

**MOTION PRACTICE IN THE FOURTH APPELLATE DISTRICT
PERTAINING TO CRIMINAL AND JUVENILE CASES**

BY

ANNA M. JAUREGUI-LAW

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This guide serves to provide the appointed appellate attorney with a comprehensive overview of the various motions¹ that are used in appellate defense practice,² including habeas proceedings, in the Fourth Appellate District and to offer useful resources and practical tips. The guide also serves as a checklist, setting forth the governing rules, policies, practices, and procedures. Hyperlinks are in blue font.

The [Fourth Appellate District](#)³ is divided into three geographical divisions. Division One is located in San Diego and has jurisdiction over appeals from the superior courts of San Diego and Imperial Counties. Division Two is located in Riverside and has jurisdiction over appeals from the superior courts of Riverside, San Bernardino, and Inyo Counties. Division Three is located in Santa Ana and has jurisdiction over appeals from the superior courts of Orange County.

The court practices and procedures and the links outlined in this guide are current as of publication. Counsel should check for any changes. See also ADI's [Fourth Appellate District Practice](#)⁴ pages.

¹ For purposes of this guide and ease of reference, motion practice includes applications, motions, notices, and requests, as well as certain petitions. Attorneys should keep in mind that different rules may apply to these different kinds of filings.

² For purposes of this guide, appellate defense practice encompasses criminal and juvenile delinquency appeals, juvenile dependency appeals, conservatorships, and civil commitments.

³ <http://www.courts.ca.gov/4dca.htm>

⁴ http://www.adi-sandiego.com/practice/fourth_dist.asp

I. INTRODUCTION

Effective motion practice takes some finesse. The foundation begins with a review of the relevant [California Rules of Court](#),⁵ which govern motion practice, and the supplements to the rules. These supplements consist of the [Court of Appeal Fourth District Local Rules of Court](#),⁶ the District's published [Practices & Procedures](#),⁷ and the specific [practices and procedures](#)⁸ of Divisions One, Two, and Three, which are either published or informally communicated to Appellate Defenders, Inc. (ADI).⁹ Unless specifically noted otherwise, the practice or procedure will be considered unpublished.

Further resources to assist counsel and promote cost savings include:

- Appellate Defenders, Inc. [California Appellate Practice Manual](#) (hereinafter ADI Manual)¹⁰
- ADI [news alerts](#)¹¹

⁵ <http://www.courts.ca.gov/rules.htm>

⁶ Hereinafter “Fourth District Local Rules, rule.”
<http://www.courts.ca.gov/documents/4dca-local-rules.pdf>

⁷ <http://www.courts.ca.gov/2834.htm>; see also Internal Operating Practices and Procedures of Division One (http://www.courts.ca.gov/documents/IOP_District4_division1.pdf) and Division Three (http://www.courts.ca.gov/documents/IOP_District4_division3.pdf)

⁸ http://www.adi-sandiego.com/practice/fourth_dist.asp

⁹ See, e.g., Fourth District Practices and Procedures relating to augment requests [checklist of documents requested to facilitate the clerk's preparation and reduce errors is an unpublished procedure], *ante*.

¹⁰ <http://www.adi-sandiego.com/panel/manual.asp>

¹¹ http://www.adi-sandiego.com/news_alerts/index.asp

- ADI practice articles: [criminal](#),¹² [delinquency](#),¹³ and [dependency](#).¹⁴
- ADI sources on filing and service requirements: [general requirements](#),¹⁵ [e-filing](#) and e-submission with the Court of Appeal,¹⁶ and [e-service](#) on other counsel and the superior court¹⁷ (See [Dec. 28, 2015, ADI news alert: Expanded Email Service Starting January 1, 2016 -- “Cheat Sheet” is the key.](#))¹⁸
- ADI sample motions: [general](#)¹⁹ and [dependency](#)²⁰
- [Other project sample motions](#)²¹
- ADI in-house sample motions: ask the staff attorney assigned to the particular case.

Practice Tip: Sign up with the Court of Appeal for email notifications (<http://appellatecases.courtinfo.ca.gov/>) so that you can be promptly informed of case activity.

¹² http://www.adi-sandiego.com/practice/pract_articles.asp

¹³ http://www.adi-sandiego.com/delinq_depend/delinquency/index.asp

¹⁴ http://www.adi-sandiego.com/delinq_depend/dependency/dep_articles.asp

¹⁵ http://www.adi-sandiego.com/practice/filing_service_chart.asp

¹⁶ http://www.adi-sandiego.com/practice/eservice_court.asp

¹⁷ http://www.adi-sandiego.com/practice/eservice_adi.asp

¹⁸ http://www.adi-sandiego.com/pdf_forms/Dec_2015_special_alert.pdf

¹⁹ http://www.adi-sandiego.com/practice/forms_samples.asp

²⁰ http://www.adi-sandiego.com/delinq_depend/dependency/forms_samples.asp

²¹ http://www.adi-sandiego.com/panel/ca_legal_projects.asp

A. California Rules of Court

The rules governing motion practice in the Court of Appeal and Supreme Court²² include not only the specific rules that govern a particular motion, but also general rules. The general appellate rules are:

- 8.1-8.68 [general provisions covering service, filing, form, number of documents; applications and motions; extending and shortening time]
- 8.4 [rules 8.1-8.642 relating to the Supreme Court and Courts of Appeal apply to original proceedings, motions, applications, and petitions]
- 8.50 [applications filed in the reviewing court]
- 8.54 [motions filed in a reviewing court]
- 8.366 and 8.470 [general rules 8.252-8.272, which concern judicial notice, new authorities, oral argument, submission of the cause, the opinion, rehearing, and remittitur, govern the hearing and decision in the Court of Appeal of an appeal in a criminal or juvenile case]

Counsel should also be familiar with the general rules applicable to all courts:

- 1.1-1.200 [preliminary rules, timing and holidays, service and filing, Judicial Council forms, accommodations, public access, citations, and form and format of papers]

Some motions do not have specific governing rules – for example, a motion to consolidate multiple appeals. Some rules and motions may apply at different stages of the

²² Special rules apply for petitioning and briefing in the California Supreme Court. (See rules 8.500-8.508 and 8.520.) The specifics of those rules are not spelled out here, because this guide is intended to cover motion practice in the Courts of Appeal. This guide will cover some rules, for example, that concern relief for failure to file a timely petition for review, a motion to permit oversized briefing or attachment, and a motion for judicial notice, which are motions filed in the Supreme Court. See ADI's Filing and Service Summary (http://www.adi-sandiego.com/practice/filing_service_chart.asp), rule 8.500 et seq., the Supreme Court website (<http://www.courts.ca.gov/supremecourt.htm>), and ADI's Supreme Court Practice page (http://www.adi-sandiego.com/practice/supreme_court_pract.asp) for further guidance.

appeal – for example, a motion for extension of time. Some of the criminal and juvenile appellate rules incorporate by reference certain provisions relating to civil appeals – for example, rules 8.366(a) and 8.470 on hearing and decision in the Court of Appeal.

