

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 tip: See the ADI February 4, 2011, Panel News Alert at http://www.adi-sandiego.com/news_alerts/pdfs/2011/FEBRUARY-2011-NEWS-ALERT.pdf for timing of augment requests in criminal, delinquency, and dependency appeals. See also “Extensions, Augmentations, and Corrections” on the [Fourth Appellate District Practice page](#). If the request is beyond the specified time limit, an explanation for the late augment request should be included.

Practice tip: This topic is covered in chapter 3 of the [ADI Appellate Practice Manual](#).

[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.

[Appellant’s name],
Defendant and Appellant.

Court of Appeal
No. *[number]*

Superior Court
No. *[number]*

REQUEST TO AUGMENT RECORD FOR *PITCHESS* MATERIAL

Appellant’s Request for Augmentation of the Record, to Be Transmitted Only to the Court of Appeal, to Include Confidential Records of (1) the Proceeding Under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 and (2) Documents Reviewed During the Hearing, Or, If the Documents Were Not Preserved, a Settled Statement Concerning Them

Under rules 8.45(d)(2), 8.155(a) and [8.340(c) / 8.410 / 8.416(d)] of the California Rules of Court, appellant requests an order augmenting the record on appeal as specified below.

The court conducted an in-camera review after granting appellant's motion for such a review under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). After this review, the court [denied disclosure of any documents /or granted the requested disclosure in part]. Because the lower court's in-camera review is sealed, an appellate court, upon request, is required to review the sealed record to determine whether the lower court abused its discretion by concluding there was [no relevant discoverable information to turn over to the defense /or limited relevant discoverable information to turn over to the defense]. (*People v. Prince* (2007) 40 Cal.4th 1179, 1284-1286; *People v. Hughes* (2002) 27 Cal.4th 287, 330; *People v. Samayoa* (1997) 15 Cal.4th 795, 827.)

Appellate counsel must exercise diligence in investigating all potential arguably meritorious issues suggested by the record on appeal, to augment that record based on suggestions of appellant and inferences contained in the appellate record, and to ensure the record is perfected for appellate review. This request is necessary to discharge that duty. (*People v. Rodriguez* (2011) 193 Cal.App.4th 360, 366 [urging appellate counsel to perfect appellate record under former rule 8.328(c) procedure, so court can

conduct independent review of *Pitchess* hearing]; see *People v. Gaston* (1978) 20 Cal.3d 476, 484-485.)

A. Clerk's transcript

Appellant requests the augmented record include a sealed clerk's transcript of records reviewed and considered by the trial court during its in-camera hearing, conducted under *Pitchess v. Superior Court, supra*, 11 Cal.3d 531. These records were produced for the Honorable *[name of judge]*, judge, by the custodian of records, *[identify custodian]*. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228-1229 [copies of items reviewed by trial court during *Pitchess* hearing may be retained in confidential file].)

These records must be sealed and transmitted only to the Court of Appeal. (*People v. Hughes, supra*, 27 Cal.4th at p. 330; Cal. Rules of Court, rule 8.45(d)(2).)

B. Reporter's transcript

Appellant also requests a sealed reporter's transcript of the in-camera review conducted under *Pitchess v. Superior Court, supra*, 11 Cal.3d 531 on *[date of hearing]* before Judge *[name of judge]*, with reporter *[name of court reporter]*. (C.T. *[cite to clerk's transcript page that reflects this in-camera proceeding]*.)

The fact there was a hearing on the *Pitchess* motion is noted in the reporter's transcripts in *[cite to the R.T. where the hearing appears]*. The

in-camera review, which was reported, is not included in the transcript.

(R.T. *[cite to R.T. where court's sealing order issued]*.)

These transcripts must be sealed and transmitted only to the Court of Appeal. (*People v. Hughes, supra*, 27 Cal.4th at p. 330; Cal. Rules of Court, rule 8.45(d)(2).)

[Enumerate proceedings for which a reporter's transcript is requested, with citations to record and applicable rules as needed. Provide all known details – dates and times, judge's name and department, reporter's name and CSR number, etc., to help identify exact proceeding.]

REQUEST FOR SETTLED STATEMENT ON APPEAL IF

REQUIRED

If it turns out the superior court failed to retain copies of the records it reviewed during the *Pitchess* hearing, appellant requests this court order Judge *[name of judge]* prepare a settled record of the documents the court reviewed. (Cal. Rules of Court, rule 8.346; *People v. Mooc, supra*, 26 Cal.4th at p. 1231 [“we are confident an augmentation of the appellate record prepared by the trial court itself would result in an accurate record on appeal”]; *People v. Gaines* (2009) 46 Cal.4th 172, 180.) This settled record must contain copies of the documents the court reviewed at the *Pitchess* hearing. As the Supreme Court stated in *Mooc*, “[w]ithout some record of the documents examined by the trial court, a party’s ability to obtain appellate review of the trial court’s decision, whether to disclose or

not to disclose, would be nonexistent.” (*People v. Mooc, supra*, 26 Cal.4th at p. 1229.)

To assist with the settled record preparation, appellant requests this court direct the custodians of records *[name of custodians]* to provide Judge *[name of judge]* copies of all the documents the court reviewed at the hearing held *[date of Pitchess hearing]*. Appellant also requests this court direct Judge *[name of judge]* to certify which items produced by the custodian of records are the same documents reviewed by Judge *[name of judge]* on *[date of Pitchess hearing]*. And, finally, appellant requests this court direct the superior court clerk to transmit a copy of the settled record of the items reviewed by Judge *[name of judge]* at the in-camera hearing held *[date of Pitchess hearing]*, to the Court of Appeal in a confidential envelope. (Cal. Rules of Court, rule 8.45(c) & (d).)

CONCLUSION

For these reasons detailed in this motion, appellant respectfully requests augmentation of the appellate record.

Dated: *[date]*

Respectfully submitted,

[Attorney's name]
State Bar No. *[number]*
Attorney for Defendant *[name]*

PROOF OF SERVICE