

NOTE: Some of the applicable rule numbers were changed effective January 1, 2014. References in this sample are to the new rules. Counsel should check the rules carefully before citing; they are complex.

Parts in blue print are instructions to user, not to be included in filed document unless so noted. [Parts and references in green font, if any, refer to juvenile proceedings. See Practice Note, this web page, for guidance in adapting forms to juvenile cases.]

PRACTICE TIPS

Applicability of sample form: This sample is helpful when certain documents have been sealed previously by the trial court or are confidential by law, are part of the normal record on appeal, and appellate counsel wants them.

General information: Sealed/confidential records are discussed on the ADI website at http://www.adi-sandiego.com/practice/conf_records.asp#sealed. Definitions of terms are in California Rules of Court, rule 8.45(b).

Recipient: If only the particular defendant had access to the matter in the trial court, specify the transcript should be sent to appellate counsel for the defendant only. See sealing order or legal source of confidentiality (statute, rule, etc.) for who is entitled to access; rule 8.45(d).

[Attorney's name, bar number]
[Address and telephone number]
[Email address and fax number if available]
Attorney for Defendant *[name]*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION *[NUMBER]*

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

Court of Appeal
No. *[number]*

v.

[Defendant's name],
Defendant and Appellant.

Superior Court
No. *[number]*

APPEAL FROM THE SUPERIOR COURT OF *[NAME]*
COUNTY

Honorable *[name]*, Judge

APPLICATION TO PROVIDE APPELLATE COUNSEL
FOR *[CLIENT'S NAME]* WITH *[SEALED /*
***CONFIDENTIAL]* RECORD**

TO THE HONORABLE *[NAME]*, PRESIDING JUSTICE, AND TO THE
HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT,
DIVISION *[NUMBER]*:

Defendant *[name]*, through appointed counsel, respectfully moves
this court to provide [sealed / confidential] material to [[his / her] appellate
counsel only / *[those entitled to access on appeal under rule 8.45(d)]*]. This

motion is based on California Rules of Court, rule 8.45, the records before the court in the instant appeal, and the attached memorandum of points and authorities.

Dated: *[date]*

Respectfully submitted,

[Attorney's name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

MEMORANDUM OF POINTS AND AUTHORITIES

I. APPELLANT REQUESTS THE FOLLOWING MATERIAL BE TRANSMITTED [TO [HIS / HER] APPOINTED COUNSEL]

[Specify record to be provided]

II. APPELLANT IS ENTITLED TO THE RECORD AS PROVIDED IN CALIFORNIA RULES OF COURT, RULE 8.45(d)

An appellant in a criminal matter is entitled to a record sufficient for appellate review under the due process and equal protection clauses.

(*Griffin v. Illinois* (1956) 351 U.S. 12, 18-19 [76 S.Ct. 585, 100 L.Ed. 891]; see also *People v. Silva* (1978) 20 Cal.3d 489, 492-493.) Where the record is missing or incomplete, appellate counsel has an obligation to remedy the defect by requesting augmentation or correction. (*People v. Barton* (1978) 21 Cal.3d 513, 519-520.)

California Rules of Court, rule 8.45(d) provides in relevant part:

[A] sealed or confidential record that is part of the record on appeal or the supporting documents or other records accompanying a motion, petition for a writ of habeas corpus, other writ petition, or other filing in the reviewing court must be transmitted only to the reviewing court and the party or parties who had access to the record in the trial court or other proceedings under review and may be examined only by the reviewing court and that party or parties.

[Explain who had access in the trial court and why.] Under rule 8.45(d), appellant thus requests the material listed in section I, *ante*, be transmitted [only to [his/her] appointed appellate counsel / to *[those entitled to access on appeal under rule 8.45(d)]*].

II CONCLUSION

Defendant requests that this application be granted.

Dated: *[date]*

Respectfully submitted,

[Attorney's name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

PROOF OF SERVICE