

Sealed Settlement Agreements in Federal District Court – May 2003 Progress Report

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The Judicial Conference's Advisory Committee on Civil Rules asked the Federal Judicial Center to conduct research on sealed settlement agreements filed in federal district court. Although the practice of *confidential* settlement agreements may be common, the question is how often and under what circumstances are such agreements *filed* under seal?

Research Questions

We identified three general research questions for this project:

1. *What are local rules and practices concerning sealed settlement agreements?* There are very few local rules concerning sealed settlement agreements specifically, but many jurisdictions have rules concerning sealed court documents generally. We identified which federal district court local rules concern sealed court documents and compiled them in Appendix A. Because state practice often influences federal practice, we also identified state and local statutes and rules that concern sealed court documents in state trial courts, and compiled them also in Appendix A. This progress report includes a summary analysis of all federal and state rules on sealed documents filed in trial courts.

2. *How often are sealed settlement agreements filed in federal court?* We have begun to determine how often sealed settlement agreements are filed in each district. We do this by searching docket sheets for sealed documents and then reading docket sheets and filed (unsealed) documents to determine which sealed documents are sealed settlement agreements. At this early stage of the research it appears that sealed settlement agreements are filed in approximately one per 300 civil cases. This progress report includes frequency estimates for 11 districts.

¹ We are grateful for advice on the presentation of this report from Jim Eaglin, Geoff Erwin, Molly Treadway Johnson, David Marshall, Syl Sobel, Russell Wheeler, and Ken Withers.

3. *Why are sealed settlement agreements filed?* In cases with sealed settlement agreements the unsealed court records often give clues to the nature of the settlement agreement. Because settlement agreements often are confidential, the question usually is not why is the settlement agreement sealed, but why is it filed? From our analysis of court records we can determine what types of cases have sealed settlement agreements, and sometimes we can infer why the agreement was filed. At a later phase of this research we may want to consider other methods to learn more about the sealed documents, such as by contacting judges or attorneys involved in the cases. This progress report includes case descriptions of cases from 11 districts that appear to have settlement agreements filed under seal.

Local Rules on Sealed Documents

Case records generally are public records and all documents filed with the court are available to the public for inspection upon request unless a statute, rule, or order provides otherwise. Judges generally have the authority to shield all or portions of court records from the public in appropriate cases.

Here we summarize state and federal rules on sealed court records. The rules are compiled in Appendix A.

Federal Local Rules

Very few written rules concern sealed settlement agreements specifically. More common are rules on the sealing of documents generally.

Only one district court – the District of South Carolina – prohibits the filing of sealed settlement agreements, and this rule was adopted recently – November 1, 2002. Sealing rules more often address either findings that must be made for a document to be sealed or time limitations on sealed documents remaining in court files.

Forty-seven district courts (50%) have local rules concerning the sealing of court records in civil cases. For 15 districts (16%), their rules do not limit the sealing of documents, but instead cover such issues as administrative mechanics (e.g., how sealed documents are to be marked). Thirty-two districts (34%) have local rules governing either the grounds for sealing or the duration of sealing or both.

Eleven districts (12%) restrict the judge's authority to seal documents. Nine districts require that a judge find "good cause" before sealing.²

² These districts are California Northern, Illinois Northern, Michigan Western, Mississippi Northern and Southern, Missouri Eastern, Oklahoma Northern, Tennessee Eastern, and Utah.

The Northern District of California's local rules include a "commentary" that elucidates good cause.

As a public forum, the Court will only entertain requests to seal that establish good cause and are narrowly tailored to seal only the particular information that is genuinely privileged or protectable as a trade secret or otherwise has a compelling need for confidentiality. Documents may not be filed under seal pursuant to blanket protective orders covering multiple documents. Counsel should not attempt to seal entire pleadings or memoranda required to be filed pursuant to the Federal Rules of Civil Procedure or these Local Rules.³

Two districts have limitations stronger than good cause. The Western District of Washington requires the court to find that the "strong presumption of public access to the court's files and records" has been outweighed by the "interests of the public and the parties in protecting files, records, or documents from public review."⁴ The District of Maryland requires the judge to consider the parties' motion to seal portions of the court record and any opposition, refrain from ruling on a motion for at least 14 days to permit interested parties to file objections, consider any objections, and find and hold that alternatives to sealing would not provide sufficient protection and that sealing of the specified portion of the record would be appropriate.⁵

Twenty-nine districts (31%) limit how long a document may remain sealed, absent an order to the contrary. Only the Eastern District of Michigan has a rule pertaining to sealed settlement agreements specifically. The rule specifies that sealed settlement agreements "will be unsealed and placed in the case file" "two years after the date of sealing," "[a]bsent an order to the contrary."⁶ Conversations with court staff reveal that it is difficult to know to which cases this rule applies, because it is not court practice to identify sealed settlement agreements in the court record as anything other than sealed documents. For other sealed documents,

Sixty days after the entry of a final judgment and an appellate mandate, if appealed, attorneys of record in a case must present to the court a proposed order specifying whether the material sealed with protective orders is (a) to be returned to the parties or (b) unsealed and placed in the case file. Failure to present the order will

³ N.D. Cal. Civ. L.R. 79-5(b) (commentary).

⁴ Wash. L. Civ. R. 5(g)(1).

⁵ Md. L.R. 105.11; District of Maryland Form Order Sealing Portions of the Court Record.

⁶ E.D. Mich. L.R. 5.4.

result in the court ordering the clerk to unseal the materials and place them in the case file.⁷

Districts with durational rules on sealed documents vary on how much time may elapse between the end of the case and the removing or unsealing of documents (see Table 1). Two districts – Western District of Virginia and Southern District of Florida – measure sealing duration from the date of filing or sealing rather than the conclusion of the case.

Table 1. Sealing Durations According to Federal Local Rules.

Ordinary Sealing Expiration	Number of Districts	List of Districts
At end of case.	6	California Southern, Idaho, North Carolina Western, North Dakota, Utah, Washington Western
30 days after sealing.	1	Virginia Western
30 days after case is over.	11	Iowa Northern and Southern, ⁸ Maryland, Michigan Western, Mississippi Northern and Southern, Missouri Eastern, North Carolina Eastern, North Carolina Middle, Ohio Northern, Tennessee Eastern
60 days after case is over.	2	Michigan Eastern, Texas Northern
63 days after case is over.	1	Illinois Northern
90 days after case is over.	1	Connecticut
6 months after case is over.	1	Minnesota
2 years after case is over.	1	Pennsylvania Middle
5 years after filing.	1	Florida Southern
10 years. after case is over	1	Kansas

⁷ *Id.* R. 5.3.

⁸ Sixty days if the United States is a party.

The Northern District of California provides for unsealing 10 years from transmittal of the case file to the records center. The Eastern District of New York provides for transmittal of sealed documents to the records center five years after the case is over and the unsealing of documents 20 years thereafter.

State Statutes and Rules

Twenty-nine states (58%) have statutes or rules concerning the sealing of court records in civil cases. For seven states (14%), their rules do not limit the sealing of documents, but just cover such issues as administrative mechanics.

Eight states proscribe sealed or confidential settlement agreements with public parties (Arkansas, Colorado, Florida, Iowa, Nevada, North Carolina,⁹ Rhode Island, Texas). Two states expressly permit such settlement agreements upon a proper showing – if “a right of individual privacy clearly exceeds the merits of public disclosure” in Montana¹⁰ and “for good cause shown” in Oklahoma.¹¹

Florida’s “Sunshine in Litigation” law proscribes sealed or confidential settlement agreements with any party that conceal public hazards.¹²

Five states explicitly require good cause to seal a court document (Delaware, Michigan, New York, Tennessee, Vermont). Four states require a finding that privacy interests outweigh public interests (California, Idaho, Indiana, North Carolina); two states require privacy interests to *clearly* outweigh public interests (Georgia, Utah); and one state requires the privacy interest to be compelling (Utah).

Seven states permit sealing only if it is the least restrictive means available to serve the privacy interest (California, Florida, Idaho, Michigan, New Hampshire, North Carolina, Texas). California also requires that sealing be narrowly tailored to the privacy interest and that only necessary portions of documents be sealed, to the extent feasible.

Time limits are rarer in state statutes and rules than they are in federal rules. Indiana requires documents to be unsealed at the earliest possible time. Delaware specifies that sealed documents will be returned or unsealed 30 days after the end of the case. Two of New Mexico’s 13 judicial

⁹ North Carolina makes an exception for “an action for medical malpractice against a hospital facility.” N.C. Gen. Stat. § 132–1.3(a).

¹⁰ Mont. Code § 2–9–304(2).

¹¹ 51 Okla. Stat. § 158.

¹² Fla. Stat. § 69.081(3).

districts specify that absent good cause, sealed documents will be unsealed 180 days after sealing.

Michigan has an interesting requirement that sealing orders themselves not be sealed.

Sealed Settlement Agreements We Found

Many civil cases settle before trial and defendants commonly seek confidentiality agreements concerning the terms of settlement. Usually such agreements are not filed. A high proportion of civil cases settle,¹³ but a sealed settlement agreement is filed in only one in approximately 300 civil cases.¹⁴

We examined 39,496 civil cases that were filed in one of 11 districts¹⁵ and terminated either in 2001 or the first half of 2002.¹⁶ We found 140 cases with sealed settlement agreements. Table 2 breaks these data down by district. Appendix B includes details about each of the 140 cases.

The most common reason for filing a settlement agreement appears to be to facilitate enforcement. It often will be administratively easier to enforce the agreement if it is breached while the court retains jurisdiction, and it is common for district courts to retain jurisdiction after termination – e.g., for 60 days – for the purpose of enforcing settlement agreements. Enforcement can be sought by motion rather than by filing a new contract action, the court will already be familiar with the case, and the agreement can be enforced with contempt sanctions.

Usually the settlement agreement is simply filed with the court under seal. Sometimes, however, what is under seal is the record of a settlement conference (we have found six such cases so far). Occasionally, the settlement agreement is not filed until one party believes it has been breached,

¹³ An analysis of disposition codes for civil terminations from 1997 through 2001 showed 22% were dismissed as settled and 2% were terminated on consent judgment. Another 10% were voluntarily dismissed, and some of these probably were settled. An additional 20% are coded as “dismissed: other.”

¹⁴ The rates for individual districts we have examined so far range from approximately one in 900 civil cases in South Carolina to approximately one in 130 civil cases in Virginia Western.

¹⁵ We are examining districts in a modified random order of states (see Appendix B for a fuller description of the method). We have begun to examine cases in five additional districts (Florida Middle, Minnesota, Mississippi Northern, Virginia Eastern, Washington Western).

