

## LR 49.1 FILING DOCUMENTS UNDER SEAL IN CRIMINAL CASES

**(a) Application of Rule.** This rule sets forth the procedure for filing documents under seal in a criminal case. This rule does not affect a party's obligation to redact personal identifiers under Fed. R. Crim. P. 49.1.

**(b) Electronic Filing Required.** All documents submitted in a criminal case—whether sealed or not—must be filed electronically in compliance with the Criminal ECF Procedures Guide.

### **(c) Documents Not Requiring a Motion to Seal.**

*(1) Documents that must be filed under seal.* The following documents must be filed under seal and must not be unsealed except by court order:

(A) grand-jury material that must remain secret under federal law;

(B) an application, any supporting documents, and an order disposing of an application:

(i) to authorize the interception of oral, wire, or electronic communications under 18 U.S.C. §§ 2510-2522;

(ii) to authorize a pen register or trap-and-trace device under 18 U.S.C. §§ 3121-3127;

(iii) to authorize the disclosure of customer-communication records under 18 U.S.C. §§ 2703-2705;

(iv) for a writ of habeas corpus ad testificandum;

(v) for a subpoena duces tecum on behalf of a defendant;

(vi) for a subpoena under Fed. R. Crim. P. 17(c); and

(vii) for review of *Brady/Giglio* materials.

(C) a document related to a juvenile proceeding;

(D) a motion for change of custody related to cooperation, any supporting documents, and an order disposing of the motion;

(E) a document supporting counsel's motion to withdraw that discloses attorney-client privileged information;

(F) a presentence report or victim-impact statement; and

(G) a document protected from public disclosure by federal statute (such as 18 U.S.C. § 3509(d)) or federal rule (such as Fed. R. Evid. 412(c)).

(2) *Documents that may be filed under seal without court permission.* The following documents may be filed under seal without obtaining the court's permission and will be unsealed when the judgment is entered:

(A) an application for an order to disclose tax returns and return information, any supporting documents, and an order disposing of the application;

(B) an application for an order authorizing travel by a defendant's appointed counsel, any supporting documents, and an order disposing of the application;

(C) an application for appointment of counsel for a subpoenaed witness, any supporting documents, and an order disposing of the application;

(D) a motion for withdrawal of counsel and any supporting documents;

(E) a motion for appointment of a taint team to review privileged information and any supporting documents;

(F) a motion for a downward departure under U.S.S.G. § 5K1.1 or 18 U.S.C. § 3553(e) and any supporting documents;

(G) a motion to compel testimony of a witness upon grant of use immunity and any supporting documents;

(H) a joint motion to extend the time to file an indictment; and

(I) letters, emails, and similar materials submitted in connection with a sentencing hearing.

**(d) Documents Requiring a Motion to Seal.** A document not listed in LR 49.1(c) may not be filed under seal except by order of the court.

LR 49.1(e) – Proposed Amendments - FINAL

(1) *Motion to seal.* A party moving to seal a document not listed in LR 49.1(c) must first file the document under temporary seal and then, after a docket number is assigned, must file:

(A) a publicly filed motion that does not disclose the information filed under temporary seal;

(B) a memorandum of law, which may be filed under temporary seal, and which must:

(i) identify by docket number and describe the document filed under temporary seal;

(ii) explain why the document should remain under seal;

(iii) address whether the document may be redacted; and

(iv) propose a specific date when the document will be unsealed;

(C) any supporting affidavits or exhibits, which may be filed under temporary seal; and

(D) if applicable, a redacted version of the document, which will be publicly filed if the motion to seal is granted, and which prominently identifies:

(i) that it is a redacted version of a sealed document; and

(ii) the docket number of that sealed document.

(2) *Proposed Order.* A moving party must provide to chambers and serve a proposed order sealing the document and identifying a specific date the document will be unsealed.

(3) *Multiple Documents Under Seal.* A party moving to seal more than one document at a time must separately file each document under temporary seal, but may file a single motion that relates to all such documents.

(4) *Order granting motion to seal.* An order granting a motion to seal must direct the clerk to:

(A) unseal the document on a specific date; and

(B) if applicable, immediately unseal the redacted version of the sealed document.

(5) *Option to Withdraw After Denial of Motion.* If the court denies the motion to seal in whole or in part:

(A) Within 7 days after entry of the order denying the motion, the moving party may withdraw the temporarily sealed document by filing a notice of withdrawal. The notice must identify the docket number of the temporarily sealed document.

