

Parts of this sample form in blue print are instructions to the 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 any guidance in adapting forms to juvenile cases.]

### PRACTICE TIPS

This sample applies to **guilty plea appeals** in which the notice of appeal was timely filed and the case has been assigned a Court of Appeal number, but the notice is defective and the defect is correctable. For example, if the notice of appeal identifies only the validity of the plea as the basis of the appeal and the request for a certificate of probable cause was denied by the trial court, it may be possible to amend the notice to state a noncertificate ground such as the sentencing and, if applicable, denial of a motion to suppress. All three divisions of the Fourth Appellate District accept motions to amend.

**Manual guidance:** See chapter 2 of the [ADI Appellate Practice Manual](#), § 2.101 et seq., for background on notices of appeal and § 2.113 et seq., for additional information on remedies for defective notices of appeal. See also section II.B.2. of ADI's  [Guide to Motion Practice \(PDF\)](#).

**Attorney General stipulation:** In some cases *without* a stipulated sentence, the Attorney General may be willing to stipulate to the amendment of the notice of appeal. In that case this motion would be unnecessary. Check with ADI about the current practice.

**Sample notice of appeal filings from ADI:** Amendment of a notice of appeal can be based on a variety of grounds. ADI staff attorneys file most of these petitions, because often they are a prerequisite to appointment of counsel. ADI therefore has a substantial bank of sample notice of appeal pleadings. Panel attorneys should ask the assigned staff attorney for assistance and any sample briefing related to the particular situation of the case.

**Stay of appeal:** Stays are generally unnecessary and tend to be disfavored, unless the court decides to stay the appeal on its own motion. Counsel should not ask for a stay unless it is necessary to avoid some kind of prejudice. An extension of time to file the brief is usually sufficient.

*[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,

v.

*[Appellant's name]*,  
Defendant and Appellant.

Court of Appeal  
No. *[number]*

Superior Court  
No. *[number]*

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

Honorable *[Name of trial judge]*, Judge

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**APPELLANT'S MOTION FOR LEAVE TO FILE  
AN AMENDED NOTICE OF APPEAL**

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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]*:

Defendant *[name]* hereby moves this court for an order deeming his timely filed notice of appeal to include *[indicate basis for appeal]* as the ground for appeal in accordance with California Rules of Court, rule 8.304 (hereinafter "rule(s)"). This motion is based upon the above-stated rule, the accompanying memorandum of points

and authorities, the attached exhibits *[such as declarations and other documentary evidence]*, and the files and records in Fourth Appellate District case number *[number]*.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. STATEMENT OF THE CASE

*[Set forth procedural history relevant to the claim.]*

### II. ARGUMENT

#### A. AMENDMENT OF THE NOTICE OF APPEAL TO INCLUDE *[identify basis of appeal, such as, the sentence]* IS JUSTIFIED BECAUSE *[briefly state the reason]*.

A defendant's exercise of the right to appeal frequently depends on many technical requirements of which *[he or she]* may be unaware. (*People v. Ribero* (1971) 4 Cal.3d 55, 64.) Here, defendant timely filed *[his or her]* notice of appeal in pro per but did not properly identify noncertificate grounds for appeal. *[For example, the notice of appeal only identified a challenge to the validity of the appeal, but the request for a certificate of probable cause was denied by the trial court, rendering the notice of appeal inoperative. The notice fails to state another ground for appeal.]*

“The rule is well-established that an incorrectly framed notice of appeal will be construed to refer to the correct appealable order assuming that the intention of the defendant is clear.” (*City of Los Angeles v. Aalbers* (1977) 67 Cal.App.3d 80, 82-83.) Here, defendant’s intention is clear in that *[set forth the facts supporting defendant’s intention, for example, the request for certificate of probable cause shows that defendant was also claiming error with the sentence or trial counsel informed the defendant that*

*[he or she] also intended to include another ground for appeal; include supporting exhibits].*

Rules 8.100(a)(2) and 8.304(a)(4) declare that notices of appeal must be liberally construed in favor of their sufficiency. (See also *Red Mountain, LLC. v. Fallbrook Public Utility Dist.* (2006) 143 Cal.App.4th 333, 344 [“A notice of appeal is to be liberally construed in favor of its sufficiency (rule 1(a)(2)), and it may be deemed sufficient if it has not misled or prejudiced the respondent.”<sup>1</sup>) “This power is to be liberally construed to protect the right to appeal.” (*Ibid.*) This advances the state’s “strong public policy in favor of hearing appeals on their merits and of not depriving a party of his right to appeal because of technical noncompliance where he is attempting to perfect his appeal in good faith.” (*Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 853-854.)

Here, there is no question defendant was diligent in timely filing his notice of appeal. But by mistake or ignorance, *[he or she]* did not include *[set forth the basis for the appeal]*. The deficiency in the notice of appeal can be remedied, and the remedy requested is consistent with the rules of court, case law favoring liberal construction, and public policy.

### **III. CONCLUSION**

For all the foregoing reasons, defendant requests this court grant the motion for

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<sup>1</sup> Rule 1(a)(2) has been renumbered as rule 8.100(a)(2).

leave to amend the notice of appeal so that it may be in compliance with rule 8.304(b) and to allow the appeal to proceed on *[set forth noncertificate basis of the appeal]* grounds.

Dated: *[date]*

Respectfully submitted,

*[Attorney name]*

State Bar No. *[number]*

Attorney for Defendant *[name]*

**PROOF OF SERVICE**