

Court Filing Requirements (For quick reference see the quick-look chart)

The following pages list general requirements concerning the filing of the major appeal documents and motions (e.g., opening brief, augmentation motion, etc.). The information has been updated to include substantive changes and renumbering of rules effective January 1, 2004. However, [appellate](#) and [local court](#) rules are reviewed and evaluated from time to time and may change in some particulars. Please make sure to check the rules for any changes.

Table of Contents

Application to Augment Record on Appeal	Opening Brief on the Merits in California Supreme Court
Application for Extension of Time	Answering Brief on the Merits in California Supreme Court
Notice of Abandonment	Reply Brief on the Merits in the California Supreme Court
Miscellaneous Motions/Applications in Court of Appeal	Petition for Rehearing on the Merits in the California Supreme Court
Application for Bail on Appeal	Answer to Petition for Rehearing on the Merits in the California Supreme Court
Appellant's Opening Brief	Federal Habeas Corpus Petition (28 U.S.C. § 2254) (Northern District of California)
Respondent's Brief	Federal Habeas Corpus Petition (28 U.S.C. § 2254) (Eastern District of California)
Appellant's Reply Brief	Petition for Writ of Certiorari
Petition for Rehearing	Motion for Leave to Proceed in Forma Pauperis
Answer to Petition for Rehearing	
Habeas Corpus and Other Original Proceedings	
Petition for Review in California Supreme Court	
Petition for Review (Exhaustion)	

APPLICATION TO AUGMENT RECORD ON APPEAL

- RULES:** 12, 32.1, 39, 39.1A(d); First Appellate District Local Rule (“L.R.”) 6
- PAPER:** 8-1/2 x 11 (blank, not numbered along margin).
- COVER:** No cover needed, just standard caption of court and case on first page.
- BINDING:** Stapled. Staples need not be covered with tape.
- TIMING:** Should be filed “within 30 days of the filing of the record or within 30 days after the expiration of the 10-day administrator review period in assisted criminal cases.... Thereafter, motions to augment will only be entertained upon a showing of good cause.” (L.R. 6(b).) In dependency fast track cases, the augment request must be made within 15 days after counsel has received the record on appeal.
- SERVICE:** ***Required:***
Court: 1 original and 3 copies
Attorney General (crim. & juv. crim.) or County Counsel (dependency)
FDAP (required by FDAP, not by service rules)
- Recommended:***
Copy to Court to be file-stamped and returned to you
An additional copy for your file.
Appellant
(The superior court and district attorney do not need to be served.)

TOTAL REQUIRED & RECOMMENDED: 1 ORIGINAL AND 8 COPIES

CAVEATS:

- (1) The court disfavors last minute requests; make your request as early as possible.
- (2) The court prefers all augment requests to be included in a single application.
- (3) An application for extension of time should usually be made along with the application to augment; the time extension should specify that the AOB is due 30 days after the augmented material is filed in the Court of Appeal.
- (4) The clerk’s office will send you a conformed copy of your application and a copy of the court's order. However, the clerk's office specifically requests that you give the clerk (at the time of filing) a stamped self-addressed envelope for the clerk to send you these items. This will greatly reduce the burden on the clerk's office, and will result in a speedier processing of your application.

NOTE: Local Rule 6 gives detailed procedures for augment requests.

APPLICATION FOR EXTENSION OF TIME

- RULES:** 45, 45.5, First Appellate District Local Rule 7.
- PAPER:** 8-1/2 x 11 (blank, not numbered along margin).
- COVER:** No cover needed, just standard caption of court and case on first page.
- BINDING:** Stapled. Staples need not be covered with tape.
- FORM:** Should be substantially in the form of the forms found in Local Rule 7. (Local Rule 7(c).) (The forms can be found on the Internet by clicking [here](#).)
- TIMING:** At least 1 day before appellant's opening brief is due, but not before a Rule 17(a) or 17(b) notice: "A motion for an extension of time to file a brief is not necessary, either before or after notice pursuant to Rule 17(a) or 17(b), if the brief can be filed within the time prescribed by Rule 17." (Local Rule 7(a).)
- SERVICE:** ***Required:***
Court: 1 orig., 4 copies (1 for court, 3 for return with order to appellant's counsel, respondent, and FDAP)
Attorney General (crim. & juv. crim.) or County Counsel (dependency): by mail.
Copies for Additional respondents or co-appellants.
FDAP (required by FDAP, not by service rules)
Recommended:
An additional copy for your files.
Appellant
(The superior court and district attorney do not need to be served.)

Total Required & Recommended: 1 Orig. + 8 copies (Not including copies for additional respondents or co-appellants)

CAVEATS:

- (1) **The court does not like last minute applications for extension of time; try to apply at least a week before the AOB is due.** Only file the application if you can't file within the time period permitted by Rule 17(a) and only file it after issuance of the 17(a) notice.
- (2) **Form.** The application must be "in substantially the form of" the forms contained in Local Rule 7 and must state: when the brief was due, whether any prior extension of time have been granted and the length of that extension, and a factual showing of good cause. The application must also include the **proposed order** block.
- (3) The clerk's office will send you, respondent, and FDAP conformed copies of the application and order. At the time of filing, you must provide the clerk with a self-addressed **stamped** envelope addressed to yourself and for any co-appellant and respondent **other than the Attorney General**. (L.R. 7(d).) Envelopes are not needed for FDAP and the AG; their copies are left in drop boxes at the court. This will reduce the burden on the clerk's office and result in speedier processing of your application.

