

No-Issue Filings: A Practical Guide for Appointed Counsel in Dependency and Civil Commitment Cases

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Introduction

This guide is for appointed appellate counsel in the Fourth Appellate District who, after full record review, determine an appeal presents no reasonably arguable issues. Because no-issue procedure depends on case type, the guide is organized into three parts: Dependency, Lanterman-Petris-Short (LPS) conservatorships, and Other Civil Commitments appeals. Each section includes a short narrative overview followed by practical, step-by-step filing guidance for (1) when the no-issue framework applies, (2) what to file, (3) what to tell the client, and (4) the most likely outcome.

Universal Principles & Requirements

Across all frameworks several core principles apply:

- A full record review, which includes ensuring the record is complete.
- Under the California project-panel system and judicial policy, approval by the assigned project staff attorney is required before any attorney, assisted or independent, makes a no-issue filing. Counsel must submit a complete draft of the brief or no-issue letter brief along with a detailed assessment of the issues considered and rejected, to the assigned ADI staff attorney at least five days before the brief is due.
- Neutral, Accurate Summary: Provide a neutral, citation-supported procedural and factual summary.
- No Adversarial Posture: Do not argue against the client or label the appeal as frivolous.
- Required Client Advisements: Notify the client of no-issue findings, provide the brief and record, and explain their right to submit a supplemental filing and the likelihood of dismissal.
- Declaration Requirements: Confirm record review, service, and advisements.
- Court's Discretion & Outcomes: Courts are not required to conduct independent review; dismissal is common absent an arguable issue.
- Correct Framework Identification: Cite the correct scheme-specific authority.
- Modest Discretionary Review Request: Request discretionary review without implying obligation.

1) Dependency Appeals (*Sade C. / Phoenix H.*)

Dependency no-issue practice rests on the Supreme Court's rule that the Court of Appeal has no duty to conduct an independent review of the record when appointed counsel finds no arguable issues. Your filing should both demonstrate a careful review through a neutral, record-supported factual and procedural summary and provide a clear advisement so the parent understands any opportunity to submit a personal filing and the likelihood of dismissal absent a good-cause showing. In the Fourth District, counsel must file a *Sade C./Phoenix H.* letter brief; thorough facts help the court evaluate any client submission. Because the court is not obliged to search the record for error in this context, your role is to present a complete, neutral account and give the client the advisements required by governing authority.

Governing authority

Anders v. California (1967) 386 U.S. 738

Holding: When appointed counsel in an indigent criminal defendant's first appeal finds no nonfrivolous issues, counsel must follow procedures that protect the right to counsel while permitting the court to determine whether any arguable issues exist.

In re Sade C. (1996) 13 Cal.4th 952

Holding: *Anders/Wende* independent record review is not required in dependency appeals when appointed counsel finds no arguable issues; the Court of Appeal may dismiss absent a good-cause showing of an arguable issue.¹

In re Phoenix H. (2009) 47 Cal.4th 835

Holding: A parent has no right to file a supplemental brief unless the parent shows good cause that an arguable issue exists; the Court of Appeal may dismiss if no such showing is made.

Phoenix H. presents some problems that raise practical questions: First, the opinion does not explain how a client is to show "good cause" for a pro per filing without having an opportunity to file a brief or even a letter. Second, once the client shows good cause, which the court defines to mean "an arguable issue does, in fact, exist," the court should

¹ In *People v. Wende* (1079) 25 Cal.3d 436 (1979), the California Supreme Court held that when appointed appellate counsel submits a brief raising no specific issues or characterizes the appeal as frivolous, the Court of Appeal is obligated to independently review the entire record to determine whether any arguable issues exist. This duty is triggered by counsel's brief alone and does not depend on the defendant separately filing a personal brief. The court must make its own determination of whether the appeal is wholly without merit rather than simply accepting counsel's assessment.

order *counsel* to brief it, not just decide the issue on the basis of pro per briefing. (See *Penson v. Ohio* (1988) 488 U.S. 75.) Third, coming full circle – if a client has a right to have counsel’s briefing upon the identification of an arguable issue, why should the client also then have a right to pro per briefing per *Phoenix H.*? Normally a client represented by counsel has no right to pro per filings in addition. (*In re Barnett* (2003) 31 Cal.4th 466.)