B. Local Rules and Practices

Some Fourth District [Local Rules, miscellaneous orders, and forms](#)²³ and specific [practices and procedures](#)²⁴ are also applicable to motion practice. Specific local rules include rule 1(a) [writ proceeding – immediate stay to preserve the status quo or the court’s jurisdiction or immediate relief sought], rule 2 [covers on documents], and rule 5 [mandatory electronic filings in all three Divisions].²⁵ The relevant [practices and procedures](#) specific to motions in the Fourth District or some of its divisions include:

- adding a document exhibit to the clerk’s transcript
- augmentation and correction of the record
- constructive notice of appeal/request for certificate of probable cause
- court file review
- exhibit review and obtaining copy of exhibit
- extensions of time
- missing record pages
- oral argument
- settlement
- supplemental briefing and striking of opening brief and
- transmission of exhibits to Court of Appeal.

²³ <http://www.courts.ca.gov/2746.htm>

²⁴ <http://www.courts.ca.gov/2834.htm>

²⁵ <http://www.courts.ca.gov/4dca-efile.htm>

II. MOTION PRACTICE

A. General

Motions should be filed *separately* from a related brief or petition. Separate rules apply regarding filing and service²⁶ of motions and of the opposition to the motion, which are different from those pertaining to the briefs. If the motion is buried in a brief or petition, the opponent may not have adequate notice to file a timely response. If the opponent does not separately respond, the Court of Appeal will not be aware of the motion until much later, when it begins its review of all the briefing. That point may be too late, and the court could simply choose not to address it.

Do not, for example, include a motion for judicial notice or a motion to consolidate an appeal with a habeas petition either within the appellant's opening brief or within the writ petition itself. (See rules 8.54(a)(1), (2) & (3) [party must file a written motion with memorandum and supporting documents and opposition is to be filed within 15 days]; 8.252(a)(1) [judicial notice motion must be filed separately]; see also [Orange County Appeals: A Detailed Guide](#),²⁷ p. 57; ADI [January 1998 Newsletter](#),²⁸ p. 11; [ADI Manual](#),²⁹ § 8.17, fn. 19.)

The majority of the motions outlined below are available as samples on the [Forms & Samples](#)³⁰ and [Dependency Forms & Samples](#)³¹ pages of the ADI website.

²⁶ See Dec. 28, 2015 [ADI news alert](#): Expanded Email Service Starting January 1, 2016 - "Cheat Sheet" is the key and filing and service section, *post*.

²⁷ http://www.courts.ca.gov/documents/4DCA3_Guide-Detailed.pdf

²⁸ http://www.adi-sandiego.com/news_alerts/pdfs/bef2005/1998_january.pdf

²⁹ <http://www.adi-sandiego.com/panel/manual.asp>

³⁰ http://www.adi-sandiego.com/practice/forms_samples.asp

³¹ http://www.adi-sandiego.com/delinq_depend/dependency/forms_samples.asp

B. Motions at Pre-Briefing Stage

1. Completing the record

Normal record

The starting point for determining whether counsel has a complete record upon its receipt is either rule 8.320 [criminal] or rule 8.407 [juvenile].³² Those rules define what is in the normal record on appeal. The description below helps guide the attorney in seeking completion of the normal record, correction of the normal record, and augmentation to include matters not falling within the definition of rules 8.320 and 8.407.

Practice tip: Sometimes the normal record has portions that are sealed or deemed confidential, and there is no notice of this in the clerk's or reporter's transcript. Hence, as a matter of good practice, appointed counsel should review the Court of Appeal [online docket](#),³³ which will disclose whether a confidential or sealed transcript was filed but not provided to counsel.

Practice Tip: The rules concerning sealed³⁴ and confidential³⁵ records in the Supreme Court and Court of Appeal have been rewritten to create more comprehensive and internally consistent provisions, effective January 2014. They clarify procedure for transmission to the reviewing court, who can receive copies of these records, and how a party can discuss these records in a brief, petition, or other filing in a particular appellate court proceeding. The new provisions are set forth at rules 8.45 to 8.47 and cover appeal and writ proceedings. For more detailed

³² Division One has issued a miscellaneous order requiring dependency transcripts to include additional matters. (See <http://www.courts.ca.gov/2746.htm> and http://www.adi-sandiego.com/practice/fourth_dist_div1.asp.) As a general matter, the rules that apply in juvenile delinquency appeals (rules 8.403-8.412) apply to juvenile dependency appeals unless otherwise provided for in rule 8.416 [dependency appeals].

³³ <http://appellatecases.courtinfo.ca.gov/>

³⁴ “A ‘sealed’ record is a record that is closed to inspection by the public or a party by order of a court under rules 2.550-2.551 or rule 8.46.” (Rule 8.45(b)(3).)

³⁵ “A ‘confidential’ record is a record that, in court proceedings, is required by statute, rule of court, or other authority except a court order under rules 2.550-2.551 or rule 8.46 to be closed to inspection by the public or party.” (Rule 8.45(b)(5).)

guidance, see [Changes to California Rules of Court, effective January 2014](#).³⁶ The new rules are incorporated below where relevant.

Practice Tip: The Court of Appeal will not automatically provide an extension of time upon being served with any of the below motions. Counsel must file a request for an extension of time in the Court of Appeal if more time is needed.

Correcting incomplete record

Letter seeking missing parts of record: If part of the normal record is missing, such as a document or transcript required to be included in the record on appeal, counsel may send a letter to the superior court to correct the record.³⁷ (Rules 8.340(b) [criminal], 8.410(a) [juvenile delinquency], 8.416(d)(1) [juvenile dependency³⁸]; ADI Manual, §§ 3.12-3.16.)

Practice Tip: Attorneys who find pages missing should call the Court of Appeal (Divisions One and Two) before filing a record correction (completion) letter. Sometimes the court's copy will have the missing pages, and the court can copy those pages for the attorney without need of a formal letter. See the [Fourth District Page](#)³⁹ for each division's preference and contact information.

Practice Tip: If an appeal was transferred to another Division of the Court of Appeal, send the letter to the original county superior court in which the case arose, because that superior court will continue to have custody of the superior court file, and send a copy of the request to the new county superior court and the Court of Appeal. Sometimes case transfers occur at the superior court level prior to an appeal. For example, in juvenile cases a minor may have moved to another county. All matters arising before the transfer should be addressed to the first county superior court, and all matters arising after should be addressed to the second county superior

³⁶[http://www.adi-sandiego.com/pdf_forms/SELECTED_CHANGES_TO CALIFORNIA RULES OF COURT EFFECTIVE JANUARY.pdf](http://www.adi-sandiego.com/pdf_forms/SELECTED_CHANGES_TO_CALIFORNIA_RULES_OF_COURT_EFFECTIVE_JANUARY.pdf); see also <http://www.courts.ca.gov/rules.htm>

³⁷ [Forms & Samples](#): "Correction of Record - Rule 8.340(b)."

