

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 form may be helpful when some records have been sealed by the trial court. If appellate counsel has reviewed the sealed documents and determined that the overriding interest that justified sealing the exhibits in the trial court no longer seems to exist, counsel can apply to unseal under California Rules of Court, rule 8.46(e)(2).

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. If the court issues an order to unseal the record, there is no further such constraint.

Application itself filed under seal: If this application itself necessarily refers to confidential matters, both redacted public and unredacted sealed versions must be filed. (Rule 8.46(e)(4).)

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(e)(4).)

In juvenile cases, the cover of the redacted version should identify it as “Redacted version—Redacts material from sealed record.” (Rule 8.46(e)(4).)

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(e)(4).)

Service: Unless the court orders otherwise, both versions must be served on a party or attorney who had access in the trial court. Other parties or attorneys must be served the public redacted version only. (Rule 8.46(e)(4).)

[Attorney 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,

Court of Appeal
No. *[number]*

v.

[Defendant's name],
Defendant and Appellant.

Superior Court
No. *[number]*

DEFENDANT'S APPLICATION TO UNSEAL RECORD(S)

TO THE HONORABLE *[NAME]*, PRESIDING JUSTICE,
OF THE FOURTH APPELLATE DISTRICT, DIVISION *[NUMBER]*:

Defendant *[name]*, through *[her / his]* appointed counsel, requests this
court to unseal the following record(s):

[List and describe applicable records – e.g., specified transcripts, audio/video recordings, psychological report, police report, photographs; provide relevant dates and other details].

This application is based on 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 record before this court, and the following memorandum of points and authorities.

[Select applicable language:] [This application does not reveal any confidential information from the sealed records and thus is filed only in a public version. / This application must discuss materials currently under seal and so is submitted in a public redacted and a confidential unredacted form, as required by California Rules of Court, rule 8.46(e)(2).]

Dated: *[date]*

Respectfully submitted,

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

MEMORANDUM OF POINTS AND AUTHORITIES

THE RECORDS SHOULD BE UNSEALED BECAUSE THE OVERRIDING INTEREST THAT JUSTIFIED SEALING THEM IN THE TRIAL COURT NO LONGER EXISTS

[Explain what was sealed in the trial court and the reason for sealing. Briefly state why that reason no longer applies – for example, the records may have been introduced into evidence at trial and become part of the public record.¹]

The overriding interest that justified sealing the items in the trial court therefore no longer exists, and the general principle that court proceedings are a matter of public record must prevail. Further, leaving the items sealed without justification would result in unnecessary time and expense, because the parties would need to file both redacted and public versions of their briefs (Cal. Rules of Court, rule 8.46(f)(2)), and the court would have the additional administrative responsibilities entailed in handling sealed records and documents (e.g., Cal. Rules of Court, rules 8.45(c) & (d), 8.46(f)(2) & (3)).

¹ **Note to counsel:** The “public record” rationale does not apply to juvenile proceedings, which are not public to begin with. A record in a juvenile proceeding may be sealed from disclosure to one party or another, however, and then unsealing may become an issue.

A. BACKGROUND

[If necessary to understand the application, provide procedural and factual background on the trial court's sealing order.]

B. ITEMS REQUESTED TO BE UNSEALED

[List and describe items to be unsealed. Provide details regarding each item, such as date of transcripts and citation to specific pages in the record where the sealed item is referred to.]

C. ARGUMENT

1. General law

A trial court may order a record sealed if it expressly finds an overriding interest supports sealing the record, the overriding interest overcomes the right of public access to the record, the proposed sealing is narrowly tailored, and no less restrictive means to achieve the overriding interest exists.² (Cal. Rules of Court, rule 2.550(d); *NBC Subsidiary, Inc. v. Superior Court* (1999) 20 Cal.4th 1178; Advisory Committee Comment to rule 8.46.) Once sealed, a record can be unsealed only by court order. (Cal. Rules of Court, rules 2.551(h)(1), 8.46(b) & (e)(1).)

²**Note to counsel:** This weighing test does not apply when records are made confidential by law rather than court order – e.g., juvenile cases, probation reports, *Pitchess* motions, proceedings on informants.

California Rules of Court, rules 2.550 and 2.551 provide specific 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.)

On appeal, any document sealed in the trial court and any document referring to it must also be placed under seal in the appellate record unless the appellate court otherwise orders. (Cal. Rules of Court, rule 8.46(b) & (e)(1).) Any party may ask the appellate court to unseal matters previously sealed. (Cal. Rules of Court, rule 8.46(e)(2).)

In determining whether to unseal a record, an appellate court is guided by consideration of the matters addressed in rule 2.550(c) [court records presumed to be open], (d) [express factual findings required to seal records], and (e) [content and scope of the order]. (Cal. Rules of Court, rules 8.46(e)(5), 2.551(h)(4); see also *NBC Subsidiary, Inc. v. Superior Court*, *supra*, 20 Cal.4th 1178, 1217-1218; see *H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 893-894.)

2. Reasons for unsealing in this case

[Explain why the sealed record(s) should be unsealed in this case.]

The overriding interest in preventing public disclosure of the sealed record(s) no longer exists. The public interest in open court proceedings thus requires the record(s) be unsealed.

Economy is also served by unsealing. Briefs filed in a reviewing court must not reveal confidential material in a sealed record and thus must be filed in two versions, one sealed version and one redacted public version. (Cal. Rules of Court, rule 8.46(f)(1) & (2).) If the items at issue were to remain sealed unnecessarily, appellant and respondent would be required to file both sealed versions and public redacted versions of their various briefs. This unnecessary time and public expense should be avoided when there is no longer any overriding interest mandating it.

CONCLUSION

Defendant asks this court to unseal the *[specify records and documents]*, for the reasons set forth in this application.

Dated: *[date]*

Respectfully submitted,

[Attorney's name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

PROOF OF SERVICE