

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.

This form is intended for use in a habeas corpus proceeding when the Court of Appeal has issued an order to show cause returnable to the superior court.

Practice Tip: Motions filed in superior court must conform to rule 2.100 et seq. The motion must be printed on pleading paper.

Practice Tip: A sample motion for appointment of counsel is at <http://www.adisandiego.com/practice/mcle/MCLE-Superior-Court-Appointment-Request.pdf>

[Attorney name]

State Bar No. *[number]*

Attorney's address

Attorney's telephone number

Attorney's email and fax number, if available

Attorney for Defendant and Petitioner *[name]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF *[NAME]*

In the Matter of

[Petitioner name]

For Writ of Habeas Corpus

Case No. *[number]*

(Related Court of Appeal No.
[number])

MOTION FOR APPOINTMENT
OF COUNSEL FOR
PROCEEDINGS ON
ORDER TO SHOW CAUSE
ISSUED BY COURT OF APPEAL

TO THE HONORABLE *[assigned judge or the presiding judge if none is yet assigned]*

Petitioner, *[name]*, through appointed appellate counsel, *[name]*, requests the appointment of counsel to represent *[her/him]* in this proceeding.¹ *[If a particular attorney is requested:* For the reasons explained below, *[identify counsel]* should be the attorney appointed.]

On *[date]*, the Court of Appeal, Fourth Appellate District, Division *[number]*, ordered the People to show cause before this court why the relief sought in petitioner's habeas corpus petition filed in the Court of Appeal, case number *[number]*, should not be granted. *[If applicable:* That order also directed this court to *[describe any other actions ordered, such as setting a hearing or briefing schedule]*.] *[Attach Court of Appeal order as exhibit.]*

[If the superior court has taken any action in the proceeding: To date, this court has *[describe action]*.]

This request is based on California Rules of Court, rules 4.551 and 8.385(e), Penal Code section 987.2 and 987.3, the attached memorandum of points and authorities, and the attached declarations.

Dated: *[date]*

Respectfully submitted,

[Appellate attorney's name]

State Bar No. *[number]*

Attorney for Defendant and Petitioner *[name]*

¹*If applicable:* Attorney *[appellate counsel's name]* is appearing specially for the sole purpose of facilitating the appointment of counsel in the superior court.

MEMORANDUM OF POINTS AND AUTHORITIES

The California Supreme Court has long held, “[I]f a petition attacking the validity of a judgment states a prima facie case leading to an issuance of an order to show cause, the appointment of counsel is demanded by due process concerns.” (*In re Clark* (1993) 5 Cal.4th 750, 780; see also *People v. Barton* (1978) 21 Cal.3d 513, 519, fn. 3 [counsel must be provided for indigent who brings collateral attack on conviction that presents factual allegations stating a prima facie case]; accord, *People v. Shipman* (1965) 62 Cal.2d 226, 231-234.)

California Rules of Court, rule 4.551(c)(2) provides that: “[o]n issuing an order to show cause, the court must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel.” Since this court now has jurisdiction over the cause (rule 8.385(e)), this court has a duty to provide appointed counsel.

Appellate counsel was appointed by the Court of Appeal solely for purpose of representation in that court. *[Cite to appellate counsel’s declaration]*. Although *[she/he]* filed the habeas corpus petition in the Court of Appeal that led to the current order to show cause, under Judicial Council rules governing compensation of appointed counsel on appeal, counsel’s appointment does not extend to later proceedings in the superior court.

Petitioner is currently incarcerated at *[institution]*, is indigent, and cannot afford to retain counsel to represent him. *[Cite to petitioner’s declaration or previous findings of indigence by the trial or appellate court.]*

[If appellate counsel does not want to handle the superior court proceedings, explain applicable circumstances, such as travel expenses, lack of experience in handling evidentiary hearings, etc. Cite to appellate counsel's declaration.]

[If appellate counsel is seeking appointment in the superior court, explain circumstances making counsel the most effective or efficient choice – e.g., familiarity with case, counsel's experience with similar proceedings, client's wishes, etc.]

[If appellate counsel wants appointment to handle the briefing but seeks appointment of a trial attorney for any evidentiary hearing, emphasize appellate counsel's familiarity with the case but inexperience in trial proceedings and ask for appointment of trial counsel or other associate counsel, along with appellate counsel.]

[If appellate counsel or the client has a particular attorney in mind for the proceeding, lay out the reasons – such as that attorney's willingness to serve, familiarity with the case, experience with similar proceedings, client's wishes, etc.]

[If the defendant was represented by a public defender below and that attorney will not be available, state the relevant facts. If the reason is a conflict of interest – e.g., an issue of ineffective assistance of counsel, cite Penal Code section 987.2, subdivision (a)(3) and set out the circumstances. Cite to applicable declarations.]

*[If a particular individual is being requested: Penal Code section 987.2, subdivisions (d) and (e), sets forth the procedures for assigning counsel and permits departure from that procedure “[i]n the interest of justice” and upon a finding of “good cause” to appoint an attorney not falling within the usual procedure. For the reasons set out above, appellate counsel believes that [I as appellate counsel am/ *[proposed**

counsel's name] is] best suited to litigate this habeas corpus proceeding and that [my/
her/his] appointment would also serve the ends of judicial economy.]

Petitioner requests this court appoint [counsel/ *appellate counsel*]/[*proposed
counsel's name*] to represent *her/him*] in this proceeding.

[*If the right to compensation is in doubt:* Penal Code section 987.3 provides for reasonable compensation and necessary expenses for a court-appointed attorney. with entitlement to reasonable compensation and necessary expenses under Penal Code sections 987.2 and 987.3.]

CONCLUSION

As petitioner's appellate counsel, I respectfully requested that the court issue an order appointing [counsel/ me/*proposed counsel's name*] to represent the petitioner in this proceeding [*if the right to compensation is in doubt:* and entitling *her/him/me*] to reasonable compensation and necessary expenses].

Dated: *date*

Respectfully submitted,

Attorney's name

State Bar No. *number*

Attorney for Defendant and Petitioner *name*

PROOF OF SERVICE