

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 counsel will file a brief, petition, or other document in the Court of Appeal that refers to matters in a “**confidential**” record, and counsel must maintain the confidentiality of such matters. The sample pertains to filings under California Rules of Court, rule 8.47(c) (rule or rules). Rule 8.47(c) allows counsel to ask the Court of Appeal for permission to file a redacted public document and an unredacted document under seal. Rule 8.46(d) governs the motion or application. (Rule 8.47(c)(2)(A).) By contrast, for records that were previously “sealed” by the trial court, no motion to file a document in redacted and unredacted versions is necessary; however, to foreclose a possible rejection of the filing, notify the Court of Appeal clerk no motion to seal will be filed pursuant to the Advisory Committee comment to rule 8.47. (See Advisory Com. com., rule 8.47(c)(2) [“[W]hen a record has been sealed by court order, rule 8.46(g)(2) requires a party to file redacted (public) and unredacted (sealed) versions of any filing that discloses material from the sealed record; it does not require the party to make a motion or application for permission to do so. By contrast, this rule [rule 8.47] requires court permission before redacted (public) and unredacted (sealed) filings may be made to prevent disclosure of material from confidential records.”].)

**General information:** The authorities set forth in this motion should be tailored to the particular circumstances, depending on the nature of the documents. See Advisory Committee comment to rule 8.47 for further guidance. Definitions of terms are in rule 8.45(b). Sealed and confidential records are discussed on the ADI website at [http://adi-sandiego.com/practice/conf\\_records.asp](http://adi-sandiego.com/practice/conf_records.asp).

**No reference to confidential matters in public filing:** Rule 8.47(c) states nothing publicly filed may disclose confidential matters, unless otherwise provided by law or order of the reviewing court.

**Two-version filings:** If it is necessary to include references to confidential materials in a brief, petition, motion, or other document, counsel may seek permission to file both (a) a public redacted version without reference to confidential matters and (b) an unredacted version submitted “conditionally” under seal. (Rule 8.47(c)(2); see also rule 8.46(d).)

Public redacted version: The cover of the public redacted version must identify it as “Public—Redacts material from conditionally sealed record.” (Rule 8.47(c)(2)(C)(i).) The public redacted version should include materials that have no legal justification for confidentiality and can reasonably be segregated from the confidential material.

In juvenile cases, the cover of the redacted version should identify it as “Redacted version—Redacts material from conditionally sealed record.” (Rule 8.47(c)(2)(C)(i).)

Conditionally sealed, unredacted version: An unredacted version of the brief, petition, motion, or other filing must be transmitted in a secure manner that preserves confidentiality of the filing. If the unredacted version is in paper format, it must be placed in a sealed envelope or other appropriate container.

The cover of the unredacted version, and if applicable the envelope or other container must be identified as “May Not Be Examined Without Court Order—Contains material from conditionally sealed record.” (Rule 8.47(c)(2)(C)(ii).)

**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. (Rule 8.47(c)(1)-(2)(B).)

**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. (Rules 8.46(d)(4) and 8.47(c)(2)(A).)

*[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 UNDER SEAL THE  
UNREDACTED *[SPECIFY DOCUMENTS, INCLUDING  
THE APPLICATION ITSELF, IF NECESSARY]*, WHICH  
REFERENCES MATERIAL THAT IS CONFIDENTIAL  
BY LAW, ALONG WITH A PUBLIC REDACTED  
VERSION**

Defendant *[name]*, through *[her / his]* appointed counsel, requests permission to file the unredacted *[specify document including, if applicable, this application]* under seal and to file concurrently a public redacted *[specify document]*. This request is made under the authority of

California Rules of Court, rule 8.47 (rule or rules) which governs confidential records.

The unredacted *[document]* necessarily makes reference to material in a record that is confidential by law and therefore may not be disclosed publicly. (Rules 8.47(a) [“This rule applies to confidential records but does not apply to records sealed by court order under rules 2.550-2.551 or rule 8.46 or to conditionally sealed records under rule 8.46”], 8.47(c)(1) [nothing filed publicly may disclose material contained in a confidential record]; see also rules 8.45(b)(5) [“A ‘confidential’ record is a record that, in court proceedings, is required by statute, rule of court, or other authority except a court order under rules 2.550-2.551 or rule 8.46 to be closed to inspection by the public or a party”], 8.45(c) [“Format of . . . confidential records”], and 8.45(d) [“Transmission of and access to . . . confidential records”].) Rule 8.46 (d) governs a motion or application requesting permission for a filing to be under seal. (Rule 8.47(c)(2)(A).)

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 8.47(c)(2)(C)(ii). As required by rule 8.47(c)(2)(C)(i), 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 declaration of counsel. (Rule 8.47(c)(2)(B) [declaration “must contain facts sufficient to establish that the record is required by law to be closed to inspection in the reviewing court and to justify sealing of the brief, petition, or other filing”].) *[Set forth the argument supporting sealing.]*

*[If necessary to protect against disclosure:]* Because this application to seal necessarily refers to confidential materials in the record, the application is also 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 8.47(c)(2)(C)(i)-(ii); see also rules 8.46(d) and 8.47(c)(2)(A).)

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 document]* which is a confidential record and which by law is required to be closed to inspection by the public or a party under California Rules of Court, rules 8.45(b)(5) and 8.47. *[Explain why the document is confidential by law as required by rule 8.47(c)(2)(B): “facts sufficient to establish that the record is required by law to be closed to inspection in the reviewing court and to justify sealing of the brief, petition or other filing.”]*
3. Argument *[number of the argument]* in the brief necessarily makes reference to and relies on non-public materials in one of these confidential documents. *[Specify materials and cite to the confidential record. Specifying the materials in this declaration subjects the instant application and declaration to the filing requirements of rule 8.47(c)(2)(C)(i)-(ii).]* Appellate counsel is unable to draft this argument without any reference to any confidential material, because it is directly relevant to the trial

court's decision which is the subject of the issue presented on appeal. To avoid improper disclosure of confidential information, appellant is submitting the appellant's *[document]* 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 "May Not Be Examined Without Court Order – Contains material from conditionally sealed record" as required by California Rules of Court, rule 8.47(c)(2)(C)(ii). A public redacted copy of the *[document]* is also being submitted under rule 8.47(c)(2)(C)(i) and identified as "Public – Redacts material from conditionally sealed record."

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**