

## HOW THE ATTORNEY SHOULD HELP THE CLIENT WHEN SENDING INFORMATION SHEET ON PRO PER PETITION FOR REVIEW

If counsel decides not to file a petition for review, the client should be notified promptly and provided with information on how to file it in pro per, including the date by which the petition must be filed and all applicable addresses where copies of the petition must be mailed. ADI has an information sheet for this purpose on the Forms & Samples page of the ADI website under Petition for Review Information Forms: Information for clients.<sup>1</sup>

When sending the client the ADI information sheet, counsel should always help the client by *customizing* the information for the particular case. For example:

- **Time frame:** Give the client the deadline. Be sure to tell the client or modify the information sheet if exceptions to the general rules set forth on the sheet apply. For example, the time for filing a petition for review is geared to finality of the decision as to the Court of Appeal. The usual rule that a decision is final 30 days from its filing does not apply if the court certifies the case for publication after the opinion is filed, or later modifies its judgment, or grants rehearing, or denies a writ petition without an order to show cause (except that a habeas corpus petition decided on the same day as the appeal is final after 30 days). (Cal. Rules of Court, rules 8.264(b)(2)(A), (b)(4), (b)(5), (c)(2); 8.366; 8.474; see ADI Criminal Appellate Practice Manual, §7.29 et seq.) If the client misses the deadline for some reason, contact ADI; we can explore the possibility of taking remedial steps.<sup>2</sup>
- **Names and addresses:** Provide up front, with the information sheet, the names and addresses where required copies are to be sent (Supreme Court, opposing counsel, other parties' counsel on appeal, Court of Appeal, superior court). You should include the proof of service from the opening brief as a guide.
- **Exhausting state remedies:** If the petition is primarily for exhaustion purposes, to preserve an issue the client wants to raise on federal habeas corpus, remind the client a petition for review is necessary. (*O'Sullivan v. Boerckel* (1999) 526 U.S. 838.) Of course, if you think there is actually a reasonable possibility of federal relief, *you* should file the petition; exhaustion is a legitimate reason in itself. (See Cal. Rules of Court, rule 8.508, on abbreviated petitions filed solely to exhaust state remedies.)

If the client cannot afford to comply with all rule requirements, such as mailing the necessary number of filing or service copies, it may be possible to ask the Supreme Court for a waiver. Or it may sometimes be an appropriate and compensable expense for counsel to offer to do the mechanics of filing and/or service (but not to put counsel's name on the petition). Contact ADI first if the client asks for assistance.

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<sup>1</sup>[http://www.adi-sandiego.com/practice/forms\\_samples/Pet\\_for\\_review\\_info\\_Oct\\_2012\\_2.pdf](http://www.adi-sandiego.com/practice/forms_samples/Pet_for_review_info_Oct_2012_2.pdf)

Realistically, the client will rarely have time to file a pro per petition in the allotted 10 days when a decision becomes final immediately. Counsel should give the benefit of any doubt to filing it themselves in such circumstances. Or it may be possible to file another original writ petition in the Supreme Court.

<sup>2</sup>For example, as long as the Supreme Court still has jurisdiction (see rule 8.512(c)), it is possible to ask the Chief Justice for relief from default. (Rule 8.500(e)(2).) If the petition was timely delivered to custodial officials at institution, an argument for application of the prison delivery rule can be made. (See, e.g., *In re Jordan* (1992) 4 Cal.4th 116 and rule 8.308(e) [criminal notice of appeal]; rule 8.400(e) [juvenile notice of appeal]; rule 8.450(e)(5) [dependency notice of intent].) A writ petition is sometimes an alternative, as well.