CONFIDENTIAL RECORDS

BY
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I. INTRODUCTION

As a matter of law, ethics, and sound practice, attorneys need to be sensitive to the law and policies dealing with confidential records and take care to observe them in filing motions and briefs, sending records and correspondence to clients, and otherwise handling confidential matters. This memo offers a brief guide to some common examples of confidential records encountered in appeals. It discusses juvenile dependency and delinquency cases; probation and diagnostic reports; *Marsden* and related proceedings; proceedings on a defense request for expert funds; *Pitchess* records; evidence regarding a confidential informant; the limited **Nondisclosure of Identity Policy** for certain protected individuals; and sealed records.

As to each topic, the memo reviews (a) the type of proceeding, (b) the legal basis for confidentiality, (c) the reason for the confidentiality, (d) typical trial procedures, and (e) current procedures in the appellate court. It also offers practice notes for counsel in a number of instances.

This memo is intended as an alert to the need for treading carefully and as a starting point for a more thorough investigation of an attorney's obligations in a specific situation. It is not a comprehensive treatment. We hope it will be a useful resource.

II. COMMON TYPES OF RECORDS MADE CONFIDENTIAL BY LAW

A. Juvenile Records

Background: This topic includes dependency proceedings under Welfare and Institutions Code section 300 et seq. and delinquency proceedings under section 601 et seq. of the same code.

Source of confidentiality: Welfare and Institutions Code section 827 makes juvenile delinquency and dependency records accessible only to the parties and their attorneys and enumerated others, and section 676 makes court hearings confidential,

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[1]This discussion is current as of the date of distribution. But the California Rules of Court on confidential records are under review in the Appellate Advisory Committee of the Judicial Council and may be altered in the future. We will alert counsel when any changes occur.

except in specified circumstances. Rule 8.401 of the California Rules of Court makes records and briefs accessible only to the court, parties, appellate projects, and others designated by the court. It also requires additional steps to protect confidentiality, such as the use of first name and last initial, or just initials. (See also **Nondisclosure of Identity Policy**, Cal. Style Manual (4th ed. 2000) § 5.9 et seq., discussed in part G, below.)

Rationale for confidentiality: Protecting the privacy rights of children and other involved persons and safeguarding the rehabilitative work of the juvenile court. (*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 778; *Navajo Express v. Superior Court* (1986) 186 Cal.App.3d 981, 985.)

Trial procedures: Juvenile proceedings are not open to the public, and any documents filed may be inspected only on the order of the juvenile court, unless the person inspecting them is one of those enumerated in Welfare and Institutions Code section 827.

Appellate procedures: Transcripts and briefs are sent to all parties, but outside individuals, e.g., the public, may not access them. (Rules 8.401(a), 8.409(d).) Filed documents must use first name and last initial or just initials. Court opinions, both published and unpublished, are public; care is exercised not to include information that may disclose the identity of the individuals involved.

> **Practice note 1 – care in writing briefs**: Even though juvenile briefs are not open to public inspection under rule 8.401, attorneys should observe proper confidentiality constraints in preparing them.
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> • *Nondisclosure of Identity Policy:* Juvenile appeals are subject to the **Nondisclosure of Identity Policy** discussed in part G, below. (Cal. Style Manual, § 5.10.) Although that policy technically applies to opinions, rule 8.401(a)(2) codifies it for briefs by requiring "all filed documents" to use only first name and last initial or just initials.
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> • *Loophole for potential amicus curiae:* In spite of the theoretical non-public policy for juvenile briefs, rule 8.401(a)(3) has a paradoxical and potentially dangerous loophole. It allows "any person or entity that is considering filing an amicus curiae brief" to inspect filed documents that conform to the requirements for confidentiality (e.g., first name, last initial). Since anyone can claim to be "considering" an amicus curiae brief, that rule potentially can open a juvenile file to public inspection, including a member of the press following a particular case or someone surreptitiously trying to locate a child. Although the rule is under review, until and unless it is changed briefs should be written with that possibility in mind.

• *Details in briefs:* For these reasons counsel should use critical judgment when selecting details to include their briefs. Birth dates of minors, last names of parents, first names of siblings when the grouping is distinctive, addresses, and other such details should be avoided. In this day of extensive access to personal information, even seemingly innocuous details can be used to identify and locate individuals with relative ease and rapidity.

• *Proof of service:* Protection of identity inside a brief can be lost if the proof of service gives full names or addresses. Counsel can use the first name-last initial or initials and "address of record," instead of actual address.

