

FILED

JUN 1 - 2010

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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DEPUTY CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

IN RE:

**ADOPTION OF NEW AND
AMENDED LOCAL RULES**

GENERAL ORDER NO. 492

IT IS HEREBY ORDERED that the Judges of the Eastern District of California, after the notice and comment period provided for by 28 U.S.C. § 2071(b), adopt the attached new and amended local rules:

Rule 141 - Sealing of Documents (amended)

Rule 141.1 - Orders Protecting Confidential Information (new)

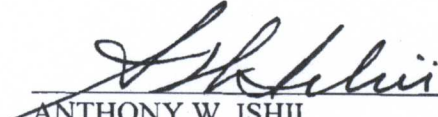
Rule 281 - Pretrial Statements (amended)

Rule 304 - Magistrate Judges' Authority in Excepted Pretrial Matters (amended)

Said new and amended local rules shall take effect upon the filing of this general order.

Dated: June 1, 2010

FOR THE COURT:



ANTHONY W. ISHII
Chief United States District Judge

RULE 141 (Fed. R. Civ. P. 5.2, 26) (Fed. R. Crim. P. 49, 49.1)

SEALING OF DOCUMENTS

(a) Sealing Documents: General Principles. Documents may be sealed only by written order of the Court, upon the showing required by applicable law. To ensure that documents are properly sealed, specific requests to seal must be made even if an existing protective order, statute, or rule requires or permits the sealing of the document. Notice that a request to seal has been made will typically be filed in the publicly available case file. Unless the Court orders otherwise, court orders sealing documents will also be filed in the publicly available case file and will not reveal the sealed information. Access to all documents filed under seal will be restricted to the Court and authorized court personnel.

(b) Requests to Seal. If a party seeks to seal documents, the party shall submit, in the manner prescribed below, a "Notice of Request to Seal Documents," a "Request to Seal Documents," a proposed order, and all documents covered by the request.

Except in pre-indictment criminal investigations in which sealing is sought, the "Notice of Request to Seal Documents" shall be filed electronically, or for non-electronic filers, shall be submitted on paper to the Clerk for filing by hand delivery, by same-day or overnight delivery service provided by a courier, or by U.S. Mail, and shall be served on all parties. The Notice shall describe generally the documents sought to be sealed, the basis for sealing, the manner in which the "Request to Seal Documents," proposed order, and the documents themselves were submitted to the Court, and whether the Request, proposed order, and documents were served on all other parties.

Except in criminal pre-indictment matters, the "Request to Seal Documents," the proposed order, and all documents covered by the Request shall be either (1) e-mailed to the appropriate Judge or Magistrate Judge's proposed orders e-mail box listed on the Court's website, with the e-mail subject line including the case number and statement: "Request to Seal Documents"; or (2) submitted on paper to the Clerk by hand delivery, by same-day or overnight courier, or by U.S. Mail; the envelope containing the Request, proposed order and documents shall state in a prominent manner "Request to Seal Documents." If the Request, proposed order, and documents are delivered to the Clerk, the party seeking sealing shall submit a self-addressed, stamped envelope for return of the documents. In either case, the Request, proposed order, and submitted documents shall not be filed at this time.

Except in matters in which it is clearly appropriate not to serve the "Request to Seal Documents," proposed order, and/or documents upon the parties, which would include criminal pre-indictment matters, all Requests, proposed orders, and submitted documents shall be served on all parties on or before the day they are submitted to the Court. See L.R. 135.

The "Request to Seal Documents" shall set forth the statutory or other authority for sealing, the requested duration, the identity, by name or category, of persons to be permitted

access to the documents, and all other relevant information. If the Request, proposed order, and/or documents covered by the Request were submitted without service upon one or more other parties, the Request also shall set forth the basis for excluding any party from service. The documents for which sealing is requested shall be paginated consecutively so that they may be identified without reference to their content, and the total number of submitted pages shall be stated in the request.

In pre-indictment criminal investigations, unless otherwise ordered, instead of filing a "Notice of Request to Seal Documents," government counsel shall submit to the Court, with the "Request to Seal Documents," proposed order, and documents proposed for sealing, a second proposed order sanitized of any identifying information, indicating in the caption that attached documents have been approved for filing under seal, with the understanding that the sanitized order will be filed in the publicly available case file.

(c) Oppositions to Sealing Requests. Except in criminal pre-indictment matters, and unless otherwise ordered by the Court, a party or any opponent may submit an opposition to the "Request to Seal Documents" within three days of the date of service of the "Notice of Request to Seal Documents." The opposition shall be either: (1) e-mailed to the appropriate Judge or Magistrate Judge's proposed orders e-mail box listed on the Court's website, with the e-mail subject line including the case number and statement: "Opposition to Request to Seal Documents"; or (2) submitted on paper to the Clerk by hand delivery, or by same-day or overnight courier, in an envelope stating in a prominent manner: "Opposition to Request to Seal Documents." The Opposition shall be served on the party or parties requesting sealing and on any other party served with the "Request to Seal Documents." The Opposition shall not be filed at this time.

(d) Orders on Sealing Requests. Unless the Court orders otherwise, following review of a "Request to Seal Documents," the documents sought to be sealed, and any opposition to the Request, the Court will file in the publicly available case file an order granting or denying the Request. The order shall identify the documents for which sealing has been granted or denied by page number without revealing their contents. The Court may file a more detailed ruling under seal. The publicly filed order or the docket shall include a notation that a sealed order has been filed.

(e) Disposition of Documents.

