

[Attorney-info heading]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)	Case No. S_____
)	
Plaintiff and Respondent,)	Court of Appeal
)	No. _____
v.)	
)	_____ County
_____,)	Superior Court
)	No. _____
Defendant and Appellant.)	
_____)	

APPLICATION FOR RELIEF FROM DEFAULT TO FILE AN UNTIMELY PETITION FOR REVIEW

TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA:

_____, Defendant and Appellant, respectfully requests relief from default for an untimely petition for review under California Rules of Court, rule 8.500(e)(2). The opinion of the Court of Appeal was filed on December 15, 2011. It became final in the Court of Appeal 30 days later on January 14, 2012. (Rules of Court, rule 8.366(b).) A petition for review is timely filed within 10 days of the opinion becoming final in the Court of Appeal (Rules of Court, rule 8.500 (e)(1), which was the date of January 24, 2012.

However, the Chief Justice may relieve a party from a failure to file a timely petition for review if the time for the Court to order review on its own motion has not expired. (Rules of Court, rule 8.500(e)(2).) The time for the Supreme Court to order

review on its own motion is 30 days after the opinion is final in the Court of Appeal. (Rules of Court, rule 8.512(c)(1).) Thirty days from January 14, 2012 makes the last day for the Court to grant relief from default February 13, 2012.

Upon receiving the opinion of the Court of Appeal I calendared the last day to file the petition for review 40 days from the date of the opinion. But instead of entering “December 15” as the filing date of the opinion I inadvertently entered “December 25” by mistake. This yielded a due date for the petition for review of February 3, 2012, rather than the correct due date of January 24, 2012. I worked through January with a due date of February 3, 2012 on my calendar. Believing the petition to be due on February 3, 2012, I mailed the petition by priority mail under California Rules of Court, rule 8.25 on February 1, 2012, and the petition was received by the Clerk of the Supreme Court on February 3, 2012. I was then advised by the Court on the afternoon of February 3, 2012 that the petition was, in fact, untimely.

The Court should grant relief from default and order the petition for review filed. The late filing was the result of an inadvertent clerical error in calculating the due date on the part of counsel, not a willful failure to prosecute the petition. My client’s petition should not be deprived of a hearing on its merits due to a mistake by counsel as we have sought relief immediately upon learning of the error as permitted by Rule 8.500(e)(2).

I declare under penalty of perjury that the foregoing is true and correct. Executed at _____(city)_____, California on ____ (date)____.

Respectfully submitted,

John Doe, SBN ___##__
Declarant and Attorney for Defendant
and Appellant ____ (name) ____