• *Minor tried as adult:* The nondisclosure policy does not apply when a minor was tried as an adult in criminal court. (Cal. Style Manual, § 5.10.) It is followed, however, when a minor *successfully* seeks relief in a collateral proceeding, such as a pretrial writ challenging an order to try the minor as an adult. (*Ibid*.)

Practice note 2 – disposition of records: Counsel should be very careful in disposing of confidential records at the conclusion of the case. Sending it to the minor in a dependency case, for example, may be a de facto disclosure to the caretaker, in violation of law. Likewise, sending it to an incarcerated client effectively subjects it to disclosure to fellow inmates, since privacy is virtually impossible to guarantee in a custodial setting. Counsel should discuss alternative methods of disposition with the client or trial counsel. ADI may also be able to offer some guidance.

B. Probation and Diagnostic Reports

Background: Under Penal Code section 1203, a probation report is prepared after conviction to assist the court in sentencing. Under Penal Code section 1203.03, the court may refer a defendant to the Department of Corrections and Rehabilitation for a diagnostic report before sentencing.

Source of confidentiality: Penal Code section 1203.05: A probation report is public for 60 days after sentencing and then may be examined only by the defendant, district attorney, or others authorized by law. Penal Code section 1203.03, subdivision (b): A diagnostic report goes to the court, defendant, probation officer, and prosecutor; the information in the report may not be disclosed to others without the defendant's consent.

Rationale for confidentiality: Protecting the defendant's privacy and potentially that of his family, witnesses, etc. (*People v. Connor* (2004) 115 Cal.App.4th 669.)

Trial procedures: The court orders preparation of a probation or diagnostic reports. The confidentiality of the report is governed by Penal Code section 1203.05 or 1203.03.

Appellate procedures: These reports are part of the normal record. (Rule 8.320(b)(13)(D) & (E).) Under rule 8.336(g) the reports are delivered in a confidential envelope to the court, Attorney General, and the defendant who was the subject of the report. The public and other parties to the proceedings, such as co-defendants, do not have access (at least after 60 days from sentencing).

> **Practice note – briefs with sensitive confidential material:** Privacy does not apply to information in a confidential report that is otherwise public in some other part of the record. However, if discussion of a matter in a brief may require disclosing some non-public, sensitive information contained in a probation or diagnostic report, the attorney should consider filing a redacted public brief with a motion to seal the unredacted version. (See SEALED RECORDS, below; rule 8.46.)

C. *Marsden* Hearings and Analogous Situations

Background: *People v. Marsden* (1970) 2 Cal.3d 118 prescribes procedures when a defendant complains about appointed trial counsel and asks the court to appoint another attorney.

Source of confidentiality: The general confidentiality of a *Marsden* hearing is grounded in case law. (E.g., *People v. Dennis* (1986) 177 Cal.App.3d 863, 871; cf. *People v. Madrid* (1985) 168 Cal.App.3d 14, 19.)

Rationale for confidentiality: Preventing premature disclosure of defense strategy and, potentially, reduction of the prosecution's burden of proof. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1094; *People v. Dennis*, *supra*, 177 Cal.App.3d 863, 871.) Often this interest has diminished or disappeared by the end of the trial, because trial strategy has been revealed. (That judgment must be made on a case-to-case basis.)

Trial procedures: The court orders an in camera hearing to explore the defendant's complaints about trial counsel, with the defendant and his or her counsel

present. The prosecutor and any uninvolved co-defendants may be excluded. Any written filings may be under seal.

Appellate procedures: Rule 8.328(b) (see also rule 8.610(b), making 8.328 procedures applicable in capital cases): A *Marsden* reporter's transcript is delivered to the court and counsel for the involved defendant only. If a *Marsden* issue is raised, the respondent may request a copy of the transcripts, using prescribed procedures. Generally, raising the issue in a public unredacted brief is deemed a waiver of confidentiality. The defendant may file public a redacted brief and an unredacted brief with a motion to seal (see part III, SEALED RECORDS, and rule 8.46) and seek protective orders if the need for confidentiality remains on appeal. (See *James G. v. Superior Court* (2000) 80 Cal.App.4th 275, 277, fn. 1, and 284.)