¹⁶ Our intention is to examine cases terminated in 2001 and 2002, but data on terminations in the last half of 2002 only recently became available.

and then it is filed as a sealed exhibit attached to a motion to enforce the agreement (we have found 11 such cases so far).

**Table 2. Frequency of Sealed Settlement Agreements
Among Federal Civil Cases**

District	Terminated Cases	Cases With Sealed Settlement Agreements
Florida Northern	2,264	4 (0.18%)
Florida Southern	12,005	73 (0.61%)
Idaho	1,005	3 (0.30%)
Michigan Eastern	7,072	13 (0.18%)
Michigan Western	2,025	4 (0.20%)
North Carolina Eastern	2,143	3 (0.14%)
North Carolina Middle	1,724	4 (0.23%)
North Carolina Western	1,663	6 (0.36%)
South Carolina	6,031	7 (0.12%)
Virginia Western	2,602	20 (0.77%)
Washington Eastern	962	2 (0.21%)
Total	39,496	140 (0.35%)

Occasionally a sealed settlement agreement is filed because the court needs to approve the agreement and the parties want to keep it confidential. An example of this is a wrongful death action by a surviving minor.

Sealed settlement agreements appear in cases of many different types. Nature of suit frequencies are presented in Table 3, but these data should not be taken as representative of federal cases as a whole at this early stage of the research.¹⁷

In most cases that we examined, the complaint is not sealed, so although the terms of the settlement are sealed, the allegations are not. One exception is an employment action against the University of Michigan.¹⁸ This case's entire case file is sealed, although the docket sheet is not. The

¹⁷ For example, one district may be skewing the frequency of Fair Labor Standards Act cases among cases with sealed settlement agreements. The Southern District of Florida has a relatively high rate of sealed settlement agreements (0.61% compared with a study average of 0.35% so far), and 42% of the sealed settlement cases there are Fair Labor Standards Act cases, compared with 6% on average in the other ten districts.

¹⁸ *E.g.*, *Baker v. Bollinger* (MI-E 4:00-cv-40239 filed 06/26/2000).

docket sheet indicates that the case file contains confidential health information.

Table 3. Types of Cases With Sealed Settlement Agreements

Nature of Suit	Cases	
Personal Injury	22	(16%)
Personal Property	5	(4%)
Fair Labor Standards Act	35	(25%)
Employment	21	(15%)
ERISA	2	(1%)
Housing/Accommodations	2	(1%)
Civil Rights	12	(9%)
Contract	17	(12%)
Intellectual Property	15	(11%)
RICO	1	(1%)
Securities	1	(1%)
Social Security	1	(1%)
Prisoner	1	(1%)
Forfeiture/Penalty	1	(1%)
Miscellaneous Statute	4	(3%)
Total	140	

Most cases with sealed settlement agreements that we have reviewed so far would not be of widespread public interest. A wrongful death action against a truck driver,¹⁹ a sexual harassment action against a private employer,²⁰ or a patent infringement action concerning edible pet greeting cards²¹ might be of interest to members of the public, but a sealed settlement agreement in cases such as these would be unlikely to cover up a public danger.

¹⁹ *E.g.*, Carr v. Louisiana-Pacific Corp. (NC-W 5:99-cv-23 filed 02/24/1999), consolidated with Carr v. Louisiana-Pacific Corp. (NC-W 5:99-cv-24 filed 02/24/1999), Cardwell v. Louisiana-Pacific Corp. (NC-W 5:99-cv-25 filed 02/24/1999), Phillips v. Louisiana-Pacific Corp. (NC-W 5:99-cv-26 filed 02/24/1999), and Carr v. Louisiana-Pacific Corp. (NC-W 5:99-cv-27 filed 02/24/1999).

²⁰ *E.g.*, Hale-DeLaGarza v. Spartan Travel Inc. (MI-W 1:01-cv-00557 filed 08/28/2001).

²¹ *E.g.*, Hoy v. Pet Greetings (MI-E 2:00-cv-72308 filed 05/19/2000).

An action against a public officer,²² or an action against the manufacturer of a vehicle²³ might be of greater public interest.²⁴ Cases likely to be of great public interest are uncommon among the cases we have reviewed so far.

²² *E.g.*, Blankenship v. Gilchrist County (FL-N 1:01-cv-00052 filed 05/16/2001) (sexual harassment by deputy sheriffs against another officer); Smith v. City of Detroit (MI-E 4:00-cv-40273 filed 07/21/2000) (wrongful killing by police officer); Doe v. Florence School District (SC 4:99-cv-01007 filed 04/08/1999) (rape by school security guard) ; Thompson v. Town of Front Royal (VA-W 5:98-cv-00083 filed 11/04/1998) (outrageously racist behavior by director of public works); (Blackman v. Town of Front Royal (VA-W 5:99-cv-00017 filed 03/19/1999) (same); Rogers v. Pendleton (VA-W 7:99-cv-00164 filed 03/16/1999) (unjustified arrest and search).

²³ *E.g.*, Rzepka v. Daimler Chrysler (FL-N 5:00-cv-00023 filed 02/01/2000) (Dodge Caravan); Rando v. Slingsby Aviation (FL-S 1:98-cv-02224 filed 09/22/1998) (Firefly aircraft); Regalado v. Airmark Engines (FL-S 0:99-cv-07579 filed 11/29/1999) (faulty aircraft fuel pump system); Acevedo v. Airmark Engines (FL-S 0:99-cv-07590 filed 11/29/1999) (same); Shinski v. McDonnell-Douglas Corp. (ID 00-cv-00280 filed 05/23/2000) (helicopter); Williams v. Ford Motor Co. (SC 2:00-cv-03398 filed 10/26/2000) (Ford Aerostar); White v. Daimler Chrysler Corp. (SC 2:00-cv-03803 filed 12/05/2000) (Jeep Grand Cherokee); Green v. Ford Motor Co. (VA-W 3:00-cv-00049 filed 06/01/2000), consolidated with Carey v. Ford Motor Co. (VA-W 3:00-cv-00050 filed 06/01/2000) (U-Haul truck).

²⁴ Other cases of possibly great public interest include Sosa v. American Airlines (FL-S 1:97-cv-03863 filed 12/03/1997) (wrongful death against airline because of insufficient ground navigational aids in Colombia); Doe v. Metropolitan Health (FL-S 1:01-cv-00546 filed 02/12/2001) (policy of not disclosing AIDS diagnosis to minor); Parks v. Alteon Inc. (NC-M 1:00-cv-00657 filed 07/13/2000) (experimental diabetes drug).

Appendix A
State and Local Rules on Sealed Settlement
Agreements in Particular and Sealed Documents
Generally in Trial Courts

Compiled and analyzed by Marie Leary, Federal Judicial Center

This appendix contains the text of statutes and rules governing the sealing of documents – especially settlement agreements – in state and federal trial courts.

We examined each federal district court’s local rules for provisions concerning sealed documents. We generally relied on districts’ Web sites for rule text, but we also consulted West’s published local rules. For state statutes and rules we searched Westlaw’s statute, rules, and orders databases, using “seal,” “settle,” “public,” “document,” “court,” and “record” as search terms. We adjusted the exact combination of search terms as appropriate for each state’s statutory database.

ALABAMA

State of Alabama

No relevant statute or rule.

Middle District of Alabama

No relevant local rule.

Northern District of Alabama

No relevant local rule.

Southern District of Alabama

No relevant local rule.

ALASKA

State of Alaska

No relevant statute or rule.

District of Alaska

No relevant local rule.

ARIZONA

State of Arizona

Arizona Supreme Court Rule 123

Public Access to the Judicial Records of the State of Arizona

(d) *Access to Case Records.* All case records are open to the public except as may be closed by law, or as provided in this rule. Upon closing any record the court shall state the reason for the action, including a reference to any statute, case, rule or administrative order relied upon.

District of Arizona

No relevant local rule.

ARKANSAS

State of Arkansas

Arkansas Code, Title 25, Chapter 18, Subchapter 4, Section 401

State Government, Public Records, Settlement Agreements, Disclosure

Required

No public official or employee acting in behalf of a governmental agency or another agency wholly or partially supported by or expending public funds shall:

- (1) Agree or authorize another to agree that all or part of a litigation settlement agreement to which the agency is a party shall be kept secret, sealed, or otherwise withheld from public disclosure; or
- (2) Seek a court order denying public access to any court record or other document containing the terms of a settlement agreement resolving a claim by or against the agency.

Eastern and Western Districts of Arkansas

No relevant local rule.

CALIFORNIA

State of California

California Rules of Court, Rule 243.1

Sealed Records

(a) *[Applicability]*

- (1) Rules 243.1-243.4 apply to records sealed or proposed to be sealed by court order.
- (2) These rules do not apply to records that are required to be kept confidential by law. These rules also do not apply to discovery motions and records filed or lodged in connection with discovery motions or proceedings. The rules do apply to discovery materials that are used at trial or submitted as

a basis for adjudication of matters other than discovery motions or proceedings. . . .

(c) *[Court records presumed to be open]* Unless confidentiality is required by law, court records are presumed to be open.

(d) *[Express findings required to seal records]* The court may order that a record be filed under seal only if it expressly finds that:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

(e) *[Scope of the order]*

(1) An order sealing the record must (i) specifically set forth the factual findings that support the order, and (ii) direct the sealing of only those documents and pages – or, if reasonably practicable, portions of those documents and pages – that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.

...

Advisory Committee Comment: This rule and rule 243.2 provide a standard and procedures for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178 (1999). These rules apply to civil and criminal cases. They recognize the First Amendment right of access to documents used at trial or as a basis of adjudication. . . .

Rule 243.1(d)-(e) is derived from *NBC Subsidiary*. That decision contains the requirements that the court, before closing a hearing or sealing a transcript, must find an ‘overriding interest’ that supports the closure or sealing, and must make certain express findings. (*Id.* at 1217-1218.) The decision notes that the First Amendment right of access applies to records filed in both civil and criminal cases as a basis for adjudication. (*Id.* at 1208-09, fn. 25.) Thus, the *NBC Subsidiary* test applies to the sealing of records.

NBC Subsidiary provides examples of various interests that courts have acknowledged may constitute “overriding interests.” (*See id.* at 1222, fn. 46.) Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute “overriding interests.” The rules do not attempt to define what may constitute an “overriding interest,” but leave this to case law.

California Rules of Court, Rule 243.2
Procedures for Filing Records Under Seal

(a) *[Court approval required]* A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely upon the agreement or stipulation of the parties.