NOTICE OF ABANDONMENT

- RULES: 30.3.
- PAPER: 8-1/2 x 11 (blank, not numbered along margin).
- COVER: No cover needed, just standard caption of court and case on first page.
- BINDING: Stapled. Staples need not be covered with tape.
- TIMING: An appeal may be abandoned at any time.
- SERVICE: ***Required:***
Court: 1 original
Attorney General (crim. & juv. crim.) or County Counsel (dependency)
FDAP (required by FDAP, not by service rules)
Recommended:
Copy to Court to be file-stamped and returned to you
An additional copy for your file.
Appellant
(The superior court and district attorney do not need to be served.)

TOTAL REQUIRED AND RECOMMENDED: 1 ORIGINAL & 6 COPIES

CAVEATS:

Abandonment should be signed by both appellant and counsel.

For a juvenile appeal, a [declaration of counsel](#) is required.

MISCELLANEOUS MOTIONS /APPLICATIONS IN COURT OF APPEAL

- RULES: 41, 43, 44
- PAPER: 8-1/2 x 11 (blank, not numbered along margin).
- COVER: No cover needed, just standard caption of court and case on first page.
- BINDING: Stapled. Staples need not be covered with tape.
- FORMAT: Must be “accompanied by a memorandum of points and authorities, and if the motion is based on matters not appearing of record, by affidavits or other evidence in support thereof.” (Rule 41(a).)
- TIMING: N/A (Opposition is due 10 days after service of motion. (Rule 41(a).))
- SERVICE: ***Required:***
Court: 1 original and 3 copies/4 copies (see Caveat (3) below)
Attorney General (crim. & juv. crim.) or County Counsel (dependency): by mail.
FDAP (required by FDAP, not by service rules)
Recommended
Copy to Court to be file-stamped and returned to you
An additional copy for your file.
Appellant
(The superior court and district attorney do not need to be served.)

**TOTAL REQUIRED AND RECOMMENDED: 1 ORIGINAL AND 8 OR 9
COPIES (see Caveat (3) below)**

CAVEATS:

- (1) Applications on routine matters require that the applicant provide the clerk with addressed and postage-prepaid envelopes for mailing the order to all parties. (Rule 43.)
- (2) Applies to motions for leave to file a supplemental brief, for leave to file over-length brief, etc.
- (3) If the filing might be considered by the panel as it decides the case, such as a motion for judicial notice or a notice of supplemental authorities, provide the court with 4 copies.

APPLICATION FOR BAIL ON APPEAL

- RULES: 30.2
- PAPER: 8-1/2 x 11 (blank, not numbered along margin).
- COVER: No cover needed, just standard caption of court and case on first page.
- BINDING: Stapled. Staples need not be covered with tape.
- TIMING: Application must be made to superior court first. If the superior court denies the application, it may be renewed in the Court of Appeal.
- SERVICE: ***Required***
Court: 1 original & 3 copies
Attorney General
District Attorney
FDAP (required by FDAP, not by service rules)
- Recommended***
Copy to Court to be file-stamped and returned to you
An additional copy for your file.
Appellant

TOTAL REQUIRED & RECOMMENDED: 1 ORIGINAL AND 9 COPIES

CAVEATS:

- (1) See Penal Code section 1272.1 for the standard for release pending appeal.
- (2) The clerk's office will send you a copy of any order.

APPELLANT'S OPENING BRIEF

- RULES:** 13, 4, 33, 44
- PAPER:** White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER:** **GREEN.** Cannot be plastic. (Rule 44(c).)
- BINDING:** On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT:** (Rule 14(b) and 37)
- (1) **Font size:** at least as large as 13-point.
 - (2) **Typeface:** any conventional proportionally-spaced or monospaced typeface.
 - (3) **Type styles:** case names are underscored or italicized; headings may be in uppercase; italics, boldface, or underscoring may be used for emphasis.
 - (4) **Line-spacing** no less than 1 ½ spaced (based on single spacing being 6 lines per vertical inch. (Headings, footnotes & block quotes may be single-spaced.) (Lines are unnumbered.)
 - (5) **Margins:** Not less than 1 ½ inch on each side and 1 inch on top and bottom.
 - (6) **Typewritten briefs:** typewritten briefs may be filed only with permission of presiding judge; such permission ordinarily will only be given to pro se litigants proceeding in forma pauperis.
 - (7) **Cover:** must state title of brief; title of case; Court of Appeal and superior court case numbers; name, address, phone number and Cal. bar number of attorney filing the brief, and name of party attorney represents. (Rule 14(b)(10).) In an appeal from an order terminating parental rights, “[t]he cover shall bear the conspicuous notation, ‘Appeal from order terminating parental rights under [Welfare and Institutions Code section 366.26] or [Family Code section 7800],’ with the appropriate code section number shown as illustrated in the bracketed phrases.”
 - (8) **Length:** 25,500 words for computer-generated briefs, including footnotes, but excluding tables, word-count certificate, and any Rule 14(d) attachment. (Rule 33(b).)
 - (9) **Certificate:** All briefs must include a certificate, signed by counsel, stating the number of words in the brief.

TIMING: In independent cases, the AOB is due either 40 days after the record is filed in Court of Appeal or 40 days after the appointment order if the record is already on file. In assisted cases, the AOB is due 45 days after expiration of the 10-day administrator review period which commences either upon the filing of the record or upon the filing of the appointment order if the record is already on file. In a fast track dependency appeal, whether assisted or independent, the AOB is due within 30 days after the filing of the record or appointment order if the record is already on file.

