

LOCAL CRIMINAL RULE 49

DESIGNATION AND HANDLING OF DOCUMENTS UNDER SEAL

(A) Unless otherwise provided by law or Court rule, no document may be filed under seal without an order entered by the Court.

(B) A government motion to seal a warrant, complaint, supporting affidavit, or indictment shall include:

- (1) A statement as to why sealing is necessary, and why another procedure will not suffice;
- (2) References to governing case law; and
- (3) A statement as to the period of time the government seeks to have the matter maintained under seal and as to how the matter is to be handled upon unsealing.

The motion shall be accompanied by a proposed order that includes findings supporting sealing, and, if appropriate, provisions for unsealing upon the occurrence of specified event(s). The Clerk shall docket the motion in a way that discloses its nature as a motion to seal. No hearing is required on motions covered by this section. No separate motion to seal is necessary in investigative proceedings made confidential by law.

~~Until an executed search warrant and related papers are kept under seal until returned executed, unless an order to seal is entered on a motion of the government to extend the seal, is returned, search warrants and related papers are not filed with the Clerk. No separate motion to seal is necessary to seal a search warrant from the time of issuance to the time the executed warrant is returned.~~

~~The Clerk shall provide a copy of any document filed under seal to the party (or attorney for the party) that filed the document upon the request of that party or the party's attorney without an order from the Court.~~

~~When any document covered by this section contains one or more personal identifiers within the meaning of the E-Government Act of 2002, and the government would otherwise move to unseal it, the government shall file a redacted version instead. Any document sealed and later moved to be unsealed that contains personal identifiers under the E-Government Act of 2002 requires redactions. Counsel must e-file redacted versions.~~

(C) In all post-arrest proceedings, a party submitting a document or portion of a document (e.g., exhibit[s]) for filing under seal pursuant to a governing statute, rule, or order shall note on the face of the document that it or a portion of it is filed under seal pursuant to that statute, rule, or order. The Clerk shall provide public notice by stating on the docket that the document contains sealed material.

(D) Any post-arrest motion for a protective order providing prospectively for filing of documents under seal shall be accompanied by a non-confidential supporting memorandum, a notice that identifies the motion as a sealing motion, and a proposed order. A confidential memorandum for *in camera* review may also be submitted. The non-confidential memorandum and the proposed order shall include:

- (1) A non-confidential description of what is to be sealed;
- (2) A statement as to why sealing is necessary, and why another procedure will not suffice;

(3) References to governing case law; and

(4) Unless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and as to how the matter is to be handled upon unsealing.

The proposed order shall recite the findings required by governing case law to support the proposed sealing.

The Clerk shall provide public notice by docketing the motion in a way that discloses its nature as a motion to seal, with its hearing date (if any). Other parties and non-parties may submit memoranda in support of or opposition to the motion, and may designate all or part of such memoranda as confidential. Any confidential memoranda will be treated as sealed pending the outcome of the ruling on the motion.

(E) Any document not covered by section (C) and filed with the intention of being sealed shall be accompanied by a motion to seal that complies with the requirements of section (D). The Clerk shall provide public notice by docketing the motion in a way that discloses its nature as a motion to seal, with its hearing date (if any). Other parties and non-parties may submit memoranda in support of or in opposition to the motion, and may designate all or part of such memoranda as confidential. The document and any confidential memoranda will be treated as sealed pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the document being treated as a public record.

(F) Each document that is the subject of an existing sealing order, or the subject of a motion for such an order, shall be submitted to the Clerk's Office securely sealed, with the container clearly labeled "UNDER SEAL." The case number, case caption, a reference to any statute, rule, or order permitting the item to be sealed, and a non-confidential descriptive title of the document shall also be noted on the container.

(G) A motion to have an entire case kept under seal shall be subject to the requirements and procedures of sections (D) and (F).

(H) Nothing in this Local Rule limits the ability of the parties, by agreement, to restrict access to documents that are not filed with the Court.

(I) Trial exhibits, including documents previously filed under seal, and trial transcripts shall not be filed under seal except upon a showing of necessity demonstrated to the trial judge.

(J) The Court having found that all motions for downward departure filed by the government under 18 U.S.C. § 3553(e), United States Sentencing Guidelines § 5.K.1.1, or Fed. R. Crim. P. 35 satisfy, by their nature, the requirements for sealing, such motions and responses thereto may be filed under seal without filing a motion to seal by placing the words "UNDER SEAL" on the face sheet of the motion and by informing the Clerk of the need to file the document under seal.

JUSTIFICATION FOR AMENDMENT TO LOCAL CRIMINAL RULE 49

Although the national amendments to Federal Rule of Criminal Procedure 49 do not require changes in our local rule, during such review the Court noticed that some references in the local rule did not reflect current practice. Therefore, the changes to Local Criminal Rule 49 have been made so that our local rule conforms to current practice in all of our clerk's offices.

