

Parts in blue print are instructions to user, not to be included in filed document unless so noted. [Parts and references in green font, if any, refer to juvenile proceedings. See Practice Note, this web page, for guidance in adapting forms to juvenile cases.]

Practice tip: The settled statement process is discussed in chapter 3 of the [ADI Appellate Practice Manual](#) at § 3.30. The section describes the process for filing in superior court and the alternative route available in the Court of Appeal. See the ADI website [Fourth District](#) page for Division-specific preferences.

[Attorney's name, bar number]
[Address and telephone number]
[Email address and fax number if available]
Attorney for Defendant *[name]*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF *[NAME]***

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff and Respondent,

v.
[Name]

Defendant and Appellant.

) Superior Court
) No. *[number]*
)
) Court of Appeal
) No. *[number]*

) **DEFENDANT'S APPLICATION FOR
) PERMISSION TO
) PREPARE A SETTLED
) STATEMENT**

**TO THE HONORABLE *[NAME]*, JUDGE OF THE SUPERIOR
COURT FOR THE STATE OF CALIFORNIA, COUNTY OF
[NAME]:**

Defendant *[name]* respectfully requests permission from this court
to prepare a settled statement of *[describe generally the record sought]*.
(Cal. Rules of Court, rule 8.346 [\[8.407\(d\)\]](#).)

1 This application is made pursuant to California Rules of Court, rule
2 8.346 [8.407(d)] on the ground that good cause exists for granting the
3 application because

4 *[generally describe relevance to appeal and reason for*
5 *unavailability/why the oral proceedings cannot be transcribed].*

6 Settlement is necessary to secure and ensure appellant's right to a
7 complete and accurate record in view of state and federal due process, equal
8 protection of the laws, and effective assistance of counsel. (See *Hardy v.*
9 *United States* (1964) 375 U.S. 277 [84 S.Ct. 424, 11 L.Ed.2d 331]
10 [defendant entitled to transcript of trial in order for counsel to discharge his
11 duty of advocacy]; *Chessman v. Teets* (1957) 354 U.S. 156, 162 [77 S.Ct.
12 1127, 1 L.Ed.2d 1253] [ex parte settlement violated due process]; *People v.*
13 *Barton* (1978) 21 Cal.3d 513, 518 [for a 'complete and adequate' appeal,
14 defendant is entitled to effective assistance and an appellate record that will
15 permit meaningful presentation of his claims]; *March v. Municipal Court*
16 (1972) 7 Cal.3d 422, 428 [equal protection requires that the state provide
17 the indigent defendant a sufficiently complete record to permit proper
18 consideration of his claims], citing *Draper v. Washington* (1963) 372 U.S.
19 487 [83 S.Ct. 774, 9 L.Ed.2d 899].)

20 This application is based upon the attached memorandum of points
21 and authorities, the declaration of *[attorney's name]*, all pleadings and
22 records on file, and such other oral and documentary evidence as may be
23 presented at or before the hearing of the application and record settlement
24 proceedings.

25 Dated: *[date]*

Respectfully submitted,

26
27 *[Attorney's name]*
State Bar No. *[number]*
28 Attorney for Defendant *[name]*

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MEMORANDUM OF POINTS AND AUTHORITIES

A. Jurisdiction

Under California Rules of Court, rule 8.346, the trial court has jurisdiction to settle the record. That rule states that “[a]s soon as a party learns that any portion of the oral proceedings cannot be transcribed, the party may serve and file in superior court an application for permission to prepare a settled statement.” (Cal. Rules of Court, rule 8.346(a).) The judge must rule on the application within five days after it is filed.” (Cal. Rules of Court, rule 8.346(b).)

B. BACKGROUND

[Provide a brief procedural and factual history relevant to the issues. Include the date the appellant’s opening brief is due for filing]

C. DEFENDANT IS ENTITLED TO A SETTLED STATEMENT

The California Supreme Court recognizes the “critical role of a proper and complete record in facilitating meaningful appellate review.” (*People v. Hawthorne* (1992) 4 Cal.4th 43, 63.) A complete and accurate record is an essential component of appellate review and a requirement for the effective assistance of appellate counsel. (*People v. Barton, supra*, 21 Cal.3d at pp. 518-521.)

The destruction or loss of a material portion of the record may constitute a denial of meaningful appellate review and require reversal. (*People v. Moore* (1988) 201 Cal.App.3d 51, 56-57.) To prevail on a claim that a missing material portion of the record requires reversal, appellant must show that the record is inadequate to permit meaningful appellate review and that an adequate substitute for the record cannot be obtained. (*People v. Galland* (2008) 45 Cal.4th 354, 370.)

1 Based on appellate counsel’s review of the record, legal research,
2 and discussions with trial counsel, appellate counsel has determined that the
3 material requested below constitutes an important part of the record on
4 appeal, is directly relevant to one or more issues on appeal, and is necessary
5 to effectively represent appellant and for a proper determination of this
6 appeal.

7 The settled statement should include the following proceedings:

8 *[describe with specificity what is needed and make a*
9 *list of the proceedings to be included in the settled*
10 *record, including dates and other details, such as the*
11 *names of the attorneys and judge, necessary to identify*
12 *proceedings].*

13 The record to be settled is an important part of the record on appeal
14 because *[describe with specificity why the record to be settled is an*
15 *important part of the record on appeal, the relevance to the issues*
16 *on appeal, and the reason for unavailability/why the oral*
17 *proceedings cannot be transcribed] .*

18 **D. ORDER, PROPOSED STATEMENT, AND HEARING DATE**

19 If the court grants the application, the following procedural rules are
20 provided for the court’s assistance in scheduling.

21 “[T]he parties must comply with the relevant provisions of rule
22 8.137, but the applicant must deliver a proposed statement to the judge for
23 settlement within 30 days after it is ordered, unless the reviewing court
24 extends the time.” (Cal. Rules of Court, rule 8.346(b).)

25 “Within 20 days after appellant serves the condensed narrative, the
26 respondent may serve and file proposed amendments.” (Cal. Rules of
27 Court, rule 8.137(b)(4).)

28

1 “The clerk must set a date for a settlement hearing by the trial judge
2 that is no later than 10 days after the respondent files proposed amendments
3 or the time to do so expires, whichever is earlier, and must give the parties
4 at least five days’ notice of the hearing date.” (Cal. Rules of Court, rule
5 8.137(c)(1).)

6 “At the hearing, the judge must settle the statement and fix the times
7 within which the appellant must prepare, serve, and file it.” (Cal. Rules of
8 Court, rule 8.137(c)(1); see also rule 8.346(c) [“The applicant must prepare,
9 serve, and file in superior court an original and three copies of the settled
10 statement”].)

11 **E. CONCLUSION**

12 Based on the forgoing, defendant requests that this application to
13 prepare a settled statement be granted.

14 Dated: *[date]*

Respectfully submitted,

[Attorney’s name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

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DECLARATION OF [APPELLATE COUNSEL'S NAME]

I, *[appellate counsel's name]*, declare:

1. I am an attorney duly licensed to practice before all the courts in the State of California and the appointed attorney of record for defendant *[name]* in his appeal.
2. *[Set forth the facts related to appellate counsel's review of the record, legal research, discussions with trial counsel that are the basis for counsel's determination that the material requested is an important part of the record and relevant to the issue(s). Explain the reason for unavailability.]*

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated: *[date]*

Respectfully submitted,

[Attorney's name]
State Bar No. *[number]*
Attorney for Defendant *[name]*

PROOF OF SERVICE

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