³⁸ http://www.courts.ca.gov/documents/not_inc_juv_rec.pdf

³⁹ http://www.adi-sandiego.com/practice/fourth_dist.asp

court. It is also prudent to call the respective superior courts because there is no uniform established practice or procedure in the differing counties.

Practice Tip: In Division Two, the record on appeal must include any *Benoit*⁴⁰ order where the court has allowed a late filing of a notice of appeal and the police report in guilty plea cases.⁴¹

Practice Tip: If counsel needs to request both augmentation and correction of the normal record on appeal, counsel should file a combined augmentation request for all the needed records, instead of doing separate augment and correction requests. (See ADI [December 18, 2015, news alert](#).⁴²)

Practice Tip: In dependency fast-track cases, all record changes should go through the Court of Appeal as augmentations, whether the change involves normal record materials or not.

Letter to superior court seeking post-judgment orders: If the clerk fails to certify and send subsequent (post-judgment) trial court orders in a criminal case, as required by rule 8.340(a), counsel may send a letter reminding the court of the need for an augmentation.⁴³ (See ADI Manual, §§ 3.16, 3.23.) In juvenile cases, the lower court must notify the reviewing court of the change. (Rule 8.410(b)(2).) A motion for augmentation would be required if the lower court fails to comply.

Adding material not in normal record

Counsel should make a motion to Court of Appeal to augment for materials not part of the normal record on appeal.⁴⁴ Such a motion should include related corrections of the record and a request for an extension of time. (Rules 8.155(a) [what can be augmented] and (c)(1) [corrections] [civil], 8.340(c) [augmentation or correction by reviewing court]

⁴⁰ *In re Benoit* (1973) 10 Cal.3d 72, 86-89.

⁴¹ http://www.adi-sandiego.com/practice/fourth_dist_div2.asp

⁴² http://www.adi-sandiego.com/news_alerts/index.asp

⁴³ [Forms & Samples](#): “Correction of Record - Later Order in Trial Court.”

⁴⁴ [Forms & Samples](#): “Augment Request.” [Dependency Forms & Samples](#): “Augment Request.”

[criminal], 8.410(b)(1) [augmentation or correction by reviewing court] [juvenile delinquency and non-fast-track dependency cases], 8.416(d) [augmenting or correcting the record] [juvenile dependency fast-track cases]; ADI Manual, §§ 3.17-3.23.)

Access to confidential records

Counsel may send a motion⁴⁵ to the Court of Appeal requesting a copy of a confidential record filed with the appellate court be sent to appellate counsel, if counsel is allowed access to that record. (Rules 8.45(d)(1) [general], (d)(2) [in camera proceedings], (d)(3) [documents concerning confidential informants] & (d)(4) [probation report], 8.47(b) [*Marsden*⁴⁶ hearings and other in camera proceedings], 8.47(c) [other confidential records].)

Practice Tip: Rule 8.45(d)(1) requires that the confidential or sealed record be transmitted to the Court of Appeal and to the party or parties who had access to the record in the trial court or other proceedings under review, except for probation reports and records dealing with a confidential informant. Under rule 8.10(3), “‘Party’ includes any attorney of record for that party.” Before sending the letter, counsel should check the court website to see if the record has been filed with the court.

Practice Tip: If counsel is not allowed access to the record under law – e.g., information related to a *Pitchess* motion⁴⁷ or a confidential informant – counsel may have to request the Court of Appeal to examine the record for error without the benefit of briefing.⁴⁸

Sealed records

- Motion to Court of Appeal to file record under seal: If a record was not sealed in the trial court but needs to be sealed in the reviewing court, counsel may move to seal it. (Rules 2.550(d) [civil], 8.46(d)(1)-(4) [general].)

⁴⁵ [Forms & Samples](#): “Confidential Records Motion.”

⁴⁶ *People v. Marsden* (1970) 2 Cal.3d 118.

⁴⁷ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

⁴⁸ See e.g., *People v. Yearwood* (2013) 213 Cal.App.4th 161, 179-182.

Practice Tip: Rule 8.46(e)(6) states that the court may order a record filed under seal only if it makes the findings required by rule 2.550(d)-(e). The motion should therefore address the factual findings outlined in that rule.

Practice Tip: It may be necessary to file the motion to seal and related documents in redacted and unredacted versions.⁴⁹

- Motion to unseal record.⁵⁰ (Rules 2.550(c)-(e) [civil], 8.46(e)(1), (2), (4) & (f) [general].)

Practice Tip: This motion is filed when, for example, the reason for sealing by the trial court no longer applies.

Practice Tip: When a record was ordered sealed by the trial court, rule 8.46(f)(2) “requires” a party to file redacted and unredacted versions of any filing (i.e., the motion) that discloses material from the sealed record. The public redacted version and unredacted version must comply with the specific cover and identification specifications in rule 8.46(f)(2)(A) and (B).

Practice Tip: Rule 8.46(e)(5) states that the court must consider the matters addressed in rule 2.550(c)-(e) in determining whether to unseal a record. The motion should therefore address the factual findings outlined in that rule.

Notice of improper material in record

- Notice to Court of Appeal concerning record improperly containing confidential identification information (e.g., juror, juvenile, or victim names).⁵¹ (Rules 8.155(c)(1) [civil], 8.332(b) [criminal], 8.340(c) [criminal]; 8.401

⁴⁹ [Forms & Samples](#): “Seal - Motion to File Document Under Seal - Not Previously Sealed.” See rule 8.45(b)(6) & (7) for definitions of a “redacted version” and “unredacted version.”

⁵⁰ [Forms & Samples](#): “Unseal Record.”

⁵¹ [Forms & Samples](#): “Juror Information Improperly in Record - Notice to Court” and “Victims or Other’s Protected Identity - Notice to Court.”

[juvenile]; Code Civil Proc., § 237, subd. (a)(2); Pen. Code, § 293.5; ADI Manual, §§ 3.7-3.10.)⁵²

- Motion to remove other confidential or sealed information from public record (e.g., confidential medical records or sealed records pertaining to informant).⁵³ (Rules 8.155(c)(1) [civil], 8.45(c) [criminal], 8.46(c) [criminal], 8.47 [criminal], 8.340(c) [criminal]; ADI Manual, §§ 3.7-3.10.)⁵⁴

Settled and agreed statements

- Application to superior court for permission to prepare settled statement.⁵⁵ (Rules 8.137 [civil], 8.346 [criminal], 8.407(d) [juvenile]; ADI Manual, §§ 3.30.)

