ 8.84]

- I. FORMAL REQUIREMENTS [§ 8.85]
  - A. Form [§ 8.86]
  - B. Cover [§ 8.87]
  - C. Service [§ 8.88]
    - 1. Persons to be served [§ 8.89]
    - 2. Method of service [§ 8.90]
  - D. Filing Copies [§ 8.91]
  - E. Other Requirements [§ 8.92]
- II. CONTENTS OF FORMAL PETITION [§ 8.93]
  - A. Current Confinement [§ 8.94]
  - B. Underlying Proceedings [§ 8.95]
    - 1. Court [§ 8.96]
    - 2. Identity of case [§ 8.97]

|  |  |           |  |
|--|--|-----------|--|
| 3.   | Offense                                    | [§ 8.98]  |  |
| 4.   | Proceedings                                | [§ 8.99]  |  |
| 5.   | Sentence                                   | [§ 8.100] |  |
| 6.   | Previous review                            | [§ 8.101] |  |
| 7.   | Administrative decision                    | [§ 8.102] |  |
| C.   | Counsel                                    | [§ 8.103] |  |
| D.   | Possible Procedural Irregularities         | [§ 8.104] |  |
| 1.   | Delay                                      | [§ 8.105] |  |
| 2.   | Failure to raise on appeal                 | [§ 8.106] |  |
| 3.   | Failure to file in lower court             | [§ 8.107] |  |
| 4.   | Failure to exhaust administrative remedies | [§ 8.108] |  |
| E.   | Relief Sought                              | [§ 8.109] |  |
| F.   | Grounds for Relief                         | [§ 8.110] |  |
| G.   | Verification                               | [§ 8.111] |  |
| 1.   | Requirement for petition                   | [§ 8.112] |  |
| 2.   | Verification by counsel                    | [§ 8.113] |  |
| III.   | POINTS AND AUTHORITIES                     | [§ 8.114] |  |
| IV.  | SUPPORTING DOCUMENTS                       | [§ 8.115] |  |
| A.   | Required Attachments                       | [§ 8.116] |  |
| B.   | Form                                       | [§ 8.117] |  |
| C.   | Number of Filing Copies                    | [§ 8.118] |  |
| V.   | PETITION FILED IN CONJUNCTION WITH APPEAL  | [§ 8.119] |  |
| A.   | Cover                                      | [§ 8.120] |  |
| B.   | Record                                     | [§ 8.121] |  |
| APPENDIX B: California Post-Conviction Habeas Corpus (flow charts) |  | [§ 8.122] |  |
| Part I. Typical Proceedings to Initial Decision                    |  | [§ 8.123] |  |
| Part II. Proceedings To Review Initial Decision                    |  | [§ 8.124] |  |

## THE COURTHOUSE ACROSS THE STREET: FEDERAL HABEAS CORPUS

[Go to Chapter 9](#)

### I. INTRODUCTION [§ 9.0]

This chapter provides basic information about federal habeas corpus law and procedure. The focus is on post-appeal review of noncapital California state convictions – a remedy of last resort for those who have failed to achieve relief in state courts. An attorney appointed to a California appeal has the responsibility, in appropriate cases, to preserve federal issues and advise the client about pursuing federal habeas corpus in pro per. Further, many state appellate practitioners will at some time or another find themselves in federal court on a habeas corpus matter, and in that case thorough familiarity with the governing law is essential.

The chapter addresses custody and mootness issues, time limitations, grounds, exhaustion of state remedies and procedural default, successive petitions, and basic habeas corpus procedures.

### II. CUSTODY AND MOOTNESS [§ 9.1]

- A. Custody Requirements [§ 9.2]
- B. Mootness Questions [§ 9.3]

### III. TIME LIMITS FOR FILING FEDERAL PETITION [§ 9.4]

- A. Starting the Clock [§ 9.5]
- B. Time of Filing [§ 9.6]
- C. Tolling [§ 9.7]
  - 1. State collateral proceedings [§ 9.8]
    - a. Properly filed state petition [§ 9.9]
    - b. Pendency of petition [§ 9.10]
    - c. End of tolling period [§ 9.11]
  - 2. Equitable tolling [§ 9.12]
  - 3. Fundamental miscarriage of justice [§ 9.13]
- D. Assertion of Statute of Limitations by State [§ 9.14]

### IV. GROUNDS FOR FEDERAL HABEAS CORPUS RELIEF [§ 9.15]

- A. General Standards for Reviewing State Court Decision [§ 9.16]
  - 1. State decision to be reviewed [§ 9.17]
  - 2. Deference to state decisions on matters of *law* [§ 9.18]
    - a. AEDPA standards for relief [§ 9.19]

