

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

Practice Tip: See ADI Manual, chapter 1, § 1.38; see also section II.B.4. of ADI's [Guide to Motion Practice \(PDF\)](#).

Practice Tip: 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.

Practice Tip: 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.)

*[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.

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 [MDO appeal]; *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]*

PROOF OF SERVICE