SERVICE: ***Required:***
Court: 1 original and 4 copies
Attorney General (crim. & juv. crim.) or County Counsel (dependency)
Superior Court: mail to superior court clerk's office, ATTN: [name of trial judge].
District Attorney
Appellant
Counsel for any co-appellants
FDAP (required by FDAP, not by service rules)
Recommended:
Copy to Court to be file-stamped and returned to you
An additional copy for your file.
Trial Counsel

TOTAL REQUIRED & RECOMMENDED: **1 original; 12 copies (not including copies for counsel for any co-appellants.)**

E-BRIEF: see discussion of electronic service of briefs in the [Appeal Checklist](#).

CAVEATS:

The court will not send you a conformed copy (file-stamped) of your brief unless you submit to the clerk at the time of filing an extra copy of the brief (thus total: 1 plus 5 copies). If you file your brief in person at the clerk's office, you can give an extra copy of the brief to the clerk at that time, and the clerk will file-stamp it then. If you file your brief by mail or commercial delivery, include a stamped, self-addressed envelope for return of your conformed copy.

RESPONDENT'S BRIEF

- RULES: 13, 14, 33, 44
- PAPER: White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER: **YELLOW.** Cannot be plastic. (Rule 44(c).)
- BINDING: On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT: Same As Appellant's Opening Brief.
- TIMING: 30 days after filing of Appellant's Opening Brief.
- SERVICE: Same as Appellant's Opening Brief

E-BRIEF: see discussion of electronic service of briefs in section III above.

CAVEATS:

The court will not send you a conformed copy (file-stamped) of your brief unless you submit to the clerk at the time of filing an extra copy of the brief (thus total: 1 plus 5 copies). If you file your brief in person at the clerk's office, you can give an extra copy of the brief to the clerk at that time, and the clerk will file-stamp it then. If you file your brief by mail or commercial delivery, include a stamped, self-addressed envelope for return of your conformed copy.

APPELLANT'S REPLY BRIEF

- RULES: 13, 14, 33, 44
- PAPER: White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER: **TAN.** Cannot be plastic.
- BINDING: On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT: Same As Appellant's Opening Brief.
- TIMING: Due 20 days after respondent's brief is filed.
- SERVICE: Same as Appellant's Opening Brief.

E-BRIEF: see discussion of electronic service of briefs in section III above.

CAVEATS:

- (1) The court will not send you a conformed copy (file-stamped) of your brief unless you submit to the clerk at the time of filing an extra copy of the brief (thus total: 1 plus 5 copies). If you file your brief in person at the clerk's office, you can give an extra copy of the brief to the clerk at that time, and the clerk will file-stamp it then. If you file your brief by mail or commercial delivery, include a stamped, self-addressed envelope for return of your conformed copy.
- (2) While in rare cases the court will grant an extension of time for filing a reply brief, extensions are disfavored.

PETITION FOR REHEARING

- RULES:** 13, 14, 25, 33
- PAPER:** White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER:** **ORANGE.** Cannot be plastic.
- BINDING:** On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT:** Must comply with Rule 14 (Rule 25(b)(3)), except word limit is 25,500 words. (Rule 33(b).)
- TIMING:** Must be filed within 15 days from date opinion is filed. The court will accept a petition for rehearing on the next day the court is open if the 15th day falls on a holiday or a weekend. **Extensions:** “Before the decision is final and for good cause, the presiding justice may relieve a party from a failure to file a timely petition or answer.” (Rule 25(b)(4).)
- SERVICE:** Same as Appellant’s Opening Brief
- CAVEATS:**

The court will not send you a conformed copy (file-stamped) of your brief unless you submit to the clerk at the time of filing an extra copy of the brief (thus total: 1 original plus 5 copies). If you file your brief in person at the clerk's office, you can give an extra copy of the brief to the clerk at that time, and the clerk will file-stamp it then. If you file your brief by mail or private delivery (U.P.S., FEDEX, etc.), include a stamped, self-addressed envelope for return of your conformed copy.

ANSWER TO PETITION FOR REHEARING

- RULES:** 13, 14, 25, 33
- PAPER:** White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER:** **BLUE.** Cannot be plastic.
- BINDING:** On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT:** Must comply with Rule 14 (Rule 25(b)(3)), except word limit is 25,500 words. (Rule 33(b).)
- TIMING:** A party may not file an answer to a petition for rehearing unless it is called for by the court. Answer due 8 days after order, unless order states otherwise. Petition “normally will not be granted unless the court has requested an answer.” (Rule 25(b)(2).) **Extensions:** “Before the decision is final and for good cause, the presiding justice may relieve a party from a failure to file a timely petition or answer.” (Rule 25(b)(4).)
- SERVICE:** Same as Appellant’s Opening Brief
- CAVEATS:**

The court will not send you a conformed copy (file-stamped) of your brief unless you submit to the clerk at the time of filing an extra copy of the brief (thus total: 1 original plus 5 copies). If you file your brief in person at the clerk's office, you can give an extra copy of the brief to the clerk at that time, and the clerk will file-stamp it then. If you file your brief by mail or private delivery (U.P.S., FEDEX, etc.), include a stamped, self-addressed envelope for return of your conformed copy.

