

Local Criminal Rule 49.1-2 - Filing Under Seal

(a) Maintaining Cases Under Seal. There is a presumption upon the initial appearance of a defendant on a sealed charging instrument that the entire case, including a multi-defendant case in which the defendant is the first to appear, should be unsealed. To maintain a case under seal, no later than at the time of the initial appearance, a party must file a motion and brief in support establishing good cause why the court should maintain the case under seal following the procedures set forth in subsections (g) and (h). The clerk will maintain a seal on the case until the court rules on the motion. If the court denies the motion, the clerk will unseal the case 21 days after service of the Order, absent Fed. R. Crim. P. 59(a) objection, motion to reconsider, notice by a party of an intent to file an interlocutory appeal, or further court order.

(b) Filing Documents Under Seal - General Rule. Unless authorized in subsection (f), other rule, statute or court order, the clerk may not maintain under seal any document. Once a document is sealed, the clerk may not, without a court order, allow anyone to see it other than:

(1) the court and its staff;

(2) the clerk's staff; and

(3) the attorney(s) who has/have appeared or been appointed on appeal in the individual defendant's case to which the document pertains.

(c) Electronic Filing Required. To file a document under seal, a party must file it electronically as required under section 18 of the *ECF Policies and Procedures Manual* unless exempt from electronic filing under S.D. Ind. L.R. 5-2(b) or 5-3(c).

(d) Title. The title of the document must clearly indicate that it is filed under seal. If the title cannot be publicly disclosed, an appropriate way to identify the document on the public docket must be identified directly below the title.

(e) Prior Authorization to Seal. If a statute, rule, or court order authorizes the document to be sealed, the first paragraph of the document must identify with specificity the statute, rule, or court order. A protective order does not authorize a party to file a document under seal.

(f) No Separate Motion Necessary. No motion to seal is necessary for documents authorized under subsection (e). In addition, the following documents may also be filed under seal without motion or further order of the court, provided counsel has a good faith belief that sealing is required to ensure the safety of a person or entity, or to otherwise protect a substantial public interest:

(1) charging instruments (e.g., complaint, information, indictment) and accompanying documents prior to the initial appearance of the defendant as set forth above in subsection (a);

(2) warrant-type applications (e.g., arrest warrants, search warrants, pen registers, trap and trace devices, tracking orders, cell site orders, and wiretaps under 18 U.S.C. §§ 2516 and 2703);

(3) motions for tax return information pursuant to 26 U.S.C. § 6103;

(4) documents filed in grand jury proceedings;

(5) documents filed in juvenile proceedings;

(6) documents that reference or relate to a defendant's cooperation;

(7) motions for competency evaluation and related documents, filed under the provisions of Fed. R. Crim. P. 12.2 and 18 U.S.C. § 4241; and

(8) victim impact statements and related documents, including documents containing the names, addresses, and/or payment information of restitution payees.

With the exception of charging documents addressed in subsection (f)(1), such documents will remain under seal subject to further order of the court.

(g) Separate Motion Necessary - Filing Documents Under Seal - Procedure.

(1) Except as provided under subsection (f), a party filing a document under seal must contemporaneously:

(A) file a Motion to Maintain Document(s) Under Seal, and

(i) if the filing party designated the subject information confidential, *e.g.*, a trade secret, proprietary information, or a business practice or procedure, a Brief in Support that complies with the requirements of subsection (h); and/or

(ii) if the filing party did not designate the subject information confidential, an identification of the designating party(ies); and

(B) unless the motion is to be considered *ex parte*, in which case no service is required, serve an unredacted and complete version of the sealed document upon all counsel and *pro se* parties.

(2) The designating party(ies) identified according to subsection (g)(1)(A)(ii) must, within 14 days of service of the Motion to Maintain Document(s) under Seal, file a

Statement Authorizing Unsealing of Document (or specific portions thereof), or a Brief in Support that complies with the requirements of subsection (h). If the designating party fails to file such Statement or Brief, then the filing party must notify the court of that failure. The court may summarily rule on the (g)(1)(A) motion to seal if the designating party does not file the required Statement or Brief.

(h) Brief in Support. A Brief in Support must not exceed 10 pages in length and must include:

(1) identification of the case and/or each specific document or portion(s) thereof that the party contends should remain under seal;

(2) the reasons demonstrating good cause to maintain the case and/or document, or portion(s) thereof, under seal including:

(A) why less restrictive alternatives to sealing, such as redaction, will not afford adequate protection; and

(B) how the case and/or document satisfies applicable authority for it to be maintained under seal; and

(C) the time period for which the case and/or document should remain sealed; and

(3) a statement as to whether maintenance of the case and/or document under seal is opposed by any party or why such party's position is unknown; and

(4) a proposed order as an attachment.

(i) Opposition to Maintenance Under Seal. The filing of an Opposition to a Motion to Maintain Case or Document(s) Under Seal is governed by S.D. Ind. L.R. 7-1, but the time for response is triggered by the filing of the Brief in Support. Any Brief in Opposition must not exceed 10 pages in length.

(j) Denial of Motion to Maintain Under Seal. If the court denies the motion, the clerk will unseal the document(s) 21 days after service of the Order, absent Fed. R. Crim. P. 59(a) objection, motion to reconsider, notice by a party of an intent to file an interlocutory appeal, or further court order.

Note: Amended July 1, 2023, to remove the requirement for a sealed coversheet and for conformity with Local Rule 5-11.