

A Quick Guide to Solve Record Correction Problems in the Sixth District

At SDAP, we know that panel attorneys struggle to receive timely and accurate versions of the record on appeal. The goal of this handout is to distill the various tactics to get these records, while also setting forth the various filing/service requirements unique to the Sixth District. If you still have additional record-related questions or problems, always feel free to reach out to your SDAP buddy.

In general, the filing of an omission letter or augment motion can result in a considerable delay, particularly if the case is from Santa Clara County. For this reason, if you are missing only a few discrete documents, we recommend you try and get them from the trial attorney or prosecutor. You can then attach them to an augment motion (with a declaration from counsel attesting to their validity). This is true even if the missing documents are part of the normal record on appeal.

With that said, here is some advice on filing omission letters and augment motions in the Sixth District.

Omission Letters:

An omission letter should be filed when something is missing from the normal record on appeal (Cal. Rules of Court, Rules 8.320 [criminal], 8.407 [juvenile]) AND that trial counsel does not have the missing document (to attach to augment motion).

You should Truefile a service copy of the letter with Court of Appeal; the court will toll time for briefing and, upon the filing of the omitted record, give you 15 days to file the brief.

You should serve the letter to the specific trial court in the following manner:

Monterey County: Monterey County accepts eservice through any third party efileing provider listed on their website:

<https://www.monterey.courts.ca.gov/efiling>. There are many listed, and

they have no preference just as long as the documents are efiled/eserved to the court.

San Benito County: Mail a hard copy of the letter to the following address:

San Benito County Superior Court
Attn: Appeals Clerk
450 Fourth Street
Hollister, CA 95023

Santa Clara County: Email service copy to appealsclerks@scscourt.org with subject line that reads “COURTESY COPY re: [trial court case name & number & title of document]”

Santa Cruz County: Email service copy to appeals@santacruzcourt.org.

Augment Motions:

An augment motion should be filed in two circumstances:

- (1) When something needs to be included in the record, but it is not a part of the normal record on appeal; OR
- (2) When you receive a document from the trial attorney/prosecutor and want it to be included as part of the record on appeal.

The Sixth District Court of Appeal requires the use of a form proposed order for all motions to augment the record. The PDF fillable proposed order must be used in civil appeals as well. It should be noted that an attorney can request an extension of time to file the opening brief of more than 15 days after the record is filed.

It is also important to note that the Court requests the form be submitted separately in the TrueFiling bundle and not attached to the augment motion. Please contact your SDAP buddy if you have any questions concerning the form, which is located here:

<http://www.sdap.org/downloads/Workshop/motaug.pdf>.

If you are attaching documents to the augment motion, these should be file-stamped (if possible) and should be supported by a declaration from trial counsel/prosecutor attesting to their validity.

Settling the Record on Appeal:

If an omission letter or augment motion do not turn up the missing documents, then you will need to move for a settled statement. Advice on this procedure can be located here:

<http://www.sdap.org/downloads/research/criminal/als19.pdf>.

We recommend you contact your SDAP buddy if you need to settle the record.