HABEAS CORPUS AND OTHER ORIGINAL PROCEEDINGS

- RULES:** 44, 56-60
- PAPER:** White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER:** **RED.** Cannot be plastic. (**RED** covers for the petition, answer and reply.)
- BINDING:** On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT:** Format for the petition is the same as Appellant's Opening Brief, except no page limit. If an order to show cause directs the Attorney General to file an informal response, the response will be either a red-covered brief or a cover-less letter brief. The petitioner's informal reply/traverse should also bear red covers, unless it is a letter brief. (Use letter brief format for reply only if AG filed a letter brief.)
- SERVICE:** ***Required:***
Court: 1 original and 4 copies (if filed in Court of Appeal)/10 copies (if filed in Cal. Supreme Court) (IF FILING IS IN SUPREME COURT, BE SURE DELIVERY IS TO: **350 McALLISTER ST RM. 1295**)
Attorney General (crim. & juv. crim.) or County Counsel (dependency)
Superior Court: mail to superior court clerk's office, ATTN: [name of trial judge].
District Attorney
Appellant
Counsel for any co-appellants
FDAP (required by FDAP, not by service rules)
- Recommended:***
Copy to Court to be file-stamped and returned to you
An additional copy for your file.
Trial Counsel

TOTAL REQUIRED & RECOMMENDED: 1 original; 12 copies if filed in Court of Appeal (not including copies for counsel for any co-appellants); 18 copies if filed in California Supreme Court (not including copies for appellate counsel for any co-defendants).

CAVEATS:

- (1) Petitions must be accompanied by a verification.
- (2) See Rule 44 if the habeas corpus petition is filed in the Supreme Court.
- (3) The Rules of Court require that a habeas petition be filed on the form approved by the Judicial Council, except for petitions filed by an attorney in a capital case. (Rule 56.5(a).) The practice, however, is that petitions filed by an attorney in a non-capital case need not be on the form.
- (4) If exhibits are voluminous, submit them in a separately bound appendix.

- (5) Tabbed and paginated exhibits. Under new Rule 56.5(c)(4), documents supporting habeas petitions are now governed by rule 56(d), which requires tabs and "consecutive pagination throughout." Tabbing and Bates-stamping the exhibits will be cumbersome, both because of the extra brief-production time and because of the need to insert citations in the petition after the Bates-stamping. The rule, however, requires the clerk to file the petition even if it is not in compliance. (Rule 56(d) ("The clerk shall accept for filing petitions and supporting documents not in compliance with this subdivision; but the court may give the petitioner notice requiring that the petition and documents be brought into compliance within a stated reasonable time, or the petition may be stricken or denied summarily.") Consideration might be given to foregoing the consecutive pagination throughout the entire volume of exhibits. If tabs are used and if each individual exhibit is internally paginated, it seems unlikely that the court would reject the exhibits.
- (6) Petition must be accompanied by a lodged copy of any related petition (excluding exhibits) filed in any lower court or federal court, pertaining to the same judgment and petitioner. (Rule 56.5(c)(4).)

PETITION FOR REVIEW IN CALIFORNIA SUPREME COURT (NON-EXHAUSTION)

- RULES:** 28, 28.1, 44
- PAPER:** White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER:** **WHITE.** Should not be plastic. (Blue for answer and white for reply to petition.)
- BINDING:** On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT:** Same as Appellant's Opening Brief, except there's a 8,400 word limit and copy of the opinion, showing the filing date, must be attached as an appendix at the end of the brief. Petition must include a certificate by counsel stating the number of words in the brief. (Answer to petition must contain no more than 8,400 words; reply to petition must contain no more than 4,200 words.)
- TIMING:** Within 10 days after the decision of the Court of Appeal becomes final. (Rule 28(e)(1).) (A decision of the Court of Appeal becomes final 30 days after filing. A decision denying a habeas corpus petition without issuance of an order to show cause is immediately final, except a decision denying a habeas petition filed on the same day as a decision in a related appeal becomes final at the same time as the appeal. (Rule 24(b)(4).))
- SERVICE:** ***Required***
Court: 1 original, 13 copies
CLERK'S OFFICE, SUPREME COURT
350 MCALLISTER STREET, RM. 1295
Attorney General (crim. & juv. crim.) or County Counsel (dependency)
Superior Court: Mail to superior court clerk's office, ATTN: (name of trial judge)
Court of Appeal
Appellant
Counsel for any co-appellants
FDAP (required by FDAP, not by service rules)
Recommended:
Copy to Court to be file-stamped and returned to you
An additional copy for your file.
District Attorney (not required by Supreme Court clerk's office, the frequent practice is to serve the district attorney.)
Trial Counsel

TOTAL REQUIRED & RECOMMENDED: 1 original; 22 copies (not including copies for counsel for co-appellants.)

WARNING: *A copy of the opinion must be attached to the end of the petition for review. It is usually double-sided and should be separated from the rest of the brief by a*

colored insert page. Be sure to instruct copy service accordingly.

CAVEATS:

- (1) “The date of finality is not extended if it falls on a day on which the clerk’s office is closed.” (Rule 28(e)(1).) Should the tenth day for filing a petition for review fall on a day on which the clerk’s office is closed, the petition is timely if filed on the next day the clerk’s office is open. No extensions are granted for petitions for review and the deadline is not extended by the filing of a petition for rehearing. (In an emergency/dog-ate-my-brief situation, remember that a brief is timely if the time for filing has not expired on the date of mailing by certified or express mail or the date of delivery to a “common carrier promising overnight delivery.”) (Rule 40(k) & (n), 45(c).)
- (2) Following the denial of a habeas corpus petition, the petitioner may seek relief in the California Supreme Court either by filing a petition for review or by filing an original habeas corpus petition in that Court. The decision of which course to take will be informed by tactical, procedural and practical considerations. Consult your FDAP buddy on which way to go.
- (3) A single petition for review challenging the Court of Appeal’s ruling on both direct appeal and habeas petition is required if the Court of Appeal formally consolidated the appeal and the petition. (Be sure the petition for review bears captions for both the appeal and the habeas, reflecting the Court of Appeal’s case numbers for both.) If the habeas corpus petition was denied without an order to show cause and without formal consolidation, then separate petitions for review are required. (Rule 28(d) and Advisory Committee Comment.)