Practice Tip: Chapter 3 of the ADI Manual at section 3.30 describes the process for filing in the superior court and the alternative route available in the Court of Appeal (see motion to Court of Appeal, *post*). See also the ADI website [Fourth District](#) page for Division-specific preferences.

- Agreed statement filed in superior court. (Rules 8.134 [civil], 8.344 [criminal], 8.407(d) [juvenile]; ADI Manual, § 3.29.)
- Motion to Court of Appeal for order to superior court to settle disputes about omissions or errors in the record and to augment the record.⁵⁶ (Rules 8.155(c)(2) [civil], 8.340(c) [criminal], 8.410(b)(1) [juvenile delinquency], 8.416(d)(1) [juvenile dependency].)

⁵² See http://www.adi-sandiego.com/practice/conf_records.asp

⁵³ [Forms & Samples](#): “Remove Confidential or Sealed Record from Public Record.”

⁵⁴ See http://www.adi-sandiego.com/practice/conf_records.asp

⁵⁵ [Forms & Samples](#): “Settled Statement Request.”

⁵⁶ [Forms & Samples](#): “Settled Statement Augment.”

Letters to superior court to correct record

- Motion or letter to superior court to correct pre-sentence custody credits.⁵⁷ (Pen. Code, § 1237.1; ADI Manual, §§ 2.13, 4.42; see [January 2016 ADI news alert](#).⁵⁸)
- Motion or letter to superior court to correct error in the imposition or calculation of monetary penalties.⁵⁹ (Pen. Code, § 1237.2; ADI Manual, §§ 2.13, 4.42; see [Recent Changes in the Law on § 1237.2](#).⁶⁰)
- Letter to superior court to correct clerical errors in minute order or abstract.⁶¹

⁵⁷ [Forms & Samples](#): “Credits Modification: Practice Tips, Informal Fares Letter, Formal Credits Motion.”

⁵⁸ http://www.adi-sandiego.com/pdf_forms/Jan_2016.pdf

⁵⁹ [Forms & Samples](#): “Credits Modification: Practice Tips, Informal Fares Letter, Formal Credits Motion.”

⁶⁰ http://www.adi-sandiego.com/news_alerts/recent_changes_statutes.asp#1237.2

⁶¹ [Forms & Samples](#): “Clerical Error - Letter to Superior Court.”

Special Fourth District practices and procedures relating to the record

- Augment motion⁶² - The motion should include a checklist of documents requested to facilitate the clerk’s preparation and reduce errors. The augment motion should not include a request for exhibits; a request for exhibits has separate requirements. See *post*.

Practice Tip: If the motion includes multiple attached documents, [Division Two’s Miscellaneous Order 16-16](#)⁶³ requires a specific format which concerns the arrangement of the documents, the numbering of the pages, and the requirement of two indices. These requirements are good general practice, and ADI recommends them for all Divisions.

Practice Tip: Exhibits are part of the normal record on appeal (rule 8.320(e)), and no augment is necessary. Counsel can go to the court to see the exhibits or, if counsel is from out-of-county, should request ADI to obtain copies of document exhibits. (See ADI’s exhibit review article, [De-Mystifying the Exhibit Review Process in Criminal Cases](#), 2016 edition.⁶⁴) Exhibits pertaining to documents admitted to prove a prior conviction, prison term, or juvenile adjudication must be included in the clerk’s transcript (rule 8.320(b)(13)(c)) and can be obtained through a letter to the superior court seeking missing parts of the record.

- Augment and correction of normal record - If counsel plans to augment *and* correct the record, counsel should file one motion in the Court of Appeal covering both. (ADI Manual, § 3.24.)
- Timing of augment requests - The Fourth District courts expect augment motions in criminal and delinquency cases to be filed within 40 days or less of the filing of the record or the appointment order, whichever is later. In

⁶² [Forms & Samples](#): “Augment Request.” [Dependency Forms](#) & Samples: “Augment Request.”

⁶³ http://www.adi-sandiego.com/practice/fourth_dist_div2.asp under Misc. Orders.

⁶⁴ http://www.adi-sandiego.com/news_alerts/pdfs/2010/EXHIBIT-REVIEW-UPDA TED-2010.pdf

dependency cases,⁶⁵ the court expects motions to be filed within 15 days or less of the filing of the record or the appointment order, whichever is later. (See rule 8.416(d)(2).) If the deadline is missed, counsel should provide good cause why it could not be filed earlier.⁶⁶ Division One has issued a formal on these matters;⁶⁷ but Divisions Two and Three likewise expect augments to be filed within the same time period. (See [ADI February 2011 news alert](#).)

- Letter to correct record under rule 8.340(b):⁶⁸

Division One advises attorneys to call the Court of Appeal before filing a letter. If the court has the missing pages in its transcript, it can send counsel a copy. If a letter is to be sent to the superior court, see the [Fourth District](#) page, Division One, for the addresses. For dependency cases, Division One has a [Notification of Incomplete Juvenile Dependency Record](#)⁶⁹ form that can be used.

Division Two also advises that counsel should send the letter to the main court branch of the applicable county, not to the outlying branch court. Division Two requests counsel to call its clerk's office before filing the letter with the superior court. If the court has the missing pages in its transcript, it can send counsel a copy. See the [Fourth District](#) page, Division Two, for contact information.

Division Three has not taken a position yet on whether attorneys should contact the Court of Appeal before seeking correction for missing

⁶⁵ <http://www.courts.ca.gov/2746.htm> and <http://www.courts.ca.gov/documents/4dca-div1-020411A-Juvenile-Augment-Order.pdf>

⁶⁶ Good cause can be included in the augment motion. In dependency cases, see [Dependency Forms & Samples](#): “Relief from Default for Failure To Timely File an Augment Request.”

⁶⁷ <http://www.courts.ca.gov/2746.htm> and <http://www.courts.ca.gov/documents/4dca-div1-020411B-Criminal-Augment-Order.pdf>

⁶⁸ [Forms & Samples](#): “Correction of Record - Rule 8.340(b).”

⁶⁹ http://www.courts.ca.gov/documents/not_inc_juv_rec.pdf

documents. If a letter is to be sent to the superior court, see the [Fourth District](#) page, Division Three, for the addresses.

- Exhibit review - Guidance is also set forth in ADI's exhibit review article, [De-Mystifying the Exhibit Review Process in Criminal Cases](#), 2014 edition,⁷⁰ which includes contact information for the exhibit custodians. Consult the [Fourth District Page](#)⁷¹ for Division-specific preferences. Some highlights include:

Division One - If the appointed San Diego attorney plans on personally viewing the exhibits, the San Diego County Superior Courts require the attorney to bring a copy of the appointment order and a picture identification. To save time and reduce expenses for non-San Diego attorneys, a Division One order⁷² permits an ADI representative to view court files and exhibits and make copies, including sealed and confidential exhibits, for the attorney. Division One's order describes access to court file "materials," which includes exhibits pursuant to established procedure. The attorney should request the assigned staff attorney to make arrangements.

