



Judicial Council of California

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Subject Text

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Title

Rules Modernization: Electronic Sealed and Confidential Records and Lodged Records in the Court of Appeal (Action Required)

Summary

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend amending the rules that establish procedures for handling sealed and confidential materials to address records submitted electronically in the Court of Appeal. The proposed amendments encompass the court's return of lodged electronic records submitted in connection with a motion to seal that is denied. The proposal would (1) harmonize the appellate rules with parallel trial court rules governing sealed records, (2) make these appellate rules internally consistent, and (3) address the transmission and handling of records in a proceeding challenging a trial court's order denying a motion to seal.

Recommendation

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2019:

1. Amend rules 8.45 and 8.46 to add language requiring that sealed, conditionally sealed, and confidential records be transmitted to the reviewing court in a secure manner that preserves the confidentiality of the record;
2. Add new subdivision (e) to rule 8.46 to clarify procedures for transmitting, conditionally sealing, and returning or deleting a record that is the subject of a challenge to a trial court order denying a motion or application to seal;
3. Amend rule 8.46 to require that the notice sent by a court proposing to unseal a record on its own motion include the court's reason for unsealing the record;
4. Amend rules 8.46 and 8.47 to:
 - Provide that when the court denies a motion or application to seal, if the moving party does not timely direct the clerk to file the lodged record unsealed, the clerk must delete the lodged record if it is in electronic form, consistent with rule 2.551;
 - Clarify the procedure for lodging an unredacted version of a record in connection with an appellate filing by requiring that the confidential material within the record be identified as such in the filing, consistent with trial court rules; and
 - Make other minor changes in language and punctuation intended to clarify the rules.