

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

<p><b>[Petitioner Name],</b> Petitioner and Appellant,</p> <p>v.</p> <p><b>Superior Court of [County],</b> Respondent.</p> <p><b>People of the State of California,</b> Real Party in Interest</p>	<p>A _____</p> <p>Related Appeal No. A#####</p> <p>([County] County Superior Court No. #####)</p>
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**PETITION FOR WRIT OF MANDATE\***

Related Appeal Pending

Judgment of the Superior Court  
of the State of California for [County] County

Honorable [Judge Name], Judge

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

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\* **Practice note:** This Petition for Writ of Mandate may be filed after the Court of Appeal has granted counsel's Application to Compel Production of a Late Record, but the superior court has failed to comply with the court's order to produce the record.

Telephone: (###) ###-####  
Email: [email address]

Attorney for Petitioner

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## TABLE OF AUTHORITIES

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

<p><b>[Petitioner Name],</b> Petitioner and Appellant,</p> <p>v.</p> <p><b>Superior Court of [County],</b> Respondent</p> <p><b>People of the State of California,</b> Real Party in Interest</p>	<p><b>A</b> _____</p> <p>Related Appeal No. A#####</p> <p>([County] County Superior Court No. #####)</p>
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**PETITION FOR WRIT OF MANDATE**

TO THE PRESIDING JUSTICE AND ASSOCIATE JUSTICES  
OF THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA, FIRST DISTRICT, DIVISION [NUMBER]:

Petitioner, [Petitioner Name], through his appointed appellate attorney, petitions for a writ of mandate to the Superior Court of the County of [County] and by this verified petition alleges as follows:

1. This petition for a peremptory writ of mandate is filed in connection with the related pending appeal in *[Case name]*, Court of Appeal No. A#####.
2. As set out more fully in the memorandum of points and authorities, petitioner contends that the Clerk of the Superior Court of [County] (“the Clerk”) has failed to

complete preparation of the record on appeal within the time limitations imposed by California Rules of Court, rule 8.336(c)-(d), and First District Local Rule 2. The clerk's failure to perform [his/her/their] duty to timely prepare and transmit the record on appeal has delayed the filing of the appellate record and constitutes an unlawful interference with this Court's proceedings, pursuant to California Rules of Court, rule 8.23. [*If Contra Costa County*: This delay is consistent with an overall pattern of significant delays in record preparation in criminal and civil commitment proceedings arising out of Contra Costa County.]

3. The Court of Appeal granted appellant's [application/motion] to compel production of the record on [Date]. However, to date, the Clerk has failed to produce the record as this Court has ordered.
4. Petitioner requests that this Court issue a writ of mandate ordering the superior court to transmit the record on appeal, including the clerk's transcript, forthwith.

### **STATEMENT OF THE CASE**

*[To the extent possible without the benefit of an appellate record, briefly describe the procedural history of the case. The abstract of judgment, minute order of sentencing, and notice of appeal should be available to you prior to the filing of the record on appeal and will serve as exhibits providing necessary information.]*

5. On [date], petitioner was convicted by [jury/court trial/plea] of [charges].
6. On [date], the court imposed a sentence of [specify sentence] and ordered petitioner committed to [state prison / the Department of State Hospitals / the county jail / etc.]. (Exhibit \_\_.)
7. Petitioner filed a timely notice of appeal on [Date]. (Exhibit \_\_.)

### STATEMENT OF FACTS

8. The clerk's transcript on appeal in case number A##### was due by [date] – twenty days after the date on which petitioner filed his notice of appeal. (See Cal. Rules of Court, rule 8.336(c)(2).)
9. The reporter's transcript on appeal in case number A##### was due by [date] – [*If appeal is from a criminal trial*: fifty days after the date on which petitioner filed his notice of appeal. (See Ct. App., First Dist., Local Rules, rule 2(b), Extension of Time for Reporter's Transcript.)] [*If appeal is not from a criminal trial*: twenty days after the date on which petitioner filed his notice of appeal. (See Cal. Rules of Court, rule 8.336(d)(3).)]
10. [*The Court of Appeal's online docket should reflect whether the court reporter requested an extension of time. If applicable*: The Clerk and court reporter have failed to request any extension of time pursuant to California Rules of Court, rule 8.336(e) *or* The court reporter was granted

an extension of [number] days until [due date]. That period of time has now lapsed, and the record on appeal has not been filed. (See Exhibit \_\_.)]

