

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 documents were sealed by the trial court, and appellate counsel now wants to refer to them in a filing 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).

No reference to confidential matters in sealed record in public filing: Rule 8.46(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 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(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(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 sealed record.” (Rule 8.46(f)(2)(B).)

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

Service: Unless the court orders otherwise, both versions must be served on a party who had access in the trial court. Other parties must be served the public redacted version only. (Rule 8.46(f)(2)(C).)

[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 UNREDACTED *[SPECIFY DOCUMENTS, INCLUDING THE APPLICATION ITSELF, IF NECESSARY]* UNDER SEAL, ALONG WITH PUBLIC REDACTED VERSION

Defendant *[name]*, through *[her / his]* appointed counsel, requests permission to file the unredacted *[specify documents including, if applicable, this application]* under seal and to file concurrently a public redacted brief. This request is made 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 a record sealed by order of the trial court and therefore may not be

disclosed publicly. (Cal. Rules of Court, rule 8.46(f).) A copy of the complete unredacted *[document]* is enclosed in an envelope labeled “May Not Be Examined Without Court Order—Contains material from sealed record,” as required by rules 2.551(d) and 8.46(f)(2)(B).

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

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

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. The record on appeal includes *[describe documents – e.g., sealed by the trial court / a reporter's transcript of an in camera hearing from which the public and the [People / County] were excluded, etc.]* This record remains sealed on appeal. *[Explain why the document was sealed in the trial court. State any action taken by the reviewing court with regard to sealing.]*
3. Argument *[number of the argument]* in the brief necessarily makes reference to and relies on non-public materials in one of these sealed documents. *[Specify materials and cite to sealed record.]* Appellate counsel is unable to draft this argument without any reference to any confidential material, because it is directly based on the events and information the trial court deemed necessary to seal. To avoid improper disclosure of sealed information, appellant is submitting the appellant's opening brief conditionally under seal and applies for the reviewing court's permission to file it under seal.
4. A copy of the complete "unredacted" *[document]* is enclosed in an envelope labeled "CONDITIONALLY UNDER SEAL" as required

by California Rules of Court, rules 2.551(d) and 8.46(f)(2)(B). A public redacted copy of the *[document]* is also being submitted under rule 8.46(f)(2)(A).

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

Dated: *[date]*

[Attorney's signature]

[Attorney name]

State Bar No. *[number]*

PROOF OF SERVICE