PETITION FOR REVIEW IN CALIFORNIA SUPREME COURT (*EXHAUSTION*)

- RULES: 28, 28.1, 33.3, 44
- PAPER: White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER: **WHITE.** Should not be plastic. (Blue for answer and white for reply to petition.)
- BINDING: On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT: Same as Petition for Review (Non-Exhaustion)
- TIMING: Same as Petition for Review (Non-Exhaustion)
- SERVICE: ***Required***
Court: 1 original, 8 copies
CLERK'S OFFICE, SUPREME COURT
350 MCALLISTER STREET, RM. 1295
Attorney General (crim. & juv. crim.) or County Counsel (dependency)
Court of Appeal
Appellant
Counsel for any co-appellants
FDAP (required by FDAP, not by service rules)
Recommended:
Copy to Court to be file-stamped and returned to you
An additional copy for your file.
District Attorney (not required by Supreme Court clerk's office, the frequent practice is to serve the district attorney.)
Trial Counsel

TOTAL REQUIRED & RECOMMENDED: 1 original; 16 copies (not including copies for counsel for co-appellants.)

CAVEATS:

Exhaustion Petition for Review. (New Rule 33.3.) An appellant may file an abbreviated petition for review where the issues don't qualify for review under Rule 28(b), but the petition is necessary to exhaust state remedies in order to preserve issues for federal habeas review.

- (1) "Petition for Review to Exhaust State Remedies" must appear on the cover of the petition.
- (2) Petition need not comply with 28.1(b)(1) (questions presented) & (b)(2) (explanation of how case presents a ground for review under 28(b)).

- (3) Petition must include: "(A) a statement that the case presents no grounds for review under rule 28(b) and the petition is filed solely to exhaust state remedies for federal habeas corpus purposes; (B) a brief statement of the underlying proceedings, including the nature of the conviction and the punishment imposed; and (C) a brief statement of the factual and legal bases of the claim." (New Rule 33.3(b)(3).)
- (4) Petition need not be served on superior court. (New Rule 33.3(c).)
- (5) Original and 8 copies only.
- (6) None of this changes how federal courts define what is adequately exhausted.

OPENING BRIEF ON THE MERITS IN THE CALIFORNIA SUPREME COURT

- RULES:** 29, 29.1, 44
- PAPER:** White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER:** **WHITE.** Should not be plastic.
- BINDING:** On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT:** Same as Appellant's Opening Brief, except there's a 14,000-word limit and the brief must quote the question presented. (Rule 29(b) and (c)(1).) Brief must include a certificate by counsel stating the number of words in the brief.
- Nomenclature: The Supreme Court generally retains the Court of Appeal's designation of parties, regardless of which side prevailed in Court of Appeal. But order of briefing is determined by who filed the petition for review.
- TIMING:** Opening brief on the merits (or brief filed in the Court of Appeal) must be filed within 30 days of the order granting review. (Rule 29.1(a).) Note: if the Supreme Court appointment order was filed substantially after the grant of review, the 30 days may run from the appointment order. Confirm with the Supreme Court clerk's office as to how it has calendared briefing in your case.
- SERVICE:** ***Required:***
Court: 1 original, 13 copies
Attorney General (crim. & juv. crim.) or County Counsel (dependency)
Superior Court: Mail to superior court clerk's office, ATTN: (name of trial judge)
Court of Appeal
Appellant
Counsel for any co-appellants.
FDAP (required by FDAP, not by service rules)
- Recommended:***
Copy to Court to be file-stamped and returned to you
An additional copy for your file.
District Attorney (not required by Supreme Court clerk's office, the frequent practice is to serve the district attorney.)
Trial Counsel
- TOTAL REQUIRED & RECOMMENDED:** 1 original; 22 copies (not including copies for counsel for any co-appellants.)

ANSWERING BRIEF ON THE MERITS IN CALIFORNIA SUPREME COURT

- RULES:** 29.1, 44
- PAPER:** White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER:** **BLUE.** Should not be plastic.
- BINDING:** On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT:** Same as Appellant's Opening Brief, except there's a 14,000-word limit. (Rule 29.1(c)(1).) Brief must include a certificate by counsel stating the number of words in the brief.
- TIMING:** Answering brief on the merits (or brief filed in the Court of Appeal) must be filed within 30 days of the filing of the petitioner's notice or brief. (Rule 29.3(a).)
- SERVICE:** Same as opening brief on the merits in the Supreme Court.
- CAVEATS:**

REPLY BRIEF ON THE MERITS IN THE CALIFORNIA SUPREME COURT

- RULES: 29.1, 44
- PAPER: White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER: **WHITE.** Should not be plastic.
- BINDING: On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT: Same as Appellant's Opening Brief, except there's a 4,200-word limit. (Rule 29.1(c)(1).) The brief must include a certificate by counsel stating the number of words in the brief.
- TIMING: Within 20 days of the filing of the opposing party's brief.
- SERVICE: Same as opening brief on the merits in the Supreme Court
- CAVEATS:

**PETITION FOR REHEARING ON THE MERITS IN THE CALIFORNIA
SUPREME COURT**

- RULES: 25(b)(1), 29.5, 44
- PAPER: White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER: **ORANGE.** Should not be plastic.
- BINDING: On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT: Same as Appellant's Opening Brief, except there's a 14,000-word limit. (Rule 14, 25(b)(3), 29.5(b).) The brief must include a certificate by counsel stating the number of words in the brief.
- TIMING: Within 15 days after the opinion. (Rules 25(b)(1); 29.5(b).)
- SERVICE: Same as opening brief on the merits in the Supreme Court
- CAVEATS:

**ANSWER TO PETITION FOR REHEARING ON THE MERITS IN THE
CALIFORNIA SUPREME COURT**

- RULES: 25(b)(1), 29.5, 44
- PAPER: White, unbleached, recycled, 8 ½ x 11, at least 20 lb., not numbered along margin.
- COVER: **BLUE.** Should not be plastic.
- BINDING: On left edge, with any non-stapled binding. If stapled, bound edge and staples must be covered with tape.
- FORMAT: Same as Appellant's Opening Brief, except there's a 14,000-word limit. (Rule 14, 25(b)(3), 29.5(b).) The brief must include a certificate by counsel stating the number of words in the brief.
- TIMING: Within 8 days of filing of petition for rehearing. (Rules 25(b)(1); 29.5(b).)
- SERVICE: Same as opening brief on the merits in the Supreme Court
- CAVEATS:

FEDERAL HABEAS CORPUS PETITION (28 U.S.C. § 2254)¹

(Northern District of California: Includes the following counties within the jurisdiction of California's First Appellate District: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo and Sonoma)

RULES: Rules Governing Section 2254 Cases in the United States District Courts; U.S. District Court (E.D. Cal.) Local Rule 2254-1 through 2254-9 (The Northern District Local Rules can be found on the Internet at "<http://www.cand.uscourts.gov>".)

PAPER: 8-1/2 x 11 with numbered lines in the left margin. Single-sided only. (N.D. Civ. Local Rule 3-4(c)(1).)

COVER: No cover needed, just standard caption of court and case on first page.

BINDING: Single staple in upper left corner. (N.D. Civ. Local Rule 3-4(c).)

FILING FEE: \$5.00. (28 U.S.C. 1914(a).) If petitioner is indigent the fee is waived. Indigent petitioners must use form IFP application provided by the court.

FORMAT: "Noncapital petitions shall be filed on a form supplied by the Clerk, and shall be filled in by printing or typewriting. In the alternative, the petition may be in a typewritten, word-processed or other legible written form which contains all of the information required by the Court's form." (N.D. Local R. 2254-3(d).) Pro se petitions must be on the form provided by the court. (N.D. Local R. 2254-3(e).)

Petition must be accompanied by a "Civil Cover Sheet" on a form provided by the court. (N.D. Civ. Local Rule 3.2(a).)

Text must be double-spaced, no less than standard pica or 12-point Courier, spaced 10 characters per inch for typewritten brief or no smaller than 12-point font for proportionally-spaced font, such as Times New Roman. (N.D. Civ. Local Rule 3-4(c)(2).)

Every document (except exhibits) must bear a footer stating the title of the document and the case number (once the case number has been assigned). (N.D. Civ. Local Rule 3-4(c)(3).)

The local civil rules provide that briefs and opposition should not exceed 25 pages of text and that reply briefs should not exceed 15 pages of text. Any brief 10 pages or longer must have tables of contents and authorities. (N.D. Civ. Local Rule 7-4.) Presumably these rules apply to points and authorities submitted in support of a habeas petition. (N.D. Local Rule 2254-2.)

¹ Please note that your appointment to an appeal in the California Court of Appeal does not include payment for work spent on a federal habeas corpus petition. We are including information here on such petitions because occasionally attorneys have provided pro-bono help to their client in drafting such a petition. The attorney may then seek appointment in the federal district court; the federal district court may or may not appoint counsel.

TIMING: A one-year limitations period runs from the latest of (1) the date on which judgment became final, the conclusion of direct review or expiration of time for seeking review (in a California case in which no petition for certiorari is filed this is probably the last day to file a petition for certiorari, i.e. 90 days after the denial of a petition for review); (2) the date on which the impediment to filing an application created by unconstitutional or illegal state action; (3) the date on which the U.S. Supreme Court newly recognized a constitutional right and made it retroactive; and (4) the date on which the factual predicate for a claim could have been discovered through due diligence. (28 U.S.C. § 2244(d)(1).)

The statute of limitations is tolled for "[t]he time during which a properly filed application for State post-conviction or other collateral review . . . is pending." 28 U.S.C. §§ 2244(d)(2); see Carey v. Saffold (2002) 122 S.Ct. 2134.