(b) *[Motion to seal a record]* (1) A party requesting that a record be filed under seal must file a noticed motion for an order sealing the record. The motion must be accompanied by a memorandum of points and authorities and a declaration containing facts sufficient to justify the sealing. (2) The party requesting that a record be filed under seal must lodge it with the court under (d) when the motion is made, unless good cause exists for not lodging it. Pending the determination of the motion, the lodged record will be conditionally under seal. (3) If necessary to prevent disclosure, the motion, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete version conditionally under seal. (4) If the court denies the motion to seal, the clerk must return the lodged record to the submitting party and must not place it in the case file.

(c) *[References to nonpublic material in public records]* A record filed publicly in the court must not disclose material contained in a record that is sealed, conditionally under seal, or subject to a pending motion to seal.

(d) *[Lodging of records that a party is requesting be placed under seal]* (1) The party requesting that a record be filed under seal must put it in a manila envelope or other appropriate container, seal the envelope or container, and lodge it with the court. (2) The envelope or container lodged with the court must be labeled “CONDITIONALLY UNDER SEAL.” (3) The party submitting the lodged record must affix to the envelope or container a cover sheet that: (i) Contains all the information required on a caption page under rule 201; and (ii) States that the enclosed record is subject to a motion to file the record under seal. (4) Upon receipt of a record lodged under this rule, the clerk must endorse the affixed cover sheet with the date of its receipt and must retain but not file the record unless the court orders it filed.

(e) *[Order]* (1) If the court grants an order sealing a record, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating, “SEALED BY ORDER OF THE COURT ON (DATE),” and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court’s order. (2) The order must state whether – in addition to records in the envelope or container – the order itself, the register of actions, any other court records, or any other records relating to the case are to be sealed. (3) The order must state whether any person other than the court is authorized to inspect the sealed record. (4) A sealed record must not be unsealed except upon order of the court.

(f) *[Custody of sealed records]* Sealed records must be securely filed and kept separately from the public file in the case. . . .

(h) *[Motion to unseal records]* A party or member of the public, or the court on its own motion, may move to unseal a record. Notice of the motion to unseal must be filed and served on the parties. The motion, opposition, reply, and supporting documents must be filed in a public redacted version and a sealed complete version if necessary to comply with (c).

Calaveras County Superior Courts, Rule 1.11

Sealed/Confidential Records

Unless confidentiality is required by law, court records in both criminal and general civil cases are presumed to be open to the public for inspection. For all records filed where confidentiality is required by law, the document caption or title shall state “CONFIDENTIAL” with an accompanying citation to the applicable law requiring such confidentiality. For any other court record a party wishes to be sealed from public inspection, the party shall follow those procedures set out in California Rules of Court, rule 243.1 et. seq.

An agreement or stipulation between the parties for confidentiality or sealing of a document filed with the court is legally insufficient. The law requires court findings prior to sealing any records not deemed confidential by existing statute. The party filing a confidential or sealed report shall, at the time of filing the document, submit an 8½ by 11 inch envelope with the report title, case number and the word “confidential” printed prominently on the outside.

Imperial County Superior Court Rules, Rule 10.03

Confidentiality Agreements, Protective Orders, Sealed Documents

It is the policy of the Court that confidentiality agreements and protective orders are disfavored and should be recognized and approved by the Court only when there is a genuine trade secret or privilege to be protected. Such agreements will not be recognized or approved by the Court absent a particularized showing (document by document) that secrecy is in the public interest, the proponent has a cognizable interest in the material (e.g., the material contains trade secrets, privileged information, or is otherwise protected by law from disclosure), and that disclosure would cause serious harm. Sealed records may be viewed only by parties and their attorneys of record, unless the order sealing the records states otherwise. Sealed records may not be copied by persons authorized to view them, absent a court order to the contrary.

San Diego County Superior Court Rules, Rule 2.48

Confidentiality Agreements, Protective Orders, Sealed Documents

It is the policy of the court that confidentiality agreements and protective orders are disfavored and should be recognized and approved by the court only when there is a genuine trade secret or privilege to be protected.

Such agreements will not be recognized or approved by the court absent a particularized showing (document by document) that secrecy is in the public interest, the proponent has a cognizable interest in the material (e.g., the material contains trade secrets, privileged information, or is otherwise protected by law from disclosure), and that disclosure would cause serious harm.

Sealed records may be viewed only by parties and their attorneys of record, unless the order sealing the records states otherwise. Sealed records may not be copied by persons authorized to view them, absent a court order to the contrary.

**San Francisco Superior Court, Rule 10.5
Confidentiality and Protective Orders**

A. It is the policy of this Court that orders sealing any record (as defined in California Rule of Court 243.1(b)(1)) filed or lodged in a proceeding, and orders directing that parties or others comply with agreements to maintain the confidentiality of documents relating to a proceeding, are disfavored and should be entered only upon a showing that:

1. the subject matter of such record or document is privileged under a provision of the Evidence Code; or
2. disclosure would violate a personal, financial, or other interest protected by law, and that such disclosure threatens to cause serious harm that outweighs the public interest in disclosure of such information; and
3. if the record is to be sealed, the facts justify the findings specified in California Rule of Court 243.1(d).

B. Nothing herein must preclude the entry of a protective order designed to facilitate the expeditious production of documents during discovery, provided that the order permits counsel to designate as confidential under the terms of such order only those documents as to which counsel entertains a good faith belief that such document is entitled to confidentiality pursuant to section 10.5.A.1 or A.2.

C. An order sealing any record filed in a proceeding must direct the sealing of only those documents, pages, or, if reasonably practicable, those portions of documents or pages, which contain the information requiring confidentiality. All other portions of such document or page must be included in the public file. For each document or page, or portion thereof, filed under seal there must be included in the public file a document bearing a legend in substantially the following form: "By order dated _____, the complete (identify document), pages or portion thereof, has been filed under seal, and may not be examined without further order of the court."

D. Except as stated in paragraph H, a party requesting that a record be filed under seal must file a noticed motion for an order sealing such specific record(s) in compliance with California Rule of Court 243.2(b). Any provision in a protective order which authorizes the filing of records under seal without the necessity of obtaining an order pursuant to a motion filed in compliance with this rule and based upon the findings specified in California Rule of Court 243.1(d) must not be sufficient to authorize the filing of any record under seal except as permitted in paragraph H; provided, however, that any record which prior to July 1, 2001 was filed under seal must remain under seal unless an order specifically unsealing such record is entered.

E. If a pleading, a memorandum of points and authorities or an affidavit or declaration contains or discloses the content of records designated as confidential pursuant to a protective order, the filing party must concurrently file redacted copies, lodge unredacted originals as specified in California Rule of Court 243.2(d) and, if the record was designated confidential by another party, give written notice to the party that designated the records confidential that the records will be placed in the public file unless within 15 days of the notice such party files a motion for a sealing order in compliance with California Rule of Court 243.2(b) and this provision of the Local Rules. If the party that designated the records confidential fails to file such a motion within 15 days (unless extended by the court for good cause), that party must be deemed to have consented to the public filing of the record and the clerk must remove the originals from the envelope labeled “CONDITIONALLY UNDER SEAL” and file the complete pleading, memorandum of points and authorities, or affidavit or declaration in the public file. If the party that designated the records confidential does file such a motion within 15 days (or within any extension ordered by the court), the originals must remain conditionally under seal until the court rules on the motion, and thereafter must be filed in the manner directed by the court.

F. A motion for an order sealing a record must specify the grounds and provision of law authorizing confidentiality of each record sought to be placed under seal. An order sealing a record must comply with California Rules of Court 243.1(d) and (e) and 243.2(e).

G. A motion filed pursuant to paragraphs D and E must be noticed for hearing in the department in which the matter to which the records relate will be heard. If this department cannot be ascertained when the motion is filed, the motion must be noticed for hearing before the Presiding Judge or before any judge designated by the Presiding Judge to hear such motion.

H. Paragraphs D and E do not apply to records that are required to be kept confidential by law, nor to discovery motions and records filed or lodged in connection with discovery motions. A party seeking to file under seal records that are required to be kept confidential by law may do so only upon an order issued by the Presiding Judge or the designee of the Presiding Judge, or by the judge assigned to hear the matter to which the records relate. A party seeking to file under seal records in connection with a discovery motion may do so only

1. if the motion is to be heard in a Discovery Department and is identified as required by Rule 8.14(G) or

2. if the motion is to be heard in another department, upon an order issued by the Presiding Judge or the designee of the Presiding Judge, or by the judge assigned to hear the matter to which the records relate. An order authorizing the filing of records under seal pursuant to this paragraph may be requested by an ex parte application. A record filed under seal on the ground that it relates to a discovery motion, and without the court having made the findings specified in California Rule of Court 243.1(d), may not be considered for any

other purpose unless the record is unsealed or the court enters an order in conformity with California Rules of Court 243.1(d) and (e) and 243.2(e).

Central District of California

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule. Disclosure can only occur upon written order of the Court.

Central District of California Local Rule 79-5 Confidential Court Records,

79-5.1 Filing Under Seal–Procedures. No case or document shall be filed under seal without prior approval by the Court. If a filing under seal is requested, a written application and a proposed order shall be presented to the judge along with the document submitted for filing under seal. The original and judge’s copy of the document shall be sealed in separate envelopes with a copy of the title page attached to the front of each envelope. Conformed copies need not be placed in sealed envelopes.

79-5.2 Confidential Court Records–Disclosure. No sealed or confidential record of the Court maintained by the Clerk shall be disclosed except upon written order of the Court.

79-5.3 Procedure for Disclosure of Confidential Court Records. An application for disclosure of sealed or confidential court records shall be made to the Court in writing and filed by the person seeking disclosure. The application shall set forth with particularity the need for specific information in such records. The procedures of L.R. 7-3 et seq. shall govern the hearing of any such application.

Eastern District of California

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule. Unsealing of a settlement agreement must be made by court order.

Eastern District of California General Local Rule 39-138(b) Sealing of Documents

Except as otherwise provided by statute or rule, documents may be sealed only upon written order of a Judge or Magistrate Judge. Court orders sealing documents are filed and maintained in the public case file and should not reveal the sealed information. A duplicate order is attached to the envelope containing the sealed documents. The case file shall reflect the date a document is ordered unsealed and by whom, and, if a document is resealed, the date and by whom.

Northern District of California

Analysis: The court must find that good cause to seal has been established before ordering a settlement agreement or portions thereof to be placed under seal.

A sealed settlement agreement may not remain under seal indefinitely. Unless the court orders otherwise upon a showing of good cause at the conclusion of the case by a party that submitted the settlement agreement which the Court placed under seal, the settlement agreement will be automatically unsealed and open to public inspection 10 years from the date the case was transmitted to the National Archives and Records Administration or other Court-designated depository.

**Northern District of California Civil Local Rule 79-5
Sealed or Confidential Documents**

(a) *Applicability.* When a statute, a federal or local rule or a Court order permits documents or things to be filed under seal, i.e., not open to inspection by the public, the procedures set forth in this local rule apply.