Counsel should accordingly work with the client to submit, as expeditiously as possible, a pro per filing (which need not be a formal brief) so that the court can consider it as an effort to show good cause. Ideally, the pro per brief or at least an issue letter from the client should be submitted at the same time as counsel’s *Sade C.* brief. To this end:

- *Inform the client early:* As soon as counsel has made arrangements for the record and is ready to submit the draft *Sade C.* brief to ADI, counsel should inform the client about the situation, ask whether he or she is interested in providing a pro per filing, and, if so, urge the client to start to work on a brief or at least an issue letter right away. The record and draft *Sade C.* brief should be enclosed.
- *Keep in close touch with client:* If the client is interested in a pro per filing, counsel should work closely with him or her to secure the filing promptly, so as to coordinate with the deadlines imposed on counsel, with the goal of submitting the pro per filing at the same time as the *Sade C.* brief.
- *Have fallback procedures (Plan B) ready:* If the client is unable to produce the pro per filing in time but still has expressed genuine interest in submitting one, counsel can resort to alternative procedures. For example:
 - Counsel may ask the court for a brief extension on behalf of the client.
 - If counsel knows what the client’s issues are, counsel can summarize them in the *Sade C.* brief.
 - If the case is dismissed, counsel may ask for reinstatement when and if the client produces the filing, provided it is within 30 days that the court has jurisdiction after the opinion is filed. (Cal. Rules of Court, rule 8.264(b)(1).) Obviously, counsel should make sure the client is aware of this jurisdictional deadline.
- *Consider habeas corpus instead:* If the issues the client wants raised are based on facts outside the record (as is often the case), counsel may suggest the client file a pro per petition for writ of habeas corpus rather than a brief. The Judicial Council form, MC-275 can be used, but counsel should suggest modifications suitable to a dependency case.

Caveat: If the appeal is from a termination of rights, counsel needs to keep in mind Welfare and Institutions Code section 366.26, subdivision (i)(1), which

provides that the court has no power to modify an order terminating parental rights, except for the right to appeal. See *Adoption of Alexander S.* (1988) 44 Cal.3d 857, 859: “[W]e hold that habeas corpus may not be used to collaterally attack a final nonmodifiable judgment in an adoption-related action where the trial court had jurisdiction to render the final judgment.” In that case the time for appealing had elapsed.

In *In re Darlice C.* (2003) 105 Cal.App.4th 459, in contrast, the court issued an order to show cause in a habeas corpus proceeding while the appeal was still in progress and directed the trial court to resolve it before the appeal was final. It disagreed with *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1161-1163, which held habeas corpus may not be used at all in termination cases. In light of these authorities, any habeas corpus petition should be filed in time for it to be decided before the appeal is final.

What to file

File a *Sade C.* letter brief consistent with Fourth District practice, not a criminal *Wende* brief. The letter brief should document counsel’s review and include enough procedural and factual detail to let the court quickly evaluate any client’s attempt to show good cause under *Phoenix H.* for an arguable issue.

Required contents:

- Statement of appealability.
- Substantive summary of procedure and facts with record citations (not perfunctory).
- Neutral identification of issues considered (the *Anders* issues) and relevant authority without urging any conclusions. You should neither urge the issues listed as a ground for relief nor argue against the client by, for example, affirmatively characterizing the issue as frivolous or discussing the facts of the case.
- Request that the court exercise its discretion to review the record and permission for the client to file a pro per supplemental letter brief within a reasonable amount of time, but acknowledge the court has no duty to grant either request.
- Declaration stating: (a) counsel conducted a full record review and a staff attorney at ADI has also reviewed the record; (b) the client was advised that a *Sade C.* letter brief will be filed; (c) a copy of the letter brief and the record have been provided to the client; and (d) the client was advised they may request that appointed counsel withdraw from the case and with the court’s advance approval, file a pro per supplemental brief.

Client advisement (mandatory)

- Counsel found no arguable appellate issues.
- Client may attempt to submit a supplemental letter brief. The divisions treat this differently. Division 3 routinely grants the client 15 days to submit a supplemental letter; Division 2 routinely grants 30 days; Division 1 always denies the request and dismisses the appeal immediately upon the filing of a no-issue letter brief, so if the client wants to submit a supplemental letter in Division 1, it must be filed with the letter brief.
- The Court of Appeal is not required to permit the parent to personally file a brief unless the parent can establish good cause by showing that an arguable issue does, in fact, exist. (*Phoenix H.*, *supra*, 47 Cal.4th at pp. 844–845).
- The courts routinely dismiss the appeal unless the client shows good cause that an arguable issue exists.

What usually happens

- No pro per supplemental brief filed → dismissal.
- Pro per filing without an arguable issue → dismissal.
- Pro per filing showing an arguable issue → court may order briefing.

2) LPS Conservatorship Appeals

LPS no-issue practice follows a distinct, counsel-driven model. The Supreme Court rejected mandatory independent review but requires counsel to file a structured brief (facts + law), not move to withdraw, and advise the conservatee of the right to submit a supplemental brief. Because conservatees have this express right, your factual/procedural summary should be strong enough to give the court context if a supplemental filing is made.

Governing authority

Conservatorship of Ben C. (2007) 40 Cal.4th 529

Holding: *Anders/Wende* procedures do not apply in LPS conservatorship appeals; counsel should not move to withdraw but must file a brief setting out the facts and law and advise the conservatee of the right to submit a supplemental brief; the Court of Appeal has no duty to independently review the record.