Division Two - The ADI ambassador can obtain copies of documentary exhibits for appointed counsel. In unusual circumstances, counsel may file a motion with the Court of Appeal for an order directing the superior court to copy media or documentary exhibits and put them into the clerk's transcript. *The court prefers that counsel try to obtain copies through ADI first.* A Division Two order⁷³ gives ADI representatives access to "court files," including sealed and confidential "documents"; this includes exhibits. Division Two's order states that if the superior court

⁷⁰http://www.adi-sandiego.com/news_alerts/pdfs/2010/EXHIBIT-REVIEW-UPDATE-TED-2010.pdf

⁷¹ http://www.adi-sandiego.com/practice/fourth_dist.asp

⁷² http://www.adi-sandiego.com/practice/fourth_dist_div1.asp and <http://www.courts.ca.gov/documents/4dca-div1-112812-ADI-access-to-superior-court-records.pdf>

⁷³ http://www.adi-sandiego.com/practice/fourth_dist_div2.asp

clerk is considering denying the request, the clerk is to call the Court of Appeal.

Division Three - Unless the exhibit is sealed, the ADI ambassador can obtain copies of documentary exhibits for appointed counsel. However, ADI does not have authority to obtain sealed and confidential exhibits. Media exhibits can be obtained by contacting the exhibit technician directly.

- Confidential or sealed exhibits - The appointed attorney can view and obtain confidential or sealed exhibits without a court order under rule 8.45. The rule governs access to sealed and confidential records. Rule 8.45(b)(1) defines the “[r]ecord” to include an “exhibit.” Although rule 8.45(d)(1) requires that the record be transmitted to the Court of Appeal and to the party or parties who had access to the record in the trial court, an exhibit would not be initially transmitted to the Court of Appeal when the record (transcripts) on appeal are filed with that court. Contact the superior court exhibit custodian to make arrangements to view and obtain a copy of the exhibit. If there is a disagreement about your right to access without a court order, refer the custodian to rules 8.45 and 8.10(3) and, if unsuccessful, contact the staff attorney.

2. Fourth District practices and procedures relating to perfecting an appeal

- If the notice of appeal is timely but defective and the defect can be corrected, counsel may move to amend the notice of appeal.
- Request to file a late notice of appeal or to construe timely filed notice of appeal to include request for certificate of probable cause under the constructive filing doctrine (*In re Benoit, supra*, 10 Cal.3d 72; *Roe v. Flores-Ortega* (2000) 528 U.S. 470 [120 S.Ct. 1029, 145 L.Ed.2d 985]) and a request for stay of appeal.⁷⁴ ADI Manual,⁷⁵ § 2.113 et seq., gives guidance on

⁷⁴ [Forms & Samples](#): “Certificate of Probable Cause - Benoit.” See ADI Manual, § 2.115: “Constructive Filing Doctrine.”

⁷⁵ <http://www.adi-sandiego.com/panel/manual.asp>

“Remedies for Untimely or Defective Filing of Notice of Appeal and Failure To Obtain Certificate of Probable Cause.”

- This remedy requires a motion in Division One cases or a petition for writ of habeas corpus in Divisions Two and Three cases.⁷⁶
- The constructive filing doctrine is often not recognized in dependency appeals.⁷⁷

3. Fourth District practices and procedures relating to time

Extensions of time and other applications: Rule 8.50 was amended effective January 1, 2016, deleting the requirement of including self-addressed, stamped envelopes for all parties with a request for time extension mailed to the Court of Appeal. [E-filing](#)⁷⁸ with the court is mandatory. E-service of the extension request is mandatory on ADI and all agencies identified in the service “Cheat Sheet.” (See [Dec. 28, 2015 ADI news alert: Expanded Email Service Starting January 1, 2016 - “Cheat Sheet” is the key](#)⁷⁹ and filing and service section, *post.*)

- Motion for extension of time.⁸⁰ (Rules 8.50 [general], 8.60 [general], 8.63 [general], 8.360(c)(4) [criminal], 8.412(c) [juvenile delinquency], 8.416(f) [juvenile dependency]; ADI Manual, §§ 3.32-3.36.) On occasion, an attorney is not able to file an extension request due to a personal emergency (e.g., serious illness or no access to a computer). The proper procedure is to ask the ADI staff attorney assigned to your case to file the request and explain the circumstances to the court. If you are unable to communicate, ask someone else to contact the staff attorney. *Do not ask a non-ADI attorney to file the request for you.*

⁷⁶ Contact the ADI oversight attorney for a sample.

⁷⁷ See *In re Z.S.* (2015) 235 Cal.App.4th 754, 769.

⁷⁸ <http://www.courts.ca.gov/9408.htm>

⁷⁹ http://www.adi-sandiego.com/pdf_forms/Dec_2015_special_alert.pdf

⁸⁰ [Forms & Samples](#): “Extension of Time.” Dependency Forms & Samples: “Extension of Time Request.”

- Relief from default for failure to file brief and extension request. (Rules 8.60(d) [general], 8.360(c)(5) [criminal], 8.412(b)(5), (d)(1)&(3) [juvenile delinquency], 8.416(g) [juvenile dependency]; ADI Manual, § 5.80.)⁸¹
- Post-augment extensions of time - Fourth District Courts of Appeal do not stay an appeal or automatically issue a time extension upon granting an augment request; it must be specifically requested within the augment.
- Post-record correction extensions of time - Courts of Appeal do not automatically issue an extension of time upon notice that a record correction letter was filed in the superior court (letter filed because certified record omits document or transcript that is considered part of the normal record or where superior court fails to certify and send a post-judgment order) or upon the filing of corresponding supplemental transcripts. Counsel must separately request an extension in the Court of Appeal.
- Extension after a “No Further Extensions” notice - counsel may still be granted a further extension of time if there is good cause for it.

4. Fourth District practices and procedures: miscellaneous motions

Motions relating to consolidation

- Motion to consolidate multiple appeals.⁸²
- Motion to consolidate a habeas petition and an appeal.⁸³

⁸¹ [Forms & Samples](#): “Brief Untimely - Criminal, Other Nonjuvenile” and “Brief Untimely - Delinquency.” Dependency Forms & Samples: “Brief Untimely.”

⁸² [Forms & Samples](#): “Consolidate Multiple Appeals.” Dependency Forms & Samples: “Consolidate Multiple Cases.”

⁸³ [Forms & Samples](#): “Consolidate Habeas and Appeal.”

