

INTERIM CIRCUIT RULE 27-13.¹

SEALED DOCUMENTS

(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.

¹ 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.

(c) Form of Documents

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.

Because documents submitted under seal will not be viewable to the parties via CM/ECF 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, via email. *See* Fed. R. App. P. 25(c)(1)(D).

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 a presentence report, its attachments, and any confidential sentencing memoranda, a motion under subsection (e) is not required.

Instead, the document 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 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 filing event. These documents shall not be included in the excerpts of record.

(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.

(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 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.

(i) 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) 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) 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 References:

- Federal Rule of Appellate Procedure 25(a)(5), Privacy Protection
- Circuit Advisory Committee Note to Rule 3-5 on page 7

NINTH CIRCUIT RULE 25-5

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~~(b) Documents excluded from electronic filing requirement. (1) Documents to be maintained under seal and motions and notices seeking leave to file a document under seal under Circuit Rule 27-13 must be submitted in paper format unless the entire case is maintained under seal; and (2) Excerpts of record under Circuit Rules 13-2, 17-1, 22-6, 30-1, and 32-4 must be submitted in paper format. (This subsection is modified by the provisional announcement found at www.ca9.uscourts.gov/excerpts.) (Rev. 7/1/13)~~

NINTH CIRCUIT RULE 30-1

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30-1.3. Appellant's Initial Excerpts of Record

~~At the time the appellant's opening brief is submitted, [T]he appellant shall, unless exempt pursuant to Circuit Rule 30-1.2, submit 4 copies of the initial excerpts of record bound separately from the briefs at the time appellant's opening brief is submitted. The excerpts shall be separate from the brief and submitted electronically unless appellant is exempt from the electronic filing requirement. On the same day the excerpts are submitted electronically, The appellant shall serve one paper copy of the excerpts on each of the any other part[y] that is not registered for electronic filing, but shall defer submission of the paper copies of the excerpts to the Court until directed by the Clerk to do so. If the brief is submitted electronically, the excerpts shall be mailed to the other parties and the Court on the same day that the brief is submitted electronically. If the brief is not submitted electronically appellant is exempt from the electronic filing requirement, appellant shall file the 4 paper copies of the excerpts at the time the brief is submitted, shall accompany the original and copies of the brief bound separately from the brief, and serve one paper copy on each of the other parties. (Rev. 12/1/09, 3/23/16)~~

Cross-Reference:

Circuit Rule 25-5. Electronic Filing on page 83, specifically, Circuit Rule 25-5(b)(2) (a), Parties exempt from electronic filing requirement.

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30-1.5 Items Not to Be Included in the Excerpts of Record

The excerpts of record shall not include briefs or other memoranda of law filed in the district court unless necessary to the resolution of an issue on appeal, and shall include only those pages necessary therefor. The presentence report, documents attached to the report, and any sentencing memoranda filed under seal in the district court shall not be included in the excerpts of record. See Cir. R. 27-13(d). Rev. 3/23/16)

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30-1.6 Format of Excerpts of Record

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(c) Excerpts of Record that include materials to be sealed

When the excerpts of record include documents: (1) required to be sealed pursuant to statute or rule and submitted under Ninth Circuit Rule 27-13(d); or (2) that are being submitted provisionally under seal pursuant to Ninth Circuit Rule 27-13(e) or (f); those documents shall be submitted in a separate, final volume of the excerpts. That volume is exempt from the chronological sequence set forth in subsections (a) and (b). If the prior volumes of the excerpts are consecutively paginated, that pagination shall continue in the final separate volume. (Rev. 3/23/16)

Cross Reference

- Circuit Rule 27-13, Sealed Documents, specifically Circuit Rule 27-13(c), Form of Documents

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30-1.7. Appellee's Supplemental Excerpts of Record