11. On [date], petitioner's appellate counsel contacted the Clerk via email to inquire about the status of the record preparation in case number A#####. (Exhibit \_\_.)
12. On [date], the Clerk indicated in [his/her/their] email reply that [*briefly describe the update provided by the clerk, e.g., "although the reporter's transcripts had been completed, the clerk's transcript remained incomplete; and that approximately [list #\_\_] outstanding records would need to be finalized before turning to the completion of petitioner's clerk's transcript."*] (Exhibit \_\_.)
13. On [date], the Court of Appeal granted petitioner's [application/motion] to compel production of the record. (Exhibit \_\_.) [Indicate whether the order specified a compliance period (e.g., "within 30 days of this order").] To date, the Clerk has not produced the record. [Indicate if there have been any subsequent developments since the order (e.g., any requests by clerk or reporter for extension; any communications between superior court and either appellate clerk or appellate counsel).]
14. [*If Contra Costa case:* Over the past few years, there has been a consistent pattern of delay in record preparation in criminal and civil commitment appeals arising out of the Contra Costa superior court.]

15. *[Include any facts that suggest potential prejudice to appellant due to the delay in filing the record, e.g. “Petitioner will be eligible for release on parole from the California Department of Corrections and Rehabilitation in [date]. (Exhibit \_\_.)” or “The court’s order of commitment will expire on [date.] (Exhibit \_\_.)”]*

**CLAIM: THE SUPERIOR COURT CLERK’S FAILURE TO PERFORM ITS DUTY TO PRODUCE THE RECORD ON APPEAL CONSTITUTES AN UNLAWFUL INTERFERENCE WITH THIS COURT’S PROCEEDINGS UNDER RULE 8.23.**

16. Respondent superior court has unlawfully interfered with this Court’s proceedings pursuant to California Rules of Court, rule 8.23, by failing to perform its duty to prepare and file the record on appeal in a timely and expeditious manner.
17. Pursuant to California Rules of Court, rule 8.336, the clerk’s transcript and reporter’s transcripts must be prepared within twenty days of the date on which a notice of appeal is filed. (Cal. Rules of Court, rule 8.336(c)(2) & (d)(3).)
18. 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).)
19. *[For appeal from a criminal bench or jury trial:]* Pursuant to First District Local Rule 2, court reporters are granted an automatic 30-day extension to prepare and file the

reporter's transcript in appeals from a criminal trial. (Ct. App., First Dist., Local Rules, rule 2(b), Extension of Time for Reporter's Transcript.) The reporter's transcript was thus due within 50 days of the date on which the notice of appeal was filed.

20. *[For appeal from a criminal bench or jury trial:]* Pursuant to First District Local Rule 2, a clerk is not granted an automatic extension to prepare the clerk's transcript. "A clerk's request for an extension of time to prepare a clerk's transcript on appeal will not be granted without a showing of good cause." (Ct. App., First Dist., Local Rules, rule 2(a), Extension of Time for Clerk's Transcript.) The clerk's transcript was thus due within twenty days of the date on which the notice of appeal was filed.
21. "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).)

### **CONCLUDING ALLEGATIONS**

22. Petitioner incorporates by reference the accompanying memorandum of points and authorities for further discussion of the merits of his claims.