The changes in the first redlined paragraph have been made because the language of the local rule currently says search warrants and related documents are not "filed with the clerk." However, search warrants and related papers are "filed" by our clerk's office as sealed documents on our CM/ECF system. It also clarifies that if the Government wants a search warrant and related papers to be sealed after it is returned executed, they need to file a motion to extend the sealing.

The middle redlined paragraph is being removed completely because it currently says that the clerk shall provide a copy of any sealed document to the party that filed the documents, or to his attorney. However, that does not reflect current practice. All of our clerk's offices obtain permission from a judge before providing a copy of a document filed under seal.

The changes to the third redlined paragraph have been made so that it is clear that any party that moves to unseal a document, not just the Government as the current local rule states, must e-file the document in redacted format.

LOCAL CRIMINAL RULE 49

DESIGNATION AND HANDLING OF DOCUMENTS UNDER SEAL

(A) Unless otherwise provided by law or Court rule, no document may be filed under seal without an order entered by the Court.

(B) A government motion to seal a warrant, complaint, supporting affidavit, or indictment shall include:

- (1) A statement as to why sealing is necessary, and why another procedure will not suffice;
- (2) References to governing case law; and
- (3) A statement as to the period of time the government seeks to have the matter maintained under seal and as to how the matter is to be handled upon unsealing.

The motion shall be accompanied by a proposed order that includes findings supporting sealing, and, if appropriate, provisions for unsealing upon the occurrence of specified event(s). The Clerk shall docket the motion in a way that discloses its nature as a motion to seal. No hearing is required on motions covered by this section. No separate motion to seal is necessary in investigative proceedings made confidential by law.

Search warrants and related papers are kept under seal until returned executed, unless an order to seal is entered on a motion of the government to extend the seal.

Any document sealed and later moved to be unsealed that contains personal identifiers under the E-Government Act of 2002 requires redactions. Counsel must e-file redacted versions.

(C) In all post-arrest proceedings, a party submitting a document or portion of a document (e.g., exhibit[s]) for filing under seal pursuant to a governing statute, rule, or order shall note on the face of the document that it or a portion of it is filed under seal pursuant to that statute, rule, or order. The Clerk shall provide public notice by stating on the docket that the document contains sealed material.

(D) Any post-arrest motion for a protective order providing prospectively for filing of documents under seal shall be accompanied by a non-confidential supporting memorandum, a notice that identifies the motion as a sealing motion, and a proposed order. A confidential memorandum for *in camera* review may also be submitted. The non-confidential memorandum and the proposed order shall include:

- (1) A non-confidential description of what is to be sealed;
- (2) A statement as to why sealing is necessary, and why another procedure will not suffice;
- (3) References to governing case law; and
- (4) Unless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and as to how the matter is to be handled upon unsealing.

The proposed order shall recite the findings required by governing case law to support the proposed sealing.

The Clerk shall provide public notice by docketing the motion in a way that discloses its nature as a motion to seal, with its hearing date (if any). Other parties and non-parties may submit memoranda in support of or opposition to the motion, and may designate all or part of such memoranda as confidential. Any confidential memoranda will be treated as sealed pending the outcome of the ruling on the motion.

(E) Any document not covered by section (C) and filed with the intention of being sealed shall be accompanied by a motion to seal that complies with the requirements of section (D). The Clerk shall provide public notice by docketing the motion in a way that discloses its nature as a motion to seal, with its hearing date (if any). Other parties and non-parties may submit memoranda in support of or in opposition to the motion, and may designate all or part of such memoranda as confidential. The document and any confidential memoranda will be treated as sealed pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the document being treated as a public record.

(F) Each document that is the subject of an existing sealing order, or the subject of a motion for such an order, shall be submitted to the Clerk's Office securely sealed, with the container clearly labeled "UNDER SEAL." The case number, case caption, a reference to any statute, rule, or order permitting the item to be sealed, and a non-confidential descriptive title of the document shall also be noted on the container.

(G) A motion to have an entire case kept under seal shall be subject to the requirements and procedures of sections (D) and (F).

(H) Nothing in this Local Rule limits the ability of the parties, by agreement, to restrict access to documents that are not filed with the Court.

(I) Trial exhibits, including documents previously filed under seal, and trial transcripts shall not be filed under seal except upon a showing of necessity demonstrated to the trial judge.

(J) The Court having found that all motions for downward departure filed by the government under 18 U.S.C. § 3553(e), United States Sentencing Guidelines § 5.K.1.1, or Fed. R. Crim. P. 35 satisfy, by their nature, the requirements for sealing, such motions and responses thereto may be filed under seal without filing a motion to seal by placing the words "UNDER SEAL" on the face sheet of the motion and by informing the Clerk of the need to file the document under seal.