

**(IMPORTANT TIP: This motion is NOT recommended for filing unless client states intention to file own brief)**

COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

_____	)	No. 3 Civil C000000
In re [JANE D.],	)	
	)	
A Person Coming Under the Juvenile Court	)	[COUNTY] County No.
Law.	)	####
	)	
	)	
DEPARTMENT OF HEALTH AND HUMAN	)	
SERVICES,	)	
	)	
Plaintiff and Respondent,	)	
	)	
vs.	)	
	)	
JOHN D.,	)	
	)	
Defendant and Appellant.	)	

**APPELLANT’S MOTION TO ALLOW APPELLANT’S SUBSTITUTION  
IN PRO. PER. AS ATTORNEY IN THIS MATTER AND FOR AN  
EXTENSION OF TIME IN WHICH TO FILE OPENING BRIEF**

Appellant [JOHN D.], by and through [his] counsel of record, hereby moves this court for an order terminating the appointment of [his] counsel, to substitute [him] in propria persona as attorney in this matter in the place and stead of [his] appointed counsel and for a 30-day extension of time in which to file the opening brief in this matter.

This motion is based upon the declaration of appellant’s counsel, the points and authorities attached hereto, and the records and documents on file in this matter.

Date: \_\_\_\_\_

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[YOUR NAME]  
Attorney for Appellant

## DECLARATION OF COUNSEL

I, [YOUR NAME], declare:

1. I am an attorney at law, licensed to practice before all courts of the State of California. If called to testify about the matters herein alleged, I could do so of my personal knowledge, except as to those matters alleged on information and belief, and as to those matters I believe them to be true.

2. I was appointed by this court to represent appellant on his appeal from the orders entered at the Welfare and Institutions Code section [366.26] hearing.

3. I have reviewed the transcripts, discussed the matter with appellant, and [STATE FURTHER WORK DONE ON THE CASE TO DATE, e.g., obtained an additional review from a staff attorney at the Central California Appellate Program]. [STATE GROUNDS FOR SUBSTITUTION, e.g., I intended to file a letter with this court, pursuant to the holding of the California Supreme Court decision in *In re Sade C.* (1996) 13 Cal.4th 952.] I advised appellant that if I file a *Sade C.* letter, this court would likely dismiss [his] appeal and that any issue [he] wished to raise on appeal would then be foreclosed. Appellant informed me that [he] wished to file [his] own brief in this matter and that [he] wished to represent [himself] in this appeal so that [he] could obtain review of issues [he] believes should be reviewed by this court.

4. I have sent the transcripts to appellant for [his] use in filing [his] own brief.

5. It is my information and belief, and I thereupon allege, that there is no

prejudice to any party from granting the within extension request.

6. Based upon appellant's desire to represent [himself], I request that this court enter an order terminating my appointment as counsel of record and substituting appellant in this case in propria persona and that this court grant appellant 30 days from the date of its order in which to file [his] opening brief. [STATE OTHER DELAYS, e.g., I have previously obtained extensions totaling 29 days in this matter. Appellant was not responsible for the need for any extension in this case and has not caused any other delay in this appeal. The extensions were obtained because of my need to complete my review of communication with appellant [(15 days)] and to consult with a staff attorney at the Central California Appellate Program [(14 days)]. [STATE WHETHER IT IS A FAST TRACK CASE, e.g., This is not a "fast track" case.] [STATE CURRENT DUE DATE, e.g., The current opening brief due date is [DATE].]

7. Appellant's current address is: [ADDRESS]. [His] current telephone number is: [NUMBER].

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on [DATE], in [CITY], California.

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[YOUR NAME]  
Attorney for Appellant [NAME]

## POINTS AND AUTHORITIES

### BACKGROUND

On [DATE], appellant filed a timely notice of appeal. (1 CT \_\_.) Based upon appellant's indigent status, on [DATE], counsel was appointed to represent appellant on appeal. **{IMPORTANT NOTE: Statement of case/facts are NOT necessary for this motion.}**

### ARGUMENT

#### **I. A PARENT HAS THE RIGHT TO REPRESENT [HIMSELF] ON APPEAL.**

In a civil case, it is black letter law that a party has an absolute right to represent himself. In a criminal case, a defendant has a qualified right to represent himself.

(*Faretta v. California* (1975) 422 U.S. 806, 835.) An indigent parent has the statutory right to represent himself in all dependency proceedings, "if the court finds that the parent . . . has made a knowing and intelligent waiver of counsel . . . ." (Welf. & Inst. Code, § 317, subd. (b).)

In a case arising under former Civil Code section 232, this court has previously held that a parent has the right to represent himself in an action to terminate his parental rights so long as he makes a knowing and intelligent waiver of the right to counsel and so long as the request is timely made. (*In re Justin L.* (1987) 188 Cal.App.3d 1068, 1073-1075.)

#### **II. APPELLANT WILL BE DEPRIVED OF [HIS] RIGHT TO APPELLATE**

**REVIEW OF THE PERMANENT PLAN IF THIS MOTION IS DENIED.**

The California Supreme Court has decided that a parent in a dependency action does not have the rights granted to criminal defendants in *People v. Wende* (1979) 25 Cal.3d 436. (*In re Sade C.* (1996) 13 Cal.4th 952.) Because a parent has now been foreclosed from the means in which to obtain independent review of the record and its attendant right to file his own brief within 30 days of the filing of a brief, unless this court grants appellant's request to terminate [his] attorney's appointment, substitute [him] in propria persona, and grant [him] a 30-day extension in which to file [his] opening brief, appellant will forever be foreclosed from [his] right to appellate review of the issues [he] wishes to bring to this court's attention for review and decision.

CONCLUSION

Appellant has the right to represent [himself] if the request is timely made. There is no prejudice to any party if the court grants appellant 30 days in which to file [his] own brief in this matter. Appellant requests that this court terminate [his] attorney's appointment, substitute [him] in propria persona, and grant [him] a 30 day extension from the date of the order in which to file an opening brief.

Date: \_\_\_\_\_

\_\_\_\_\_  
[YOUR NAME]  
Attorney for Appellant [NAME]

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vs.	)	
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JOHN D.,	)	
	)	
Defendant and Appellant.	)	

**DECLARATION OF APPELLANT IN SUPPORT OF APPELLANT’S MOTION  
TO ALLOW APPELLANT TO SUBSTITUTE IN PRO. PER. AS ATTORNEY IN  
THIS MATTER AND FOR AN EXTENSION OF TIME IN WHICH TO FILE THE  
OPENING BRIEF**

I, [JOHN D.], declare:

1. I am the appellant in this action. If called upon to testify about the matters herein alleged, I could do so of my own personal knowledge.

2. I request that my attorney [YOUR NAME] be relieved as my attorney of record and that I be substituted in propria persona to represent myself in this matter.

3. My attorney has sent me the transcripts in this matter, and I intend to file an opening brief to raise issues on appeal.

4. I request that I be granted 30 days from the date of the court's order relieving my appointed counsel to file my opening brief.

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

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[APPELLANT'S NAME]