Motion relating to release of defendant

- Release or bail pending appeal motion must initially be filed in superior court (Pen. Code, §§ 1272, 1272.1); if denied, file in Court of Appeal (rule 8.312 [criminal]).⁸⁴

Motions relating to abandonment or abatement of appeal

- Abandonment of appeal.⁸⁵ (Rules 8.316 [criminal], 8.411 [juvenile]; ADI Manual, §§ 1.39, 1.53, 1.58, 2.4, 4.91, 4.111, 4.120.)
- Motion to abate the appeal due to client’s death.⁸⁶ (ADI Manual, § 1.38.)

Motions relating to potential habeas or other writ

Where a potential habeas petition or other writ petition is being investigated and/or a petition is being filed, the following motions may apply:

- Confidential motion to Court of Appeal for expert fees.⁸⁷ (Rules 8.54(a) [general], 8.50 [general], 8.46(e)(2) [general]; Pen. Code, § 1241; ADI Manual, § 8.4.)
- Motion in superior court to release juror information.⁸⁸ (Code of Civ. Proc., § 237.)
- Stay appeal pending resolution of habeas.⁸⁹ (Rule 8.54 [general].)

⁸⁴ [Forms & Samples](#): “Bail Motions.”

⁸⁵ [Forms & Samples](#): “Abandonment of Appeal Request.” Dependency Forms & Samples: “Abandonment.”

⁸⁶ [Forms & Samples](#): “Abatement Request (client death).”

⁸⁷ [Forms & Samples](#): “Expert Fee Request.”

⁸⁸ [Forms & Samples](#): “Juror ID - Motion to Disclose - Superior Court.”

⁸⁹ [Forms & Samples](#): “Stay Appeal.”

- Request for immediate stay to preserve the status quo or the court’s jurisdiction and/or relief. (Rule 8.486(a)(7) [criminal]; Fourth Dist., Local Rules, rule 1(a); ADI Manual, §§ 8.77, 8.92.)
- Motion to consolidate a habeas petition and an appeal.⁹⁰

C. Motions at Briefing Stage

1. Motions related to the brief

- Brief oversize motion.⁹¹ (Rules 8.50 [general], 8.360(b)(1) & (b)(5) [criminal], 8.412(a)(3) [juvenile delinquency], 8.416(a)(2) [juvenile dependency]; ADI Manual, § 5.77.)
- Motion to permit attachment to brief greater than 10 pages. (Rules 8.204(d) [civil], 8.360(a) [criminal], 8.412(a)(2) [juvenile delinquency], 8.416(a)(2) [juvenile dependency]; ADI Manual, § 5.77.)
- Judicial notice.⁹² (Rule 8.252 [civil], 8.366(a) [criminal], 8.470 [juvenile]; Evid. Code, §§ 452, subd. (d)(1), 453, 459, subd. (a).)

Practice Tip: Division Two’s [Miscellaneous Order 16-16](#)⁹³ requires a specific format of the multiple documents that may be attached to a motion for judicial notice concerning the arrangement of the documents, the numbering of the pages, and the requirement of two indices. ([January 2016 ADI news alert](#).⁹⁴) These requirements are good general practice, and ADI recommends them for all Divisions.

⁹⁰ [Forms & Samples](#): “Consolidate Habeas and Appeal.”

⁹¹ [Forms & Samples](#): “Brief - Oversize.” [Dependency Forms & Samples](#): “Oversize Brief Request.”

⁹² [Forms & Samples](#): “Judicial Notice.” [Dependency Forms & Samples](#): “Judicial Notice.”

⁹³ http://www.adi-sandiego.com/practice/fourth_dist_div2.asp under Misc. Orders.

⁹⁴ http://www.adi-sandiego.com/pdf_forms/Jan_2016.pdf

- Relief from default for failure to file brief and extension request. (Rules 8.50(b) [general], 8.60(d) [general], 8.360(c)(5) [criminal], 8.412(b)(5) and (d)(1)&(3) [juvenile delinquency], 8.416(g) [juvenile dependency]; ADI Manual, § 5.80.)⁹⁵
- Motion to file under seal a brief, petition, or filing that raises a *Marsden* issue or an issue related to another in-camera hearing and request for order to maintain the confidentiality of the relevant material. (Rule 8.47(b)(3) [criminal].)⁹⁶

Practice Tip: Rule 8.47(b)(3) permits an appellant to file a brief or other document under seal if necessary to protect confidential matters in the record. Rule 8.46(d) governs the procedure. The appellant must submit both a redacted and an unredacted version of the document. The cover of each version must appropriately identify the document. (Rule 8.47(b)(3)(C)(i) and (ii).) Additionally, the motion must be accompanied with a declaration or application containing facts sufficient to justify an order maintaining the confidentiality. (Rule 8.47(b)(3)(B).) The motion should request that the order include direction to the respondent to file its related briefing under seal.

Practice Tip: It may be necessary to also include a request for a protective order to prevent the respondent from disclosing confidential information to others, such as the District Attorney, in the event of a reversal and retrial.

- Opposition to the respondent’s application requesting transcript and documents in connection with a *Marsden* hearing or other in-camera hearing. (Rule 8.47(b)(2)(C) [criminal].)⁹⁷

Practice Tip: If appellant raises a *Marsden* issue or other issue related to an in-camera hearing in the appellant’s opening brief, the respondent can request the confidential transcript or documents relating to that issue. If counsel plans on filing an opposition, it must specify what material is not relevant to the issue to preclude its release.

⁹⁵ [Forms & Samples](#): “Brief Untimely - Criminal, Other Nonjuvenile” and “Brief Untimely - Delinquency.” [Dependency Forms & Samples](#): “Brief Untimely.”

⁹⁶ [Forms & Samples](#): “Seal-Motion to File Document under Seal.”

⁹⁷ [Forms & Samples](#): “Marsden Transcript - Notice of Irrelevant Confidential Material.”

- Motion to file under seal a brief, petition, or filing to maintain the confidentiality of material contained in a confidential record. (Rule 8.47(c) [general].)

Practice Tip: Rule 8.47(c) is intended to cover situations in which a record may be subject to a privilege that a party may choose to maintain or choose to waive. (See Advisory Committee com., 23 pt. 2 West’s Ann. Codes, Rules (2006 ed.) foll. rule 8.47 (2014 supp.), p. 582.) The request must be sufficient to justify the sealing and confidentiality. Rule 8.46(d) governs the procedure. The party must submit both a redacted and an unredacted version of the document.

- Motion to file brief (or habeas or other petition and exhibits) under seal and redacted brief.⁹⁸ (Rules 8.46(e) [general], 8.384(b)(4) [habeas supporting documents], 8.486(d) [mandate, certiorari, and prohibition], see also rule 2.550 [general] [sealed records].)
- Motion to strike brief and file new brief.⁹⁹ (Rule 8.200(a)(4) [civil], 8.360(a) [criminal], 8.412(a)(1) [juvenile].)

