

# CRIMINAL PROCEEDING

## NOTICE OF APPEAL

**Forms:** The attached forms are for use in an appeal in the Court of Appeal, Fourth Appellate District, from a judgment in a criminal case or an order after judgment affecting the substantial rights of the defendant. The forms include:

- [Notice of Appeal](#). The notice of appeal should be filled out completely and must be signed by either you or your trial counsel.
- [Motion for Appointment of Counsel on Appeal](#). If you cannot afford to retain an attorney on appeal, the motion for appointment of counsel at the bottom of the notice of appeal should be filled out and signed by you (preferably) or trial counsel. If you have no income and are not in custody, you must explain how living expenses are met.
- [Instructions for Filling Out Notice of Appeal](#).
- [Request for Certificate of Probable Cause](#). If the appeal seeks to challenge the validity of a plea of guilty or nolo contendere or the admission of a probation violation, a request for a certificate of probable cause must be filed with the notice of appeal. (Cal. Rules of Court, rule 8.304(b); see Penal Code § 1237.5.) You may use this form.
- [Background Information](#). This information helps to ensure that your appeal is processed correctly and that you are properly represented on appeal. Please file with page 1. It is not confidential.
- [Change of Address](#). Detach and keep the change of address form for use as needed. It is critical you keep the Court of Appeal, Appellate Defenders, Inc., and your appellate attorney informed of your current address at all times.

**When:** A notice of appeal must be filed within **60 days** from the date of the judgment or order being appealed. If you have not yet been sentenced, it is too early to appeal.

**What:** Penal Code section 1237 permits an appeal from a judgment after trial or from an order after judgment affecting the substantial rights of the defendant.

If you pled guilty or nolo contendere or your probation was revoked on the basis of an admitted probation violation, an appeal may raise only these issues:

- Orders, such as sentencing, made *after* the plea and *not* affecting the validity of the plea.
- Denial of a motion to suppress evidence under Penal Code section 1538.5 (illegal search or seizure).
- Challenge to the *validity* of the plea or the admission of a probation violation. For this kind of issue, Penal Code section 1237.5 and rule 8.304(b) of the California Rules of Court require you to file a *request for a certificate of probable cause along with the notice of appeal*.
  - This category includes, among a number of other issues, the denial of a motion to withdraw the plea and an attack on a sentence that was agreed to as part of the plea bargain. Such issues may be based only on facts shown *in the record* on appeal (any issue relying on facts *outside* the record requires a writ petition).

**Where:** A notice of appeal must be filed with the appeals section of the superior court where the decision being appealed was made. The main courthouses handling these cases in each county of the Fourth Appellate District are listed on Appellate Defenders Inc. website [here](#) and e-filing information is listed [here](#). If you do not have access to the website, or are unsure if you have the correct address, please check with your trial attorney or a court clerk for the filing location. You can also call the on-duty attorney at Appellate Defenders, Inc. (619) 696-0282 to confirm the address.

**For assistance:** Contact Appellate Defenders, Inc., a firm of appellate attorneys that manages the entire system of court-appointed counsel in the Fourth Appellate District Court of Appeal: 555 West Beech Street, Suite 300, San Diego, CA, 92101. Telephone: (619) 696-0282. Website with e-mail contacts, forms, ADI California Criminal Appellate Practice Manual, and multiple other resources: <http://www.adi-sandiego.com>.

This Notice of Appeal must be filed within 60 days of the decision being appealed, in the county superior court where the decision was made. [Instructions](#) for filling out the notice of appeal are on page 2. File the [background information form](#) (p. 3) along with it.

(1) Name of appellant: \_\_\_\_\_  
 Address (include I.D. No. if in custody): \_\_\_\_\_  
 \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Phone (if applicable): \_\_\_\_\_ Date of birth: \_\_\_\_\_

*For Court Use Only*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF (2) \_\_\_\_\_**

PEOPLE v. \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 (4) \_\_\_\_\_ )  
 Appellant's full name \_\_\_\_\_ )  
 \_\_\_\_\_ )

(3) Superior Court No. or Nos. \_\_\_\_\_

**NOTICE OF APPEAL**  
 (Criminal case)

**From the decision of this court entered**

(5) \_\_\_\_\_  
 (Date of sentencing or appealable order after judgment)

(6) **TYPE OF PROCEEDING** – check one of these boxes:

- Jury or court trial.
- Contested probation violation.
- Order after judgment affecting substantial rights of appellant or other order (describe):
- Plea of guilty or nolo contendere, or admission of probation violation. If you check this box, you must also check one or more boxes in part (7), next.

(7) **If Plea of Guilty or Nolo Contendere or Admitted Violation of Probation**, check one or more of these boxes:

- This appeal is based on the sentence or other matters that occurred after the plea and do not affect its validity.
- This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5 (illegal search and seizure).
- This appeal challenges the validity of the plea or admission of probation violation. If this box is checked, you must file with this notice a request for certificate of probable cause, signed under penalty of perjury. (See page 3 of this form.) It must state why the plea is invalid.

(8) **Signature (required):** \_\_\_\_\_

Signature of Defendant or Trial Counsel (with State Bar no.)