(b) *Lodging Matter with Request to File Under Seal.* A party authorized by statute, rule or Court order to file a document under seal must lodge the document with the Clerk in accordance with this rule. The Clerk shall refer the matter to the assigned Judge pursuant to Civil L.R. 79-5(d). No document shall be filed under seal except pursuant to a Court order that authorizes the sealing of the particular document or portion thereof and is narrowly tailored to seal only that material for which good cause to seal has been established. Any order sealing any documents shall direct the sealing of only those documents, pages or, if practicable, those portions of documents or pages, which contain the information requiring confidentiality. All other portions of such documents shall be included in the public file.

Commentary: As a public forum, the Court will only entertain requests to seal that establish good cause and are narrowly tailored to seal only the particular information that is genuinely privileged or protectable as a trade secret or otherwise has a compelling need for confidentiality. Documents may not be filed under seal pursuant to blanket protective orders covering multiple documents. Counsel should not attempt to seal entire pleadings or memoranda required to be filed pursuant to the Federal Rules of Civil Procedure or these Local Rules.

(c) *Format.* The lodged document must be contained in an 8½ inch by 11 inch sealed envelope or other suitable container. The party must affix a cover sheet to the document and to its envelope or container, which must:

- (1) Set out the information required by Civil L.R. 3-4(a) and (b);
- (2) Set forth the name, address and telephone number of the submitting party;
- (3) If filed pursuant to a previous Court order, state the date and name of the Judge ordering the matter filed under seal and attach a copy of the order; if filed pursuant to statute or rule, state the authorizing statute or rule and good cause for filing the submitted matter under seal;
- (4) Prominently display the notation: "DOCUMENT FILED UNDER SEAL." When permitted by the Court order, the notation may also include: "NOT TO APPEAR ON THE PUBLIC DOCKET."

(d) *Motion to File Under Seal.* Counsel seeking to file a document or thing under seal, which is not authorized by statute or rule to be so filed, may file a motion under Civil L.R. 7-10 and lodge the document or thing with the Clerk in a manner which conforms with Civil L.R. 79-5(c). If pursuant to referral by the Clerk or motion of a party, the Court orders that a lodged document be filed under seal, the Clerk shall file the lodged document under seal. Otherwise, the lodged document shall be returned to the submitting party and the document shall not be placed in the file.

Commentary. Upon receipt of an order to file a lodged document under seal, the Clerk shall file-stamp the sealed envelope or container containing the document. Following receipt and away from public view, the clerk shall remove the item from the envelope, place a dated filed-stamp on the original document, enter it on the docket in a manner that ensures confidentiality consistent with this local rule, and place the document in a sealed folder which shall be maintained in a secure location at the courthouse of the assigned Judge or at the National Archives and Records Administration or other Court-designated depository.

(e) *Effect of Seal.* Unless otherwise ordered by the Court, any document, paper or thing filed under seal shall be kept from public inspection, including inspection by attorneys and parties to the action during the pendency of the case. Once a case is closed, any document, paper or thing filed under seal in a case shall be open to public inspection without further action by the Court 10 years from the date the case is transmitted to the National Archives and Records Administration or other Court-designated depository. However, a party that submitted documents, papers or other things which the Court placed under seal in a case may, upon showing good cause at the conclusion of the case, seek an order which would continue the seal until a specific date beyond the 10 years provided by this rule. Nothing in this rule is intended to affect the normal records destruction policy of the United States Courts.

Southern District of California

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Unless otherwise ordered by the court, a sealed settlement agreement will be returned to the party that submitted it upon entry of the final judgment or termination of the appeal, if any.

Local Civil Rule 79.2

Books and Records of the Clerk

b. *Sealed Documents.* Documents filed under seal in civil actions will be returned to the party submitting them upon entry of the final judgment or termination of the appeal, if any, unless otherwise ordered by the court.

c. *Sealing Orders*. Documents that are to be filed under seal must be accompanied by an order sealing them. If the order is also to be filed under seal, it shall so state.

COLORADO

State of Colorado

Colorado Court Rules, Chapter 38

Public Access to Records and Information

The purpose of this rule is to provide the public with reasonable access to Judicial Branch documents and information while protecting the privacy interests of parties and persons. In addition, this rule is intended to provide direction to Judicial Branch personnel in responding to public records requests.

The Chief Justice is authorized to issue directives regarding access of the public to documents and materials made, received, or maintained by the courts. Such Directives of the Chief Justice are orders of the Supreme Court and shall govern release of records to the public. The Chief Justice on behalf of the Supreme Court is authorized, in the implementation of this rule, to appoint committees and assign custodians of records, and to designate the functions of such committees and custodians of records, as the Chief Justice may determine.

The Chief Justice has issued CJD 98-05, which is authorized pursuant to this rule without further action. Pursuant to CJD 98-05, the Chief Justice has appointed a Public Access Committee to adopt policy. The policy of that Committee is effective without further action. Because policy concerning public access to information is in development stages, as are components of the ICON system, the policy of any duly authorized committee appointed by the Chief Justice is effective when adopted. This rule is adopted by the Court on an interim basis, pending a final proposal by the Public Access Committee, public comment thereon, and further action by the court.

Custodians of records within the judicial branch are not authorized to release any records or material to the public inconsistent with this rule or the Chief Justice Directives. This rule is intended to be a rule of the Supreme Court within the meaning of the Colorado Public Records Act, including sections 24-72-204(1)(c) and 24-72-305(1)(b) (7 C.R.S.)

Colorado Statutes Section 24-19-105

Settlement Agreements – Public Inspection – Filing With the Department of Personnel

(1)(a) Notwithstanding any other law to the contrary, if any settlement agreement between a governmental unit or government-financed entity and a government-supported official or employee settles any employment dispute between such parties and involves the payment of any compensation to such official or employee after the term of employment of such official or employee in a particular employment position has ended, information regarding any amounts

paid or benefits provided under such settlement agreement shall be a matter of public record. Any governmental unit or government-financed entity that is a party to such a settlement agreement shall make such information available for public inspection and copying during regular business hours.

(b) If a state governmental unit enters into a settlement agreement to settle an employment dispute with a government-supported official or employee, the state governmental unit shall file a copy of the final settlement agreement with the department of personnel, which shall be a public record pursuant to the provisions of part 2 of article 72 of this title [procedures for inspection, copying, or photographing public records].

Colorado Statutes Section 24-19-107

Open Records

If a governmental unit is required under the provisions of this article to make any employment contracts or any information regarding amounts paid or benefits provided under any settlement agreements available to the public, such employment contracts or information shall be deemed to be public records, as such term is defined in section 24-72-202(6), and shall be subject to the provisions of part 2 of article 72 of this title [procedures for inspection, copying, or photographing public records].

District of Colorado

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule.

District of Colorado Local Civil Rule 7.2

Motions to Seal; Motions to Close Court Proceedings

A. *Scope.* Upon motion and a showing of compelling reasons, a judicial officer may order that:

1. All or a portion of papers and documents filed in a case shall be sealed; or
2. All or a portion of court proceedings shall be closed to the public.

B. *Motion Open to Public Inspection.* A motion to seal or close court proceedings will be placed in the case file and open to public inspection.

C. *Proposed Filing.* A proposed filing of papers or documents will be submitted under seal until the motion to seal is decided by a judicial officer.

D. *Public Notice; Objections.* On the business day after the filing of a motion to seal or motion to close court proceedings, a public notice will be posted in the clerk's office and on the court's web site. The public notice will advise of such motion and state that any person or entity may file objections to the motion on or before the date set forth in such public notice. The date will be not less than three business days after the public notice is posted.

E. *Order*. No order to seal or close court proceedings will be entered before the date set forth in the public notice for filing objections, except in emergency circumstances shown or referred to in the motion.

Local Civil Rule 7.3

Procedures for Filing Papers and Documents Under Seal

A. *Manner of Filing*. The following papers or documents must be placed unfolded in a sealed envelope with a copy of a cover page (see section B. of this rule) affixed to the outside of the envelope:

1. papers or documents ordered sealed by the court;
2. proposed filings of papers or documents submitted under seal with a motion requesting that the documents be sealed; and
3. documents required to be sealed by law.

B. *Cover Page*. The cover page affixed to the outside of the sealed envelope must include:

1. the case caption;
2. the title of the paper or document;
3. the name, address, and telephone number of the attorney or pro se party filing the paper or document;
4. a notation that the paper or document is filed under seal;
5. the title and date of the court order pursuant to which the paper or document is sealed, if applicable; or
6. the citation of the statute or other authority pursuant to which the paper or document is sealed, if applicable.

C. *Copies*. Copies of the papers or documents in sealed envelopes shall be filed in accordance with D.C. Colo. L. Civ. R. 10.1.L.

CONNECTICUT

State of Connecticut

Connecticut Rules of Court for the Superior Court, Civil Procedure Rule 11-20 Exclusion of the Public; Sealing Files Limiting Disclosure of Documents

(a) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that the public, which may include the news media, be excluded from any portion of a proceeding and shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

(b) Upon motion of any party, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a proceeding and may order that files, affidavits, documents or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such pro-

ceeding or in viewing such materials. Any such order shall be no broader than necessary to protect such overriding interest.

(c) In connection with any order issued pursuant to subsection (b) of this section, the judicial authority shall, on the record in open court, articulate the overriding interest being protected and shall specify its findings underlying such order. The time and date of any such order shall be entered by the court clerk in the court file together with such order.

(d) With the exception of orders concerning any session of court conducted pursuant to General Statutes §§ 46b-11, 46b-49, 46b-122 or any other provision of the General Statutes under which the judicial authority is authorized to close proceedings, whether at a pretrial or trial stage, no order excluding the public from any portion of a proceeding shall be effective until seventy-two hours after it has been issued. Any person affected by such order shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. The timely filing of any petition for review shall stay such order.

(e) With the exception of orders concerning the confidentiality of records and other papers, issued pursuant to General Statutes § 46b-11 or any other provision of the general statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents or other materials, whether at a pretrial or trial stage, any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order.

(f) The provisions of this section shall not apply to settlement agreements which have not been incorporated into a judgment of the court.

District of Connecticut

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. If counsel did not file a motion for return of the sealed settlement agreement, 90 days after final determination of the action the Clerk may destroy the sealed settlement agreement or send it with other parts of the file to the Federal Records Center, whereupon the settlement agreement will be automatically unsealed without notice to counsel.

