

~~INTERIM~~ CIRCUIT RULE 27-13. SEALED DOCUMENTS⁺

(New 6/1/19)

(a) Introduction

This Court has a strong presumption in favor of public access to documents. Therefore, except as provided in (d) below, the presumption is that every document filed in or by this Court (whether or not the document was sealed in the district court) is in the public record unless this Court orders it to be sealed.

Accordingly, unless a case or document falls within the scope of (d) below, this Court will permit it to be filed under seal only if justified by a motion to seal the document from public view. *See* (e), (f), (g), and (h) below. The Court will not seal a case or a document based solely on the stipulation of the parties.

When an entire case was sealed in district court, the case will be docketed provisionally under seal in this Court, and within 21 days of filing the notice of appeal, a party must file a motion to continue the seal or the seal will be lifted without notice. *See* (g) below. When a document was sealed in the district court, the document will be filed provisionally under seal, and must be accompanied by a notice under subsection (d), a motion to seal under subsection (e), or a notice under subsection (f). The document will remain provisionally sealed until the Court rules on any motion to seal.

Documents in Social Security and Immigration cases, including administrative records, are not filed under seal in this Court. However, remote electronic access to documents is limited by rule to the parties to the case, though the documents will be available for public viewing in the Clerk's Office. *See* Fed. R. Civ. P. 5.2(c); Fed. R. App. P. 25(a)(5). This same rule, however, presumes that the orders and dispositions will be publicly available.

(b) Definitions

(1) Sealed Document: There is no public access via PACER. Once submitted, access to the document is restricted to the Court.

(2) Sealed Case: There is no public access via PACER. Access to the docket and all documents filed in the case is restricted to case participants and the Court.

(c) Form of Documents

⁺ This rule is promulgated on an interim basis pursuant to 28 U.S.C. § 2071(e), and replaces prior Circuit Rule 27-13 pending adoption of a final Rule.

All documents shall be submitted electronically unless the filer is exempt from the electronic filing requirement. Each document or volume of documents submitted under seal shall include the words "UNDER SEAL" on its cover and/or first page. Any publicly filed redacted version of a sealed document shall include the word "REDACTED" on the cover and/or first page of the document.

Because documents submitted under seal will not be viewable to the parties via ~~CM/ECF~~Appellate Electronic Filing noticing, any notice or motion submitted under seal and any document associated with such notice or motion shall be served on opposing counsel in paper form or, by mutual agreement with consent, via email. *See Fed. R. App. P. ~~25(e)(1)(D)~~Circuit Rule 25-5(f)(2).*

Rather than moving to file the entire excerpts of record under seal, a party shall submit any document(s) it wishes to seal as a separate volume. *See* Circuit Rule 30-1.6(c).

(d) Presentence Reports, Grand Jury Transcripts, and Sealed Filings Mandated by Statute or Procedural Rule

When a statute or procedural rule requires that a brief or other document be filed under seal (*see, e.g.*, 18 U.S.C. § 5038(c), 3509(d); Fed. R. Crim. P. 6(e)), or when a party is filing an original, revised, or amended presentence report, its attachments, and any confidential sentencing memoranda, a motion under subsection (e) is not required.

Instead, the document(s) shall be submitted under seal in accordance with subsection (c), and accompanied by a notice of filing under seal that references this rule and the pertinent statute or procedural rule.

In cases in which ~~any~~the presentence report is referenced in the brief, the party first filing that brief must file under seal the presentence report, the documents attached to the report, and any sentencing memoranda filed under seal in the district court. The report and documents shall be filed on the same day as the brief that references the report and documents, using the presentence report electronic document filing ~~event~~type, without an accompanying notice of filing under seal. These documents shall not be included in the excerpts of record. The party submitting the presentence report and related sealed memoranda shall separately notify the opposing party by email (or first class mail if the opposing party is exempt from electronic filing) of the specific documents submitted, and shall provide a copy upon request.

(e) Motion to Submit a Sealed Document

In the absence of a statutory or procedural requirement as described in (d) above, a party who wishes to submit any document or portion of a document, including a brief, under seal, whether or not it was sealed in the district court, shall file a motion simultaneously with the document. The motion shall explain the specific reasons for this relief and describe the potential for irreparable injury in the absence of such relief. In addition, the motion shall request the least restrictive scope of sealing and be limited in scope to only the specific documents or portion of documents that merit sealing, for example, propose

redaction of a single paragraph or limit the request to a portion of a contract. The motion and document will be provisionally sealed pending a ruling on the motion.

Additionally, rather than moving to file the entire excerpts of record under seal, a party shall submit any document(s) that fall within this subsection as a separate volume. *See* subsection (c) above. Where redaction of a document is feasible, the moving party shall highlight in the unredacted document all portions of the document that party is seeking to file under seal.