Some other situations using *Marsden*-type procedures: in camera hearing excluding prosecution:

• Hearing on forfeiture of the right to counsel (*King v. Superior Court* (2003) 107 Cal.App.4th 929, 947-948);

• Pretrial hearing on a motion to dismiss for denial of a speedy trial (*Shleffar v. Superior Court* (1986) 178 Cal.App.3d 937);

• Hearing on why the defense needed to know the identity of a confidential informant (*People v. Galante* (1983) 143 Cal.App.3d 709);

• Phases of a hearing under *Faretta v. California* (1975) 422 U.S. 806 (right to self-representation at trial) dealing with defense strategy (*People v. Lynch* (2010) 50 Cal.4th 693, 715-719);

• Pretrial habeas corpus petition alleging ineffective assistance of counsel (*People v. Barnett* (1998) 17 Cal.4th 1044, 1088);

• Proceedings to determine competence to stand trial under Penal Code section 1367 et seq., when court has reason to believe trial counsel's input would violate attorney-client confidentiality if public (rule 4.130(b)(2)).

Practice note 1 – precautions in letting record be sent to Attorney General: Since in many cases the need for confidentiality no longer applies by the time the case is on appeal, because trial strategy has been revealed, there may be no practical need to withhold parts of the confidential record from the Attorney General. Consultation with trial counsel on this matter is advisable. If the *Marsden* record does include

potentially sensitive or prejudicial matters not revealed publicly at trial, care must be taken – e.g.:

• *Irrelevant confidential materials in record:* If the confidential matters are **not** relevant to the *Marsden* issue raised on appeal, counsel should invoke the procedures outlined in rule 8.328(b)(4) (notice filed with opening brief detailing confidential and irrelevant material that should not be released to Attorney General) or 8.328(b)(6) (opposition to Attorney General request for *Marsden* record, detailing parts that should not be released).

• *Relevant confidential materials:* If the sensitive or prejudicial matters not revealed at trial **are** relevant to the *Marsden* issue and may not be withheld from the Attorney General, counsel can if necessary seek a protective order prohibiting the Attorney General from turning the information over to the trial prosecuting attorney or otherwise disclosing it outside the appeal. (See *James G. v. Superior Court*, *supra*, 80 Cal.App.4th 275, 284.)

Practice note 2 – precautions in writing briefs: If there is a need for continued confidentiality, counsel may file briefs necessarily referring to confidential matters in an unredacted form with a motion to seal, with a public redacted brief. (See *James G. v. Superior Court*, *supra*, 80 Cal.App.4th 275, 277, fn. 1; rule 8.46(e) & (g); part III, below, SEALED RECORDS.) Counsel should also scrutinize the respondent's filings and the opinion to ensure confidentiality is observed. Protective orders may be needed in some such cases.

D. Defense Request for Expert Funds

Background: *Capital cases* – Under Penal Code section 987.9, an indigent capital defendant may apply to the superior court for state funds for experts, investigators, etc., as needed to prepare a defense. (See *People v. Guerra* (2006) 37 Cal.4th 1067, 1085.) *Non-capital cases* – The county has a constitutional obligation to provide such ancillary services as may be required to ensure the right to the effective assistance of counsel. (*Corenevsky v. Superior Court* (1984) 36 Cal.3d 307, 318-320; see also *Ake v. Oklahoma* (1985) 470 U.S. 68; see Pen. Code, § 987; Evid. Code, §§ 730, 731.)

Source of confidentiality: *Capital cases* – Penal Code section 987.9 prescribes that the hearing on the motion for defense services and even the fact a motion has been made are confidential. *Non-capital cases* – Case law establishes the confidentiality of

proceedings on the motion. (*Corenevsky v. Superior Court*, *supra*, 36 Cal.3d 307, 320, fn. 12; see also *King v. Superior Court*, *supra*, 107 Cal.App.4th 929, 947.)

Rationale for confidentiality: Similar to *Marsden* confidentiality: protecting against disclosure of defense strategy. (*People v. Berryman* (1993) 6 Cal.4th 1048, 1071, overruled on other grounds in *People v. Hill* (1998) 17 Cal.4th 800, 822-823.)

Trial procedures: The court orders an in camera hearing to examine the defendant's request for funds, with the defendant and counsel present. The prosecutor and any uninvolved co-defendants may be excluded. Any written filings may be under seal.