23. Petitioner requests that this Court take judicial notice of the docket and other records in his related appeal, A#####.
24. Petitioner is the person beneficially interested in the issue of the writ because he is the appellant in [*Case name*], case number A#####, pending before this Court, in which he intends to raise issues going to the validity of the judgment and sentence thereon.
25. The People of the State of California are the real party in interest. The People have an interest directly affected by this proceeding in that they are the plaintiffs and respondents in petitioner's appeal.
26. Petitioner has no plain, speedy and adequate remedy in the ordinary course of law other than the relief sought herein.
27. This petition is made to this Court in the first instance rather than to the Superior Court because that court is the respondent herein and the party that failed to fulfill its responsibility.

### **PRAYER FOR RELIEF**

28. Petitioner respectfully asks this Court to:
  - a. Take judicial notice of the appellate docket, filings, and records in petitioner's related direct appeal, A#####.
  - b. Issue a writ of mandate directing respondent court to produce the record on appeal forthwith.

- c. Grant whatever further relief this Court deems appropriate and in the interests of justice.

Dated: [Date]

Respectfully submitted,

*/s/ Attorney Signature*

ATTORNEY NAME

Attorney for Petitioner

## VERIFICATION

I, [attorney name], declare:

I am a member of the Bar of the State of California and am appointed appellate counsel for petitioner, [Client Name].

I have read the foregoing petition and know the contents thereof. The matters set forth in the petition are true to my knowledge, except as to matters alleged on information and belief, and as to those matters, I believe them to be true.

I certify under penalty of perjury that the foregoing is true and correct. Executed on [Date], at [City], California.

*/s/ Attorney Signature*

ATTORNEY NAME  
Attorney for Petitioner

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. **The Superior Court Clerk’s Failure To Perform Its Duty To Produce the Record on Appeal Constitutes an Unlawful Interference With This Court’s Proceedings Under Rule 8.23.**

The California Rules of Court provide that 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).) 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. (Cal. Rules of Court, rule 8.336(e).)

*[For appeal from a criminal trial only:* 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. 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), Extension of Time for Reporter’s Transcript.) The automatic extension does not apply to the clerk’s transcript. (See Ct. App., First Dist., Local Rules, rule 2(a), Extension of Time for Clerk’s Transcript.) “A clerk’s request for an extension of time to prepare a clerk’s transcript on appeal will not be granted without a showing of good cause.” (*Ibid.*)]

*[Set forth the history of this case with respect to the record on appeal, e.g.,* “In this case, petitioner filed a notice of appeal on [Date]. (Exhibit \_\_.) The clerk’s transcript was therefore due by [Date]. The reporter’s transcript, which was subject to an automatic 30-day extension of time, was due by [date]. On [Date],

the court reporter requested an extension of time until [date] to file the reporter's transcript, which this Court granted. (See Exhibit \_\_.) The Clerk has not requested an extension of time to file the clerk's transcript. (*Ibid.*) The clerk's transcript on appeal is nearly six months overdue.”]

On [date], the Court of Appeal granted petitioner's [application/motion] to compel production of the record. (Exhibit \_\_.) [Indicate whether the order specified a compliance period (e.g., “within 30 days of this order”).] To date, the Clerk has not produced the record. [Indicate if there have been any subsequent developments since the order (e.g., any requests by clerk or reporter for extension; any communications between superior court and either appellate clerk or appellate counsel).]

The Clerk's continuing delay in preparing the record on appeal is prejudicial to Petitioner. [*Set forth any factual basis for potential prejudice due to the delay, e.g.,: “Petitioner was sentenced to a term of two years and eight months, with credit for 276 days served. (See Exhibit \_\_.) The CDCR public inmate locator system states that petitioner will be eligible for parole in November 2022. (Exhibit \_\_.) The delayed preparation of the record on appeal may preclude petitioner from obtaining meaningful appellate review and relief prior to the completion of his sentence.*]

A failure to follow appellate directions can be challenged by an immediate petition for writ of prohibition or writ of mandate. (*Butler v. Superior Court* (2002) 104 Cal.App.4th 979, 982.)

