|  |
| --- |
| 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 webpage, for guidance in adapting forms to juvenile cases.]  ***PRACTICE TIP***  Depending on the extent and timing of the proposed supplemental brief (e.g. the respondent’s brief has not been filed), the court may require striking the opening brief and filing a new, corrected brief in its place. Check with the clerk’s office, the ADI staff attorney, and theADI website page on Fourth District practice at [Fourth District Resources - Appellate Defenders, Inc. (adi-sandiego.com)](https://www.adi-sandiego.com/legal-resources/fourth-district-resources/). All divisions of the Fourth Appellate District do not accept errata filings (letters or motions pointing out errors in a previous filing and purporting to correct them). The motion is filed under California Rules of Court, rule 8.200(a)(4). (See also rule 8.256(d).)  If supplemental briefing is to be pursued after remand or transfer from the Supreme Court, no motion is required. (Cal. Rules of Court, rule 200(b)(1) [“Within 15 days after finality of a Supreme Court decision remanding or order transferring a cause to a Court of Appeal for further proceedings, any party may serve and file a supplemental opening brief in the Court of Appeal”].)  See [ADI Manual](http://www.adi-sandiego.com/panel/manual.asp), chapter 5, section 5.4.3, et seq., chapter 6, section 6.6.3.6., and [ADI’s Motion Practice Guide](http://www.adi-sandiego.com/practice/pract_articles.asp), section II.C.2. |

*[Attorney’s name, bar number*

*address and telephone number*

*email address and fax number if available]*

Attorney for Defendant and Appellant *[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,  vs.  *[NAME]*,  Defendant and Appellant. | Court of Appeal  No. *[number]*  Superior Court  No. *[number]* |

**APPEAL FROM THE SUPERIOR COURT OF *[NAME]* COUNTY**

Honorable *[name]*, Judge

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DEFENDANT’S MOTION FOR LEAVE**

**TO FILE SUPPLEMENTAL BRIEFING**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Under California Rules of Court, rules 8.200(a)(4), 8.360(a) [and 8.412(a)(1)], defendant *[name]* requests leave of court to file the accompanying supplemental opening brief. The respondent’s brief was filed on *[date]*. The reason is *[state briefly, e.g.: Counsel failed to argue a necessary point in the opening brief; new law has created an issue not available at the time of the opening brief; etc.]*.

This motion is based on the present moving papers, the supporting memorandum of points and authorities, the declaration of appellate counsel (Exhibit A), and the documents already filed in this court.

Dated: *[date]* Respectfully submitted,

*[Attorney’s name]*

State Bar No. *[number]*

Attorney for Defendant and

Appellant *[name]*

**MEMORANDUM OF POINTS AND AUTHORITIES**

A party may file supplemental briefing with the permission of the Presiding Justice of the Court of Appeal. (Cal. Rules of Court, rules 8.200(a)(4), 8.360(a) [and 8.412(a)(1)].)

*[Provide sufficiently detailed explanation of reason for supplemental brief: issue sought to be included, why it was omitted, etc.]*

Appellate counsel has an obligation to raise meritorious claims of error on appeal. (*Anders v. California* (1967) 386 U.S. 738, 743-744; *People v. Johnson* (1981) 123 Cal.App.3d 106, 111.) Meritorious claims include those of sufficient substance to have a reasonably strong potential for obtaining reversal or other relief or for making new law. (*People v. Johnson*, *supra*,at p. 111; *People v. Von Staich* (1980) 101 Cal.App.3d 172, 175.)

The defendant’s right to effective assistance of appointed appellate counsel requires that, when a meritorious claim of error is omitted from the initial briefing, counsel take steps to present that claim of error to the reviewing court in supplemental briefing. (See *In re Smith* (1970) 3 Cal.3d 192, 202-204.)

Neither justice nor judicial economy is served by refusing supplemental briefing and consequently failing to consider the issue properly on appeal. Later writ proceedings and claims of ineffective assistance of appellate counsel or other grounds for collateral attack are costly, indirect, duplicative, and less effective than proper appellate processes in the first place. When the trigger for such an attack can be prevented before it occurs, the parties, the court, and the public all benefit.

Dated: *[date]* Respectfully submitted,

*[Attorney’s name]*

State Bar No.*[number]*

Attorney for Defendant and

Appellant *[name]*

**EXHIBIT A**

**DECLARATION OF APPELLATE COUNSEL**

**DECLARATION OF** *[ATTORNEY’S NAME]*

I, *[name]*, declare:

1. I am appointed counsel for defendant *[name]* in case number *[number]*.

2. On *[date]*, I filed the appellant’s opening brief. The respondent’s brief was filed on *[date]*.

3. After the filing of the respondent’s brief, I became aware that *[describe defect or omission in opening brief].*

4. I consulted with a staff attorney at Appellate Defenders, Inc., and we both agreed that supplemental briefing was warranted.

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

Dated: *[date]*  *[Attorney’s signature]*

*[Attorney’s name]*

State Bar No. *[number]*

Attorney for Defendant and

Appellant *[name]*

**PROOF OF SERVICE**