Appellate procedures: Rule 8.328(c): The defendant applies to the superior court for additional record on the confidential motion and hearing, in compliance with rule 8.324. (Rule 8.328(c)(1)-(2).) The confidential record is delivered to the appellate court only (rule 8.328(c)(4)); an index is provided to the parties, but it may not list a section 987.9 hearing (rule 8.328(c)(5)). Parties who had access in the trial court may examine the records. (Rule 8.328(c)(6).) Although rule 8.328(c) does not provide for the respondent's access to the record once the issue is raised, Penal Code section 987.9, subdivision (d) allows the appellate court to grant the Attorney General access in such a situation, and in practice the record is also released to the respondent in a non-capital case. (See *People v. Superior Court (Berryman)* (2000) 83 Cal.App.4th 308.)

> **Practice note 1 – getting motion and hearing into appellate record**: Rule 8.328(c) is defective as it exists. Rule 8.328(c)(2) requires an application for the confidential record to the superior court in compliance with rule 8.324. But rule 8.324(c)(2) requires the application be filed with the notice of appeal or soon thereafter and deems it denied if filed after the record is certified to the appellate court. Thus it is already untimely when appellate counsel first receives the record and discovers the need for the confidential record. (The rule is under examination in the Appellate Advisory Committee of the Judicial Council.)
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> • *Rule 8.324 application in superior court:* Nevertheless, counsel may file the application in the superior court under rule 8.324, pointing out the contradiction in the rules and asking for a commonsense interpretation of the timeliness requirement. If it is denied, counsel may file an augmentation request in the appellate court, documenting the denial and explaining the circumstances.
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> • *Augmentation in Court of Appeal:* An augmentation motion in the Court of Appeal in the first instance is another approach. It should make

clear that the record be sent initially only to the Court of Appeal and the defendant(s) who participated in the motion.

• *Transmittal to counsel if record already filed in Court of Appeal:* If, as is sometimes the case, the superior court has already sent the record to the Court of Appeal, counsel may submit a letter asking the Court of Appeal to transmit a copy of the record to counsel.

Practice note 2 – care with briefs and record: Although often no need for confidentiality remains by the time of the appeal, counsel should consider that question and, when necessary, follow the steps outlined above under *Marsden* records: Seek to withhold from the respondent any confidential and irrelevant parts of the record on the motion for defense funds; seek protective orders for the use of confidential matters released to the respondent; file unredacted briefs referring to confidential matters with a motion to seal, with a redacted public brief.

E. *Pitchess* Motion

Background: *Pitchess v. Superior Court* (1974) 11 Cal.3d 531: The defendant may make a motion for disclosure of the record of complaints of misconduct made against an officer, when potentially relevant to the defense. (Evid. Code, §§ 1043-1047; Pen. Code, §§ 832.5, 832.7, 832.8.)

Source of confidentiality: Penal Code section 832.7, subdivision (a) makes peace officer personnel files confidential except through discovery procedures under Evidence Code sections 1043 and 1046.

Rationale for confidentiality: Protecting the rights of the officer against "an unwarranted invasion of personal privacy" (Pen. Code, § 832.8, subd. (f)) and protecting the officer and agency from "unnecessary annoyance, embarrassment or oppression" (Evid. Code, § 1045, subd. (d)). (See *People v. Mooc* (2001) 26 Cal.4th 1216, 1227.)

Trial procedures: The custodian of the records must deliver to the trial court any records in the officer's file potentially responsive to the defense's discovery request. (*People v. Mooc*, *supra*, 26 Cal.4th at pp. 1228-1230.) The trial court must examine the records outside the presence of either party (Evid. Code, § 1045, subd. (b)) and make a record of the documents it examines (*Mooc*, at pp. 1228-1230).

Appellate procedures: Rule 8.328(c). The record of the *Pitchess* proceedings below is not automatically part of the normal record and must be requested under rules

8.328 and 8.324. (*People v. Rodriguez* (2011) 193 Cal.App.4th 360, 366; see also general discussion of rule 8.328(c) under "Defense Request for Expert Funds," above.) The record is not accessible to either party. Rather, the defendant requests the Court of Appeal to examine the record and make a ruling without receiving briefing. (*People v. Hughes* (2002) 27 Cal.4th 287, 330; see *People v. Price* (1991) 1 Cal.4th 324, 493 [when appeal challenges trial court order withholding evidence as privileged or non-discoverable, court will fill gap caused by party's lack of access to record by reviewing it objectively].)

> **Practice note – obtaining record:** Practice note 1 under "Defense Request for Expert Funds," above, applies to obtaining *Pitchess* records, except that counsel may not obtain a copy of the record.

