

Application to Obtain Client File from Trial Counsel

YOUR NAME & SBN

Attorney at Law

YOUR ADDRESS

YOUR ADDRESS

Telephone

Attorneys for Appellant [Appellant's name]

COURT OF APPEAL OF THE STATE OF CALIFORNIA

[THIRD/FIFTH] APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	Crim. _____
Plaintiff and Respondent,)	
)	([County]
)	Superior Court
)	No. [county no.]
v.)	
)	
APPELLANT, NAME.,)	
)	
_____ Defendant and Appellant.)	

EX PARTE APPLICATION FOR ORDER DIRECTING APPELLANT'S TRIAL COUNSEL TO FURNISH APPELLANT'S TRIAL FILES TO APPELLANT'S PRESENT COUNSEL

[YOUR NAME], counsel for [APPELLANT'S NAME], petitioner in this case, applies to the court for an order directing appellant's trial counsel, [NAME/ADDRESS OF COUNSEL] to provide to [HER/HIM], within 10 days of the date of the order, with a copy of all materials obtained or prepared by [NAME TRIAL COUNSEL] in the course of his representation of appellant in the trial

court that are in [HIS/HER] actual or constructive possession. This application is based on the accompanying Declaration and Points and Authorities.

Dated:

Respectfully submitted

YOUR NAME
Attorney for Appellant

DECLARATION OF [YOUR NAME]

I, [YOUR NAME], have been appointed to represent appellant in this case;

[DESCRIBE EFFORTS TO OBTAIN TRIAL FILE IN DETAIL, INCLUDE DATES/TIMES YOU HAVE CALLED TRIAL COUNSEL, ATTACH COPIES OF ANY LETTERS YOU HAVE WRITTEN, AND EXPLAIN WHY THE FILE IS NECESSARY TO YOUR REPRESENTATION OF THE CLIENT ON APPEAL.]

I believe that [NAME TRIAL COUNSEL] will not voluntarily provide the documents necessary to my representation of appellant in this appeal and that an order from this court is necessary to accomplish this.

I declare under penalty of perjury the foregoing is true and correct.

Executed on [DATE] at [PLACE].

[YOUR NAME], Attorney for Appellant

POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION

**FOR ORDER DIRECTING TRIAL COUNSEL TO FURNISH HIS
CLIENT'S FILE TO APPELLATE COUNSEL**

Trial counsel has an ethical duty to his client to forward files and documents to substitute counsel. (*Finch v. State Bar* (1981) 28 Cal.3d 659, 665.) Rule 3-700(D) [formerly rule 2-111(A)(2)] of the Rules of Professional Conduct of the State Bar of California requires an attorney who has withdrawn from a case to deliver to his client all papers and property to which the client is entitled. Trial counsel in a criminal matter owes a duty of loyalty to his client, which includes cooperating with appellate counsel and preserving his client's file so that it may be available to him on appeal. (See *People v. Ledesma* (1987) 43 Cal.3d 171.) The work product of an attorney who is no longer representing the client belongs to the client, regardless of the circumstances under which counsel withdrew and regardless of whether the client has paid the attorney for his services. (*Kallen v. Delub* (1984) 157 Cal.App.3d 940, 950; *Weiss v. Marcus* (1975) 51 Cal.App.3d 590, 599; *Academy of California Optometrists, Inc. v. Superior Court* (1975) 51 Cal.App.3d 999, 1005-1006.) An attorney who refuses to deliver case files to a former client or substituted counsel is subject to discipline (*Finch v. State Bar, supra*, 28 Cal.3d at 665), or to a court order directing him to do so (*Academy of California Optometrists, Inc. v. Superior Court, supra*, 51 Cal.App.3d at 1005-1006.) Thus it is clear that appellant is entitled to the records he seeks.

Despite a clear duty to provide the trial file and repeated requests for it by

appellate counsel, trial counsel has failed to turn over appellant's files. A review of the file is necessary because [DESCRIBE].

CONCLUSION

For the foregoing reasons, appellant respectfully submits that [NAME TRIAL COUNSEL], is wrongfully withholding appellant's trial file, which is necessary to [DESCRIBE WHY NECESSARY]. Appellant requests that this court order [NAME TRIAL COUNSEL] to provide appellate counsel with all materials obtained or prepared during [HER/HIS] representation of appellant within [HER/HIS] actual or constructive possession.

[DATE]

Respectfully submitted,

[YOUR NAME], Attorney for Appellant