District of Connecticut Local Rule 7(F)

Sealed Documents

1. Counsel seeking to file a document under seal, shall file a motion to seal and shall attach to the motion the document to be sealed. The document shall be submitted in an unsealed envelope, bearing the caption of the case, the case number, and the caption of the document to be sealed. The Clerk of the Court

shall file-stamp the motion to seal and the document to be sealed, shall docket the motion and document and shall forward the motion to seal and the document to be sealed to the Court for consideration. If ordered sealed by the Court, the Clerk shall seal the document in the envelope provided by counsel, shall note the date of the sealing order on the envelope and docket sheet. Until such document is ordered sealed, the document shall be treated as a public document subject to public inspection. In the alternative, counsel can seek advance permission of the Court to file a document under seal without submitting the document to be sealed.

2. Counsel filing documents which are, or may be claimed to be, subject to any protective or impounding order previously entered shall file with the documents, and serve on all parties, a notice that the documents are, or are claimed to be, subject to such order or orders, identifying the particular order or orders by date, and shall submit such documents to the Clerk under seal.

3. Any file or document ordered sealed by the Court upon motion of the parties, by stipulation or by the Court, sua sponte, shall remain sealed pending further order of this Court, or any Court sitting in review. Upon final determination of the action, as defined in Rule 14 of the Local Rules of Civil Procedure, counsel shall have ninety (90) days to file a motion pursuant to Rule 14 for the return of the sealed documents. Any sealed document thereafter remaining may be destroyed by the Clerk pursuant to Rule 14 or retired by the Clerk with other parts of the file to the Federal Records Center, whereupon they shall be automatically unsealed without notice to counsel.

DELAWARE

State of Delaware

Delaware State Superior Court Rule of Civil Procedure 5(g)

Service and Filing of Pleadings and Other Papers, Sealing of Court Records

(1) Except as otherwise provided by statute or rule, including this Rule 5(g) and Rule 26(c), all pleadings and other papers of any nature filed with the Prothonotary, including briefs, appendices, letters, deposition transcripts and exhibits, answers to interrogatories and requests for admissions, responses to requests for production or certificates and exhibits thereto (“Court Records”), shall become a part of the public record of the proceedings before this Court.

(2) Court Records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of this Court specifying those Court Records, categories of Court Records, or portions thereof which shall be placed under seal; provided, however, the Court may, in its discretion, receive and review any document in camera without public disclosure thereof and, in connection with any such review, may determine whether good cause exists for the sealing of such documents; and provided further that, unless the Court or-

ders otherwise, the parties shall file within 30 days redacted public versions of any Court Record where only a portion thereof is to be placed under seal.

(3) The provisions of paragraph (2) of this Rule 5(g) notwithstanding, the Court may, in its discretion, by appropriate order, authorize any person to designate Court Records to be placed under seal pending a judicial determination of the specific Court Records, categories, or portions thereof to which such restriction on public access shall continue to apply.

(4) Any person who objects to the continued restriction on public access to any Court Record placed under seal pursuant to paragraphs (2) or (3) of this Rule 5(g) shall give written notice of his or her objection to the person who designated the Court Record for filing under seal and shall file such written notice with the Court. To the extent that any person seeks to continue the restriction on public access to such Court Record, he or she shall serve and file an application within 7 days after receipt of such written notice setting forth the grounds for such continued restriction and requesting a judicial determination whether good cause exists therefor. In such circumstances, the Court shall promptly make such a determination.

(5) The Prothonotary shall promptly unseal any Court Record in the absence of timely compliance with the provisions of this Rule 5(g), if applicable. In addition, 30 days after final judgment has been entered without any appeal having been taken therefrom, the Prothonotary shall send a notice, return receipt requested, to any person who designated a Court Record to be placed under seal that such Court Record shall be released from confidential treatment if required to be kept by the Prothonotary or, if not required to be kept, returned to the person at the person's expense or destroyed, as such person may elect, unless that person makes application to the Court within 30 days after notice from the Prothonotary for further confidential treatment for good cause shown.

[*Note:* Rule 5(g) of the Chancery Court Rules and Rule 5(g) of Common Pleas Court Civil Rules are similar.]

District of Delaware

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule.

District of Delaware Local Rule 5.3

Number of Copies

The original and one copy of pleadings, stipulations, motions, responses to motions, briefs, memoranda of points and authorities, appendices and any papers filed under seal shall be filed with the Clerk of Court. Any party filing papers under seal shall distinguish the original on the cover of the paper. The original of all other papers required to be filed shall be filed with the Clerk. Two copies of each paper filed with the Court shall be served on local counsel for each of the other parties. Whenever papers are captioned in more than one action, suf-

ficient copies shall be furnished to permit the Clerk to file one copy in each action.

DISTRICT OF COLUMBIA

District of Columbia Superior Court Rule Civil 5-III

Sealed or Confidential Documents

(a) Absent statutory authority, no case or document may be sealed without an order from the Court. Any document filed with the intention of being sealed shall be accompanied by a motion to seal or an existing order. The document will be treated as sealed, pending the ruling on the motion. Failure to file a motion to seal will result in the pleading being placed in the public record.

(b) Unless otherwise ordered or otherwise specifically provided in these Rules documents submitted for a confidential *in camera* inspection by the Court, which are the subject of a Protective Order, which are subject to an existing order that they be sealed, or which are the subject of a motion for such orders, shall be submitted to the Clerk securely sealed. The envelope/box containing such documents shall contain a conspicuous notation such as “DOCUMENT UNDER SEAL” or “DOCUMENTS SUBJECT TO PROTECTIVE ORDER,” or the equivalent.

(c) The face of the envelope/box shall also contain the case number, the title of the Court, a descriptive title of the document and the case caption unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope/box shall also contain the date of any order or the reference to any statute permitting the item to be sealed.

(d) Filings of sealed materials shall be made only in the Clerk’s Office during regular business hours. Such filings of sealed materials at the security desk are prohibited because the Security Officers are not authorized to accept this material.

District of the District of Columbia

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule.

District of Columbia Federal District Court Local Civil Rule 5.1(j)

Sealed or Confidential Documents

(1) Absent statutory authority, no cases or documents may be sealed without an order from the Court. Any pleading filed with the intention of being sealed shall be accompanied by a motion to seal. The document will be treated as sealed, pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the pleading being placed in the public record.

(2) Unless otherwise ordered or otherwise specifically provided in these Local Rules, all documents submitted for a confidential *in camera* inspection by the Court, which are the subject of a Protective Order, which are subject to an exist-

ing order that they be sealed, or which are the subject of a motion for such orders, shall be submitted to the Clerk securely sealed in an envelope/box needed to accommodate the documents. The envelope/box containing such documents shall contain a conspicuous notation that carries “DOCUMENT UNDER SEAL” or “DOCUMENTS SUBJECT TO PROTECTIVE ORDER,” or the equivalent.

(3) The face of the envelope/box shall also contain the case number, the title of the Court, a descriptive title of the document and the case caption unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope/box shall also contain the date of any order, or the reference to any statute permitting the item sealed.

(4) Filings of sealed materials must be made in the Clerk’s Office during the business hours of 9:00 a.m. and 4:00 p.m. daily except Saturdays, Sundays and legal holidays. Filings at the security desk are prohibited because the Security Officers are not authorized to accept this material.

FLORIDA

State of Florida

Florida Statutes Section 69.081

Sunshine in Litigation; Concealment of Public Hazards Prohibited

(2) As used in this section, “public hazard” means an instrumentality, including but not limited to any device, instrument, person, procedure, product, or a condition of a device, instrument, person, procedure or product, that has caused and is likely to cause injury.

(3) Except pursuant to this section, no court shall enter an order or judgment which has the purpose or effect of concealing a public hazard or any information concerning a public hazard, nor shall the court enter an order or judgment which has the purpose or effect of concealing any information which may be useful to members of the public in protecting themselves from injury which may result from the public hazard.

(4) Any portion of an agreement or contract which has the purpose or effect of concealing a public hazard, any information concerning a public hazard, or any information which may be useful to members of the public in protecting themselves from injury which may result from the public hazard, is void, contrary to public policy, and may not be enforced. . . .

(8)(a) Any portion of an agreement or contract which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against the state, its agencies, or subdivisions or against any municipality or constitutionally created body or commission is void, contrary to public policy, and may not be enforced. Any person has standing to contest an order, judgment, agreement, or contract that violates this section. . . .

Florida Rule of Judicial Administration 2.051

Public Access to Judicial Branch Records

(a) *Generally*. Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to the records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below. . . .

(c) *Exemptions*. The following records of the judicial branch shall be confidential: . . .

(9) Any court record determined to be confidential in case decision or court rule on the grounds that

(A) confidentiality is required to

(i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;

(ii) protect trade secrets;

(iii) protect a compelling governmental interest;

(iv) obtain evidence to determine legal issues in a case;

(v) avoid substantial injury to innocent third parties;

(vi) avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed;

(vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law;

(B) the degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (A);

(C) no less restrictive measures are available to protect the interests set forth in subdivision (A); and

(D) except as provided by law or rule of court, reasonable notice shall be given to the public of any order closing any court record.

Florida Rule of Judicial Administration 2.075

Retention of Court Records

(k) *Sealed Records*. No record which has been sealed from public examination by order of court shall be destroyed without hearing after such notice as the court shall require.

Middle District of Florida

No relevant local rule.

Northern District of Florida

No relevant local rule.

Southern District of Florida

Analysis: No specific restriction on court’s authority to seal a settlement agreement; party seeking to file matter under seal must set forth reasonable basis for departing from court’s general policy of public filings. A sealed settlement agreement may not remain sealed indefinitely unless the court’s sealing order specifically provides for permanent sealing of the matter. A sealed settlement agreement will be unsealed, destroyed, or returned to the filing party upon expiration of the time specified in the court’s sealing order which may not exceed five years from the date of filing absent extraordinary circumstances.

Southern District of Florida General Local Rule 5.4 Filings Under Seal; Disposal of Sealed Materials

A. *General Policy.* Unless otherwise provided by law, Court rule or Court order, proceedings in the United States District Court are public and Court filings are matters of public record. Where not so provided, a party seeking to file matters under seal shall follow the procedures prescribed by this rule.

B. *Procedure for Filings Under Seal.* A party seeking to make a filing under seal shall:

1. Deliver to the Clerk’s Office an original and one copy of the proposed filing, each contained in a separate plain envelope clearly marked as “sealed document” with the case number and style of the action noted on the outside. The Clerk’s Office shall note on each envelope the date of filing and docket entry number.

2. File an original and a copy of the motion to seal with self-addressed postage-paid envelopes, setting forth a reasonable basis for departing from the general policy of a public filing, and generally describing the matter contained in the envelope. The motion shall specifically state the period of time that the party seeks to have the matter maintained under seal by the Clerk’s Office. Unless permanent sealing is sought, the motion shall set forth how the matter is to be handled upon expiration of the time specified in the Court’s sealing order. Absent extraordinary circumstances, no matter sealed pursuant to this rule may remain sealed for longer than five (5) years from the date of filing.

