


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 any guidance in adapting forms to juvenile cases.]

Practice tip: Vacating submission of the case is discussed in chapter 7, § 7.3 of the [ADI Manual](#); see also section II.D.2. of ADI's  [Guide to Motion Practice \(PDF\)](#). The court issues an order submitting the case once oral argument has taken place or has been waived and the time for filing briefs and papers has passed. (Cal. Rules of Court, rules 8.256(d)(1), [8.366(a) / 8.470], 8.524(h)(1) (hereinafter rules).) The court may vacate submission (rules 8.256(e)(1), [8.366(a) / 8.470], 8.524(h)(2)), but the rules do not expressly allow nor prohibit a party to file a motion to vacate. See general rule 8.54 which permits a party to file a motion and sets forth the procedure.

Practice tip: Counsel should generally submit the desired supplemental brief at the time of filing this motion.

Practice tip: Counsel should use this motion prudently. Vacating submission disrupts the court's normal schedule and its responsibility under the law to decide cases promptly. (E.g., Cal. Const., art. VI, § 19; Gov. Code, § 68210.)

[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.

[Defendant'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

**DEFENDANT'S MOTION FOR ORDER VACATING SUBMISSION
TO ALLOW SUPPLEMENTAL BRIEFING**

TO THE HONORABLE *[NAME]*, PRESIDING JUSTICE, AND TO THE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION *[NUMBER]*:

Under California Rules of Court, rules 8.54, 8.256(e)(1) and [8.366(a) / 8.470] [hereinafter “rule(s)”], defendant *[name]* hereby moves for an order vacating submission of the cause to allow supplemental briefing based on *[identify reason – e.g., a change in the law, a recent published case issued after the instant cause was submitted that addresses an issue central to defendant’s claim, oversight of a critical issue by appellate counsel, etc.]*. This motion is based upon the above-stated rules, 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]*.

Dated: *[Date]*

Respectfully submitted,

[Attorney’s name]
State Bar No. *[number]*
Attorney for Defendant *[name]*

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

[Provide procedural and factual background, including the date of submission under rule 8.256(d)(1), as necessary to understand the motion supported by citations to the record, declarations, and/or other documentary evidence.]

II. VACATING SUBMISSION OF THE CAUSE IS JUSTIFIED BECAUSE *[BRIEF STATEMENT OF GROUNDS FOR VACATING]*.

Rule 8.256(e)(1) provides, in relevant part: “. . . the court may vacate submission only by an order stating its reasons and setting a timetable for resubmission.” Here, after the cause was submitted, *[set forth the circumstances that justify vacating submission]*.

The proposed supplemental brief is filed with this motion for the court’s consideration.

III. CONCLUSION

Based on the foregoing, defendant requests submission of the cause be vacated to allow for supplemental briefing.

Dated: *[date]*

Respectfully submitted,

[Attorney’s name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

PROOF OF SERVICE