


UNITED STATES COURTS
Judicial Council of the Eighth Circuit
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EIGHTH CIRCUIT JUDICIAL COUNCIL
ORDER

I hereby certify that the United States District Court for the Eastern District of Missouri has furnished amended Local Rule 13.05 to the Judicial Council, in accordance with 28 U.S.C. § 2071(d). The Local Rule amendment has been reviewed by the Judicial Council, and it has determined to take no action with respect to the amended rule. The rule, therefore, becomes effective June 1, 2021 in accordance with 28 U.S.C. § 2071(c)(1) and Fed. R. Civ. P. 83(a)(1).


Millie B. Adams
Circuit Executive

St. Louis, Missouri
April 22, 2021

cc: Judicial Council Members
Chief Judge Rodney W. Sippel
Gregory J. Linhares, Clerk of Court

Review was undertaken by the Rules and District Court Committees.

JCO 3182

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

(For procedural instructions on seeking leave to file sealed motions or sealed documents in CM/ECF, see the Sealed and Ex Parte Documents section of the Court's CM/ECF Procedures Manual at <http://www.moed.uscourts.gov/cmecf-procedures-manual>)

(A) General Provisions for Civil and Criminal Cases

(1) Except as otherwise provided in this Rule, all pleadings, documents, and other materials (collectively “material”) received in the Office of the Clerk for filing must ultimately 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 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 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 under seal.

(3) The fact that certain information or material has 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 will be sealed when filed with the Court.

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

(a) **The proponent of the sealing or the continued sealing** of material (“Movant”) must file an unsealed motion for sealing (“Motion for Sealing” or “Motion for Continued Sealing”) describing generally (i) the material or information sought to be filed under seal without disclosing the substance of the material sought to be kept confidential; (ii) the legal grounds for the sealing; and (iii) the requested duration for the sealing or, if the proponent requests that the material remain sealed indefinitely, the reasons supporting the request.

If the information or material that is sought to be sealed includes information or material produced by a non-party as confidential under a judicial protective order, at the time the Motion for Sealing or the Motion for Continued Sealing is filed Movant must provide the producing non-party written Notice of the Motion for Sealing or the Motion for Continued Sealing.

(b) **With Motion for Sealing or Motion for Continued 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 must state whether any producing non-party has been served with Notice of the Motion and whether such producing non-party does or does not object to the sealing; and

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

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

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

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

(d) **Opposition to Motion for Sealing.** Within seven (7) days from the filing of the Motion for Sealing, a party or a non-party may file a Memorandum Opposing Sealing which may be filed in the public record or under seal. 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 and must provide any producing non-party written Notice of the Memorandum Opposing Sealing and of the Movant's Reply.

(f) **Ruling on Motion to Seal or for Continued Sealing.** The Court will rule the Motion for Sealing or the Motion for Continued Sealing with or without a public hearing and may conduct a hearing *in camera*. The ruling of the Court on the Motion for Sealing or the Motion for Continued 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 or the Motion for Continued Sealing has been GRANTED or DENIED, whether in whole or in part.

(g) **Stay of Order Denying Sealing and Opportunity to Withdraw Material.** Any Order Denying a Motion to Seal or Denying a Motion for Continued Sealing will be stayed for a period of 14 days after entry of the Order during which an appropriate appeal from the Order may be filed or during which all or part of the material filed under seal may be withdrawn before it becomes a part of the public record. If an appeal is filed, the subject Order will remain stayed until the appeal is determined and, if the Order is affirmed, in whole or in part, the Order will remain stayed for an additional 14 days after the entry of the appellate ruling during which all or part of the material filed under seal may be withdrawn before it becomes a part of the public record.

(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) The following material 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) documents required to be sealed in Qui Tam actions under 31 U.S.C. § 3729.

For the filing of these and any other material or information required by law to be filed under seal, the procedures in Section (A) above must be used.

(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 District 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 Sealing is filed pursuant to Section (A)(4)(a) above. Materials filed under seal pursuant to Section (B)(1) or otherwise ordered sealed indefinitely will remain under seal indefinitely unless otherwise ordered.

(C) Criminal Cases

(1) Section (A) above notwithstanding, without the need of a Judge's order, the following material 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, wiretaps, records of electronic communications, and IRS search warrants and tax return orders.** The provisions of Section (A) above notwithstanding for pre-charge judicial records, all applications and orders thereon for pen registers, trap and trace devices, wiretaps, 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 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 regarding any guilty plea or sentencing.**

(a) The provisions of Section (A) above notwithstanding, all presentence investigation reports and filings regarding cooperation, including any plea agreement

supplements, sentencing statements, plea transcript supplements, or sentencing transcript supplements, 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.

(b) For the filing of any other material or information required by law or requested to be filed under seal, including, without limitation, parties' sentencing memoranda, the procedures in Section (A) above must be used.

(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. If the motion to seal or for continued sealing is denied in whole or in part, or if no motion is timely filed, the Court will order the Clerk to unseal and file unrestricted material in the public record, unless the Court determines otherwise.

(5) **Written communications by non-parties regarding criminal case defendants.** 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 April 7, 2021, effective June 1, 2021)