Date of Signature

*The filing of a notice of appeal by counsel is not an undertaking to handle the appeal. (Pen. Code, § 1240.1, subd. (b).)*

**(9) MOTION FOR APPOINTMENT OF COUNSEL**

Defendant requests the Court of Appeal appoint an attorney for appeal. Defendant does not have sufficient means to hire an attorney. Defendant's spouse (if applicable) and defendant have the following combined income and property:

Take-home pay from job (monthly):	\$ _____	Trial attorney was: (Check one.)
Other income (monthly):	\$ _____	<input type="checkbox"/> A public defender or court-appointed attorney.
Money in bank at this time:	\$ _____	<input type="checkbox"/> An attorney paid for by defendant.
Home ownership? (Check one.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other: _____

I declare under penalty of perjury under the laws of the State of California that this information is true and correct:

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature of Defendant (preferred) or Trial Counsel

## INSTRUCTIONS FOR FILLING OUT NOTICE OF APPEAL

Please follow these instructions carefully. If you have any questions, ask your trial attorney of Appellate Defenders, Inc., for help.

A notice of appeal must be filed within **60 days** after you are sentenced or an order after sentencing is made. It is filed with the **county superior court** where the sentence or order took place.

The notice of appeal form can be completed easily by filling in the blanks and checking boxes. Wherever you see a line like this, \_\_\_\_\_, fill the blank in with the appropriate information. The numbers below refer to the numbers on the notice of appeal form:

- (1) **Name and address:** Print your name. Give your address at the time you file the notice of appeal. (Use the change of address form for later changes.) Provide phone number if applicable and date of birth. If you are in custody, provide your inmate I.D. number.
- (2) **County:** Show the county where your case took place and the decision being appealed was entered.
- (3) **Superior court number:** State the correct case number(s) on the notice of appeal form. Ask your attorney if you do not know your superior court number(s). If you were sentenced on more than one case at the same time, be sure to include *all* of the case numbers you want to appeal.
- (4) **Your name:** Print your name in the blank.
- (5) **Date of sentencing or order after judgment:** Indicate the date you were sentenced or the date the order after judgment was made. If you are not sure, check with your attorney or write, "On or about" and the closest date that you can recall.
- (6) **Type of proceeding:** One of these boxes must be checked.
  - **Jury or court trial:** Check this box if you had a jury trial or a court trial (a trial in which the judge instead of a jury made the decision as to guilt or innocence).
  - **Contested probation revocation:** Check this box if your probation was revoked at a hearing and you did not admit the probation violation or violations that were the basis for the revocation.
  - **Order after judgment or other:** Check this box if you are appealing an order made after you were sentenced that affects your substantial rights, such as orders revoking or modifying probation, resentencing, changes in credits, etc. If the appeal is from some other kind of order, describe it in the blank space.
  - **Plea of guilty or nolo contendere, or revocation of probation based on admitted probation violation:** If you check this box, you must *complete part (7)*.
- (7) **Grounds for appeal after guilty or nolo contendere plea or admission of probation violation:** If you pleaded guilty or nolo contendere or your probation was revoked on the basis of an *admitted* violation, you must check *at least one box* in part (7). Otherwise, the court can dismiss the appeal for not complying with Rules of Court, rule 8.304(b).
  - **Sentence or other matter after plea:** Check this box if you are appealing because you do not agree with your sentence (including the term, credits, restitution, fines, probation conditions, etc.) or any other order made after you entered the plea or admitted a probation violation, if the order does *not* affect the validity of the plea.
  - **Denial of a Penal Code section 1538.5 motion to suppress evidence:** Check this box if you are appealing because the judge denied a motion to suppress evidence on the ground of an illegal search and seizure.
  - **Challenge to validity of plea or admission:** Check this box if you are challenging the validity of the plea or of an *admission* of a probation violation that was the basis for a probation revocation. *If this box is checked, you must file with the notice of appeal a request for a certificate of probable cause, signed under penalty of perjury.* You may use the form on page 3 for the request.
    - This category includes, among a number of other issues, the denial of a motion to withdraw the plea and an attack on a sentence that was agreed to as part of the plea bargain. Such issues may be based only on facts shown *in the record* on appeal (any issue relying on facts *outside* the record requires a writ petition).
- (8) **Signature:** Your signature or your attorney's signature is required.
- (9) **Motion for appointment of counsel:** You are entitled to court-appointed counsel on appeal if you do not have the funds to retain an attorney. Fill out and sign the form at the bottom of the notice of appeal.

### REMEMBER:

- A notice of appeal must be filed **no later than 60 days** from the decision being appealed. If possible, keep some proof of mailing or filing.
- Send the notice of appeal to the **superior court** of the county where your case took place.
- Complete and file **all sections** of the notice of appeal, motion for appointment of counsel, and background information form.
- Keep the **change of address** form for use as needed. It is critical to keep the Court of Appeal, Appellate Defenders, Inc., and your appellate attorney informed of your current address at all times.

