

ADDENDUM

Table of Contents

Amendment/Statute	Page #
U.S. Constitution, Amendment I	1
California Government Code § 68150	2
California Rule of Court 2.550	5

**Articles in Addition to, and Amendment of, the Constitution of
the United States of America, Proposed by Congress, and
Ratified by the Legislatures of the Several States Pursuant
to the Fifth Article of the Original Constitution**

ARTICLE [I]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

HISTORICAL NOTES

Proposal and Ratification of Amendments 1 to 10

The first ten amendments to the Constitution of the United States, which comprise the Bill of Rights, set out in 1 Stat. 97, were proposed to the Legislatures of the several States by the First Congress, on September 25, 1789. They were ratified by the following States, and the notifications of ratification by the governors or secretaries of state thereof were communicated successively by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; New York, February 27, 1790; Pennsylvania, March 10, 1790; Rhode Island, June 7, 1790; Vermont, November 3, 1791; and Virginia, December 15, 1791. The Legislatures of Connecticut, Georgia, and Massachusetts ratified them on April 19, 1939, March 18, 1939, and March 2, 1939, respectively.

Twelve articles were proposed on September 25, 1789. The first two, which failed of adoption, read as follows:

"Art. I. After the first enumeration required by the first article of the Constitution, there shall be one representation for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred representatives, nor less than one representative for every forty thousand persons, until the number of representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred representatives, nor more than one representative for every fifty thousand persons.

"Art. II. No law varying the compensation for the services of the senators and representatives shall take effect, until an election of representatives shall have intervened."

ARTICLE [II]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

ARTICLE [III]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.



Effective: January 1, 2011

West's Annotated California Codes Currentness

Government Code (Refs & Annos)

■ Title 8. The Organization and Government of Courts (Refs & Annos)

■ Chapter 1.4. Management of Trial Court Records (Refs & Annos)

■ **§ 68150. Creation, maintenance and preservation of trial court records; application; Judicial Council to adopt rules; indexing of records; certified copies; disposal, storage and review**

(a) Trial court records may be created, maintained, and preserved in any form or forms of communication or representation, including paper, optical, electronic, magnetic, micrographic, or photographic media or other technology, if the form or forms of representation or communication satisfy the rules adopted by the Judicial Council pursuant to subdivision (c), once those rules have been adopted. Until those rules are adopted, the court may continue to create, maintain, and preserve records according to the minimum standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management.

(b) This section shall not apply to court reporters' transcripts or to specifications for electronic recordings made as the official record of oral proceedings. These records shall be governed by the California Rules of Court.

(c) The Judicial Council shall adopt rules to establish the standards or guidelines for the creation, maintenance, reproduction, or preservation of court records, including records that must be preserved permanently. The standards or guidelines shall reflect industry standards for each medium used, if those standards exist. The standards or guidelines shall ensure that court records are created and maintained in a manner that ensures accuracy and preserves the integrity of the records throughout their maintenance. They shall also ensure that the records are stored and preserved in a manner that will protect them against loss and ensure preservation for the required period of time. Standards and guidelines for the electronic creation, maintenance, and preservation of court records shall ensure that the public can access and reproduce records with at least the same amount of convenience as paper records previously provided.

(d) No additions, deletions, or changes shall be made to the content of court records, except as authorized by statute or the California Rules of Court.

(e) Court records shall be indexed for convenient access.

(f) A copy of a court record created, maintained, preserved, or reproduced according to subdivisions (a) and (c) shall be deemed an original court record and may be certified as a correct copy of the original record.

(g) Any notice, order, judgment, decree, decision, ruling, opinion, memorandum, warrant, certificate of service, or similar document issued by a trial court or by a judicial officer of a trial court may be signed, subscribed, or verified using a computer or other technology in accordance with procedures, standards, and guidelines established by the Judicial Council pursuant to this section. Notwithstanding any other provision of law, all notices, orders, judgments, decrees, decisions, rulings, opinions, memoranda, warrants, certificates of service, or similar documents that are signed, subscribed, or verified by computer or other technological means pursuant to this subdivision shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by a trial court or a judicial officer of the court.

