

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 TIPS**

This sample applies to appellant's opening brief or other briefs (e.g., reply and supplemental briefs) in criminal adult, juvenile delinquency, and other nonjuvenile appeals. If appointed counsel fails to file the appellant's opening brief, the clerk issues a default notice which allows counsel a 30-day grace period in which to file it. (Cal. Rules of Court, rule 8.360(c)(5) / 8.412(d)(1).) If counsel fails to file the brief, s/he is subject to removal from the case. (Rules 8.360(c)(5)(A)(ii) and (6) / 8.412(d)(1)(A)(ii); see also rule 8.412(d)(3) [unlike rule 8.360 which governs criminal adult cases, rule 8.412(d)(3), which governs juvenile cases, expressly permits application for an extension of time for good cause within the 30-day grace period].) The rules do not provide for a 30-day grace period for reply and supplemental briefs. If counsel will not be able to file the opening brief within the allowed time period or failed to file a reply or supplemental brief by the due date, use this sample.

See section II.B.3. of ADI's Guide to Motion Practice, found under APPELLATE PRACTICE<Nuts and Bolts of Panel Practice.

For dependency appeals, rule 8.412 governs non-fast-track cases and rule 8.416 governs fast-track cases. For a sample, click [here](#).

For untimely petitions for rehearing or review samples, click [here](#).

*[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]*

**APPLICATION FOR RELIEF FROM DEFAULT FOR FAILURE  
TO TIMELY FILE [APPELLANT'S OPENING BRIEF / OTHER  
BRIEF] *[AND REQUEST FOR AN EXTENSION OF TIME]***

Appellant *[Name]*, through *[her / his]* appointed counsel requests relief from default for failure to timely file the *[appellant's opening brief / other brief] [and for an extension of time]* under the authority of California Rules of Court,<sup>1</sup> rules 8.50 [applications – good cause], 8.60[(c)&](d) *[[extending time and] relief from default]*, 8.63(b) [good cause factors], *[and 8.360(c)(4) [extending time] / 8.412(d)(3) [extending time – good cause ]]*. *[Accompanying this application is the brief]*.

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<sup>1</sup> Hereinafter rules or rule.

This request is based upon the present moving papers, the supporting memorandum of points and authorities, and a declaration from appellant's appointed counsel, *[Name]*. (Exhibit A.)

Dated: *[date]*

Respectfully submitted,

*[Attorney's Name]*

State Bar No. *[number]*

Attorney for Defendant *[Name]*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. STATEMENT OF CASE AND FACTS

*[Set forth the relevant procedure with citations to the record and the circumstances leading to the delay which demonstrate good cause with citations to the declaration of appellate counsel.]*

### II. RELIEF FROM DEFAULT MAY BE GRANTED BASED ON GOOD CAUSE.

Rule 8.50(b) states that an application must state facts showing good cause. Rule 8.60(d) provides that “[f]or good cause, a reviewing court may relieve a party from default for any failure to comply with these rules except the failure to file a timely notice of appeal or a timely statement of reasonable grounds in support of a certificate of probable cause.” The reviewing court has discretion to grant a motion for relief from default based on good cause. (*Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1144, citing rule 8.60(d).) Rule 8.63(b) sets forth a non-exclusive list of good cause factors for the court’s consideration:

- (1) The degree of prejudice, if any, to any party from a grant or denial of the extension. A party claiming prejudice must support the claim in detail.
- (2) In a civil case, the positions of the client and any opponent with regard to the extension.
- (3) The length of the record, including the number of relevant trial exhibits. A party relying on this factor must specify the length of the record. In a civil case, a record containing one volume of clerk’s transcript or appendix and two volumes of reporter’s transcript is considered an average-length record.
- (4) The number and complexity of the issues raised. A party relying on this factor must specify the issues.
- (5) Whether there are settlement negotiations and, if so, how far they have progressed and when they might be completed.
- (6) Whether the case is entitled to priority.

(7) Whether counsel responsible for preparing the document is new to the case.

(8) Whether other counsel or the client needs additional time to review the document.

(9) Whether counsel responsible for preparing the document has other time-limited commitments that prevent timely filing of the document. Mere conclusory statements that more time is needed because of other pressing business will not suffice. Good cause requires a specific showing of other obligations of counsel that:

- (A) Have deadlines that as a practical matter preclude filing the document by the due date without impairing its quality; or
- (B) Arise from cases entitled to priority.

(10) Illness of counsel, a personal emergency, or a planned vacation that counsel did not reasonably expect to conflict with the due date and cannot reasonably rearrange.

(11) Any other factor that constitutes good cause in the context of the case.

Good cause is established because the failure to timely file the brief was due to *[set forth the circumstances leading to the delay and establishing good cause; apply the relevant authorities described above; cite to appellate counsel's declaration]*.

Further, appellant was not at fault for the delay. (See *Strong v. Mack* (1943) 58 Cal.App.2d 805, 809 [“It is a severe penalty to be inflicted on a client to deprive him of his day in court for no fault other than his reliance on the implied representation of competency made by the licensing of the attorney;” motion to be relieved from default for failure to file the appellant’s opening brief granted]; *In re Parker* (1968) 68 Cal.2d 756, 761 [in the context of a late filing of a notice of appeal and granting petitioner a remedy, the Supreme Court recognized that “petitioner was hardly at fault for his counsel’s mistaken belief”].)

Therefore, appellant requests that he be relieved from default *[and that he be permitted to file the brief, which accompanies the filing of this motion]*.

**[III. REQUEST FOR EXTENSION OF TIME]**

*[Based on the foregoing good cause showing as required under rules 8.60(b) and 8.63(b) [and 8.412(d)(3)] and under rule 8.360(c)(4) [extension permitted only upon order of the presiding judge under rule 8.60], appellate counsel requests that the time to file appellant's opening brief be extended by [number] days. This will permit counsel time to adequately represent appellant's interests by raising all arguably meritorious issues before this court. (People v. Brown (1978) 21 Cal.3d 513, 518-520, quoting Entsminger v. Iowa (1967) 386 U.S. 748, 752 ["an indigent who is entitled to appeal is constitutionally entitled to 'a complete and effective appellate review of his conviction . . .'].)]*

**CONCLUSION**

For the foregoing reasons, defendant requests that the motion be granted.

Dated: *[date]*

Respectfully submitted,

*[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. *[Set forth relevant procedural posture of the case, e.g., number of prior extensions, the reasons for the extensions, etc. This description may take more than one numbered paragraph.]*
3. I was unable to file the brief on time because *[set forth the circumstances leading to the delay and establishing good cause consistent with the applicable rules of court]*.

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

Dated: *[date]*

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

Attorney for Defendant *[name]*

## **PROOF OF SERVICE**