

Parts in blue print are instructions to user, not to be included in filed document except as 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 TIPS

See [ADI Manual](#), chapter 1, section 1.38; see also section II.B.4. of ADI's [Guide to Motion Practice](#), found under APPELLATE PRACTICE<Nuts and Bolts of Panel Practice.

Health and Safety Code section 103526 governs the procedure for obtaining certified and noncertified death certificates. (See also Health and Saf. Code, § 103525.) Check the related county website for additional information on obtaining vital records.

In at least some dependency cases, dismissal rather than abatement may be the appropriate remedy. (See *In re A.Z.* (2010) 190 Cal.App.4th 1177.) A sample abandonment form is provided on the [dependency forms and samples](#) page.

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

Attorney for Appellant *[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,

v.

[Name],
Defendant and Appellant.

Court of Appeal
No. *[Number]*

Superior Court
No. *[Number]*

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

Honorable *[Name]*, Judge

**MOTION TO ABATE THE ACTION
UPON DEATH OF APPELLANT**

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]*:

A judgment was imposed against defendant and appellant, *[Name]*, in *[Name]*
County Superior Court case number *[number]*. On *[date]*, appellant filed a notice of
appeal, and the appeal is pending before this court. On *[date]*, appellant died. A certified
copy of a certificate of death is attached hereto as Exhibit A.

The death of an appellant while appellate review is pending abates the appeal and all proceedings in the prosecution from its inception. (*People v. Dail* (1943) 22 Cal.2d 642, 659-660; *People v. Smith* (1994) 21 Cal.App.4th 942, 951; see also *In re Sheena K.* (2007) 40 Cal.4th 875, 893 [juvenile delinquency appeal]; *People v. Anzalone* (1999) 19 Cal.4th 1074, 1076 [mentally disordered offender appeal], superseded by statute on another ground, *People v. Stevens* (2015) 62 Cal.4th 325, 337-338; *In re Jackson* (1985) 39 Cal.3d 464, 480 [parole review].)

Accordingly, counsel for appellant requests that this court dismiss the appeal, vacate the judgment of conviction, and remand the case to the trial court with directions to dismiss the information/indictment.

Dated: *[date]*

Respectfully submitted,

[Attorney's Name]

State Bar No. *[number]*

Attorney for Appellant *[Name]*

EXHIBIT A

PROOF OF SERVICE