What to file

File a *Ben C.* brief; do not move to withdraw. The brief should state that counsel found no arguable issues, set out a record-supported procedural history and facts, summarize the governing law, and include a declaration documenting record review, service, and the required client advisements.

Required contents:

- Procedural history and relevant facts with record citations.
- Neutral identification of issues considered and relevant authority without urging any conclusions. You should neither urge the issues listed as a ground for relief nor argue against the client by, for example, affirmatively characterizing the issue as frivolous or discussing the facts of the case.
- Statement that counsel found no arguable issues.
- Declaration stating: (a) counsel conducted a full record review; (b) service on the conservatee; and (c) advisement of the right to submit a supplemental personal brief (*Ben C.*, *supra*, 40 Cal.4th at p. 544, fn. 6).

Client rights (distinct from dependency cases)

- Conservatee must be told of the right to file a supplemental brief (*Ben C.*, *supra*, 40 Cal.4th at p. 544, fn. 6).

What usually happens

- No supplemental submission → dismissal.
- Supplemental submission without an arguable issue → dismissal common.
- Supplemental submission raising an arguable issue → court may order briefing.

3) Other Civil Commitment Appeals (OMHD/OMD, SVP, NGI, IST/Competency)

For most other civil-commitment schemes – Offenders with a Mental Health Disorder (OMHD)², Sexually Violent Predators (SVP), Not Guilty by Reason of Insanity (NGI) extensions/restoration, and Incompetent to Stand Trial (IST) competence – courts consistently hold that *Wende/Anders* independent review does not apply and that dismissal is appropriate where counsel and the appellant identify no arguable issues. The critical practice points are to identify the correct scheme, cite the scheme-specific

² This designation was formerly “Mentally Disordered Offenders.” Much of the case law uses this term.

‘no-*Wende*’ authority, and provide a concise but adequate record-supported summary and advisement so the client understands that dismissal is the likely result absent an arguable claim.

Governing authorities

People v. Taylor (2008) 160 Cal.App.4th 304 (OMHD)

Holding: *Anders/Wende* review does not apply to MDO/OMD civil-commitment appeals; when appointed counsel finds no arguable issues, the Court of Appeal may dismiss without independent record review.

People v. Kisling (2015) 239 Cal.App.4th 288 (SVP)

Holding: *Wende* review is inapplicable in SVP appeals because they are civil; the appeal may be dismissed when no arguable issue is presented.

People v. Martinez (2016) 246 Cal.App.4th 1226 (NGI extension)

Holding: Due process does not require *Anders/Wende*-type independent review in appeals from NGI commitment extensions; the Court of Appeal may dismiss if counsel and appellant identify no arguable issues.

People v. Sundberg (2023) 88 Cal.App.5th 441 (NGI outpatient/Pen. Code § 1026.2)

Holding: *Anders/Wende* procedures do not apply to appeals from orders denying NGI outpatient placement under Penal Code section 1026.2; after offering the appellant an opportunity to file, the court may dismiss if no arguable issue is shown.

Conservatorship of Ben C., supra, 40 Cal.4th 529 (analytic foundation frequently cited across civil-commitment no-issue decisions).

Holding: *Wende* does not apply in LPS and, by analogy, informs other civil-commitment contexts that there is no mandatory independent review when counsel finds no arguable issues.

When this applies

Use this framework when you are appointed in appeals arising from OMHD/OMD proceedings, SVP proceedings, NGI commitment extensions or NGI outpatient/restoration orders, or IST/competency commitments, and you conclude, after full review and research, that no arguable appellate issue exists. Because controlling law rejects mandatory *Wende/Anders* review in these categories, the court may dismiss

without independently reviewing the entire record, which makes accurate scheme identification and authority citations essential.

What to file

File a no-issue civil-commitment brief tailored to the specific scheme, not a criminal-style *Wende* brief. Include a concise factual/procedural summary, cite the scheme-specific no-*Wende* authority (e.g., *Taylor* for OMHD/OMD, *Kisling* for SVP, *Martinez/Sundberg* for NGI), and attach a declaration documenting record review, client service, and advisement that dismissal is likely because no independent review is required.

Basic structure (works across schemes)

- Statement of appealability.
- Concise statement of facts/procedure (with record citations).
- Short section identifying the controlling no-*Wende* authority for the scheme (*Taylor*, *Kisling*, *Martinez*, or *Sundberg*).
- Declaration stating: (a) full record review; (b) service on the client; and (c) advisement that dismissal is likely because independent review is not required.

Client advisement (plain language)

- “I reviewed the entire record and found no arguable appellate issue.”
- “The Court of Appeal is not required to independently review the record in this type of proceeding.”
- “If no arguable issue is identified, the appeal may be dismissed.”

What usually happens

- No arguable issue raised → dismissal common; written opinion often not issued.