

Parts in blue print are instructions to user, not to be included in filed document except as noted. References to rules are to the California Rules of Court.

**Practice Tip:** Motions filed in superior court must conform to rule 2.100 et seq. Release pending appeal is covered in chapter 3, §3.37 et seq. of the ADI Manual. Motions filed in superior court should be printed on pleading paper.

*[Attorney name]*

State Bar No. *[number]*

*Attorney's address*

*Attorney's telephone number*

*Attorney's email and fax number, if available*

Attorney for Defendant *[Name]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF *[Name]*

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff,

v.

*[Defendant's name],*

Defendant.

Case No. *[number]*

NOTICE OF MOTION AND  
MOTION FOR BAIL PENDING  
APPEAL

*[Add client name if there is more  
than one defendant]*

Hon. *[name]*

DEPT: No. *[number]*

DATE/TIME:TBD

TO THE CLERK OF THE COURT AND *[Name]*, DISTRICT ATTORNEY, COUNTY  
OF *[Name]*:

Notice is given that defendant *[name]*, through counsel, *[name of counsel]*, moves  
for bail [or release on own recognizance pending appeal, which is presently pending in  
the Court of Appeal, case number *[number]*].

This motion is made based on the attached memorandum of points and authorities.

DEFENDANT *[NAME]*'S NOTICE OF MOTION AND MOTION FOR BAIL [RELEASE ON OWN RECOGNIZANCE]  
PENDING APPEAL

Defendant respectfully requests that the court enter an order directing that defendant be released on reasonable bail [or released on own recognizance] pending final determination of his/her case on appeal and further order of this court upon issuance of the remittitur. It is further requested that the court direct the clerk of the court to deliver to counsel a certified copy of the order of release on bail [or release on own recognizance] for personal delivery to the custodian of the defendant.

Dated: *[date]*

Respectfully submitted,

*[Attorney's name]*

State Bar No. *[Number]*

Attorney for Defendant *[Name]*

## MEMORANDUM OF POINTS AND AUTHORITIES

Defendant and Appellant, *[name]*, by and through his/her attorney, *[name]*, submits this memorandum of points and authorities in support of his/her request for release on reasonable bail [or release on own recognizance] pending finality of his/her appeal.

### STATEMENT OF THE CASE

An information was filed on *[date]*, charging appellant with *[offenses]* pursuant to *[code sections]*. Appellant was convicted by a jury/plea of *[state counts]*. (S)he was sentenced to *[set forth the sentence]*. (Exhibit A.)

A notice of appeal was filed on *[date]*. (Exhibit B.) This appeal is currently pending before the Fourth District Court of Appeal, Division *[Number]*, appeal number *[number]*. (Exhibit C.)

Appellant is presently in the custody of the *[custodian]* and is incarcerated at *[custodial location]*. Appellant's inmate/ CDCR identification number is *[number]*.

For the reasons set forth below, appellant is not likely to flee and does not pose a danger to the safety of any other person or to the community. (Pen. Code, § 1272.1, subds. (a) & (b).)

For the reasons set forth below, the appeal is not for the purposes of delay and raises [a] substantial legal question(s) which, if decided in favor of the defendant, is/are likely to result in reversal. (Pen. Code, § 1272.1, subd. (c).)

## DISCUSSION

### 1. The Trial Court Has Jurisdiction to Order Release Pending Appeal.

Penal Code section 1272.1 prescribes that “release on bail pending appeal under [Pen. Code, § 1272, subd. (3)] shall be ordered,” when certain criteria are established. California Rules of Court, rule 8.312(b), requires, in essence, that application first be made to the superior court. Thus, this court is the appropriate court in which to make this application.

### 2. The Defendant is Unlikely to Flee And Is Not A Danger to the Safety of Any Person or the Community.

It is within the court’s discretion to determine whether appellant should be granted bail [or release on own recognizance]. (See *In re Podesto* (1976) 15 Cal.3d 921, 926 & fn. 1.) Under Penal Code section 1272.1, subdivision (a), this court must consider (1) the ties of the defendant to the community, including his or her employment, the duration of his or her residence, the defendant’s family attachments and his or her property holdings; (2) the defendant’s record of appearance at past court hearings or of flight to avoid prosecution; and (3) the severity of the sentence the defendant faces. For the following reasons, clear and convincing evidence establishes the defendant is unlikely to flee.

*[State pertinent applicable facts and cite to supporting evidence, e.g., “Appellant posted bond after her arrest and fulfilled all the terms and obligations of that bond.*

*Appellant attended all scheduled court appearances prior to her conviction, 23 in total.*

*Moreover, appellant was not late to any of those scheduled appearances, even though*

*she had to travel a significant distance from her home, with a travel time of one and a half hours each way.”]*

Moreover, clear and convincing evidence establishes appellant is not a threat and does not pose a danger to the community. Under Penal Code section 1272.1, subdivision (b), this court must consider among other factors, whether the crime for which the defendant was convicted is a violent felony, as defined in Penal Code section 667.5, subdivision (c). Appellant does not stand convicted of such an offense. *[State pertinent facts and cite to supporting evidence, e.g., “The forgery convictions were non-violent offenses, and similarly, the majority of appellant's prior offenses were also non-violent offenses, theft and petty theft.”]*

Appellant has significant ties to the community. *[State pertinent facts and cite to supporting evidence, e.g., “She is a devoted mother of three young children, ages 7, 9, and 13, and her absence poses a severe hardship to her family. She is very involved in the community, where she attends a local church with her family, and is involved with her children's activities including boy scouts, girl scouts, soccer, baseball, and camping. Appellant owns her home with her husband, and they have lived there for nine years. During that time, they have made several friends in the neighborhood.”]*

**3. The Appeal is Not Taken for Delay, and the Appeal Raises Substantial Legal Questions Which, If Decided in Favor of the Appellant is Likely to Result in Reversal.**

For purposes of Penal Code section 1272.1, subdivision (c), “‘a ‘substantial legal question’ means a close question, one of more substance than would be necessary to a finding that it was not frivolous. In assessing whether a substantial legal question has been raised on appeal by the defendant, the court shall not be required to determine whether it committed error.”

Appellant intends to raise several issues on appeal including, but not limited to, the following: *[State generally issues to be raised. The statement must be specific enough to satisfy Pen. Code section 1272.1, subdivision (c), but need not be a full exposition of the entire issue.]* Each of the aforementioned issues presents “a close question, one of more substance than would be necessary for a finding that it was not frivolous.” (Pen. Code, § 1272.1, subd. (c).) Moreover, each of these issues would require reversal if successful, and thus, bail on appeal is appropriate in this instance where there are meritorious issues to be presented on appeal.

## CONCLUSION

For the reasons presented herein, it is respectfully requested that the court exercise its discretion to permit appellant's release from custody on reasonable bail [or release on own recognizance] pending finality of his/her appeal.

Dated: *[date]*

Respectfully submitted,

*[Attorney's name]*

State Bar No. *[Number]*

Attorney for Defendant and Appellant *[Name]*

## PROOF OF SERVICE

DEFENDANT *[NAME]*'S NOTICE OF MOTION AND MOTION FOR BAIL [RELEASE ON OWN RECOGNIZANCE]  
PENDING APPEAL