

Rule 13.05 (FRCP 83) Sealing of Materials Filed in Civil and Criminal Cases

(A) General Provisions for Civil and Criminal Cases

(1) All pleadings, documents, and other materials (collectively “material”) received in the Office of the Clerk for filing must be filed in the public record, unless (a) the docket reflects prior entry of an Order to file under seal or (b) a Judge of this Court otherwise orders pursuant to this Local Rule.

(2) The Court recognizes the right of the public to access material(s) filed with the Court in civil and criminal cases. The Court also recognizes the right of parties in cases to seek the filing under seal of material(s) and information lawfully kept confidential in civil and criminal cases, and the right of parties and non-parties to support or challenge the filing of such material(s) under seal.

(3) The fact that certain information or material(s) have been protected as confidential by parties in a case pursuant to a Protective Order is relevant to, but not dispositive of, whether this information or material(s) will be sealed when filed with the Court.

(4) Subject to the provisions of subsections (B) (Civil Cases) and (C) (Criminal Cases) below, the following procedures must be followed for filing material(s) under seal or for contesting the sealing of such material(s):

(a) **The proponent of the sealing** of material (“Movant”) must file a public motion for the sealing (“Motion for Sealing”) (a) describing generally the material or information sought to be filed under seal without disclosing the substance of the material(s) sought to be kept confidential; (b) the legal ground(s) for the sealing; and (c) a limited time period for the sealing.

If the information or material(s) that is sought to be sealed includes information or material(s) produced by a non-party as confidential under a judicial protective order, Movant must provide the producing non-party written Notice of the Motion for Sealing and of any opposition to the Motion for Sealing.

(b) With the public Motion for Sealing,

(i) Movant must file under seal a Memorandum Supporting Sealing. This Memorandum must state the specific legal and factual reasons justifying the sealing, with or without sworn factual declarations or affidavits; and

(ii) Movant must file under seal a complete copy of the subject document(s) or item(s) containing the material(s) sought to be filed under seal.

(c) **Redacted material(s) to be submitted.** Within three (3) business days from the filing of the Motion for Sealing, Movant must file the following:

(i) in the public record, a copy of the subject document(s) redacting only the specific information sought to be sealed redacted from the document(s), or

(ii) under seal, a Memorandum explaining the specific reasons for the failure or inability to file a redacted document or material(s).

(d) **Opposition to Motion for Sealing.** Within seven (7) days from the filing of the Motion for Sealing, a party or a non-party (by intervention) may file a Memorandum Opposing Sealing which may be filed in the public record or under seal. If there is no opposition to the sealing by any party, a Memorandum so stating must be filed in the public record by each party. Any such Memorandum must state whether any producing non-party has been served with Notice of the Motion for Sealing and whether such non-party does or does not object to the sealing.

(e) **Reply supporting sealing.** Within seven (7) days from the filing of any Memorandum Opposing Sealing, Movant may file a Reply Supporting Sealing.

(f) **Ruling on Motion to Seal.** The Court will rule the Motion for Sealing with or without a public hearing and may conduct a hearing *in camera*. The ruling of the Court on the Motion for Sealing may be filed under seal. However, the Clerk of Court must post a public minute entry in the case stating generally that the Motion for Sealing has been GRANTED or DENIED, whether in whole or in part.

(g) **Stay of Order Denying Sealing.** Any Order Denying a Motion to Seal or Denying a Motion for Continued Sealing will be stayed for a period of 14 days during which an appropriate appeal from the Order may be filed. If an appeal is filed, the subject Order will remain stayed until the appeal is determined.

(h) **Material ordered sealed by the Court.** Any material or item ordered sealed by the Court will be filed and maintained by the Clerk under seal. No sealed records will be unsealed without Court order.

(B) Civil Cases

(1) Section (A) above notwithstanding, without the need of a Judge's order, the following material(s) must be filed under seal:

(a) information listed in Federal Rule of Civil Procedure 5.2; Federal Rule of Criminal Procedure 49.1; and Eastern District of Missouri Local Rule 2.17(a);

(b) the Administrative Record filed in a case brought under Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a)(1)(B);

(c) the Administrative Record filed in a case brought under the Social Security Act, 42 U.S.C. § 405; and

(d) any other material(s) or information required to be filed under seal by law.

(2) **At conclusion of civil action.** Not less than 30 days after a final order or other disposition has been issued in a civil action in the District Court, or 30 days after the receipt of a mandate from the Court of Appeals in a case in which an appeal has been taken, a motion may be filed with the Court requesting that documents previously filed under seal be unsealed and made a part of the public record. Unless otherwise ordered by the Court, all documents previously sealed in a civil action will remain sealed by the Clerk of Court for 90 days following final disposition of the litigation, unless a motion to continue the sealing is filed pursuant to section (A)(4)(a) above.

