

[ATTORNEY NAME
(Bar No. #####)
Street Address
City, State ZIP
###-###-####
email@address.email]

Attorney for Appellant

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION [NUMBER]

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

[CLIENT NAME],

Defendant and Appellant.

A#####

([County] County Superior Court No. #####)

APPLICATION TO COMPEL PRODUCTION OF LATE RECORD

To the Honorable Presiding Justice and Associate Justices of the California Court of Appeal, First Appellate District, Division [Number]:

Appellant [Client Name], through appointed appellate counsel, requests an order to compel production of the late record.*†

The notice of appeal in this case was filed in [County] County Superior Court on [Date], and undersigned counsel was appointed on [Date]. [Recount history of late record, e.g.: “The court’s docket shows that on [Date] the court reporter was granted an extension until [Date] to produce the record. There is no activity on the docket since the entry noting this extension.”]

[To the extent possible without the benefit of an appellate record, briefly describe your case, focusing on important facts, if any, establishing how your client is adversely affected by the record delay, such as the likelihood of the appeal becoming moot or indicators of a contested or even meritorious potential issue.]

[Briefly describe your communication with the superior court appeals clerk and what you have learned about the delay, e.g., “Counsel communicated with the appeals clerk at the [County Name] County Superior Court concerning the delay in filing appellant’s record transcripts on [Date]. The clerk

* **Practice Note:** This motion was drafted for use in criminal appeals but can be adapted to juvenile and civil commitment cases. Preparation of the record in juvenile cases is governed by rules 8.409 and 8.416; per rules 8.480-8.483, rule 8.336 applies to LPS conservatorship and civil commitment appeals. Counsel should also be aware of First District Local Rule 2, which contains specific provisions applicable to juvenile cases.

† **Practice Note:** Though not required by the court rules, counsel should serve this application on the superior court.

estimated appellant’s record would not be completed until records were completed in [Number] other cases, and that it will take at least [Number] of months and likely more to get to appellant’s record.”]

In criminal appeals, preparation of the clerk’s and reporter’s transcripts must be completed within twenty days of the date on which the notice of appeal is filed. (Cal. Rules of Court, rule 8.336(c)(2) & (d)(3).)

[For appeals from a *criminal trial* (bench or jury), add the following: In the First District, court reporters are granted an automatic 30-day extension to prepare and file the reporter’s transcript in appeals from a criminal trial (bench or jury). Thus, for such appeals, the reporter’s transcript is due within 50 days of the filing of the notice of appeal. (Ct. App., First Dist., Local Rules, rule 2(b).)] While “the reviewing court may order one or more extensions of time for preparing the record,” the total time extended may not exceed sixty days. (Rules of Court, rule 8.336(e).) The rules also provide, in part, that “Each clerk/executive officer of the Court of Appeal, under the supervision of the administrative presiding justice or the presiding justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under this rule.” (Rules of Court, rule 8.336(h).)

Our Supreme Court has stressed “how important it is that court reporters diligently comply with transcript preparation deadlines in the processing of an appeal” and warned that

“[u]nreasonable delays ... cannot and will not be condoned.” (*In re Watson* (1985) 38 Cal.3d 655, 657; see also Rules of Court, rule 8.23 [in authorizing sanctions for late records, noting that “[t]he failure of a court reporter or clerk to perform any duty imposed by statute or these rules that delays the filing of the appellate record is an unlawful interference with the reviewing court’s proceedings.”]; Ct. App., First Dist., Local Rules, rule 2(d), Sanctions [same].) An excessive delay in an appeal can violate the appellant’s rights under the Fourteenth Amendment’s Due Process Clause. (See, e.g., *In re Christopher S.* (1992) 10 Cal.App.4th 1337, 1341.)

More than [Number] months have passed since the due date to complete the record following the court reporter’s extension. [Explain likely consequence if late record is not filed soon, e.g., “The longer it takes for the record to be filed with this court, the less likely the Court of Appeal will decide this case before appellant will be released from prison.”]

Both the Rules of Court and due process principles require timely preparation of the record to ensure that the appeal can be briefed and decided in sufficient time to provide a meaningful remedy for an incarcerated defendant. It is no answer to say that the county is facing a backlog of records or is too understaffed to discharge its responsibilities. As this District has observed in the analogous context of underfunding of a Public Defender’s Office, it is incumbent upon the judiciary to take corrective action where a county has failed to provide sufficient staffing and resources to discharge its constitutional responsibilities to ensure fair and

timely adjudication of criminal cases. (Cf. *In re Edward S.* (2009) 173 Cal.App.4th 387, 409-415.)

Accordingly, appellant requests this court issue an order compelling the Clerk of the [Name of County] County Superior Court to prepare and file the record of appeal forthwith and provide copies to counsel.

Dated: [Month, Day, Year]

Respectfully submitted,

[Attorney signature]

[Attorney name]

Attorney for Appellant

DECLARATION OF [NAME OF APPELLATE COUNSEL]

I, the undersigned, declare as follows:

1. I am attorney admitted to practice in the State of California and I have been appointed to represent [Appellant's Name] in First District Court of Appeal Case No. [Number].
2. On [Date], I emailed the Appeals Clerk at the [County Name] County Superior Court and requested an estimate for when the record would be ready. On [Date], I received a reply, stating [briefly describe, e.g., appellant's record would not be completed until records were completed in [Number] of other cases, and that it will take at least [Number] of months and likely more to get to appellant's record.]
3. I have viewed documents associated with this appeal provided to me by the First District Appellate Project, including the notice of appeal filed by the attorney who represented appellant in the superior court. Based on these documents [Briefly describe your case, focusing on important facts, if any, establishing how your client is adversely affected by the record delay, e.g., "After the superior court denied a motion to suppress evidence under Penal Code section 1538.5, appellant pleaded guilty to a violation of second degree burglary (Pen. Code, § 459), in exchange for dismissal of all other charges. On [Date], the court sentenced appellant to the aggravated term of three years in state prison. Appellant is due to be released from prison on [Date]. The main issues in this case appear to be:

(1) whether the court correctly denied appellant's suppression motion and whether the court and (2) whether the court lawfully imposed a sentence exceeding the middle term under Penal Code section 1170, subdivision (b)(2) [permissible only when circumstances in aggravation of the crime justifying imposition of a term of imprisonment exceeding middle term, and facts underlying those circumstances have been stipulated to by defendant, or found true beyond reasonable doubt at trial].”]

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on this [Date] in [City, State].

/s/ [Attorney Name]