

**SAMPLE APPLICATION FOR PERMISSION TO FILE OVERSIZED BRIEF**  
[Note that this level of detail is recommended in order to establish good cause.]

YOUR NAME, SBN  
ADDRESS/TELEPHONE  
Attorney for Appellant [NAME OF APPELLANT]

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE \_\_\_\_\_ APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
Plaintiff and Respondent,	)	Cxxxxxxx
	)	
v.	)	xxxxxx County
	)	Superior Court
JOHN/MARY DOE,	)	No. xxxxxx
	)	
Defendant and Appellant.	)	
	)	
	)	

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**APPLICATION FOR PERMISSION TO FILE BRIEF  
IN EXCESS OF 25,500 WORDS  
(Cal. Rules of Court, rule 8.360(b)(5))**

TO THE HONORABLE \_\_\_\_\_, PRESIDING JUSTICE, AND TO THE  
HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE  
STATE OF CALIFORNIA, \_\_\_\_\_ APPELLATE DISTRICT:

Appellant [APPELLANT’S NAME], through his appointed counsel, respectfully  
requests this Court to grant permission to file an opening brief in the above-captioned  
action in excess of the page limit specified in the California Rules of Court.

The proposed Appellant’s Opening Brief on this appeal is oversized, at 58,246  
words (235 pages). I am familiar with one reviewing court’s decision in *In re S.C.* (2006)  
138 Cal.App.4th 396 [Third Appellate District]), stating that Court will now take a  
“cautious approach” to allow oversized filings, and requiring counsel “to demonstrate

with specificity why it is necessary for their briefs to exceed the words limit established by the California Rules of Court.” This application establishes that need in this case.

1. Attached to this application is a copy of the Topical Index from the brief, which itself is 10 pages long, to assist the Court in evaluating why an oversized brief is necessary.

2. Appellant was charged in this case with three kinds of special-circumstance murder, committed with six accomplices; the death penalty was sought and he was tried as a capital defendant (although the jury recommended life without parole). Appellant also was charged with torture, kidnapping, and three different kinds of unlawful sexual penetration; in addition, numerous special allegations (or firearms use, tying and binding, great bodily injury, etc.) were alleged. The prosecution presented several alternate theories of culpability: appellant’s personal and direct participation in all the acts; his derivative liability as an aider and abetter and as a co-conspirator; and the natural and probable consequences of the acts contemplated.

3. Issues V, VI and VII of this Opening Brief challenge the “sufficiency of the evidence” to sustain any of appellant’s counts of convictions under any of the three alternate theories of culpability. Because “sufficiency” challenges are fact-intensive, those issues alone occupy almost 60 pages of the brief (pages 130-189). However, they are addressing six separate crimes and three separate special circumstances, while distinguishing principles of aiding and abetting from conspiracy.

4. Pretrial motions in this case were very complex; they included motions to exclude appellant’s post-arrest statement to police (Issues I and II of the Opening Brief), motions to exclude hearsay and speculative evidence (issues III and IV), and a

challenge under the Eighth Amendment's "narrowing requirement" to California's special circumstance law, under which appellant became death- (or LWOP-) eligible (issue VIII). Post-conviction one significant substantive issue also presented itself for this case: the trial court's refusal to continue the sentencing hearing to allow the defense to investigate (and possibly raise in a New Trial motion), misconduct of several trial jurors during deliberations (issue IX). And because of the number of possible errors at trial, I also had to argue "cumulative error" (issue X).

5. In addition, there are several sentencing errors which must be corrected, including an improper term applied to the determinate base term, improper multiple weapons enhancements attached to individual counts, an improper "parole revocation fine" in a case where LWOP is the term of imprisonment, and (to preserve it for future federal review), a challenge under *Apprendi* and *Blakely* to the upper and consecutive terms imposed here (issues XI, XII, XIII and XIV).

6. The Clerk's Transcript in this case, including the augmented transcript and the (separate) two-volume transcript of the preliminary hearing, is 2,127 pages long; I summarized it in three pages of the Opening Brief (see, pp. 1-3). The Reporter's Transcripts, including the augmented transcripts, total 3,783 pages; I summarized them in 19 pages in the Statement of Facts (see, pp. 4-23). The transcripts thus were summarized in a ratio of one page of briefing for every 257 pages of transcript.

7. I included a two-page "Introduction" before the "Argument" section of the Opening Brief, to help the reader follow the logical progression of the issues raised (see, pp. 24-25). With respect to the "Argument" section which comprises the remaining 210 pages of the brief, there are eight substantive and four sentencing issues argued; two

of them (issues VIII and XIV), must be raised to preserve them for future United States Supreme Court rulings on the constitutionality of California statutes and procedures.

8. In addition, as appellate counsel I had the burden of discussing, for every issue I raised in the brief, how the matter was raised and litigated in the court below (to avoid a claim of “waiver”); which federal constitutional guarantees are implicated by the argument (for a future federal habeas corpus petition under the AEDPA, noting that Ninth Circuit decisional law requires more than merely citing to a constitutional amendment, but also requires citation to the key case(s) and a statement of the federal principle involved); what standard of review applies to each discrete appellate challenge; and a discussion of how each and every error prejudiced appellant, under the *Chapman* and/or *Watson* standards of prejudice.

9. The number of pages devoted to each issue is not excessive; in addition, if I do not include the sub-issues that "federalize" these contentions, I run the risk of failing to exhaust and/or procedurally defaulting my client's rights to pursue relief in a subsequent federal court habeas action, if one is necessary.

10. As appellant's counsel on appeal, I have a duty to raise all viable issues before this court. (*In re Smith* (1970) 3 Cal.3d 192.)

For these reasons, on behalf of appellant I respectfully request this Court grant appellant leave to file an Opening Brief in excess of 25,500 words. (Cal. Rules of Court, rule 8.360(b)(5).)

Dated: \_\_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
[YOUR NAME, SBN]  
{ Address/Telephone }  
Attorney for Appellant