

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 the document has been inadvertently included in the public record.

General information: Sealed/confidential records are discussed on the ADI website at http://www.adi-sandiego.com/practice/conf_records.asp#sealed. The rules that govern include California Rules of Court, rules 8.45 to 8.47. Definitions of terms are in rules 8.45(b) and 8.10.

Recipient: Any party or parties who had access to the record in the trial court or other proceedings under review is entitled to access on appeal. See sealing order, legal source of confidentiality (see http://www.adi-sandiego.com/practice/conf_records.asp) for who is entitled to access, and rule 8.45(d). If an entity not entitled to the record has received the record, the motion should include a request to order that entity to return the record to the superior court.

[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]*

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

Honorable *[name]*, Judge

**MOTION FOR COURT ORDER TO REMOVE A
[SEALED OR CONFIDENTIAL] RECORD FROM THE PUBLIC
RECORD FILED IN THE COURT OF APPEAL**

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
for an order that *[sealed/confidential]* material be removed from the
[clerk's transcript or reporter's transcript or other records sent to the

reviewing court] and be placed in a secure location separate from the public record to preserve its confidentiality. This motion is based on California Rules of Court, rules 8.45 and *[8.46 or 8.47]*, 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. DEFENDANT REQUESTS THE FOLLOWING MATERIAL BE REMOVED FROM THE PUBLIC RECORD

[Specify record to be removed and identify it as sealed or confidential]

II. REMOVAL IS NECESSARY BECAUSE THE MATERIAL WAS *[SEALED BY ORDER OF A COURT OR IS CONFIDENTIAL BY LAW]* AS PROVIDED IN CALIFORNIA RULES OF COURT, RULES 8.45 (b)-(d) and *[8.46 or 8.47]*

California Rules of Court, rule 8.45(b)(3) defines a sealed record as “a record that is closed to inspection by the public or a party by court order under rules 2.550-2.551 or rule 8.46.” Rule 8.45(b)(5) defines a confidential record as “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.” Rule 8.47(a)-(c) [confidential records] pertains to records of *Marsden*¹ hearings, other in-camera proceedings, and other confidential records. Rule 8.45(c)(1) instructs that such records must be kept separate from the rest of the public record. It provides:

Unless otherwise provided by law or court order, sealed or confidential records that are part of the record on appeal or the supporting documents or other records accompanying a motion, petition for writ of habeas corpus, other writ petition, or other filing in the reviewing court must be kept separate from the rest of a

¹ *People v. Marsden* (1970) 2 Cal.3d 118.

clerk's or reporter's transcript, appendix, supporting documents, or other records sent to the reviewing court and in a secure manner that preserves their confidentiality.

Rule 8.45(d)(1) directs which party has access to these separate records:

Unless otherwise provided by (2)-(4)² or other law or court order, 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.

Rule 8.45(c)(1)(A)-(D) sets forth the process for securing the material's confidentiality. Under rule 8.45(c)(1), as set forth in detail *ante*, the material filed in the "reviewing court must be kept separate" Rule 8.45(c)(1)(A) provides, in relevant part: "If the records are in paper format, they must be placed in a sealed envelope or other appropriate sealed container." Rule 8.45(c)(1)(B) provides: "Sealed records, and if applicable the envelope or other container, must be marked as 'Sealed by Order of the Court on (*Date*).'" Rule 8.45(c)(1)(C) provides, in relevant part: "Confidential records, and if applicable the envelope or other container, must be marked as 'Confidential (*Basis*) --- May Not Be Examined Without Court Order.'"

² Rule 8.45(d)(2)-(4) limits access to a record involving any in-camera hearing from which a party was excluded and an in-camera hearing concerning a confidential informant and to a probation report.

Rule 8.45(c)(1)(D), in relevant part, further instructs the clerk of the superior court transmitting the record to the reviewing court to prepare a sealed or confidential index of the materials, and rule 8.45(c)(2) instructs that the indexes to the public record must list each sealed or confidential record by title, not disclosing the substance of the record, and must identify it as “‘Sealed’ or ‘Confidential’ --- May Not Be Examined Without Court Order.’”

The material listed in section I, *ante*, has been identified as a *[sealed or confidential]* document. Under the rules of court previously cited, defendant requests this material be removed from the public record and secured as set forth in rule 8.45(c).

III. CONCLUSION

Defendant requests that this motion be granted.

Dated: *[date]*

Respectfully submitted,

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

PROOF OF SERVICE