

AMENDED IN SENATE JULY 10, 2008

AMENDED IN SENATE MAY 8, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2379

Introduced by Assembly Member Evans

February 21, 2008

An act to amend Section 904.1 of the Code of Civil Procedure, relating to court records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2379, as amended, Evans. Court records: appeal: attorney's fees.

Existing rules of court provide a standard and procedures for courts to use when a motion is made to seal or unseal a court record. Existing case law provides that a court order to unseal a court record is appealable as the final determination of a collateral matter, in that it directed the performance of an act.

Existing law generally provides that an appeal is to the court of appeal, other than in a limited civil case, and specifies certain judgments and orders from which an appeal may be taken.

This bill would provide that an order granting or denying a motion to seal or unseal a court record is not a final judgment or order from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. The bill would require a party, intervenor, or member of the public, in order to obtain review of any order to seal or unseal a court record, ~~to file a petition~~ within 20 days after service upon him or her of a written notice of entry of the order, ~~or within any further time not exceeding~~

an additional 20 days as the trial court may for good cause allow to file a petition for an extraordinary writ or a notice of appeal, as specified.

The bill would include related statements of legislative intent.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in adding
2 subdivision (c) to Section 904.1 of the Code of Civil Procedure in
3 Section 2 of this act to avoid delays associated with appeals of
4 orders sealing or unsealing court records by providing for the use
5 of a writ procedure rather than in addition to normal appeals, in
6 order to determine these matters more expeditiously. Courts have
7 recognized the importance of avoiding delays and obtaining prompt
8 decisions on matters involving access to courts and the sealing of
9 court records. Language in some court cases has suggested that
10 orders unsealing court records are appealable as the final
11 determination of a collateral matter (see, for example, In re
12 Providian Credit Card Cases (2002) 96 Cal.App.4th 292, 297, fn.
13 2). This act is intended to overrule that language and to treat orders
14 unsealing court records the same way as matters are treated under
15 the California Public Records Act (Chapter 3.5 (commencing with
16 Section 6250) of Division 7 of Title 1 of the Government Code).
17 Orders allow orders sealing or unsealing court records to be
18 challenged using either a writ procedure or the appeal process
19 within specified timeframes. Nothing in this act is intended to alter
20 existing procedures relating to the court's discretion to stay orders
21 sealing or unsealing court records pending appeal, or as to orders
22 directing disclosure of public records or upholding a refusal to
23 disclose public records may be challenged only by writ and not
24 by appeal under pursuant to subdivision (c) of Section 6259 of the
25 Government Code.

26 SEC. 2. Section 904.1 of the Code of Civil Procedure is
27 amended to read:

28 904.1. (a) An appeal, other than in a limited civil case, is to
29 the court of appeal. An appeal, other than in a limited civil case,
30 may be taken from any of the following:

31 (1) From a judgment, except (A) an interlocutory judgment,
32 other than as provided in paragraphs (8), (9), and (11), or (B) a

1 judgment of contempt that is made final and conclusive by Section
2 1222.

3 (2) From an order made after a judgment made appealable by
4 paragraph (1).

5 (3) From an order granting a motion to quash service of
6 summons or granting a motion to stay the action on the ground of
7 inconvenient forum, or from a written order of dismissal under
8 Section 581d following an order granting a motion to dismiss the
9 action on the ground of inconvenient forum.

10 (4) From an order granting a new trial or denying a motion for
11 judgment notwithstanding the verdict.

12 (5) From an order discharging or refusing to discharge an
13 attachment or granting a right to attach order.

14 (6) From an order granting or dissolving an injunction, or
15 refusing to grant or dissolve an injunction.

16 (7) From an order appointing a receiver.

17 (8) From an interlocutory judgment, order, or decree, hereafter
18 made or entered in an action to redeem real or personal property
19 from a mortgage thereof, or a lien thereon, determining the right
20 to redeem and directing an accounting.

21 (9) From an interlocutory judgment in an action for partition
22 determining the rights and interests of the respective parties and
23 directing partition to be made.

24 (10) From an order made appealable by the provisions of the
25 Probate Code or the Family Code.

26 (11) From an interlocutory judgment directing payment of
27 monetary sanctions by a party or an attorney for a party if the
28 amount exceeds five thousand dollars (\$5,000).

29 (12) From an order directing payment of monetary sanctions
30 by a party or an attorney for a party if the amount exceeds five
31 thousand dollars (\$5,000).

32 (13) From an order granting or denying a special motion to
33 strike under Section 425.16.

34 (b) Sanction orders or judgments of five thousand dollars
35 (\$5,000) or less against a party or an attorney for a party may be
36 reviewed on an appeal by that party after entry of final judgment
37 in the main action, or, at the discretion of the court of appeal, may
38 be reviewed upon petition for an extraordinary writ.

39 (c) An order granting or denying a motion to seal or unseal a
40 court record pursuant to subdivision (b) or (h) of Rule 2.551 of

1 the California Rules of Court is not a final judgment or order within
2 the meaning of this section from which an appeal may be taken,
3 but shall be immediately reviewable by petition to the appellate
4 court for the issuance of an extraordinary writ. *shall be reviewed*
5 *as follows:* Upon entry of any order pursuant to Rules 2.550 and
6 2.551 of the California Rules of Court, a party, intervenor, or
7 member of the public shall, in order to obtain review of the order,
8 file a petition within 20 days after service upon him or her of a
9 written may elect to do one of the following:

10 (1) *File a petition for extraordinary writ within 20 days of the*
11 *notice of entry of the order, or within any further time not*
12 *exceeding an additional 20 days as the trial court may for good*
13 *cause allow. If the notice is served by mail, the period within which*
14 *to file the petition shall be increased by five days.*

15 (2) *File a notice of appeal, the record relating to the sealing or*
16 *unsealing order, and the opening brief within 30 days of the notice*
17 *of entry of the trial court's order.*

18 (A) *Within 30 days of the filing of the appellant's opening brief,*
19 *the respondent shall file either the respondent's brief or a statement*
20 *indicating the respondent has no intention to file a brief.*

21 (B) *The reply brief, if any, shall be filed within 15 days of the*
22 *respondent's brief. The appellant shall immediately notify the court*
23 *of the completion of the filing of the briefs on appeal.*

24 (C) *No filing extensions shall be granted unless the court finds*
25 *that exigent circumstances require an extension.*

26 (D) *The clerk of the reviewing court shall set the appeal for a*
27 *hearing on the first available court date after the respondent files*
28 *a statement of no intention to file a brief pursuant to subparagraph*
29 *(A) or after the appellant notifies the court of the completion of*
30 *the filing of the briefs pursuant to subparagraph (B).*