

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: Depending on the extent and timing of the supplemental brief, the court may require striking the opening brief and filing a new, corrected brief in its place. Check with the clerk's office, the ADI staff attorney, and the ADI website page on Fourth District practice at http://www.adi-sandiego.com/practice/fourth_dist.asp under "Briefs".

Practice tip: Alternative ADI sample forms may be preferable, depending on the timing and the court – e.g., erratum letter or motion or request to strike opening brief and file a new one.

[Attorney's name, bar number]

[Address and telephone number]

[Email address and fax number if available]

Attorney for Defendant *[name]*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION *[NUMBER]*

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

vs.

[Defendant's name],
Defendant and Appellant.

Court of Appeal
No. *[number]*

Superior Court
No. *[number]*

APPEAL FROM THE SUPERIOR COURT OF *[NAME]* COUNTY

Honorable *[name]*, Judge

**DEFENDANT'S MOTION FOR LEAVE
TO FILE SUPPLEMENTAL BRIEFING**

TO THE HONORABLE [NAME], PRESIDING JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION [NUMBER]:

Under California Rules of Court, rules 8.200(a)(4), 8.360(a) [and 8.412(a)(1)], defendant [name] requests leave of court to file the accompanying supplemental opening brief. The reason is [state briefly -- e.g.: Counsel failed to argue a necessary point in the opening brief; new law has created an issue not available at the time of the opening brief; etc.].

This motion is based on the present moving papers, the supporting memorandum of points and authorities, the declaration of appellate counsel (Exhibit A), and the documents already filed in this court.

Dated: [date]

Respectfully submitted,

[Attorney's name]

State Bar No. [number]

Attorney for Defendant [name]

MEMORANDUM OF POINTS AND AUTHORITIES

A party may file supplemental briefing with the permission of the Presiding Justice of the Court of Appeal. (Cal. Rules of Court, rules 8.200(a)(4), 8.360(a) [and 8.412(a)(1)].)

[Provide sufficiently detailed explanation of reason for supplemental brief: issue sought to be included, why it was omitted, etc.]

Appellate counsel has an obligation to raise meritorious claims of error on appeal. (*Anders v. California* (1967) 386 U.S. 738, 743-744 [87 S.Ct. 1396, 18 L.Ed.2d 493]; *People v. Johnson* (1981) 123 Cal.App.3d 106, 111.) Meritorious claims include those of sufficient substance to have a reasonably strong potential for obtaining reversal or other relief or for making new law. (*People v. Johnson, supra*, 123 Cal.App.3d 106, 111; *People v. Von Staich* (1980) 101 Cal.App.3d 172, 175.)

The defendant's right to effective assistance of appointed appellate counsel requires that, when a meritorious claim of error is omitted from the initial briefing, counsel take steps to present that claim of error to the reviewing court in supplemental briefing. (See *In re Smith* (1970) 3 Cal.3d 192, 202-204.)

Neither justice nor judicial economy is served by refusing supplemental briefing and consequently failing to consider the issue properly on appeal. Later writ proceedings and claims of ineffective assistance of appellate counsel or other grounds for collateral attack are

costly, indirect, duplicative, and less effective than proper appellate processes in the first place. When the trigger for such an attack can be prevented before it occurs, the parties, the court, and the public all benefit.

Dated: *[date]*

Respectfully submitted,

[Attorney's name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

EXHIBIT A
DECLARATION OF APPELLATE COUNSEL

DECLARATION OF *[ATTORNEY'S NAME]*

I, *[name]*, declare:

1. I am appointed counsel for defendant *[name]* in case number *[number]*.
2. On *[date]*, I filed the appellant's opening brief.
3. After filing the appellant's opening brief, I became aware that *[describe omission in opening brief]*.
4. I consulted with a staff attorney at Appellate Defenders, Inc., and we both agreed that it would be appropriate to submit a supplemental brief.
5. *[If applicable:]* On *[date]*, I spoke by telephone with [Deputy Attorney General *[name]* / *other opposing counsel*] assigned to the case for respondent, *[name]*. *[He / She]* informed me that *[he / she]* did not object to my filing a supplemental brief.

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

Dated: *[date]*

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

PROOF OF SERVICE