F. Motions Regarding Confidential Informant

Background: Evidence Code sections 1041 and 1042 prescribe the procedures and standards applicable when a confidential informant is a potential witness on the issue of guilt or provides information as the basis for a search warrant or a warrantless arrest or search. (*People v. Hobbs* (1994) 7 Cal.4th 948.)

Source of confidentiality: Evidence Code section 1042, subdivisions (b)-(d); *People v. Hobbs*, *supra*, 7 Cal.4th 948, 973-974.

Rationale for confidentiality: Protecting the informant's personal security and anonymity – and thereby law enforcement's, and derivatively the public's, interest in retaining sources of information. (Evid. Code, § 1041, subd. (a)(2); *People v. Hobbs*, *supra*, 7 Cal.4th 948, 958; see also *McCray v. Illinois* (1967) 386 U.S. 300, 308-309.)

Trial procedures: If the informant is potentially a material witness to guilt or innocence, Evidence Code section 1042, subdivision (d) prescribes an in camera hearing outside the presence of the defense, with a record to be sealed and examined only by a court. If the informant is relevant to the validity of a warrant (Evid. Code, § 1042, subd. (b)), *People v. Hobbs*, *supra*, 7 Cal.4th 948, 973-974, prescribes an in camera hearing on request. If the informant is relevant to the validity of a warrantless search or arrest, Evidence Code section 1042, subdivision (c) calls for a hearing in open court on the question whether the informant is reliable. (*Cooper v. Superior Court* (1981) 118 Cal.App.3d 506-509.)

Appellate procedures: The record of the hearing below is not automatically part of normal record, but must be requested under rules 8.328(c) and 8.324. (See "Defense Request for Expert Funds" and "*Pitchess* Motion," above.) The record is sent to the court

only. It will not be accessible to the defendant on appeal, although the People may examine it; rather, the defendant requests the Court of Appeal to review the record.

> **Practice note – obtaining record:** Practice note 1 under "Defense Request for Expert Funds," above, applies to obtaining *Pitchess* records, except that counsel may not obtain a copy of the record.

G. Limited Confidentiality of Certain Information

Background: In general, court records are deemed to be public unless specifically made confidential by court order or by law. (Gov. Code, § 68100.2, subd. (b); rules 2.550(c) ["Unless confidentiality is required by law, court records are presumed to be open"], 10.500 [public access to court administrative records]; *Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106, 111-112.) Nevertheless, the law and court practices do provide limited confidentiality protection in court records for certain information and certain persons. These matters should be safeguarded in preparing documents and handling records.

> **Practice note – proof of service:** Protection of identity inside a brief can be lost if the proof of service gives full names or addresses. Counsel can use the first name-last initial or initials and "address of record," instead of actual address on the proof of service.

> **Practice note – police reports:** Police reports may be used as the factual basis for a plea or otherwise be part of the record. They are not written with protection of privacy in mind, and counsel should redact personal information unrelated to the case before forwarding them to clients.

Private information: Rule 1.20(b) prohibits use of personal identifiers such as Social Security and financial account numbers. A party may submit a confidential reference list explaining the reference or abbreviation that corresponds with the complete identifier. (Cal. Forms, Misc., MC-120.)

Nondisclosure of Identity Policy: The California Supreme Court and the California Style Manual have set forth a **Nondisclosure of Identity Policy**, which keeps from disclosure identifying information of protected persons. (Cal. Style Manual (4th ed. 2000) § 5.9 et seq.) It covers:

Protected persons include living victims of sex crimes, minors innocently involved in court proceedings, LPS conservatees, trial jurors and sworn alternate jurors, and some victims and witnesses in criminal matters. Homicide victims are not included, nor are

adults bringing an action for wrongdoing committed during the plaintiff's minority, nor minors tried as an adult in criminal court.

Identifying information includes last names, middle names or middle initials, street addresses, full birth dates, parent's last name if same as minor's, etc.

The policy provides:

• **Jurors:** Code of Civil Procedure sections 206 and 237 and rule 8.332 protect identifying information of trial jurors and sworn alternates in criminal cases. The rationale is protecting jurors from harassment, threats, tampering, or reprisals or an undue invasion of personal privacy – thereby protecting the jury system itself. (*Townsel v. Superior Court* (2009) 20 Cal.4th 1084, 1093, 1097.)