**REQUEST FOR CERTIFICATE OF PROBABLE CAUSE**

*This request must be completed, signed, and filed with the notice of appeal if you checked box number 3 in section (7). It applies when:*

- *You pled guilty or nolo contendere, or if your probation was revoked on the basis of an admitted probation violation.*  
**AND**
- *You intend to challenge the validity of the plea or admission on appeal.*

**I request a certificate of probable cause. The plea of guilty or nolo contendere, or the admission of a probation violation, was unlawful because:**

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**I declare under penalty of perjury under the laws of the State of California that this statement is true.**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
Defendant or Trial Counsel

**POINTS AND AUTHORITIES**

A certificate of probable cause is required in an appeal after a plea of guilty or nolo contendere or an admission of a probation violation, in order to raise an issue challenging the validity of the plea. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b).) A common example of a challenge to the plea is a contention that the trial court improperly denied the defendant's motion to withdraw the plea.

A certificate of probable cause should be issued unless a challenge to the plea on appeal would be "clearly frivolous and vexatious." (*People v. Ribero* (1971) 4 Cal.3d 55, 63, fn. 4.) Signing the certificate does not mean the trial court believes the contention is "probably" meritorious or will result in reversal; it merely means there can be an honest difference of opinion about the issue. (*Ibid.*)

The request for certificate of probable cause is (check one) \_\_\_\_\_ granted.  
\_\_\_\_\_ denied.

\_\_\_\_\_  
Honorable \_\_\_\_\_, Judge of the Superior Court \_\_\_\_\_ Date

## BACKGROUND INFORMATION

To be filed along with [Notice of Appeal](#) (page 1)

THE INFORMATION ON THIS FORM WILL BE A PART OF THE PUBLIC RECORD AND IS NOT CONFIDENTIAL.

Name: \_\_\_\_\_ Date of birth: \_\_\_\_\_ Superior court no. \_\_\_\_\_

Current address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

If applicable: Booking or inmate no.: \_\_\_\_\_ Phone: \_\_\_\_\_ A.K.A.: \_\_\_\_\_

**\* IMPORTANT: YOU MUST TELL APPELLATE DEFENDERS, INC., THE COURT OF APPEAL, OR YOUR APPELLATE ATTORNEY WHENEVER YOUR ADDRESS CHANGES. IF YOU FAIL TO DO THIS, YOUR CASE MAY BE DELAYED OR LOST. [CHANGE OF ADDRESS FORMS](#) ARE ATTACHED.**

Family member or friend who will always know your address:

Name and relationship: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Trial attorney:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Proceeding:

Jury trial     Court trial     Guilty plea     Other (describe): \_\_\_\_\_

Crime(s) convicted of: \_\_\_\_\_

Sentence: \_\_\_\_\_

Did you need an interpreter in court?  Yes  No. If yes, in what language? \_\_\_\_\_

Do you have now, or have you ever had, any related appeals, writs, or other proceedings before this or any other California appellate court?  Yes  No. If yes, give case title, number, and dates, and describe proceedings:

\_\_\_\_\_

\_\_\_\_\_

Names of co-defendants and their counsel (whether joint or separate proceedings):

\_\_\_\_\_

\_\_\_\_\_

Possible issues on appeal (These are only suggestions. The attorney on appeal will make the final decision on which issues to raise.):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Arrangements for counsel on appeal: Have you *hired* an attorney for your appeal?  Yes  No. If yes:

Name: \_\_\_\_\_ Address and phone: \_\_\_\_\_

**If you cannot afford to hire an attorney, you have the right to have the court appoint one for you. Please fill out and sign the [request for counsel](#) on the bottom of the notice of appeal (page 1).**

# NOTIFICATION OF CHANGE OF ADDRESS

– DETACH FROM NOTICE OF APPEAL AND KEEP FOR USE AS NEEDED –

Once a notice of appeal is filed, it is important that the Court of Appeal, your appellate attorney, and Appellate Defenders, Inc., know your current address at all times while the appeal is pending. It is your responsibility to provide your correct address. If you fail to do that, your appeal may be delayed or dismissed.

You do not have to use the forms below, but they may make it easier to provide the information.

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## CHANGE OF ADDRESS

Appeal Number (if known): \_\_\_\_\_ Date: \_\_\_\_\_

Your Name: \_\_\_\_\_ I.D. # (if in custody): \_\_\_\_\_

New Address: \_\_\_\_\_

\_\_\_\_\_  
City State Zip

Mail to: Appellate Defenders, Inc.  
555 West Beech Street, Suite 300  
San Diego, CA 92101-2939

*Be sure to notify your attorney, too, if an attorney has been appointed to your case.*

(DETACH HERE)

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## CHANGE OF ADDRESS

Appeal Number (if known): \_\_\_\_\_ Date: \_\_\_\_\_

Your Name: \_\_\_\_\_ I.D. # (if in custody): \_\_\_\_\_

New Address: \_\_\_\_\_

\_\_\_\_\_  
City State Zip

Mail to: Appellate Defenders, Inc.  
555 West Beech Street, Suite 300  
San Diego, CA 92101-2939

*Be sure to notify your attorney, too, if an attorney has been appointed to your case.*