SERVICE: Court: 1 original, 1 copy (if represented by counsel) 0 copies if pro se, and 1 copy "file-stamped" for return. (N.D. Local Rule 2254-3(g).)
Clerk's Office
U.S. District Court, Northern District of California
450 Golden Gate Avenue, Box 36060
San Francisco, CA 94102
Attorney General
Petitioner
Filing Attorney's File

TOTAL: 1 original and 5 copies for counseled petitions

CAVEATS:

- (1) The district court's form petition should be the starting place for any petition. The form comes with helpful and very important instructions. Even a petition in which you don't use the form, must include all the information requested in the form.
- (2) Indigent petitioner's petition should be accompanied by an IFP motion (on the form provided by the Court) and a motion for appointment of counsel. Such motions should be distinct separate pleadings from the petition.
- (3) The Attorney General is not required to respond to the petition unless so ordered by the court. (Rules Gov. Section 2254 Cases, Rule 3(b).) Upon preliminary consideration, the district court shall order a response, at which time the court shall serve a copy of its order and the petition on the Attorney General. (Id., Rule 4.) The AG's answer is due either as ordered by the Court or 60 days after service of the petition. (N.D. Local Rule 2254-7(b).) A traverse is due either as ordered by the court or 30 days after filing of the answer. (N.D. Local Rule 2254-7(c).)
- (4) You must be admitted to the bar of the court.
- (5) **SOLANO COUNTY CASES, FILE IN EASTERN DISTRICT**

FEDERAL HABEAS CORPUS PETITION (28 U.S.C. § 2254)²

(Eastern District of California: Includes just one county within the jurisdiction of California's First Appellate District: Solano)

- RULES:** Rules Governing Section 2254 Cases in the United States District Courts; U.S. District Court (E.D. Cal.) Local Rule 81-190 (The Eastern District Local Rules can be found on the Internet at "<http://www.caed.uscourts.gov/>".)
- PAPER:** 8-1/2 x 11 with numbered lines in the left margin or form provided by court. Single-sided only.
- COVER:** No cover needed, just standard caption of court and case on first page.
- BINDING:** Single staple in upper left corner and pre-punched with two (2) holes (approximately 1/4" diameter) centered 2-3/4" apart, 1/2" to 5/8" from the top edge of the document. (Local Rule 7-130.)
- FILING FEE:** \$5.00. (28 U.S.C. 1914(a).) If petitioner is indigent the fee is waived. Indigent petitioner must complete Application to Proceed In Forma Pauperis by a Prisoner. (The IFP form is appended to the form habeas petition available from the court.) A prison official must complete the certification of the petitioner's funds on deposit at the institution.
- FORMAT:** If pro se, petition must be on form provided by the court. Counseled petitions not on the form must contain all the information requested on the form. In counseled case, petition should be accompanied by separate points and authorities. Local Rule 81-190.
- Any brief 15 pages or longer must have tables of contents and authorities. Local Rule 5-134(f). Text (except footnotes, headings, quotations) must be double-spaced 7-130.
- TIMING:** See "Timing" discussion in the preceding section on habeas petitions filed in the Northern District of California.

² Please note that your appointment to an appeal in the California Court of Appeal does not include payment for work spent on a federal habeas corpus petition. We are including information here on such petitions because occasionally attorneys have provided pro-bono help to their client in drafting such a petition. The attorney may then seek appointment in the federal district court; the federal district court may or may not appoint counsel.

SERVICE: Court: 1 original, 2 copies (L.R. 81-190(c), and 1 copy “file-stamped” for return.

Clerk's Office
U.S. District Court, Eastern District of California
501 I Street
Sacramento, CA 95814

Attorney General
Petitioner
Filing Attorney's File

TOTAL: 1 original; 6 copies

CAVEATS:

- (1) The district court's form petition should be the starting place for any petition. The form comes with helpful and very important instructions. Even a petition in which you don't use the form, must include all the information requested in the form.
- (2) Indigent petitioner's petition should be accompanied by an IFP motion (on the form provided by the Court) and a motion for appointment of counsel. Such motions should be distinct separate pleadings from the petition.
- (3) The Attorney General is not required to respond to the petition unless so ordered by the court. (Rules Gov. Section 2254 Cases, Rule 3(b).) Upon preliminary consideration, the district court shall order a response, at which time the court shall serve a copy of its order and the petition on the Attorney General. (Id., Rule 4.) The AG's answer and your traverse are due as ordered by the Court.
- (4) You must be admitted to the bar of the court.

PETITION FOR WRIT OF CERTIORARI FILED IN UNITED STATES SUPREME COURT ON BEHALF OF INDIGENT PETITIONER³

(These guidelines do not cover filings for non-indigent petitioners, which must be in booklet format.)

RULES: Supreme Court Rules 13, 14, 29

TIMING: 90 days after entry of either: the order of the California Supreme Court denying Petition for Review or the judgment, if decided on the merits by the California Supreme Court. (Rule 13.1.) (Time does not run from issuance of remittitur. (Rule 13.3.)) If a timely petition for rehearing is filed, the time to file the petition for a writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. (Id.)

Extensions: **Are not favored. Application must be filed at least 10 days before expiration of period.** “For good cause, a Justice **may** extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days.” (Rule 13.5.)

_____ **Cross Petitions:** See Rules 12.5 and 13.4.

Timely filed upon service by First Class Mail: A document is timely filed if it is sent by first-class mail (including express or priority mail) and bears a postmark (commercial postage meter label alone is not acceptable) showing that the document was mailed on or before the last day for filing. (For inmates, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing.) A document also is timely filed if it is forwarded through a private delivery or courier service and is actually received by the Clerk within the time permitted for filing. (Rule 29.2)

FORMAT: 8 ½ x 11 paper, double-spaced, stapled in upper left corner. Rule 33.2.