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Practice note – sending records to clients: Counsel should take care that transcripts comply with rule 8.332 before sending them to the client. If the references to juror-identifying information are few, counsel may physically redact them himself or herself. If they are more widespread, counsel should at an early stage of the case notify the Court of Appeal and ask for an order to the superior court to correct the record.

• **Threatened victims or witnesses:** Penal Code section 1054.7 provides for protective nondisclosure to be ordered by the court on a showing of threats to the safety of a victim or witness, possible loss of evidence, compromising of an investigation, etc.

Practice note – sending records to clients: Counsel should be careful to redact any information that might violate a court protective order before sending the transcripts to the client.

• **LPS Conservatees:** Welfare and Institutions Code section 5325.1 protects an LPS conservatee's right to dignity, privacy, and care. It recognizes that such a person is a patient, not in the legal system by his or her own fault, and safeguards the individual's personal rights. (*In re Qawi* (2004) 32 Cal.4th 1, 17.)

Practice note – confidentiality in briefs: Counsel in an conservatorship appeal should use the first name and last initial or just initials policy and take care to avoid details that might identify the client. LPS briefs are public, but are subject to the **Nondisclosure of Identity Policy** set out in the California Style Manual.

• **Sterilization conservatees:** Rule 8.482(g), on appeals from a judgment establishing a conservatorship to consent to sterilization (Prob. Code, § 1950 et seq.; see *Conservatorship of Valerie N.* (1985) 40 Cal.3d 143; *In re Conservatorship of Angela D.* (1999) 70 Cal.App.4th 1410), provides that written reports of physicians and any other matter marked confidential by the court may be inspected only by court personnel, parties, the district appellate project, and persons designated by the court.

Practice note – protecting confidentiality in briefs and records: These records tend to be highly sensitive, and counsel should make every effort to safeguard the client's privacy by use of initials and avoidance of identifying information. If necessary, counsel may ask that parts of the record and filings be sealed. On the proof of service, counsel can use the first name-last initial or initials and "address of record," instead of actual address.

III. SEALED RECORDS

Background: Sealed records are those made confidential by court order on a case by case basis, rather than by law. (Rules 8.46(a), 2.550-2.551.)

• The records may be closed to public inspection (rules 8.46(b)(2), 2.550(b)(2)) or to inspection by other parties, as well (see rules 8.46(e)(4), (f)(5), 2.551(b)(2), (e)(3), (h)(5)).

• The court making the order must weigh the need for confidentiality against the public's First Amendment right to access to court records (see also Code Civ. Proc., § 124 [court proceedings are public unless otherwise provided by law]), according to criteria set out in rule 2.550(d) and *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178.

Source of confidentiality: A court order that the record be sealed makes it confidential within the scope of the sealing. (Rules 8.46, 2.550-2.551.)

Rationale for confidentiality: The reason varies according to the type of sealed record and must be specified by the court ordering the record sealed. (Rules 2.550(d)-(e), 8.46(e)(6).)

Trial procedures: Trial procedures are laid out in rules 2.550-2.551. A motion or application to file is filed and served under rule 2.551(b)(1), (2), and (5); or a record produced subject to a confidentiality agreement or protective order is filed under (b)(3); or a record sought to be sealed is lodged under (b)(4) and (5). An order for sealing must

set out the five-fold findings required by rule 2.550(d) and specify the content and scope of the sealing (rules 2.550(e), 2.551(e)). Unsealing procedures are prescribed in rule 2.551(h).

Appellate procedures: Rule 8.46 governs sealed records on appeal in civil and criminal cases.

- *Records sealed in the trial court* remain sealed on appeal unless the reviewing court orders otherwise. (Rule 8.46(c).)

- *Records not filed in the trial court* may be sealed on order of the appellate court under rule 8.46(e), which prescribes the procedures for obtaining a sealing order, lodging a record conditionally under seal, making an order, and dealing with the records. A sealing order must state the findings required by rule 2.550(d) and comply with rule 2.550(e).

- *Unsealing* a record is governed by rule 8.46(f). Matters in briefs and other publicly filed documents must not disclose the contents of the sealed records. (Rule 8.46(g).) The general procedure is to file a public redacted document and an unredacted, complete version with a motion to seal (e.g., rule 8.46(f)(2)).

  Practice note: A motion or application for sealing should demonstrate why sealing is required in light of the considerations set forth in rule 2.550(d) and *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, *supra*, 20 Cal.4th 1178. It may be necessary to use the public redacted/sealed unredacted procedure for the motion or application itself.