(C) Criminal Cases

(1) Section (A) above notwithstanding, without the need of a Judge's order, the following material(s) must be filed under seal: (a) grand jury proceedings under Federal Rule of Criminal Procedure 6; (b) information listed in Federal Rule of Criminal Procedure 49.1 and in Eastern District of Missouri Local Rule 2.17(a); and (c) any other material or information required by law to be sealed.

(2) **Applications for pen registers, trap and trace devices, wire taps, records of electronic communications, and IRS search warrants and tax return orders.** The provisions of subsection (A) above notwithstanding for pre-charge judicial records, all applications and orders thereon for pen registers, trap and trace devices, wire taps, records of electronic communications, and IRS search warrants and tax return orders must be filed and maintained by the Clerk under seal, unless otherwise ordered by the Court. Documents, pleadings, and other

material(s) filed under seal pursuant to this paragraph will be maintained by the Clerk in original form for not less than five (5) years from the date of filing. All such original sealed documents will be scanned into electronic digital images, indexed, and permanently stored under seal in such electronic format in lieu of maintaining the original paper copies after the required period of five (5) years. When an electronic digital image or copy of any original document, pleading, or other material filed with the Court under seal is created pursuant to this paragraph, the electronic version will be the permanent and official court record. From time to time, the Clerk may petition the Court for an Order granting leave to destroy original documents and materials filed under seal pursuant to this paragraph for which electronic digital images have been made.

(3) **Presentence investigation reports and such other material(s) regarding any guilty plea or sentencing.** All presentence investigation reports and such other material(s) regarding any guilty plea or sentencing which the Court orders filed under seal, including but not limited to any plea agreement supplement, sentencing statement, plea transcript supplement, or sentencing transcript supplement, will be filed and maintained by the Clerk under seal. The U.S. Attorney's Office must file a sealed statement in all criminal cases in which a defendant enters a guilty plea that will either explain the terms of a defendant's cooperation or state that a defendant did not cooperate with the government. Nothing in the Court's public record will allow anyone to be able to determine whether a defendant did or did not cooperate with the government. The Court may issue administrative orders and procedures further specifying processes necessary to preserve the confidentiality of the documents and proceedings described in this paragraph.

(4) (a) **Applications for search warrants, warrants and similar orders issued pursuant to Federal Rule of Criminal Procedure 41.** Applications for search warrants, warrants and similar orders issued pursuant to Federal Rule of Criminal Procedure 41 upon application of the government for the acquisition of information or evidence in connection with a criminal investigation, and returns made pursuant to Fed.R.Crim.P. 41(f), will each be received by the Court under temporary seal.

(b) **Ex parte motion to seal.** Within fourteen (14) days from the date of receipt by the Court of any document identified in subsection (a) immediately above, the government or any other person or entity having a sufficient privacy interest in the search warrant information, or the property or evidence that is the object of acquisition by the government, may

file an ex parte Motion to Seal setting forth the legal and factual ground for sealing. The Motion to Seal must also state the date on which the sealing order should expire without further order of the court. The moving party must establish that compelling reasons exist to justify non-disclosure of the subject judicial records which outweigh the public right to access and that no less restrictive alternative to sealing is appropriate or practical. While such a motion is pending, the subject material will remain sealed.

(c) **Initial sealing time period and motion to continue sealing.** If the Motion to Seal is granted, the Clerk must file the relevant documents under seal for a period of time not to exceed six (6) months. After six months, a party seeking continued sealing of the file must file a motion to that effect demonstrating that continued sealing is appropriate under the applicable law and the factual circumstances.

(5) **Written communications by non-parties regarding criminal case defendant(s).** Except as otherwise provided in this paragraph, any written communication regarding any defendant by persons other than court-related personnel working on the case, the defendant, or counsel, submitted at any point before the defendant has been sentenced, will be made available for viewing at the public terminal in the clerk's office. Any written communication received in paper form will be scanned and filed electronically in the appropriate case. Any party may file a motion, either at or after the time any written communication is submitted, stating the particular reasons as to why it should not be made available at the public terminal. A Judge, either on the Judge's own motion or on the motion of any party, may order all or any portion of any written communication to be removed from the public terminal at any time. Any written communication that has been redacted will be filed under seal in a non-redacted form. The clerk's office will publish a notice to the bar and include a permanent notice on its website restating this paragraph. This notice will also state the types of personally identifying information that must not be included on any written communication submitted to this Court, consistent with Fed. R. Crim. P 49.1 and any order of this Court regarding prohibited information on any such written communication.

(New rule added April 3, 1998, effective July 1, 1998; Paragraph B amended February 4, 2000, effective March 8, 2000; Paragraph B amended April 5, 2002, effective June 1, 2002; Amended July 10, 2006, effective August 28, 2006; Amended January 9, 2009, effective February 16, 2009; Amended September 8, 2009, effective December 1, 2009; Amended November 4, 2015, effective January 1, 2016; Amended November 30, 2016, effective February 1, 2017; Amended December 9, 2020; effective March 1, 2021)