If the appellee believes that the excerpts of record filed by the appellant exclude items which are required under this rule, or if argument in the answering brief

requires review of portions of the reporter's transcript or other documents not included by appellant in the excerpts, ~~the~~ appellee shall, unless exempt pursuant to Circuit Rule 30-1.2, at the time of ~~the~~ appellee's brief is submitted, submit supplemental excerpts of record, prepared pursuant to this rule, comprised of the omitted items. ~~Appellee shall submit 4 copies of [T]he supplemental excerpts shall be separate from the brief and submitted electronically unless appellee is exempt from the electronic filing requirement. On the same day the excerpts are submitted electronically, The appellee shall serve one paper copy of the supplemental excerpts of record on each of the any other parties that is not registered for electronic filing, but shall defer submission of the paper copies of the excerpts to the Court until directed by the Clerk to do so. If the brief is submitted electronically, the excerpts shall be mailed to the other parties and the Court on the same day that the brief is submitted electronically. If the brief is not submitted electronically appellee is exempt from the electronic filing requirement, appellee shall file the 4 paper copies of the supplemental excerpts at the time the brief is submitted, shall accompany the original and copies of bound separately from the brief, and serve one paper copy on each of the other parties. (Rev. 12/1/09, 3/23/16)~~

If appellant did not file excerpts of record under subsection 30-1.3 of this rule, the contents of appellee's supplemental excerpts are limited to the district court docket sheet, the notice of appeal, the judgment or order appealed from, and any specific portions of the record cited in appellee's brief. *(New 1/1/05)*

Cross-Reference:

Circuit Rule 25-5. Electronic Filing ~~on page 83~~, specifically, Circuit Rule 25-5(b)(2) (a). Parties exempt from electronic filing requirement.

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30-1.8. Further Excerpts of Record

(a) If the reply brief requires review of portions of the reporter's transcript or other documents not included in the previously filed excerpts, appellant shall, unless exempt pursuant to Circuit Rule 30-1.2, at the time the reply brief is submitted, submit ~~supplemental~~ further excerpts of record. ~~Appellant shall submit 4 copies of the supplemental~~ The further excerpts shall be separate from the brief and submitted electronically unless appellant is exempt from the electronic filing requirement. On the same day the further excerpts are submitted electronically, appellant and shall serve one paper copy of such excerpts of record on each of the any other parties that is not registered for electronic filing, but shall defer submission of the paper copies of the excerpts to the Court until directed by the Clerk to do so. If the brief is submitted electronically, the excerpts shall be mailed

~~to the other parties and the Court on the same day that the brief is submitted electronically. If the brief is not submitted electronically appellant is exempt from the electronic filing requirement, appellant shall file the 4 paper copies of the excerpts at the time the brief is submitted, shall accompany the original and copies of bound separately from the brief, and serve one paper copy on each of the other parties. (Rev. 12/1/09, 3/23/16)~~

~~(b) If a supplemental brief filed pursuant to court order requires review of portions of the reporter's transcript or other documents not included in any previously filed excerpts, the party filing the supplemental brief, shall, at the time the supplemental brief is submitted, submit additional further excerpts of record. The party shall submit 4 copies of the further excerpts shall be separate from the brief and submitted electronically unless the filing party is exempt from the electronic filing requirement. On the same day the excerpts are submitted electronically, the filing party and shall serve one paper copy of such excerpts of record on each of the any other parties that is not registered for electronic filing, but shall defer submission of the paper copies of the excerpts to the Court until directed by the Clerk to do so. If the brief is submitted electronically, the excerpts shall be mailed to the other parties and the Court on the same day that the brief is submitted electronically. If the brief is not submitted electronically filing party is exempt from the electronic filing requirement, the party shall file the 4 paper copies of the excerpts at the time the brief is submitted, shall accompany the original and copies of bound separately from the brief, and serve one paper copy on each of the other parties. (Eff. 7/1/98; Rev. 12/1/09, 3/23/16)~~

Cross-Reference:

~~Circuit Rule 25-5. Electronic Filing on page 83, specifically, Circuit Rule 25-5(b)(2) (a). Parties exempt from electronic filing requirement.~~

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~~30-1.10. Presentence Reports~~

~~In all cases in which the presentence report is referenced in the brief, the party filing such brief must file the presentence report and may file any other relevant confidential sentencing documents. The presentence report and documents shall be filed on the same day as the brief that references the report and documents. The presentence report and documents shall remain under seal and be provided by the Clerk to the panel hearing the case. (New 7/1/97; Rev. 12/1/09; Rev. 7/1/13)~~

Appendix A, Disposition of Motions by the Clerk

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~~(25) to grant an unopposed motion to file a document under seal when the document was maintained under seal below, the seal is required by law or filing under seal is necessary to preserve the provisions of a protective order entered below.~~