(i) If the document is timely withdrawn, the clerk must make the document inaccessible to the parties and the public.

(ii) If the document is not timely withdrawn, the clerk must unseal the document.

(B) A temporarily sealed document that is withdrawn is not part of the record and will not be considered by the court unless the document is refiled as a public document.

**(e) Sealed Indictments.**

(1) *Single-Defendant Indictment.* If a single-defendant indictment is filed under seal, the clerk must unseal the case when:

(A) the defendant makes an initial appearance, or

(B) the court orders the unsealing of the case.

(2) *Multi-Defendant Indictment.* If a multi-defendant indictment is filed under seal:

(A) the United States Attorney must, at or before the initial appearance of any defendant, publicly file a redacted indictment that discloses the charges against that defendant; and

(B) the clerk must unseal a defendant's case when:

(i) the United States Attorney files a redacted indictment that discloses the charges against that defendant, or

(ii) the court orders the unsealing of that defendant's case; and

(C) the clerk must unseal the entire indictment when:

- (i) all defendants have made an initial appearance; or
- (ii) the court orders the unsealing of the entire indictment.

**(f) Extending the Time a Document Is Sealed.** The court may extend the time a document is sealed on its own motion or on a party's motion. While a party's motion is pending, the clerk must not unseal the document.

(1) *Motion to extend.* At any time before a document is scheduled to be unsealed, a party moving to extend the time the document is sealed must file the following, all of which may be filed under seal:

- (A) a motion;
- (B) a memorandum of law which must:
  - (i) identify by docket number and describe the document filed under seal;
  - (ii) explain why the document should remain under seal; and
  - (iii) propose a specific date when the document will be unsealed; and
- (C) any supporting affidavits or exhibits.

(2) *Proposed Order.* A moving party must provide to chambers and serve a proposed order continuing the sealing of the document and identifying a specific date the document will be unsealed.

(3) *Order extending seal.* The order extending the time a document is sealed must direct the clerk to unseal the document on a specific date.

[Adopted effective July 20, 2015; amended effective \_\_\_\_, 2016]

**2015 Advisory Committee Note to LR 49.1**

This new rule significantly changes the procedures governing the sealing of documents in criminal cases. It requires all documents — whether sealed or not — to be filed electronically in compliance with the Criminal ECF Procedures Guide.

The rule establishes separate procedures for two categories of sealed documents: (1) documents that do not require a motion to seal; and (2) documents that require a motion to seal. Documents not requiring a motion to seal are further divided into two subcategories: documents that *must* be filed under seal and documents that *may* be filed under seal without court permission.

## LR 49.1(e) – Proposed Amendments - FINAL

The rule specifies that all letters, emails, or other materials submitted in connection with sentencing — including communications from defendants, family members, friends, and members of the public — will be electronically filed in the case and will be unsealed when the judgment is entered. The court's website provides a notice to the public that any communication made to the court in connection with sentencing will be filed in the case and may be publicly disclosed.

If a motion to seal a document is required, the filing party must file the document under temporary seal and then file a motion to seal. If the motion to seal is granted, the document may remain sealed until the date specified in the court order. If the court denies the motion to seal, the filing party may withdraw the temporarily sealed document by filing a notice to the clerk. A withdrawn document is not part of the record and will not be considered by the court unless it is refiled as a public document. If the document is not withdrawn within 7 days after the motion to seal is denied, the temporarily sealed document will be unsealed and become part of the record.

Parties may file a single motion and a single memorandum under LR 49.1(d)(1) to request that multiple documents be sealed. Documents that parties seek to seal, however, must be filed under seal separately so that each is assigned its own docket number, as provided in LR 49.1(d)(2). For more information on how to file a motion to seal under LR 49.1, consult the court's Criminal ECF Procedures Guide.

The rule contemplates that all documents filed under seal without court permission under LR 49.1(c)(2) will be unsealed when judgment is entered. This deadline is intended to encourage parties to address sealing issues at or before sentencing. If a party wishes to maintain a document under seal after entry of judgment, that party should request an extension of the time the document is sealed at or before sentencing.

The rule also provides procedures for when the United States Attorney files a multi-defendant indictment under seal. In such cases the United States Attorney must, at or before the initial appearance of a defendant, publicly file a redacted indictment that discloses the charges against that defendant. The rule also directs when the clerk must unseal a multi-defendant indictment.

The rule governs only the sealing of specific documents in a criminal case, not the sealing of an entire criminal case.