Practice Tip: A motion to strike and file new brief is required even for minimal corrections to the brief, because the Fourth District courts no longer accept errata filings. The courts are unable to alter TrueFiling or other documents to reflect desired changes. (See August 29, 2016, ADI news alert.)¹⁰⁰

- Motion to file supplemental brief.¹⁰¹ (Rule 8.200(a)(4) [civil], 8.360(a) [criminal], 8.412(a)(1) [juvenile].)

⁹⁸ [Forms & Samples](#): “Seal - Motion to File Document Under Seal - Not Previously Sealed.”

⁹⁹ [Forms & Samples](#): “Strike Brief and File New Brief Request.”

¹⁰⁰ http://www.adi-sandiego.com/news_alerts/index.asp

¹⁰¹ [Forms & Samples](#): “Supplemental Briefing Request.”

2. Fourth District practices and procedures relating to supplemental briefing

- Division One - advises that if counsel plans on adding another argument to the filed opening brief and the respondent's brief has not yet been filed, move to strike the opening brief and file a combined brief. If the respondent's brief has already been filed, file a motion to permit the filing of a supplemental brief, along with the brief.
- Division Two - advises counsel to move to file a supplemental brief, unless there are multiple corrections on different pages. If there are, then move to strike the opening brief and file a combined brief.
- Division Three - does not accept supplemental briefs. It advises counsel to move to strike the brief and file a combined brief.

Practice Tip: If the circumstances in your case warrant a different procedure, call the court for its preference.

3. Motion relating to time

- Expedite appeal, shorten time, and calendar preference.¹⁰² (Rules 8.54 [general], 8.68 [general], 8.240 [civil]; ADI Manual, § 1.32.)

4. Motions relating to exhibits

- Motion for transmission of exhibits filed in superior court within 10 days of the filing of the respondent's brief.¹⁰³ (Rules 8.224(a)&(c) [civil], 8.320(e) [criminal], 8.407(f) [juvenile delinquency], 8.416(a)(2) [juvenile dependency].)
- Motion for late transmission of exhibits filed in Court of Appeal.¹⁰⁴ (Rules 8.224(c) [civil], 8.320(e) [criminal].)

¹⁰² [Forms & Samples](#): “Expediting Appeal, Shortening Time, Calendar Preference.”

¹⁰³ [Forms & Samples](#): “Exhibits - Transmission Request Superior Court.”

¹⁰⁴ [Forms & Samples](#): “Exhibits - Late Transmission Court of Appeal.”

Division Two practices and procedures relating to transmittal of exhibits: Division Two has a different procedure. Upon appointment, counsel will receive a form where she/he must list all exhibits referred to in the opening brief. The form must be filed in the Court of Appeal with the opening brief. The court then arranges for the transfer from the superior court. If counsel fails to file this on time, counsel can still use this form with an added explanation regarding the delay.

5. Motion relating to consolidation

- Motion to consolidate a habeas petition and an appeal.¹⁰⁵

Practice Tip: There is no express rule governing the procedure to consolidate appeals. Rule 8.147(b) refers to use of records from prior appeals on subsequent appeals in the same case and has been interpreted in a manner to promote consolidation of appeals, unless it can be shown that a party would be prejudiced by consolidation. (*General Elec. Co. v. Fed. Emp. Distributing Co.* (1954) 122 Cal.App.2d 509, 511.)

D. Post-Briefing Stage

1. Motions relating to oral argument

See the court's published [practices and procedures](#).¹⁰⁶

- Request for oral argument
 - Division One – Oral argument must be requested in the time the court notice indicates. The Division has a [form for requesting argument](#).¹⁰⁷
 - Division Two - A tentative opinion is sent to counsel which includes either a letter that the court believes oral argument will assist the court and will schedule oral argument or that the court will not schedule argument on its own

¹⁰⁵ [Forms & Samples](#): “Consolidate Habeas and Appeal.”

¹⁰⁶ <http://www.courts.ca.gov/2834.htm>

¹⁰⁷ <http://www.courts.ca.gov/documents/ltrlweb.pdf>

and instead invites counsel to request oral argument if counsel so wishes. Oral argument must be requested as the court notice indicates.

- Division Three - Oral argument must be requested within 10 days of filing of the respondent's brief (the court sends out a notice to this effect). Division Three's [request form](#) is available online.¹⁰⁸
- Request for permission to use associate counsel for oral argument.¹⁰⁹ (See [April 10, 2012, ADI news alert](#).¹¹⁰)

Practice Tip: Courts request that if counsel intends to use associate counsel for oral argument, she/he notify the court as soon as possible. Preapproval by the Court of Appeal and ADI is required for use of associate counsel. The written request must identify the attorney associated and include a brief statement that associate counsel is qualified and will be adequately prepared for oral argument. Request permission, state the reason for the last minute change, identify the attorney being associated, and include a statement that the attorney is qualified and will be adequately prepared for oral argument.

- Late request for oral argument. If the attorney decides to orally argue after the period for requesting oral argument has expired, she/he may file a late request with a cover letter briefly explaining the delay.
- Time for oral argument. Divisions One and Two have a 15-minute default time limit for oral argument.¹¹¹ Permission for a longer time must be specially requested. Division Three follows the time limit set forth in rule 8.256(c)(2) [30 minutes], but permits more time upon request.¹¹²

¹⁰⁸ <http://www.courts.ca.gov/2746.htm#tab7889>

¹⁰⁹ [Forms & Samples](#): "Oral Argument - Associate Counsel Request."

¹¹⁰

http://www.adi-sandiego.com/news_alerts/pdfs/2012/APRIL_2012_ADI_NEWS_ALERT.pdf

¹¹¹ http://www.adi-sandiego.com/practice/fourth_dist_div1.asp and http://www.adi-sandiego.com/practice/fourth_dist_div2.asp

¹¹² http://www.adi-sandiego.com/practice/fourth_dist_div3.asp

- Request for additional time at oral argument.¹¹³ (Rule 8.256(c) [civil]; ADI Manual, § 6.22.)
- Request for oral argument recording.
See the District’s published Practices & Procedures.¹¹⁴
Division Three’s request form is available online.¹¹⁵
- Request for a change in calendar position: Divisions One and Three may be able to accommodate requests to move oral argument from the morning to the afternoon calendar and vice-versa. Or it might grant a request to trail a case to later in the calendar. Division Two is unable to accommodate requests to move oral argument from the morning to the afternoon calendar and vice-versa.
- Subsequent waiver: A request for oral argument may be cancelled (the earlier the better). Attorneys unsure that oral argument will be necessary may choose to file a request within the time limit and later cancel it on deciding not to orally argue.

2. Motion relating to submission of case

- Motion to vacate submission of case. (Rules 8.54 (general), 8.256(d) [civil] [when a cause is submitted] & (e) [vacating submission].)