3. File an “ORDER RE: SEALED FILING” in the form set forth at the end of this rule. The form is available at the Clerk’s Office. The bottom portion should be left blank for the Judge’s ruling.

C. *Court Ruling.* If the Court grants the motion to seal, the Clerk’s Office shall maintain the matter under seal as specified in the court order. If the Court denies the motion to seal, the original and copy of the proposed filing shall be returned to the party in its original envelope.

D. *Disposition of Sealed Matter.* Unless the Court’s sealing order permits the matter to remain sealed permanently, the Clerk will dispose of the sealed matter

upon expiration of the time specified in the Court’s sealing order by unsealing, destroying, or returning the matter to the filing party.

Comment on 2001 Amendment: The current amendments are intended to reflect more accurately existing procedures, and to assist the court in the maintenance and ultimate disposition of sealed records by creating a form order which specifies how long the matter is to be kept under seal and how it is to be disposed of after the expiration of that time. By its terms, this rule does not apply to materials covered by specific statutes, rules or court orders authorizing, prescribing or requiring secrecy. However, litigants are required to complete an “Order Re: Sealed Filing” in the form set forth at the end of this rule for materials being filed under seal after the entry of, and pursuant to, a protective order governing the use of and disclosure of confidential information.

GEORGIA

State of Georgia

Georgia State Uniform Rules for the Superior Courts

Rule 21. Limitation of Access to Court Files. All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below.

Rule 21.1. Motions and Orders. Upon motion by any party to any civil action, after hearing, the court may limit access to court files respecting that action. The order of limitation shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for limitation.

Rule 21.2. Finding of Harm. An order limiting access shall not be granted except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest.

Rule 21.3. Ex Parte Orders. Under compelling circumstances, a motion for temporary limitation of access, not to exceed 30 days, may be granted, ex parte, upon motion accompanied by supporting affidavit.

Rule 21.4. Review. An order limiting access may be reviewed by interlocutory application to the Supreme Court.

Rule 21.5. Amendments. Upon notice to all parties of record and after hearing, an order limiting access may be reviewed and amended by the court entering such order or by the Supreme Court at any time on its own motion or upon the motion of any person for good cause.

Middle District of Georgia

No relevant local rule.

Northern District of Georgia

No relevant local rule.

Southern District of Georgia

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule.

Southern District of Georgia Local Rule 79.7

Sealed Documents

(a) Papers submitted for filing with the Clerk may be placed under seal only where required by operation of law, these rules, or order of a judicial officer.

(b) Any person desiring to have any matter placed under seal shall present a motion stating grounds why a document filed with the Clerk should not be available for public inspection. The Clerk shall: (i) docket the motion as a Motion to Seal; (ii) refrain from labeling the filing as “sealed” or identifying the person seeking the sealing order unless the person consents; (iii) designate any accompanying papers as “sealed matter”; and (iv) maintain the motion and accompanying papers in a secure file pending a ruling on the Motion to Seal.

(c) If the Motion to Seal is denied, any papers which the person sought to have sealed, and which were submitted to the Clerk with the motion, shall be returned to the person, who shall then have the option of filing the papers in the normal course.

(d) Motions to Seal may extend to three layers of information:

(1) the name of the movant;

(2) the title of the filing sought to be sealed; and

(3) the contents of the filing itself. In most cases, only the contents of the filing itself (e.g., proprietary data embodied within an *in limine* motion) will warrant sealing, not the title of the filing (e.g., Motion in Limine) or the identity of the movant (e.g., XYZ Tire Company). Therefore, unless the Court specified otherwise, the Clerk shall construe all sealing orders to extend only to the contents of the underlying filing. The burden rests upon the moving party to justify all three sealing levels.

Southern District of Georgia Local Rule 83.28

Release of Information by Courthouse Personnel

All courthouse supporting personnel, including but not limited to the United States Marshal and his deputies, the Clerk and his deputies, the Probation Officer and probation clerks, bailiffs, court reporters, and any employees or subcontractors retained by the official court reporters, are prohibited from disclosing to any person, without authorization from the Court, any information relating to a pending grand jury proceeding, criminal case, or civil case that is not part of the public record of the Court. The public record of each case shall be those materials which are contained in the court’s official file as maintained by the Clerk except such parts thereto as may be sealed, secret, impounded or specially set aside for in camera inspection. . . .

GUAM

Territory of Guam

No relevant statute or rule.

District of Guam

No relevant local rule.

HAWAII

State of Hawaii

No relevant statute or rule.

District of Hawaii

No relevant local rule.

IDAHO

State of Idaho

Idaho Court Administrative Rule 32

Records of the Judicial Department – Examination, Inspection and Copying – Exemption from and Limitations on Disclosure

(f) *Other Prohibitions or Limitations on Disclosure.* Records subject to inspection, examination and copying under paragraph (c) of this Rule and not exempt from disclosure by statute or paragraph (d) of this Rule, may be prohibited or limited from disclosure by order of the court on a case-by-case basis. In ruling on whether specific records should be disclosed or sealed by order of the court, the court shall determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates. If the court prohibits or limits a disclosure to protect predominating privacy interests, it must fashion the least restrictive exception from disclosure consistent with privacy interests. Before a court may enter an order denying disclosure or sealing documents or materials from disclosure under paragraph (l), it must also make one or more of the following determinations in writing:

(1) That the documents or materials contain highly intimate or embarrassing facts or statements, the publication of which would be highly objectionable to a reasonable person, or

(2) That the documents or materials contain facts or statements that the court finds might be libelous, or

(3) That the documents or materials contain facts or statements, the dissemination or publication of which would reasonably result in economic or financial loss or harm to a person having an interest in the documents or materials, or compromise the security of personnel, records or public property of or used by the judicial department, or

(4) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals. In applying these rules, the court is referred to the traditional legal concepts in the law of invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding intimate or embarrassing material about persons. . . .

(1) *Motion Regarding the Sealing of Records.* Any interested person or the court on its own motion may move to seal or unseal part or all of the records in any judicial proceeding. The custodian judge shall hold a hearing on the motion after the moving party gives notice of the hearing to all parties to the judicial proceeding and any other interested party designated by the custodian judge. The custodian judge shall issue a written decision on the motion to seal or unseal records which may be reconsidered, altered or amended by the court at any time.

District of Idaho

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Unless the court orders otherwise, after the case is closed and the appeal time has expired, or if appealed, after the conclusion of all appeals, the sealed settlement agreement will be returned to the submitting party.

District of Idaho Local Rule 5.3

Sealed Documents and Public Access

(a) *Motion to File Under Seal.* Counsel seeking to file a document under seal shall file an ex parte motion to seal, along with supporting memorandum and proposed order, and lodge the document with the Clerk of Court. Said motion must contain "MOTION TO SEAL" in bold letters in the caption of the pleading.

(b) *Motion to Seal Existing Documents.* Counsel seeking to place a pending case or filed document under seal shall file an ex parte motion to seal, along with supporting memorandum and a proposed order with the court. Said motion must contain "MOTION TO SEAL" in bold letters in the caption of the pleading. Portions of a document cannot be placed under seal. Instead, the entire document must be placed under seal in order to protect confidential information.

(c) *Public Information.* The Clerk of Court shall file and docket the motion to seal in the public record of the court. All lodged documents under seal will not be docketed, scanned or available for public inspection unless otherwise ordered by the court.

(d) *Format of Lodged Documents Under Seal.* Counsel lodging the material to be sealed shall submit the material in an UNSEALED 8½ x 11 inch manila envelope. The envelope shall contain the title of the court, the case caption, and case number.

(e) *Procedures.* The Clerk of Court will forward the lodged documents to the assigned judge for consideration. The assigned judge will direct the clerk to:

(1) File the documents under seal with any further specific instructions; or

(2) Return the documents to the offering party with appropriate instructions; or

(3) File the documents or materials in the public record.

(f) *Return of Sealed Documents to Public Record.* Because the Federal Records Center prohibits the storage of sealed records or documents, the clerk must unseal all documents and cases prior to shipment of any record to the Federal Records Center. Absent any other court order, the sealed documents will be returned to the submitting party after the case is closed and the appeal time has expired, or if appealed, after the conclusion of all appeals.

ILLINOIS

State of Illinois

No relevant statute or rule.

Central District of Illinois

No relevant local rule.

Northern District of Illinois

Analysis: The court must find that good cause has been shown before ordering a settlement agreement to be filed as a restricted or sealed document. A restricted or sealed settlement agreement may not remain restricted or under seal indefinitely. Except where the court in response to a request of a party or on its own motion orders otherwise, the clerk will place the restricted settlement agreement in the public file 63 days following final disposition including appeals of the case. If a party on written motion filed not more than 63 days following the closing of the case period requests to have the restricted settlement agreement turned over, the court may authorize the clerk to turn over the settlement agreement to the party, destroy it, or retain the settlement agreement as a restricted document no longer than a 20 year period and then destroy it.

Northern District of Illinois Local Rule 5.8

Filing Materials Under Seal

Any document to be filed as a restricted or sealed document as defined by LR 26.2 must be accompanied by a cover sheet which shall include the following:

(A) the caption of the case, including the case number;

(B) the title “Restricted Document Pursuant to LR 26.2”;

(C) a statement indicating that the document is filed as restricted in accordance with an order of court and the date of that order; and

(D) the signature of the attorney of record or unrepresented party filing the document.

Any document purporting to be a restricted or sealed document as defined in LR 26.2 that is presented for filing without the cover page or copy of the order shall not be treated as a restricted or sealed document, but shall be processed like

any other document. In such instances the clerk is authorized to open the sealed envelope and remove the materials for processing.

Northern District of Illinois Local Rule 26.2

Protective Orders; Restricted Documents

(a) *Definitions.* As used in this rule the term:

“Restricted document” means a document or an exhibit to which access has been restricted either by a written order or by a rule;

“Sealed document” means a restricted document which the court has directed be maintained within a sealed enclosure such that access to the document requires breaking the seal of the enclosure;

“Document awaiting expunction” means a document or an exhibit which the court has ordered held for possible expunction pursuant to 21 U.S.C. Section 844(b)(2) but for which the period for holding prior to final destruction has yet to pass; and

“Protective order” means any protective order entered pursuant to Fed.R.Civ.P. 26(c), or any other order restricting access to one or more documents filed or to be filed with the court.

(b) *Restricting Order.* The court may on written motion and for good cause shown enter an order directing that one or more documents be restricted. The order shall also specify the persons, if any, who are to have access to the documents without further order of court. The minute order accompanying the order shall specify any qualifications as to access and disposition of the documents contained in the order.

