

Parts in blue print are instructions to user, not to be included in filed document unless so noted. [Parts and references in green font, if any, refer to juvenile proceedings. See Practice Note, this web page, for guidance in adapting forms to juvenile cases.]

PRACTICE TIP

This sample form may be useful if counsel wished to consolidate another proceeding, such as habeas corpus or another writ, with an ongoing appeal. There is no express rule governing the procedure to consolidate. 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, 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.)

[Attorney's Name, bar number]
[Address and telephone number]
[Email address and fax number if available]
Attorney for Defendant *[Name]*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION *[NUMBER]*

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

[Appellant's Name],
Defendant and Appellant.

Court of Appeal
No. *[number]*

Superior Court
No. *[number]*

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

Honorable *[Name]*, Judge

**APPELLANT'S MOTION TO CONSOLIDATE
[SPECIFY] PROCEEDING WITH APPEAL**

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

Appellant, *[Name]*, hereby moves for an order consolidating the
direct appeal, case number *[number]*, and the *[specify]* proceeding, which
is being initiated by the contemporaneous filing of *[specify pleading]*, case
number *[number]*. The appellant's opening brief was filed on *[date]*. The
basis for this motion is more particularly set forth in the accompanying

memorandum of points and authorities and the declaration of appellant's
appointed counsel, *[Name]*. (Exhibit A).

Dated: *[date]*

Respectfully submitted,

[Attorney's signature]

[Attorney's Name]

State Bar No. *[number]*

Attorney for Defendant *[Name]*

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF CONSOLIDATION**

I. STATEMENT OF CASE AND FACTS SUPPORTING CONSOLIDATION

[Set forth relevant procedure and facts with citations to the record and to the declaration of appellate counsel, below.]

II. THE REVIEWING COURT HAS INHERENT POWER AND BROAD DISCRETION TO CONSOLIDATE CAUSES INVOLVING COMMON ISSUES OF FACT OR LAW.

There is no express California Rule of Court governing procedures to consolidate appeals and *[specify]* proceedings. However, California Rules of Court, 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.) Rule 8.500(d)¹ specifically contemplates that appeals and habeas corpus proceedings may be consolidated.

Witkin is in agreement:

Where separate actions, related in subject matter and issues, are consolidated for trial (see 4 Cal. Proc. (5th), *Pleading*, §341), or where actions separately tried are nevertheless so related, they may often profitably be considered together on appeal. So far as the reviewing court is concerned, it may without order place them on the calendar together, make use of briefs and arguments interchangeably, and write only one

¹ Rule 8.500(d) provides: “If the Court of Appeal decides an appeal and denies a related petition for writ of habeas corpus without issuing an order to show cause and without formally consolidating the two proceedings, a party seeking review of both decisions must file a separate petition for review in each proceeding.”

detailed opinion, deciding the other cases on the authority of the first. (See *infra*, §788.) An order of consolidation, however, goes further: it allows the parties to all the appeals to prepare a single record and set of briefs.

(9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 765, p. 838.)

Where issues are interrelated, reviewing courts have consolidated appellant's direct appeal with another proceeding, such as the appellant's petition for writ of habeas corpus. (See, e.g., *People v. Nelson* (2010) 190 Cal.App.4th 1453, 1457, fn. 3; *People v. Stone* (2008) 160 Cal.App.4th 323, 325; *People v. Upsher* (2007) 155 Cal.App.4th 1311, 1315, fn. 2; *In re Cassandra R.* (1983) 139 Cal.App.3d 670, 672.)

Under rule 8.50(b) [applications], good cause must be shown. Judicial economy and public economy justify a conclusion all interests would be best served by an order consolidating the appeal and [specify] proceeding in this action, where identical and related issues are presented, in addition to new issues. As shown in the declaration of appellate counsel (Exhibit A), consolidation is appropriate because of the relationship of the issues raised in the appellant's opening brief and the petition for writ of habeas corpus.

III. CONCLUSION

For the foregoing reasons, appellant requests that the appeal and [specify] proceeding be consolidated for briefing and decision.

Dated: [date]

Respectfully submitted,

[Attorney's signature]

[Attorney's Name]

State Bar No. [number]

Attorney for Defendant [Name]

DECLARATION OF *[APPELLATE COUNSEL'S NAME]*

I, *[appellate counsel's Name]*, hereby declare:

1. I am an attorney duly licensed to practice before all the courts in the State of California and the appointed attorney of record for appellant *[appellant's Name]* in *[his / her]* appeal. My state bar number is *[insert number]*.
2. *[Provide factual background needed to understand motion. Describe issues raised in each proceeding and demonstrate how they are related and how consolidation may further judicial economy. Depending on length of justification, additional numbered paragraphs may be needed.]*

I declare under penalty of perjury of the laws of California that the foregoing and all attachments are true and correct.

Dated: *[date]*

[Attorney's signature]
[Attorney name]
State Bar No. *[number]*
Attorney for Defendant *[Name]*

PROOF OF SERVICE