3. Notice of new authorities

- Letter to court of new authority decided after briefing completed.¹¹⁶ (Rule 8.254(a)-(c) [civil] [letter may provide only citation to case and to the part of the brief it relates to].)

Practice Tip: If counsel wishes to present *argument* based on the new authority, then the proper procedure is to file a motion requesting permission to

¹¹³ [Forms & Samples](#): “Oral Argument - Additional Time.”

¹¹⁴ <http://www.courts.ca.gov/2834.htm>

¹¹⁵ <http://www.courts.ca.gov/2746.htm#tab7889>

¹¹⁶ [Forms & Samples](#): “New Authority - Letter After Briefing Complete.”

file a supplemental brief (rules 8.200(a)(4), 8.360(a)), accompanied by the supplemental brief.

4. Motions relating to publication or depublication

- Publication request.¹¹⁷ (Rule 8.1120(a); ADI Manual, §§ 7.19-7.21.)

Practice Tip: In evaluating whether to seek publication, see [ADI January 2016 news alert](#),¹¹⁸ pp. 2-3.)

- Depublication request.¹¹⁹ (Rule 8.1125(a); ADI Manual, §§ 7.22-7.27.)

5. Motion relating to rehearing¹²⁰

- Request to be relieved from failure to file a timely petition for rehearing.¹²¹ (Rule 8.268(b)(4) [civil]; ADI Manual, §§ 7.33-7.42.)

6. Motions relating to seeking review¹²²

- Late petition for review: The time to file a petition for review may not be extended. The Chief Justice may nevertheless grant relief from failure to file on time, provided the Supreme Court still has jurisdiction. (Rules 8.500(e)(2); 8.512(c)(1); ADI Manual, § 7.58.)

¹¹⁷ [Forms & Samples](#): “Publication Request.”

¹¹⁸ http://www.adi-sandiego.com/pdf_forms/Jan_2016.pdf

¹¹⁹ [Forms & Samples](#): “Depublication Request.”

¹²⁰ [Forms & Samples](#): “Petition for Rehearing - Untimely.”

¹²¹ [Forms & Samples](#): “Petition for Rehearing - Request to File Untimely.”

¹²² [Forms & Samples](#): “Petition for Review Template” and “Petition for Review To Exhaust State Remedies - Template.” See also “Petition for Review Information Forms,” for clients and attorneys. [Dependency Forms & Samples](#): “Petition For Review Information Forms.”

- If there is time, counsel may file a request for relief from failure to meet rule time.¹²³
- If the remittitur (rule 8.272) has issued, the California Supreme Court has no appellate jurisdiction. One remedy might be a motion in the Court of Appeal seeking to recall the remittitur (rules 8.272(c)(2) & (3), 8.366(a)) and refile the opinion, in order to permit a petition for review.¹²⁴ Another remedy would be habeas corpus, alleging ineffective assistance of appellate counsel for negligence in missing the deadline. Contact the oversight staff attorney for guidance.
- Regardless of the Supreme Court’s appellate jurisdiction, counsel may file a petition for habeas corpus in the Supreme Court.
- Motion to permit longer petition for review, answer, reply, or attachment.¹²⁵ (Rule 8.504(d)(4); ADI Manual, § 7.60.)

7. Motions relating to the remittitur

- Motion for immediate issuance of remittitur (by stipulation of all parties only).¹²⁶ (Rules 8.272(c)(1) [civil], 8.366(a) [criminal], 8.387(f) [habeas corpus], 8.470 [juvenile]; ADI Manual, §§ 7.43-7.44.)

Practice Tip: If a document requires the signature of multiple parties, like a stipulation, the original signature of at least one party must appear on the document filed in the Court of Appeal. Other signatures may be on copies of the signature page. (Rule 8.42.) The filer must obtain the signatures of all required parties and make them available upon request. (Rule 8.77(c).)

¹²³ [Forms & Samples](#): “Petition for Review - Untimely.”

¹²⁴ This is most likely to succeed if the reason the petition was late is the fault of the court – e.g., failure to send a copy of the opinion.

¹²⁵ [Forms & Samples](#): “Petition for Review - Oversize.”

¹²⁶ [Forms & Samples](#): “Immediate Issuance of Remittitur.”

- Motion (or writ petition) to recall remittitur and reinstate appeal.¹²⁷ (Rules 8.272(c)(2) & (3) [civil], 8.366(a) [criminal], 8.387(f) [habeas corpus], 8.470 [juvenile]; ADI Manual, §§ 7.43, 7.45.)

III. FILING AND SERVICE

A. E-Filing with the Court of Appeal in the Fourth District

All divisions of the Fourth Appellate District have implemented TrueFiling, which is the court's electronic filing system. Fourth Appellate District [Local Rule 5](#)¹²⁸ requires all filings be made through the TrueFiling portal.¹²⁹

Local Rule 5 requires documents filed through TrueFiling, such as briefs, motions, and petitions, be bookmarked and consecutively paginated using Arabic numbers beginning with the cover and including attachments for appellate briefs and exhibits for petitions. It requires all documents be text searchable and in PDF format. TrueFiling will not paginate briefs or add bookmarks. Check the [CCAP guide](#)¹³⁰ for instructions on how to do this.

B. Service on ADI, Counsel, and the Superior Court

Service required by the Rules of Court must be electronic wherever a mutual agreement for e-service has been executed. The documents may be served either through

¹²⁷ [Forms & Samples](#): “Recall Remittitur and Reinstate Appeal.”

¹²⁸ <http://www.courts.ca.gov/documents/4dca-Local-Rule-5.pdf>

¹²⁹ <http://www.courts.ca.gov/9408.htm#tab18463>; see also ADI's announcement and guide:
http://www.adi-sandiego.com/pdf_forms/TRUEFILING_IN_FOURTH_DISTRICT.pdf

¹³⁰ http://www.capcentral.org/procedures/truefiling/step_tf_guides.asp

TrueFiling or through counsel's own email. The [requirements for e-service](#)¹³¹ are outlined on ADI's website. The official source for current service information is the "[Cheat Sheet](#)."¹³² (Counsel's attention is called to the [Dec. 28, 2015, ADI news alert: Expanded Email Service Starting January 1, 2016 - "Cheat Sheet" is the key .](#))¹³³ For technical assistance, contact staff attorney Lynelle Hee.¹³⁴

For situations where email service is not available, consult the ADI website [service charts](#)¹³⁵ for mailing requirements.

¹³¹ http://www.adi-sandiego.com/practice/eservice_adi.asp

¹³² http://www.adi-sandiego.com/practice/service_quick_reference.asp

¹³³ http://www.adi-sandiego.com/practice/eservice_adi.asp and http://www.adi-sandiego.com/practice/service_quick_reference.asp

¹³⁴ lkh@adi-sandiego.com

¹³⁵ http://www.adi-sandiego.com/practice/filing_service_chart.asp