(h) A court record created, maintained, preserved, or reproduced in accordance with subdivisions (a) and (c) shall be stored in a manner and in a place that reasonably ensures its preservation against loss, theft, defacement, or destruction for the prescribed retention period under Section 68152.

(i) A court record that was created, maintained, preserved, or reproduced in accordance with subdivisions (a) and (c) may be disposed of in accordance with the procedure under Section 68153, unless it is either of the following:

(1) A comprehensive historical and sample superior court record preserved for research under the California Rules of Court.

(2) A court record that is required to be preserved permanently.

(j) Instructions for access to data stored on a medium other than paper shall be documented.

(k) Each court shall conduct a periodic review of the media in which the court records are stored to ensure that the storage medium is not obsolete and that current technology is capable of accessing and reproducing the records. The court shall reproduce records before the expiration of their estimated lifespan for the medium in which they are stored according to the standards or guidelines established by the Judicial Council.

(l) Unless access is otherwise restricted by law, court records created, maintained, preserved, or reproduced under subdivisions (a) and (c) shall be made reasonably accessible to all members of the public for viewing and duplication as the paper records would have been accessible. Unless access is otherwise restricted by law, court records maintained in electronic form shall be viewable at the court, regardless of whether they are also accessible remotely. Reasonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court.

CREDIT(S)

(Added by Stats.1994, c. 1030 (A.B.1374), § 1. Amended by Stats.1996, c. 1159 (A.B.3471), § 13; Stats.2010, c. 167 (A.B.1926), § 1.)

Current with urgency legislation through Ch. 11 of 2012 Reg.Sess. and all propositions on the 6/5/2012 ballot.

(C) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

Cross References

Indexes kept by superior courts, see Government Code § 69842.
 Register of actions kept by superior courts, alternative provisions, see Government Code § 69845.5.
 Search warrants, see Penal Code § 1523 et seq.

Law Review and Journal Commentaries

Regulating the availability of public records balance issues of privacy and public access.
 online: federal and state courts are working to Carole Levitt, 25-DEC L.A. Law. 38 (2002).

Library References

Records ⇨32.
 Westlaw Topic No. 326.
 C.J.S. Records §§ 65, 67 to 75.

CHAPTER 3. SEALED RECORDS**Rule**

- 2.550. Sealed records.
 2.551. Procedures for filing records under seal.

Chapter 3, effective Jan. 1, 2007, was adopted June 30, 2006 as part of the reorganization of the California Rules of Court.

Historical Notes

For disposition and derivation tables relating to the 2007 reorganization of the California Rules of Court, see tables at the front of this volume. (If using an electronic publication, see Refs & Annos (References, Annotations, or Tables).)

Rule 2.550. Sealed records**(a) Application**

- (1) Rules 2.550–2.551 apply to records sealed or proposed to be sealed by court order.
- (2) These rules do not apply to records that are required to be kept confidential by law.
- (3) These rules do not apply to discovery motions and records filed or lodged in connection with discovery motions or proceedings. However, the rules do apply to discovery materials that are used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings.

(b) Definitions

As used in this chapter:

- (1) "Record." Unless the context indicates otherwise, "record" means all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court.
- (2) "Sealed." A "sealed" record is a record that by court order is not open to inspection by the public.
- (3) "Lodged." A "lodged" record is a record that is temporarily placed or deposited with the court, but not filed.

COURT RECORDS

Rule 2.550

Div. 4

(c) Court records presumed to be open

Unless confidentiality is required by law, court records are presumed to be open.

(d) Express factual findings required to seal records

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 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.

(e) Content and scope of the order

- (1) An order sealing the record must:

(A) Specifically state the facts that support the findings; and

(B) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.

- (2) Consistent with Code of Civil Procedure sections 639 and 645.1, if the records that a party is requesting be placed under seal are voluminous, the court may appoint a referee and fix and allocate the referee's fees among the parties.

(Formerly Rule 243.1, adopted, eff. Jan. 1, 2001. As amended, eff. Jan. 1, 2004. Renumbered Rule 2.550 and amended, eff. Jan. 1, 2007.)