(f) Notice of Intent to File a Document Publicly that Was the Subject of a Seal Below

If the filing party does not intend to ask that a seal issued by the district court be continued, the party shall file the documents provisionally under seal, along with a notice of intent to file publicly, in order to allow any other party an opportunity to move for appropriate relief within 21 days of the notice. Absent a motion by another party to continue the seal, or a notice pursuant to subsection (d), the provisional seal will be lifted without notice and the documents will be made available to the public.

(g) Motion or Notice to Maintain a Case Under Seal

A party who wants a case that was fully sealed in the district court to remain fully sealed on appeal shall file a motion to continue the seal within 21 days of the filing of the notice of appeal. The motion must explain with specificity why it is necessary for the entire case to be sealed on appeal and why no less restrictive alternatives are available.

When the seal is required by statute or procedural rule, a motion is not required; instead, a party must file a notice that references this rule and the pertinent statute or rule within 21 days of the filing of the notice of appeal.

Absent a motion or notice, the seal will may be lifted without notice and the case in full will be made available to the public.

~~**(h) Motion or Notice to Maintain the Record Under Seal**~~

~~Any portion of the record that was sealed below and is transmitted to this Court by the district court or agency will be provisionally sealed and the parties must move to maintain the seal within 21 days of transmission. The motion must explain with specificity why it is necessary to maintain the seal on appeal and why no less restrictive alternatives are available. Absent a motion to continue the seal, or a notice pursuant to subsection (d), any seal will be lifted without notice and the record in full will be made available to the public.~~

~~**(h)**~~ **Motions to Unseal**

Motions to unseal may be made on any grounds permitted by law. The parties in a civil case may stipulate to the public filing in this Court of a document that was filed under seal in the district court.

~~(j)~~(i) **Argument**

Except as otherwise ordered by the Court, the Court will not close oral argument to the public in any type of case, even when the case itself or the briefs or excerpts of record have been filed under seal. A party seeking a closed hearing shall move for such extraordinary relief at least 14 days prior to the scheduled argument date and explain with specificity why such relief is required and whether any less extraordinary alternative is available.

~~(k)~~(j) **Dispositions**

This Court will presumptively file any disposition publicly, even in cases involving sealed materials. Any party who believes the Court's disposition should be sealed shall file a motion seeking that relief within 28 days of the completion of briefing.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 27-13

*The Court has a strong presumption in favor of public access to Court records in both civil and criminal cases. See *The Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016); *Oliner v. Kontrabecki*, 745 F.3d 1024, 1025-26 (9th Cir. 2014); *Seattle Times v. U.S. Dist. Court of Western Washington*, 845 F.2d 1513, 1516 (9th Cir. 1988). Motions to file documents under seal are therefore discouraged. Moreover, if the contents of documents originally sealed in the district court have subsequently been disclosed publicly, the Court will be disinclined to maintain the seal.*

A motion to seal does not ordinarily change the briefing schedule and any order resolving such a motion will include further instructions for the parties as needed. The Court may defer ruling on the motion until the completion of briefing. If the Court denies a motion to file a document under seal, the Court will ordinarily provide the moving party with an opportunity to withdraw that document and will shield the document from public access during that period.

When the filing of classified documents on an ex parte or sealed basis in a given case is necessary in light of national security issues, the Court will adopt procedures specific to that case.

Cross Reference:

- FRAP 25. Filing and Service on page **_Error! Bookmark not defined.**, specifically FRAP 25(a)(5), Privacy Protection
- Circuit Advisory Committee Note to Rule 3-5 on page **_Error! Bookmark not defined.**

~~CIRCUIT RULE 27-13. SEALED DOCUMENTS; MOTIONS TO SEAL~~

Abrogated 3/23/16

CIRCUIT RULE 27-14. MOTIONS TO TRANSMIT PHYSICAL AND DOCUMENTARY EXHIBITS

(New 7/1/13)

If a party asserts that review of an exhibit not currently available on the electronic district court docket is necessary to resolution of an issue on appeal, that party shall move the Court for leave to transmit to the Court a copy or replication of the exhibit. The copy, or photograph or other replication shall not be included with the motion. The Court will defer ruling on the motion until after the completion of briefing. If the exhibit was submitted under seal in the district court, the party moving to transmit the exhibit must also file a notice or motion pursuant to Circuit Rule 27-13. (Rev. 6/1/19)

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 27-14

The parties should be aware that frequently this Court does not have access to trial exhibits because the district courts typically return them to the parties. Therefore, the parties are encouraged during the course of the district court proceedings to file documentary exhibits electronically and, when practicable, to photograph or otherwise electronically replicate physical exhibits in a manner that permits the exhibits' inclusion on the electronic district court docket. The parties may consider including portions of relevant documentary exhibits that were admitted and/or offered and excluded in the excerpts of record. To the extent that the Court finds additional exhibits relevant, the Court may direct the parties to provide the exhibits. (New 7/1/13)