(c) *Docket Entries.* The court may on written motion and for good cause shown enter an order directing that the docket entry for a restricted document show only that a restricted document was filed without any notation indicating its nature. Absent such an order a restricted document shall be docketed in the same manner as another document except that the entry will indicate that the document is restricted.

(d) *Inspection of Restricted Documents.* The clerk shall maintain a record in a manner provided for internal operating procedures approved by the Court of persons permitted access to restricted documents. Such procedures may require anyone seeking access to show identification and to sign a statement to the effect that they have been authorized to examine the restricted document.

(e) *Disposition of Restricted Documents.* When a case is closed in which an order was entered pursuant to section (b) of this rule, the clerk shall maintain the documents as restricted documents for a period of 63 days following the final disposition including appeals. Except where the court in response to a request of a party made pursuant to this section or on its own motion orders otherwise, at the end of the 63 day period the clerk shall place the restricted documents in the public file.

Any party may on written motion request that one or more of the restricted documents be turned over to that party. Such motions shall be filed not more than 63 days following the closing of the case period.

In ruling on a motion filed pursuant to this section or on its own motion, the court may authorize the clerk to do one of the following for any document covered by the order:

- (1) turn over a document to a party; or
- (2) destroy a document; or
- (3) retain a document as a restricted document for a period not to exceed 20 years and thereafter destroy it.

Internal Operating Procedures of the U.S. District Court, Northern District of Illinois, IOP 30

Restricted Documents.

(a) *Separate Filing Area for Restricted Documents.* The clerk shall maintain restricted documents, sealed documents, and documents awaiting expunction as defined by LR 26.2(a) separately from the files of documents to which access has not been restricted. Any area used to store documents to which access has been restricted shall be secure from entry by any persons other than the clerk or those designated in writing by the clerk as authorized to have access. The clerk shall designate in writing deputies authorized to accept restricted documents either from chambers or for filing pursuant to protective orders. Materials accepted for filing as restricted shall be maintained in a secure area until collected by one of the designated deputies. Where the materials so accepted are being filed pursuant to a protective order, the deputy accepting them will stamp the cover of the document with a FILED stamp indicating the date of filing.

(b) *Handling Sealed Documents.* Where a document is ordered to be sealed, it is to be delivered for filing pursuant to LR5.9 with the seal on the enclosure intact. If the document is sent from chambers or returned from an appellate court with the seal broken, one of the deputies authorized to handle restricted materials pursuant to section (a) will forthwith deliver the document to the courtroom deputy assigned to the judicial officer to whose calendar the proceedings to which the sealed document was filed is assigned. If that judicial officer is no longer sitting, the deputy will forthwith deliver the document to the courtroom deputy assigned to the emergency judge. The courtroom deputy will promptly bring the document to the attention of the judge. The judicial officer will either order that the document be re-sealed, or order that it continue to be handled as a restricted document, but not as a sealed document, or enter such other order as required to indicate the status of the document. Where the document is to be re-sealed, the judicial officer or courtroom deputy will re-seal the document and transmit it to the appropriate deputy in the clerk's office. Where under the terms of a protective order a party is permitted to inspect a sealed document and that party appears in the clerk's office and requests the document, one of the deputies authorized to handle restricted materials pursuant to section (a) will obtain the

document and provide an area where the person may inspect the document other than in the public area of the clerk's office. The deputy will complete a form showing the date, description of the document, the name of the person requesting access to the document, a statement indicating that the deputy has checked the protective order and it does indeed authorize the person to inspect the document, and a statement that the deputy requested of and was shown identification by the person requesting access to the document. Any person wishing to break the seal and inspect the document must sign the form completed by the deputy to indicate that they are authorized to inspect the document and have broken the seal. After the person has completed the inspection, the deputy will follow the procedures set out in the previous paragraph for handling the re-sealing of the document. . . .

Southern District of Illinois

No relevant local rule.

INDIANA

State of Indiana

Indiana Code Section 5-14-3-5.5

Sealing of Certain Records by Court; Hearing; Notice

(a) This section applies to a judicial public record.

(b) As used in this section, "judicial public record" does not include a record submitted to a court for the sole purpose of determining whether the record should be sealed.

(c) Before a court may seal a public record not declared confidential under section 4(a) of this chapter, it must hold a hearing at a date and time established by the court. Notice of the hearing shall be posted at a place designated for posting notices in the courthouse.

(d) At the hearing, parties or members of the general public must be permitted to testify and submit written briefs. A decision to seal all or part of a public record must be based on findings of fact and conclusions of law, showing that the remedial benefits to be gained by effectuating the public policy of the state declared in section 1 of this chapter are outweighed by proof by a preponderance of the evidence by the person seeking the sealing of the record that:

- (1) a public interest will be secured by sealing the record;
- (2) dissemination of the information contained in the record will create a serious and imminent danger to that public interest;
- (3) any prejudicial effect created by dissemination of the information cannot be avoided by any reasonable method other than sealing the record;
- (4) there is a substantial probability that sealing the record will be effective in protecting the public interest against the perceived danger; and

(5) it is reasonably necessary for the record to remain sealed for a period of time. Sealed records shall be unsealed at the earliest possible time after the circumstances necessitating the sealing of the records no longer exist.

Northern District of Indiana

No relevant local rule.

Southern District of Indiana

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations required to be placed in the sealing order by this rule.

Southern District of Indiana Local Rule 5.3

Filing of Documents Under Seal

(a) *General Rule.* No document will be maintained under seal in the absence of an authorizing statute, Court rule, or Court order.

(b) *Filing of Cases Under Seal.* Any new case submitted for filing under seal must be accompanied by a motion to seal and proposed order. Any case presented in this manner will be assigned a new case number, District Judge and Magistrate Judge. The Clerk will maintain the case under seal until a ruling granting the motion to seal is entered by the assigned District Judge. If the motion to seal is denied, the case will be immediately unsealed with or without prior notice to the filing party.

(c) *Filing of Documents Under Seal.* Materials presented as sealed documents shall be inside an envelope which allows them to remain flat. Affixed to the exterior of the envelope shall be an 8½ x 11" cover sheet containing:

- i. the case caption;
- ii. the name of the document if it can be disclosed publicly, otherwise an appropriate title by which the document may be identified on the public docket;
- iii. the name, address and telephone number of the person filing the document; and
- iv. in the event the motion requesting the document be filed under seal does not accompany the document, the cover sheet must set forth the citation of the statute or rule or the date of the Court order authorizing filing under seal.

(d) *Prohibition of Electronic Filing of Sealed Documents.* Sealed documents will not be filed electronically, but rather manually on paper. The party filing a sealed document shall file electronically a Notice of Manual Filing (see Form in Electronic Case Filing Administrative Policies and Procedures Manual for the Southern District of Indiana). The courtroom deputy to the District or Magistrate Judge should be contacted for instructions when filing certain *ex parte* documents which could not be disclosed by the electronic Notice of Manual Filing.

IOWA

State of Iowa

Iowa Code Section 22.13

Settlements – Governmental Bodies

A written summary of the terms of settlement, including amounts of payments made to or through a claimant, or other disposition of any claim for damages made against a governmental body or against an employee, officer, or agent of a governmental body, by an insurer pursuant to a contract of liability insurance issued to the governmental body, shall be filed with the governmental body and shall be a public record.

Northern and Southern Districts of Iowa

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Thirty days after a judgment has become final (60 days if the United States is a party), or, if an appeal from the judgment is filed, 30 days after the issuance of the mandate by the circuit court, the Clerk of Court may unseal a settlement agreement not claimed and withdrawn after (1) the Clerk gives notice to the attorneys of record in the case and to any pro se parties of the Clerk’s intention to unseal the settlement agreement; and (2) no response to the notice is filed within 30 days after the notice was sent. If a timely objection is filed, the settlement agreement will be unsealed only upon an order of the court.

Northern and Southern Districts of Iowa Local Rule 1.1(k)

Public Records

All filings with the Clerk of Court’s Office are public records and are available for public inspection unless otherwise ordered by the court or provided by a Local Rule or a statute of the United States. Materials may be filed under seal with the Clerk of Court, but only in accordance with the procedures prescribed in LR 5.1(e).

Northern and Southern Districts of Iowa Local Rule 5.1(e)

Sealed Documents and Exhibits

A party seeking to file under seal a pleading, motion, document, or exhibit first must file a written request for leave to do so. The pleading, motion, document, or exhibit thereafter may be filed under seal only if the court so orders. If the court enters an order permitting or directing the parties to file certain designated materials under seal, the parties thereafter must file all such materials under seal without filing a further request to do so.

A request for leave to file materials under seal may be filed under seal ex parte and without prior court order. The request must be delivered by the Clerk of Court in a sealed envelope marked with the caption of the case and the notation, “FILED UNDER SEAL PURSUANT TO LR 5.1(e).”

Materials to be filed under seal must be filed in a sealed envelope marked with the caption of the case and the notation, “SEALED PURSUANT TO COURT ORDER ENTERED [DATE].”

All materials filed in response to or in connection with other materials filed under seal also must be filed in a sealed envelope marked with the caption of the case and the notation, “SEALED PURSUANT TO COURT ORDER ENTERED [DATE].”

Envelopes containing materials filed under seal may be opened only by the Clerk of court, deputy clerks, federal judges, and their staff members.

Thirty days after a judgment has become final (60 days if the United States is a party), or, if an appeal from the judgment is filed, 30 days after the issuance of the mandate by the circuit court, sealed materials not claimed and withdrawn pursuant to LR 83.7(e) may be unsealed by the Clerk of Court after the following occurs: (1) The Clerk of Court gives notice to the attorneys of record in the case and to any pro se parties of the Clerk of Court’s intention to unseal the materials; and (2) No response to the notice is filed within 30 days after the notice has been sent. If a timely objection is filed, the document or exhibit will be unsealed only upon an order of the court.

A party intending to object to a notice of intention to unseal a document must, before filing the objection, confer with opposing counsel and any pro se parties and attempt to reach an agreement on the disposition of the exhibit pursuant to LR 83.7(e) in lieu of the unsealing of the exhibit. An objection to a notice of intention to unseal must contain a statement describing the results of these efforts.

The procedures in this section do not apply to preindictment ex parte filings by the government in criminal cases or to cases where other procedures are required by statute.

KANSAS

State of Kansas

Kansas Statutes, Article 2, Section 45-217

Records Open To Public, Definitions

(f)(1) “Public record” means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency including, but not limited to, an agreement in settlement of litigation involving the Kansas public employees retirement system and the investment of moneys of the fund.

