

Parts in blue print are instructions to 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 guidance in adapting forms to juvenile cases.]

Practice tip: Petition for rehearing is covered in chapter 7, § 7.33 et seq. of the [ADI Appellate Practice Manual](#).

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]*, Judge

PETITION FOR REHEARING

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

Attorney for Defendant and Appellant *[name]*

By Appointment of the Court of Appeal
Under the Appellate Defenders, Inc.
Independent/Assisted Program

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[See rule 8.204(a)(1)(A) of the California Rules of Court and chapter 5, §§5.4 - 5.5 of the ADI Appellate Practice Manual.]

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[NAME], COUNTY

Honorable *[name]*, Judge

PETITION FOR REHEARING

Although a petition for rehearing is not generally a prerequisite for a petition for review, it is required if review is sought on the ground the Court of Appeal opinion contained errors or omissions of issues or facts. (See rule 8.500(c) and ADI Manual, Chapter 7, The End Game: Decisions By Reviewing Court And Processes After Decision, §§7.33, et seq. for greater detail.)

The petition is most often needed to call the court's attention to significant and material errors, such as a misstatement of fact, an error of law, an omission in the facts or law, or failure to consider an argument raised in the brief. Reliance in the opinion on a theory not briefed by the parties is another ground.

A petition for rehearing generally is not appropriate merely to reargue the points made in briefs and rejected, if it appears the court properly understood the points and supporting authorities and simply disagreed with the conclusion being urged. Generally, the petition should not address points that were not included in the briefs on appeal. An exception is jurisdictional issues, which may be raised at any time. (See ADI Manual, Chapter 7, §7.34.)

Naturally, losing in the Court of Appeal will have been disappointing. Addressing the Court of Appeal respectfully and positively is nevertheless essential good practice. For the proper content and tone, see ADI Manual, Chapter 7, § 7.40.

INTRODUCTION

In this section briefly set forth the basis of the petition and cite the rules of court.

Example:

California Rules of Court, rule 8.268 sets forth the authority for filing a petition for rehearing. Rule 8.500(c) imposes limitations on review and, in relevant part, states that "the Supreme Court normally will accept the Court of Appeal opinion's statement of . . . facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of . . . fact in a petition for rehearing." Petitioner respectfully requests correction of what (*he/she*) construes to be an error in the facts.

ARGUMENT

I.

Heading *[summary of argument]*

Rule 8.204(a)(1)(B) of the California Rules of Court states that a brief must “[s]tate each point under a separate heading or subheading summarizing the point. . . .”; see chapter 5, §5.24 of the ADI Appellate Practice Manual.

A. The Opinion Relies on a Material Misstatement of Fact

Include your legal argument(s) supported by authority. Rule 8.204(a)(1)(B) of the California Rules of Court states “. . .support each point by argument and, if possible, by citation of authority.” See also ADI Manual, Chapter 5, Briefing §5.33.

Example:

In the statement of facts section, the opinion states that “[*insert quote*].” (Opin., p. [*number*].) However, the testimony was as follows: [*insert record cite*]. (R.T. p. [*number*].) The opinion references the misstatement of fact in the analysis of the issue concerning [*insert relevant issue*]. (Opin., p. [*number*].)

The fact is material to the court’s analysis of the issue. [*Explain how a correct version of the fact(s) would apply to and change the court’s analysis.*]

CONCLUSION

See chapter 5, §5.46 of the ADI Appellate Practice Manual.

Dated: [date]

Respectfully submitted,

[Attorney's name]

State Bar No. [number]

Attorney for Appellant [name]

CERTIFICATION OF WORD COUNT

[See rule 8.204(c)(1) of the California Rules of Court and chapter 5.]

I, *[appellate counsel's name]*, hereby certify in accordance with California Rules of Court, rule 8.360(b)(1), that this brief contains *[number]* words as calculated by the *[name of program]* software in which it was written.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated: *[date]*

Respectfully submitted,

[Attorney's name]

State Bar No. *[number]*

PROOF OF SERVICE