- b. Exceptions to AEDPA standards [§ 9.20]
        - c. Interpretation of state decision [§ 9.21]
        - d. Meaning of state law [§ 9.22]
      - 3. Deference to state decisions on matters of *fact* [§ 9.23]
    - B. Grounds for Relief Enumerated in AEDPA [§ 9.24]
      - 1. “Federal law” [§ 9.25]
      - 2. “Clearly established” federal law [§ 9.26]
        - a. Holdings [§ 9.27]
        - b. Decisions by United States Supreme Court [§ 9.28]
        - c. Well developed and unconflicting precedents [§ 9.29]
        - d. Established at the time of the state court decision [§ 9.29A]
      - 3. “Contrary to” federal law [§ 9.30]
      - 4. “Unreasonable application” of federal law [§ 9.31]
        - a. “Objectively unreasonable” test [§ 9.32]
        - b. Application of precedent to new factual situation [§ 9.33]
        - c. Unresolved legal issues [§ 9.34]
      - 5. Unreasonable determination of facts [§ 9.35]
        - a. Presumption of correctness [§ 9.36]
        - b. Unreasonableness [§ 9.37]
        - c. Absence of factual showing in state court [§ 9.38]
    - C. Prejudicial Error Standard [§ 9.39]
      - 1. AEDPA standards and *Brecht* test [§§ 9.40-9.42]
      - 2. Prejudicial per se error [§ 9.43]
      - 3. Cumulative error [§ 9.43A]
- V. PROPER PRESENTATION TO STATE COURTS: EXHAUSTION AND PROCEDURAL DEFAULT [§ 9.44]
  - A. Some Definitions [§ 9.45]
  - B. Independent and Adequate State Grounds [§ 9.46]
    - 1. Independence of state ground [§ 9.47]
    - 2. Adequacy of state ground [§ 9.48]
      - a. Consistently applied and established rule [§ 9.49]
      - b. Determination of adequacy [§ 9.50]
  - C. Excuse from Procedural Default [§ 9.51]
    - 1. Cause [§ 9.52]
    - 2. Prejudice [§ 9.53]
    - 3. Fundamental miscarriage of justice [§ 9.54]
      - a. Actual innocence: *Schlup* gateway [§ 9.55]
      - b. Constitutional error in imposing death penalty [§ 9.56]

- D. Interpreting Ambiguous and Unexplained State Decisions [§ 9.57]
    - 1. Standards when state court resolves federal issue and also refers to state procedural default [§ 9.58]
    - 2. Standards when state court does not resolve federal issue [§ 9.59]
      - a. Properly presented issues [§ 9.60]
      - b. Evidence of procedural default in presenting issue [§ 9.61]
    - 3. State court decision to be reviewed for resolution of federal issue [§ 9.62]
      - a. “Look through” doctrine [§ 9.63]
      - b. Procedural default in presenting issue to state high court [§ 9.64]
  - E. Assertion of Exhaustion or Procedural Default Defense by State [§ 9.65]
  - F. Steps to Preserving a Federal Issue in California State Court [§ 9.66]
    - 1. Raising issue in each state court [§ 9.67]
      - a. Trial court [§ 9.68]
      - b. Court of Appeal [§ 9.69]
      - c. California Supreme Court [§ 9.70]
    - 2. Briefing the issue [§ 9.71]
      - a. Mention of federal issue in heading or subheading [§ 9.72]
      - b. Operative facts supporting federal issue [§ 9.73]
      - c. Specific reference to federal law [§ 9.74]
      - d. Argument linking operative facts to legal theory [§ 9.75]
    - 3. Petitioning for review [§ 9.76]
    - 4. Later proceedings [§ 9.77]
  - G. Mixed Petitions with Both Exhausted and Unexhausted Claims [§ 9.78]
- VI. SUCCESSIVE PETITIONS [§ 9.79]
- A. Meaning of “Successive Petition” [§ 9.80]
    - 1. Types of applications treated as successive petition [§ 9.81]
    - 2. Subsequent applications considered not to be successive petition [§ 9.82]
      - a. First petition dismissed for lack of exhaustion or ripeness [§ 9.83]
      - b. Federal procedural defect [§ 9.84]
      - c. Claim not ripe at time of original petition [§ 9.84A]
      - d. Successive filing construed as motion to amend when original petition not yet adjudicated [§ 9.84B]
      - e. Motion for reconsideration [§ 9.84C]
  - B. New Rule of Law Retroactively Applicable to Cases on Collateral Review [§ 9.85]
    - 1. “New” rule [§ 9.86]



- 2. Supreme Court determination of retroactivity [§ 9.87]
  - C. New Factual Predicate [§ 9.88]
    - 1. Due diligence [§ 9.89]
    - 2. Clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found applicant guilty of the underlying offense [§ 9.90]
  - D. Procedures for Filing Successive Petition [§ 9.91]
    - 1. Authorization by court of appeals to file petition [§ 9.92]
    - 2. Determination by district court whether statutory grounds for successive petition have been met [§ 9.93]
- VII. FEDERAL HABEAS CORPUS PROCEDURES [§ 9.94]
- A. Petition [§ 9.95]
    - 1. Counsel [§ 9.96]
    - 2. Filing formalities [§ 9.97]
      - a. District [§ 9.98]
      - b. Respondent [§ 9.99]
      - c. Fees [§ 9.100]
    - 3. Content [§ 9.101]
  - B. Process in District Court [§ 9.102]
    - 1. Summary denial [§ 9.103]
    - 2. Post-petition pleadings and discovery [§ 9.104]
    - 3. Evidentiary hearing [§ 9.105]
    - 4. Decision [§ 9.106]
  - C. Appeal [§ 9.107]
    - 1. Filing requirements [§ 9.108]
    - 2. Certificate of appealability [§ 9.109]
      - a. Standards for granting [§ 9.110]
      - b. Application to circuit judge [§ 9.111]
      - c. Scope of appellate review [§ 9.112]
    - 3. Procedures on review [§ 9.113]
    - 4. Certiorari [§ 9.114]

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TABLE: [United States Supreme Court Cases with Parallel Citations](#)