Advisory Committee Comment

This rule and rule 2.551 provide a standard and procedures for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. These rules apply to civil and criminal cases. They recognize the First Amendment right of access to documents used at trial or as a basis of adjudication. The rules do not apply to records that courts must keep confidential by law. Examples of confidential records to which public access is restricted by law are records of the family conciliation court (Family Code, § 1818(b)), in forma pauperis applications (Cal. Rules of Court, rule 985(h)), and search warrant affidavits sealed under *People v. Hobbs* (1994) 7 Cal.4th 948. The sealed records rules also do not apply to discovery proceedings, motions, and materials that are not used at trial or submitted to the court as a basis for adjudication. (See *NBC Subsidiary, supra*, 20 Cal.4th at pp. 1208–1209, fn. 25.)

Rule 2.550(d)–(e) is derived from *NBC Subsidiary*. That decision contains the requirements that the court, before closing a hearing or sealing a transcript, must find an “overriding interest” that supports the closure or sealing, and must make certain express findings. (*Id.* at pp. 1217–1218.) The decision notes that the First Amendment right of access applies to records filed in both civil and criminal cases as a basis for adjudication. (*Id.* at pp. 1208–1209, fn. 25.) Thus, the *NBC Subsidiary* test applies to the sealing of records.

Rule 2.550

TRIAL COURT RULES Title 2

NBC Subsidiary provides examples of various interests that courts have acknowledged may constitute "overriding interests." (See *id.* at p. 1222, fn. 46.) Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute "overriding interests." The rules do not attempt to define what may constitute an "overriding interest," but leave this to case law.

Historical Notes

The Jan. 1, 2004, amendment, in subd. (d), inserted "factual" and substituted "facts that establish" for "that"; and in subd. (e), inserted "Content and" and rewrote par. (e)(1), which had read:

"[e](1) An order sealing the record must (i) specifically set forth the factual findings that support the order, and (ii) direct the sealing of only those documents and pages--or, if reasonably practicable, portions of those documents and pages--that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file."

The Jan. 1, 2007 amendment, adopted June 30, 2006 as part of the reorganization of the California Rules of Court, renumbered this rule, and in subd. (a), substituted "Application" for

"Applicability", and in par. (1), substituted "2.550-2.551" for "243.1-2.43.4", and in par. (3), in the first sentence, deleted "also" preceding "do not apply", and in the second sentence, inserted "However,"; in subd. (b), inserted "As used in this chapter:" as the introductory paragraph, and in par. (1), deleted "as used in this rule" preceding "means all or a portion"; and in subd. (e), in par. (1), redesignated subpars. (i) and (ii) as (A) and (B), and in subpar. (A), substituted "state" for "set forth"; and made nonsubstantive changes.

For disposition and derivation tables relating to the 2007 reorganization of the California Rules of Court, see tables at the front of this volume. (If using an electronic publication, see Refs & Annos (References, Annotations, or Tables).)

Cross References

Motion for leave to file complaint for intervention, see California Rules of Court, Rule 2.834.

Protection of confidential personal information in police reports as exception to this rule, see Penal Code § 964.

Sealed records, see California Rules of Court, Rule 8.160.

Law Review and Journal Commentaries

Drafting protective orders for confidentiality of documents. New rules of court challenge counsel to properly protect confidential disclo-

sures. Michael H. Strub, Jr., 27-APR L.A. Law. 21 (2004).

Library References

Records ☞ 32.
Westlaw Topic No. 326.
C.J.S. Records §§ 65, 67 to 75.

Notes of Decisions

Accounting records 9
Burden of proof 10
Construction and application 1
Construction with other laws 2
Contamination of jury 13
Courtroom access, generally 4
Discretion of court 3
Evidence, sufficiency of 11
Final judgment 14
Financial and accounting records 9
Instructions 12
Judicial discretion 3
Jury contamination 13
Overriding interest 5
Presumptions and burden of proof 10
Privileged documents 7

Review, standard of 15
Standard of review 15
Substantial prejudice 6
Sufficiency of evidence 11
Trade secrets 8

1. Construction and application

While commercial harm or embarrassment of a party does not alone justify sealing the entire record of a case, it is appropriate to seal certain records when those particular records contain highly sensitive and potentially embarrassing personal information about individuals. *People v. Jackson* (App. 2 Dist. 2005) 27 Cal.Rptr.3d 596, 128 Cal.App.4th 1009. Records ☞ 32