

**Motion for Permission to Settle Record in the Superior Court  
(Fifth District requires that appointed counsel file for permission first in the COA)**

[YOUR NAME (SBN)]  
[Address]  
[Telephone]  
Attorney for Appellant

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, 5 Crim. No. F \_\_\_\_\_

Plaintiff and Respondent,

[NAME] County Superior Court  
County No. \_\_\_\_\_

v.

[APPELLANT'S NAME],

Defendant and Appellant.

\_\_\_\_\_ /

**APPELLANT'S APPLICATION FOR PERMISSION TO HAVE  
SETTLED STATEMENT PREPARED IN THE TRIAL COURT,  
REQUEST FOR AUGMENTATION,  
AND REQUEST FOR A 30-DAY EXTENSION OF TIME  
FOLLOWING FILING OF THE SETTLED RECORD FOR  
FILING OF APPELLANT'S OPENING BRIEF**

TO THE HONORABLE JAMES A. ARDAIZ, PRESIDING JUSTICE, AND TO THE  
HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE  
STATE OF CALIFORNIA, FIFTH APPELLATE DISTRICT:

**I. APPLICATION FOR PERMISSION TO HAVE  
A SETTLED STATEMENT PREPARED IN THE TRIAL COURT**

Appellant [NAME] respectfully makes an application to this court, pursuant to rule 8.346 of the California Rules of Court, to permit the preparation of a settled statement of the record in the above-entitled appeal. In *People v. Gzikowski* (1982) 32 Cal.3d 580, 584-585, fn. 2, the California Supreme Court held that unreported aspects of the trial proceedings may properly be made part of the record on appeal through a settled

statement where the appellant demonstrates that an unreported matter may be useful on appeal.

The particular portion of the record that requires settlement is [DESCRIBE AND CITE TO RECORD, e.g., an in-chambers conference with both counsel that took place just before the trial began on March 18, 1997, in Dept. 3, before the Honorable [TRIAL JUDGES'S NAME], where the trial court denied the parties' request for appellant to enter into a negotiated disposition. (RT \_\_.)] This application for permission to have the record settled is also based on the attached declaration of appellate counsel.

Because it is necessary for the record on appeal, appellant requests permission to settle the record in the trial court.

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

Respectfully submitted,

[YOUR NAME]  
Attorney for Appellant

#### **VERIFICATION**

I, [YOUR NAME], hereby declare:

I am an attorney, licensed to practice law in the State of California. My office is in [NAME] County. I have been appointed by this court, on an [ASSISTED/INDEPENDENT] basis through the Central California Appellate Program, to represent appellant, [APPELLANT NAME], in his appeal and am authorized to file this motion.

Appellant is unable to make verification because he is absent due to his incarceration in state prison. For this reason, I make verification on his behalf.

I have read the foregoing application/motion and declaration. I verify that the facts alleged are supported by citations to the record in the appellant's appeal.

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

Executed at [CITY], California, on [DATE].

[YOUR NAME]  
Attorney for Appellant

**(Sample declaration of appellate counsel. Include all facts supporting discovery and need for settling the record.)**

**DECLARATION OF [YOUR NAME]**

I, [YOUR NAME], declare:

[DESCRIBE SPECIFIC NEED FOR SETTLING RECORD AND CITE TO RECORD WHERE POSSIBLE, e.g., Pursuant to my communications with trial counsel, trial counsel indicated to me that prior to the beginning of the trial, but after the readiness hearing, appellant and the prosecution entered into a negotiated plea agreement for appellant to plead guilty to count one (possession of methamphetamine) in exchange for a 16 month state prison sentence. Appellant's maximum was six years.

The trial court's discussion and ruling on the plea agreement was unreported and took place in-chambers just before the trial. (RT XX.) Thus a settled statement of the record is required of this proceeding. According to trial counsel, the trial court denied the parties' request for appellant to plead pursuant to the agreement due to the existence of rule 7.05(c) of the Shasta County Rules of Court. Rule 7.05(c) prohibits negotiated plea agreements following the readiness hearing.]

[DESCRIBE SPECIFIC RELATED APPEAL ISSUE, e.g., On appeal, appellant will argue that rule 7.05(c) of the Shasta County Rules of Court violated appellant's statutory right to enter into an plea bargain pursuant to Penal Code section 1192.5. In addition, appellant will argue that enforcement of the local rule deprived appellant of equal protection of the laws under the state and federal Constitutions. (See,

*People v. Cobb* (1983) 139 Cal.App.3d 578.)]

[IF YOU KNOW YOU WANT AUGMENTATION NOW, e.g.,  
Augmentation of the settled record is also required for a complete record on appeal.]

[IF YOU KNOW YOU WILL WANT AN EXTENSION OF TIME,  
INCLUDE A REQUEST FOR 30-DAYS HERE.]

I declare under penalty of perjury that the foregoing is true and correct. I  
executed this [DATE], at [CITY], California.

[YOUR NAME]  
Attorney for Appellant