

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Joyce L. Kennard, Chair
Heather Anderson, Senior Attorney, 415-865-7691

DATE: September 27, 2005

SUBJECT: Appellate Procedure: Sealed Records (amend Cal. Rules of Court, rule 12.5) (Action Required)

Issue Statement

Rule 12.5 of the California Rules of Court establishes the procedures for the handling of sealed records in appellate court proceedings. Currently, rule 12.5 provides that it applies to “sealed records and records proposed to be sealed on appeal and in original proceedings *under rule 56*” (emphasis added). Because rule 56 provides that it does not apply to “petitions for writs of habeas corpus, except as provided in rule 60, or to petitions for writs of review under rules 57-59,” an argument can be made that the sealed records procedures in rule 12.5 do not apply in the case of petitions for writs of habeas corpus or petitions for review under rules 57–59.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2006, amend rule 12.5 of the California Rules of Court to clarify that the sealed records procedures established by that rule apply to all writ proceedings in the appellate courts.

The text of the amended rule is attached at page 3.

Rationale for Recommendation

The intent of the exemption set forth in rule 56 appears to have been to relieve parties in these particular proceedings from the obligation to comply with the form- and- format requirements generally applicable to original proceedings in the appellate courts. It seems appropriate, however, that sealed records in these proceedings be handled in the same manner as such records in other appellate court proceedings. The Appellate Advisory Committee therefore proposes that rule 12.5 be amended to clarify that the sealed records procedures apply in all writ proceedings in the appellate courts.

Alternative Actions Considered

No alternative actions were considered.

Comments From Interested Parties

The proposed amendment was circulated as part of the spring 2005 comment cycle. Six individuals or organizations submitted comments on this proposal. All six commentators agreed with the proposal. The full text of the comments and the committee's responses are attached at pages 4 and 5.

Implementation Requirements and Costs

Implementing this proposal is not expected to impose any requirements or costs on litigants or the courts.

Attachments

Rule 12.5 of the California Rules of Court is amended, effective January 1, 2006, to read:

1 **Rule 12.5. Sealed records**

2

3 **(a) Application**

4

5 This rule applies to sealed records and records proposed to be sealed on
6 appeal and in original proceedings ~~under rule 56~~, but does not apply to
7 records required to be kept confidential by law.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Saul Bercovitch Committee on Appellate Courts State Bar of California San Francisco	A		The Committee supports this proposal. Rule 12.5 provides the appellate court rules regarding the sealing of records. It incorporates the standard stated in <i>NBC Subsidiary (KNBC-TV), Inc. v. Superior Court</i> (1999) 20 Cal.4th 1178. As currently written, rule 12.5 “applies to sealed records and records proposed to be sealed on appeal and in original proceedings <i>under rule 56</i> , but does not apply to records required to be kept confidential by law.” Rule 12.5(a); italics added. The recommended amendment to rule 12.5(a) is straightforward – simply delete the words “under rule 56.” Doing so would make clear that the rule applies to all proceedings in the appellate courts. The requirements of <i>NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, supra</i> , 20 Cal.4th 1178, appear to apply to all court proceedings. Accordingly, the clarification would make the rule conform to law.	No response needed.
2.	Hon. Roger W. Boren Administrative Presiding Justice Court of Appeal, Second Appellate District Los Angeles	A	N	Agree with proposed changes.	No response needed.
3.	Ms. Linda Gorham Court Manager Superior Court of San Francisco County	A	N	Agree with proposed changes.	No response needed.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	San Francisco				
4.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County San Diego	A	N	Agree with proposed changes and have no additional comments.	No response needed.
5.	Mr. Brian P. Worthington Chair, Appellate Court Committee San Diego County Bar Association San Diego	A	Y	We support this proposed amendment. A clarification that the sealed records procedures established by rule 12.5 applies to all writ proceedings in the appellate courts, including applications for writs of habeas corpus or petitions for review under rules 57-59, will be helpful. The deletion of the reference to rule 56 in rule 12.5 resolves the current ambiguity.	No response needed.
6.	Mr. Dean Zipser President Orange County Bar Association Irvine	A	Y	Agree with proposed changes.	No response needed.