COVER: **(Rule 34.1)** Each document shall bear on its cover, in the order indicated, from the top of the page:

the docket number (or space for one); the name of the Court: “The Supreme Court of the United States”; the caption of the case; the nature of the proceeding and the name of the court from which the action is brought (e. g., "On Petition for Writ of Certiorari to the California Court of Appeal"); the title of the document (e. g., "Petition for Writ of Certiorari,"); the name of the attorney who is counsel of record for the party concerned (who must be a member of the Bar of the Court),

³ It is only in a very rare case that the filing of a petition for writ of certiorari in the U.S. Supreme Court is appropriate. Before proceeding with such a petition you should seek pre-approval from FDAP if you wish to be compensated for the petition. If FDAP believes your case is one of the rare ones in which a petition is appropriate, we would use a guideline equivalent to a Petition for Review in the California Supreme Court (i.e., 10 hours).

and on whom service is to be made, with a notation directly thereunder identifying the attorney as counsel of record and setting out counsel's office address and telephone number. Only one counsel of record may be noted on a single document.

PAGE LIMIT: 40 pages (excluding question presented, list of parties, tables and appendix) for petition or opposition; 15 page for reply to a brief in opposition, supplemental brief, or petition for rehearing. Rules 33.1(d); 33.2(b).

CONTENT: The petition shall contain, in the order indicated (Rule 14):

(a) The questions presented for review, on the first page following the cover (no other information may appear on that page).

(b) A list of all parties to the proceeding below (unless the caption of the case contains the names of all the parties).

(c) If the petition exceeds five pages, tables of contents and authorities.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, showing:

·the date the judgment or order sought to be reviewed was entered;

·the date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for a writ of certiorari;

·express reliance on Rule 12.5, when a cross petition for a writ of certiorari is filed under that Rule, and the date of docketing of the petition for a writ of certiorari in connection with which the cross petition is filed;

·the statutory provision believed to confer on the Court jurisdiction to review on a writ of certiorari the judgment or order in question (28 U.S.C. § 1257 authorizes the Court to review a decision of state high court);

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with citation. If the provisions are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in the appendix.

(g) A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following: specification of the stages in the proceedings when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts.

(h) A direct and concise argument amplifying the reasons relied on for allowance of the writ. See Rule 10.

(I) An appendix containing, in the order indicated:

- (i) the opinions, orders, findings of fact, and conclusions of law, written or orally, entered in conjunction with the judgment sought to be reviewed;
- (ii) any other opinions, orders, findings of fact, and conclusions of law entered in the case, and, if reference thereto is necessary to ascertain the grounds of the judgment, of those in companion cases (each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry);
- (iii) any order on rehearing;
- (iv) the judgment sought to be reviewed if the date of its entry is different from the date of the opinion or order required in sub subparagraph (i) of this subparagraph;
- (v) material required by subparagraphs 1(f) or 1(g)(i); and
- (vi) any other material the petitioner believes essential to understand the petition.

If the material required by this subparagraph is voluminous, it may be presented in a separate volume or volumes with appropriate covers.

SERVICE: *Required:*

Court: Original and 10 copies (only original needed if pro se) (Rule 39.2);
Supreme Court of the United States
1 First Street, N.E.,
Washington, D.C. 20543
Clerk of the Court (202) 479-3011

Attorney General (crim. & juv. crim.) or County Counsel (dependency): 1 copy
(Rule 29.3) (The state Attorney General must be served with every petition
challenging the constitutionality of a state statute, even if the Attorney
General was not a party to the state court proceedings (Rule 29.4(c));

Petitioner (Appellant)

Counsel for any co-petitioners

FDAP (required by FDAP, not by service rules)

Recommended:

Copy to Court to be file-stamped and returned to you

An additional copy for your file.

(Service is not required on the Cal. Supreme Court, Cal. Court of Appeal,
Superior Court, Trial Counsel, District Attorney)

TOTAL: 1 original; 15 copies (not including copies for counsel for any co-petitioners, Cal. Supreme Court, Court of Appeal, Superior Court, trial counsel or district attorney.)

CAVEATS:

The Supreme Court Rules are available on the internet at:
[http://www.supremecourtus.gov/_____](http://www.supremecourtus.gov/)

For non-indigent filings, the requirements are very different and the rules should be consulted. For instance, the petition must be in booklet format and the number of copies served on the court and opposing party are different than for indigent petitions. Rules 29.3, 33.1.

The filing requirements for briefs on the merits are different than for petitions for certiorari. Given the rarity of a grant of certiorari, those requirements are not set out here. If your petition is granted, consult the rules, confer with the Supreme Court clerk's office and read Stern and Gressman, *Supreme Court Practice*.

Any questions not answered here? Consult Stern and Gressman, *Supreme Court Practice*, (7th ed. 1993).

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS FILED IN THE UNITED STATES SUPREME COURT

RULES: Supreme Court Rule 39.

FORMAT/CONTENT:

A party seeking to proceed in forma pauperis shall file a motion for leave to do so, together with the party's notarized affidavit or declaration (in compliance with 28 U. S. C. §§1746) in the form prescribed by the Federal Rules of Appellate Procedure, Form 4. See 28 U. S. C. §§1915 . The motion shall state whether leave to proceed *in forma pauperis* was sought in any other court and, if so, whether leave was granted. Rule 39.1.

The motion, and affidavit/declaration shall be filed with the petition. **A copy of the motion shall precede and be attached to each copy of the accompanying document.** Rule 39.2.

SERVICE

Court: Original and 10 copies (original only if pro se inmate) Rule 39.2

CAVEATS:

Leave to proceed in forma pauperis permits filing without payment of fees and in 8 ½ x 11 format, under Rule 33.2, for a cert. petition. Rules 39.3, 39.4. (Briefs on the merits must be in booklet format as described in Rule 33.1 and shall be prepared under the Clerk's supervision. Rule 39.6.)

If the petition is filed in forma pauperis, the respondent may respond in 8 ½ x 11 format and with 10 copies. Rule 39.5.