

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 may be helpful when certain documents have NOT been sealed previously by the trial court, and appellate counsel wants them and references to them sealed in the Court of Appeal.

General information: Sealed 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).

Lodging record under seal: Rule 8.46(d)(3) provides that a party lodging a record sought to be sealed must place the record in an appropriate container, seal it, attach a cover sheet that complies with rule 8.40(c), and label the contents as "CONDITIONALLY UNDER SEAL."

No reference to confidential matters in sealed record in public filing: Rule 8.46(d)(9) and (f) prohibits a publicly filed document from disclosing matters in a sealed record.

Two-version filings: If it is necessary to include references to sealed materials in a brief, petition, motion, or other document, counsel must file both (a) a public redacted version without reference to sealed matters and (b) an unredacted version submitted conditionally under seal. (Rule 8.46(f)(2); see also rule 8.46(f)(3) [references to conditionally sealed record].)

Public redacted version: The cover of the public redacted version must identify it as "Public—Redacts material from conditionally sealed record." The public redacted version should include materials that have no legal justification for confidentiality and can reasonably be segregated from the confidential material. (Rule 8.46(d)(4) and (f)(2)(A).)

In juvenile cases, the cover of the redacted version should identify it as "Redacted version—Redacts material from sealed record." (Rule 8.46(d)(4) and (f)(2)(A).)

Conditionally sealed, unredacted version: The cover of the conditionally sealed, unredacted version must identify it as "May Not Be Examined Without Court Order—Contains material from conditionally sealed record." (Rule 8.46(d)(4).)

Application itself filed under seal: It may be necessary to file, conditionally under seal, (a) counsel's unredacted application to file the record or document under seal and (b) any attachment, if they necessarily state facts in support of sealing that should not be revealed to the public. (Rules 2.551(b)(5), 8.46(d)(4), 8.46(f)(3).)

[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,

v.

[Defendant's name],
Defendant and Appellant.

Court of Appeal
No. *[number]*

Superior Court
No. *[number]*

**APPLICATION TO FILE *[SPECIFY RECORD]* UNDER
SEAL AND TO FILE *[SPECIFY DOCUMENTS,*
INCLUDING THE APPLICATION ITSELF, IF
NECESSARY] UNDER SEAL, ALONG WITH A
PUBLIC REDACTED VERSION**

Defendant *[name]*, through *[her / his]* appointed counsel, lodges the *[specify record]* conditionally under seal, in accordance with California Rules of Court, rule 8.46(d)(3). It is marked "CONDITIONALLY UNDER SEAL." Defendant requests the court order it filed under seal. *[She / he]* also requests permission to file the unredacted *[specify document including, if necessary, this application]* under seal and to file concurrently a public redacted brief. These submissions are under the authority of California

Rules of Court, rules 2.550 [sealed records], 2.551 [procedure for filing records under seal], and 8.46 [sealed records on appeal].)

The unredacted *[document]* necessarily makes reference to material in the conditionally sealed record. A copy of the complete unredacted *[document]* is enclosed in an envelope labeled “May Not Be Examined Without Court Order—Contains material from conditionally sealed record,” as required by rule 8.46(d)(4) and (f)(3)(B).

As required by rule 8.46(d)(4) and (f)(3)(A), a public redacted copy of the *[document]* is also submitted, labeled “Public—Redacts material from conditionally sealed record.”

This application to seal is based on the record in this appeal and the attached points and authorities and declaration of counsel. (Cal. Rules of Court, rule 8.46(d)(2).) *[[If necessary to protect against disclosure:]* Because it necessarily refers to confidential materials, the application is filed as an unredacted version marked “May Not Be Examined Without Court Order—Contains material from conditionally sealed record” and a redacted version marked “Public—Redacts material from conditionally sealed record.” (Rule 8.46(d)(4), (f)(3).)]

Dated: *[date]*

Respectfully submitted,

[Attorney's name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

MEMORANDUM OF POINTS AND AUTHORITIES

THE RECORD SHOULD BE SEALED BECAUSE *[BRIEFLY STATE NEED FOR SEALING]*

[Introductory paragraph, if helpful, summarizing record to be sealed and need for sealing.]

A. BACKGROUND

[Include procedural history or introduction as needed to provide background for the court to rule on the application.]

B. ITEMS REQUESTED TO BE FILED UNDER SEAL

[List and describe records to be sealed. Provide details, if applicable, such as dates and citation to specific pages in the filed record referring to matters in the record to be sealed.]

C. ARGUMENT

1. General law

Rules 2.550 and 2.551 of the California Rules of Court provide standards and procedures for courts to use when a request is made to seal a pleading, record, or any portion of one. Rule 2.550(d) provides:

The court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of the public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

Rule 2.550(d)-(e) is derived from the decision in *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1217-1218. These rules apply to civil and criminal cases. (*Id.* at pp. 1207-1208.) They recognize the First Amendment right of access to trial proceedings and documents used at trial or as a basis of adjudication. (*Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 558-581 [100 S.Ct. 2614, 65 L.Ed.2d 973] (plurality opinion) [the press and general public have a constitutional right of access to criminal trials; the right of access is embodied in the First Amendment and applied to the States through the Fourteenth Amendment]; *Globe Newspaper Co. v. Superior Court for Norfolk County* (1982) 457 U.S. 596, 606-607 [102 S.Ct. 2613, 73 L.Ed.2d 248] [barring press and public from criminal trials is limited and justification must be a weighty one necessitated by a compelling interest and narrowly tailored to serve that interest].)

2. Reasons why sealing the [document] is necessary to protect [right or concern to be protected by sealing]

[Provide specifics. Argument should include application of facts presented in counsel's declaration to support the five areas the court must consider in its decision to grant the request to seal the documents. Refer to California Rules of Court, rule 2.550(d)(1)-(5). Examples of overriding interests include:

- *An accused's interest in a fair trial (Press-Enterprise Co. v. Superior Court of California for Riverside County (1986) 478 U.S. 1, 14, [106 S.Ct. 2735, 92 L.Ed.2d 1]);*
- *Protection of minor victims of sex crimes from further trauma and embarrassment (Globe Newspaper Co. v. Superior Court for Norfolk County, supra, 457 U.S. 596, 607-608);*

• Protection of witnesses from embarrassment or intimidation so extreme that it would traumatize them or render them unable to testify (Rovinsky v. McKaskle (5th Cir. 1984) 722 F.2d 197, 200).]

D. CONCLUSION

For these reasons, good cause exists for this court to grant defendant's request to seal. Defendant asks for an order under California Rules of Court, rules 2.550(e) and 8.46(d) sealing the [brief / petition / other document].

Dated: *[date]*

Respectfully submitted,

[Attorney's name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

DECLARATION OF [APPELLATE COUNSEL'S NAME]

I, *[appellate counsel's name]*, declare:

1. I am an attorney duly licensed to practice before all the courts in the State of California and the appointed attorney of record for defendant *[name]* in *[his/her]* appeal.
2. It is necessary to seal the *[specify]* in this case because *[summarize specific facts sufficient to justify the sealing]*.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Dated: *[date]*

Attorney's name

State Bar Number *[number]*

Attorney for Defendant *[name]*

PROOF OF SERVICE