Upon issuance of an order on a sealing request and unless the Court has ordered otherwise, the Clerk will file under seal the "Request to Seal Documents," proposed order, and any opposition. Disposition of the documents covered by the Request depends on whether the Request is denied or granted.

(1) Denial. If a Request is denied in full or in part, the Clerk will return to the submitting party the documents for which sealing has been denied.

(2) Grant. If a Request is granted in full or in part, the disposition of

documents to be sealed depends upon whether the requesting party is authorized to file electronically.

(i) **Electronic Filer.** If the requesting party is authorized to file electronically, then counsel for the requesting party shall either e-mail to the Clerk, at the e-mail address for sealed documents listed on the Court's website, an electronic copy of the documents covered by the sealing order, in .pdf format as an attachment, or submit to the Clerk by hand-delivery, by same-day or overnight courier, or by U.S. Mail, a CD containing a copy of the documents in .pdf format. If submitted by e-mail, the subject line of the e-mail shall include the case number, and the body of the e-mail shall identify the order authorizing the sealing of the attached documents. If submitted by hand, U.S. mail, or courier, the envelope containing the CD shall state in a prominent manner: "Sealed Documents" and shall identify the order authorizing sealing. The Clerk will file the documents under seal and will then return to the submitting party any documents submitted by hand, U.S. mail, or courier and any CD.

(ii) **Non-Electronic Filer.** If the requesting party is not authorized to file electronically, the Court will transmit to the Clerk the documents to be sealed along with the order authorizing sealing. The Clerk will scan the documents to be sealed and file them under seal. The Clerk will then return the documents to the submitting party.

(f) **Unsealing Documents.** Upon the motion of any person, or upon the Court's own motion, the Court may, upon a finding of good cause or consistent with applicable law, order documents unsealed. See Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1.

RULE 141.1 (Fed. R. Civ. P. 26)

ORDERS PROTECTING CONFIDENTIAL INFORMATION

(a) Presumption of Public Access; Limits to Protection.

(1) All information provided to the Court in a specific action is presumptively public, but may be sealed in conformance with L.R. 141. Confidential information exchanged through discovery, contained in documents to be filed in an action, or presented at a hearing or trial otherwise may be protected by seeking a protective order as described herein.

(2) A protective order is entered without prejudice to any rulings made in a different lawsuit or dispute, and the determination in an action in this Court does not bind other courts.

(b) Mechanics of Obtaining a Protective Order.

(1) **Non-Trial Civil and Criminal Protective Orders.** Either the person possessing or the party seeking information to be protected may move the Court for a protective order pursuant to L.R. 230, 251, or 430.1 or may submit a proposed stipulated protective order signed by all parties and the person possessing the information in accordance with L.R. 143. See L.R. 302(c)(2). A protective order issued prior to trial does not affect the admission of evidence at trial unless the order specifically so states.

(2) **Protective Order for Civil Trial.** A party seeking a protective order relating to the admission of evidence at trial shall submit a stipulation or request with the party's pretrial statement. A non-party seeking a protective order for trial shall submit a motion at or before the time for filing pretrial statements or promptly following discovery of the need for the order. See L.R. 230, 281, 282.

(3) **Protective Order for Criminal Trial.** Before the trial confirmation hearing in a felony or Class A misdemeanor case, either the person possessing or the party seeking information to be protected may move the Court for a protective order pursuant to L.R. 430.1 or may submit a proposed stipulated protective order signed by all parties and the person possessing the information in accordance with L.R. 143. In any other criminal action, a motion or proposed stipulated protective order shall be filed at least fourteen (14) days prior to trial. See L.R. 450.

(d) **Requirements of a Proposed Protective Order.** All stipulations and motions seeking the entry of a protective order shall be accompanied by a proposed form of order. Every proposed protective order shall contain the following provisions:

(1) A description of the types of information eligible for protection under the order, with the description provided in general terms sufficient to reveal the nature of the information (e.g., customer list, formula for soda, diary of a troubled child);

(2) A showing of particularized need for protection as to each category of information proposed to be covered by the order; and

(3) A showing as to why the need for protection should be addressed by a court order, as opposed to a private agreement between or among the parties.

(e) **Hearing on Civil or Criminal Protective Orders.** The Court may order that the person for whose benefit a protective order is sought shall attend a hearing, in camera or in open court, to discuss the necessity for the protective order.

(f) **Filing Documents Subject to Protective Order.** Documents that are the subject of a protective order may be filed under seal only if a sealing order is first obtained in compliance with L.R. 141.

(g) **Closed Actions.** Once the Clerk has closed an action, unless otherwise ordered, the Court will not retain jurisdiction over enforcement of the terms of any protective order filed in that action.

RULE 281 (Fed. R. Civ. P. 16)

PRETRIAL STATEMENTS

(b) Form, Contents. The pretrial statement shall state the name of the party or parties on whose behalf it is presented and set forth the nature of the action and the following matters, under the following captions and in the following order:

...

(22) Trial Protective Order. Whether a trial protective order will be sought pursuant to L.R. 141.1(b)(2).

(23) Miscellaneous. Any other appropriate comments, suggestions, or information that might aid in the disposition of the action, including references to any matters set forth in Fed. R. Civ. P. 16(c).

RULE 304 (Fed. R. Civ. P. 72)

**MAGISTRATE JUDGES' AUTHORITY
IN EXCEPTED PRETRIAL MATTERS**

...

(d) Response. Responses to objections shall be filed, and served on all parties, within fourteen (14) days after service of the objections.