This Court should order the superior court to produce the record on appeal forthwith. Such action by the Court of Appeal is contemplated by the California Rules of Court for the purpose of ensuring that superior court clerks perform their duty to prepare the record on appeal. (See Cal. Rules of Court, rule 8.336(h) [“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.”].)

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 Cal. Rules of Court, rule 8.23; Ct. App., First Dist., Local Rules, rule 2(d), Sanctions.) A delayed appeal can result in an appellant “suffer[ing] an unwarranted period of incarceration, or unwarranted collateral consequences.” (*People v. Grimes* (2009) 172 Cal.App.4th 121, 124.) 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.)

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.)

California Rules of Court, rule 8.23, titled “[s]anctions to compel compliance,” provides that “[t]he failure to 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.” Local Rule 2(d) provides that “[s]anctions may be imposed upon a clerk who failed to timely file a clerk’s transcript or upon a court reporter who fails to timely file a reporter’s transcript.” (Ct. App., First Dist., Local Rules, rule 2(d), Sanctions.) Here, the Clerk has failed to perform [his/her/their] duty to prepare and transmit the record on appeal within the time limitation set forth in the Rules of Court. By failing to perform this duty, the Clerk has unlawfully interfered with this Court’s proceedings by delaying appellate review. Courts have imposed monetary sanctions against state actors in other contexts for failure to meet deadlines that may be prejudicial to litigants. (See, e.g., *People v. Hooper* (2019) 40 Cal.App.5th 685, 688-689 [affirming imposition of sanctions against the Department of State Hospitals for failure to timely admit defendants found incompetent to stand trial]; *People v. Kareem A.* (2020) 46 Cal.App.5th 58, 64 [same].) We defer to

the Court of Appeal on the question of whether the delay of producing the record warrants sanctions on the superior court.

This Court should issue a writ/order directing the Presiding Judge of the [County] County Superior Court and the Clerk of that court to take all steps necessary to ensure that the appellate record in A##### (including both Clerk's and Reporter's Transcripts and all other "normal record" items specified in Rules of Court, rule [criminal: 8.320; juvenile: 8.407; civil commitment: 8.483(a)(1) & 8.320] and/or in First Dist. Local Rule 3) is completed, filed in this Court, and served on appellate counsel no later than 30 days after the filing of this order/writ. Petitioner also asks that the order/writ direct the Presiding Judge to order any reallocation of staff or resources and to direct any other measures necessary to ensure compliance with this Court's order/writ within that period. Petitioner asks that the writ clarify that this duty shall also include taking any steps necessary to obtain additional staff or resources to ensure timely completion of the appellate records in this case and in all other criminal, juvenile or dependency appeals in which the records have not been completed within the periods specified in the relevant Rules. Petitioner also requests that immediately upon filing of this order/writ, the Clerk of this Court shall serve certified copies of this order upon the Presiding Judge of the [County] County Superior Court and upon the Clerk of that court via electronic service as well as mail.

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## CONCLUSION

For the foregoing reasons, petitioner respectfully requests that this Court issue a writ of mandate directing respondent court to produce the record on appeal forthwith.

Dated: [Date]

Respectfully submitted,

*/s/ Attorney signature*

ATTORNEY NAME

Attorney for Petitioner

## CERTIFICATE OF WORD COUNT

Counsel for petitioner hereby certifies that the memorandum of points and authorities accompanying this petition consists of **#,###** words (excluding tables, proof of service, and this certificate), according to the word count of the computer word-processing program. (California Rules of Court, rules 8.204(c)(1) and 8.384(a)(2).)

Dated: [Month #, #####]

*/s/ Attorney Signature*  
ATTORNEY NAME

## TABLE OF EXHIBITS

<b>Exhibit</b>	<b>Document</b>	<b>Pages</b>
A	Abstract of Judgement	
B	Notice of Appeal	
C	Docket number A#####	
D	[Date] Email to Superior Court Clerk	
E	[Date] Email from Superior Court Clerk	
F	CDCR Inmate Information	