District of Kansas

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. A settlement agreement placed under seal after October 22, 1998, will be unsealed 10 years after a final judgment or dismissal was entered in the case unless the court ordered

otherwise at the time of entry of such judgment or dismissal. If a settlement agreement placed under seal before October 22, 1998 is contained in a case that has been closed by entry of final judgment or order of dismissal for 10 years or more, the clerk will lift the seal on the settlement agreement after notifying the parties by written notice, unless a motion to extend the seal, served on all parties to the action, is filed within six months.

District of Kansas Local Rule 79.4

Sealed Files and Documents in Civil Cases

(a) *Documents/files Sealed After the Effective Date of this Rule.* Any file, pleading, motion, memorandum, order or other document placed under seal by order of this court in any civil action shall be unsealed by operation of this rule ten years after entry of a final judgment or dismissal unless otherwise ordered by the court at the time of entry of such judgment or dismissal. Any party, upon motion filed no more than six months before the seal is to be lifted, with notice to the remaining parties, may seek to renew the seal for an additional period of time not to exceed ten years. There shall be a rebuttable presumption that the seal shall not be renewed, and the burden shall be on the moving party to establish an appropriate basis for renewing the seal.

(b) *Documents/files Under Seal Before the Effective Date of this Rule.* On an ongoing basis, for a term of ten years from the effective date of the adoption of this rule, the clerk of the court will identify all civil files which have been sealed, or civil files in which sealed pleadings, motions, memoranda, orders or other documents are contained, and which files have been closed by entry of final judgment or order of dismissal, for a term of ten years or more, and at that time shall notify the parties, by written notice mailed to the last known address of counsel representing each party to the action, that:

- (1) unless a motion to extend the seal, served on all parties to the action, is filed within six months, the seal will be lifted; and
- (2) if a motion to extend the seal is filed, the burden shall be on the moving party to overcome a rebuttable presumption that the seal shall not be renewed and to establish an appropriate basis for renewing the seal.

In the event of a pro-se litigant all notices required by this rule shall be mailed to the last known mailing address of such litigant as reflected in the records of the Clerk of the District court in the file in issue.

(c) By its terms, this rule applies only to civil actions and does not apply to sealed files, documents, records, transcripts, or any other matter sealed in criminal cases.

KENTUCKY

Commonwealth of Kentucky

No relevant statute or rule.

Eastern and Western Districts of Kentucky

No relevant local rule.

LOUISIANA

State of Louisiana

No relevant statute or rule.

District of Louisiana

No relevant local rule.

District of Louisiana

No relevant local rule.

District of Louisiana

No relevant local rule.

MAINE

State of Maine

Maine Rules of Court, Rule of Civil Procedure 79

Books and Records Kept by the Clerk and Entries Therein

(b)(1) *Motion to Impound*. Upon the filing of a motion or other request to impound or seal documents or other materials, the clerk shall separate such materials from the publicly available file and keep them impounded or sealed pending the court's adjudication of the motion.

(2) *Confidential Materials*. Requests for inspection or copying of materials designated as confidential, impounded or sealed within a case file must be made by motion in accordance with Rule 7.

District of Maine

No relevant local rule.

MARYLAND

State of Maryland

No relevant statute or rule.

District of Maryland

Analysis: To file a settlement agreement under seal, the court must consider the parties joint motion to seal portions of the court record (i.e., the settlement agreement) and any opposition thereto; refrain from ruling on the joint motion for at least 14 days to permit interested parties to file objections; and consider any objections by interested parties. Then, the court must find and hold that al-

alternatives to sealing would not provide sufficient protection and that sealing of the specified portion of the record (i.e., the settlement agreement) would be appropriate. A sealed settlement agreement may not remain under seal indefinitely. Upon final termination of an action, if any counsel fails to remove from the record the sealed settlement agreement within 30 days of receiving notice from the Clerk, the clerk may return the settlement agreement to the parties, destroy it, or otherwise dispose of it.

District of Maryland Local Rule 105.11

Sealing

Any motion seeking the sealing of pleadings, motions, exhibits or other papers to be filed in the Court record shall include (a) proposed reasons supported by specific factual representations to justify the sealing and (b) an explanation why alternatives to sealing would not provide sufficient protection. The Court will not rule upon the motion until at least 14 days after it is entered on the public docket to permit the filing of objections by interested parties. Materials that are the subject of the motion shall remain temporarily sealed pending a ruling by the Court. If the motion is denied, the party making the filing will be given an opportunity to withdraw the materials.

[See also form “Order Sealing Portions of the Court Record (Local Rule 105.11)” which includes several additional provisions not stated in LR 105.11: “That the Sealed Record (as defined above) be, and hereby is, PLACED UNDER SEAL by the Clerk of the Court and that the Sealed Record shall be placed in an envelope or other container which is marked ‘SEALED, SUBJECT TO ORDER OF COURT DATED _____.’ . . . A copy of this Order shall be mailed to all counsel of record and to any other person entitled to notice hereof, and shall be docketed in the Court file.”]

District of Maryland Local Rule 113.2

Disposition of Exhibits, Upon Final Termination of Action

Upon the final termination of an action, the Clerk shall send a notice to counsel advising them to remove from the record within thirty days of the notice all trial and hearing exhibits and all sealed materials which they presented at any time during the pendency of the action. If any counsel fails to do so, the clerk may return the materials to the parties, destroy the materials, or otherwise dispose of them.

MASSACHUSETTS

Commonwealth of Massachusetts

No relevant statute or rule.

District of Massachusetts

No relevant local rule.

MICHIGAN
State of Michigan

Michigan Court Rule 8.119

Court Records and Reports; Duties of Clerks

(F) *Sealed Records.*

(1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals court records, in whole or in part, in any action or proceeding, unless

(a) a party has filed a written motion that identifies the specific interest to be protected,

(b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and

(c) there is no less restrictive means to adequately and effectively protect the specific interest asserted.

(2) In determining whether good cause has been shown, the court must consider the interests of the public as well as of the parties.

(3) The court must provide any interested person the opportunity to be heard concerning the sealing of the records.

(4) For purposes of this rule, “court records” includes all documents and records of any nature that are filed with the clerk in connection with the action. Nothing in this rule is intended to limit the court’s authority to issue protective orders pursuant to MCR 2.302(C).

(5) A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.

(6) Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.129 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action. See MCR 8.116(D).

(7) Whenever the court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and to the State Court Administrative Office.

Eastern District of Michigan

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Unless the court orders otherwise, a sealed settlement agreement will be unsealed and placed in the case file two years after the date on which it was sealed.

Eastern District of Michigan Local Rule 5.3
Civil Discovery Material Sealed Under Protective Orders

Sixty days after the entry of a final judgment and an appellate mandate, if appealed, attorneys of record in a case must present to the court a proposed order specifying whether the material sealed with protective orders is (a) to be returned to the parties or (b) unsealed and placed in the case file. Failure to present the order will result in the court ordering the clerk to unseal the materials and place them in the case file.

Eastern District of Michigan Local Rule 5.4
Sealed Settlement Agreements in Civil Cases

Absent an order to the contrary, sealed settlement agreements will remain sealed for two years after the date of sealing, after which time they will be unsealed and placed in the case file.

Western District of Michigan

Analysis: The court must find that there was good cause shown in order to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Unless the court orders otherwise, a sealed settlement agreement will be unsealed thirty days after the case is terminated or any appeal is terminated, whichever is later.

Western District of Michigan Local Civil Rule 10.6.

Form of Pleadings and Other Papers; Filing Requirements; Filing Under Seal.

(a) *Request to Seal* - Requests to seal a document must be made by motion and will be granted only upon good cause shown. If the document accompanies the motion, it shall be clearly labeled “Proposed Sealed Document” and shall include an envelope suitable for sealing the document. The envelope shall have the caption of the case, case number, title of document, and the words “Contains Sealed Documents” prominently written on the outside. The document shall not be considered sealed until so ordered by the Court.

(b) *Documents Submitted Pursuant to Court Order* - A document submitted pursuant to a previous order by the Court authorizing the document to be filed under seal shall be clearly labeled “Sealed Document,” shall be submitted in an envelope suitable for sealing the document, and identify the order or other authority allowing filing under seal. The caption of the case, case number, title of document, and the words “Contains Sealed Documents” shall be prominently written on the outside of the envelope.

(c) *Expiration of Seal* - Unless otherwise ordered by the Court, thirty days after the termination of a case or any appeal, whichever is later, sealed documents and cases will be unsealed by the Court.

MINNESOTA

State of Minnesota

No relevant statute or rule.

District of Minnesota

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Unless the court orders otherwise on its own motion or on the motion of any party or nonparty, four months after the case is closed, or if appealed, 30 days after the filing and recording of the mandate of the Appellate Court finally disposing of the cause, a sealed settlement agreement in the Clerk’s custody must be taken away by the parties. If the settlement agreement remains in the Clerk’s custody after the expiration of the above time periods, the Clerk shall destroy the sealed settlement agreement 30 days after the Clerk notified counsel in the case by mail, unless the court orders otherwise.

District of Minnesota Local Rule 79.1

Custody and Disposition of Records, Exhibits and Documents Under Seal

(c) *Documents Subject to a Protective or Confidentiality Order.* Original documents filed subject to a protective or confidentiality order shall be separately stored and maintained by the Clerk and shall not be disclosed or otherwise made available to any person except as provided by the terms and conditions of the relevant order.

(d) *Removal of Models, Diagrams, Exhibits and Documents under Seal.* All models, diagrams, exhibits and documents subject to a protective or confidentiality order remaining in the custody of the Clerk shall be taken away by the parties within four months after the case is finally decided unless an appeal is taken. In all cases in which an appeal is taken, they shall be taken away within 30 days after the filing and recording of the mandate of the Appellate Court finally disposing of the cause. On motion of any party, or on the request of any nonparty, or on the court’s own initiative, the court may order that any model, diagram, exhibit or document shall be retained by the Clerk for such longer period of time as may be determined by the court, notwithstanding any of the foregoing requirements of this paragraph (d).

(e) *Other Disposition by the Clerk.* When models, diagrams, exhibits and documents subject to a protective or confidentiality order in the custody of the Clerk are not taken away within the time specified in the preceding paragraph of this rule, it shall be the duty of the Clerk to notify counsel in the case, by mail, of the requirements of this rule. Any articles, including documents subject to a protective or confidentiality order, which are not removed within 30 days after such notice is given shall be destroyed by the Clerk, unless otherwise ordered by the Court.

MISSISSIPPI

State of Mississippi

No relevant statute or rule.

Northern and Southern Districts of Mississippi

Analysis: In order to seal a settlement agreement the court must find good cause for placing the document under seal. A sealed settlement agreement cannot remain sealed indefinitely. A sealed settlement agreement will be unsealed and placed in the case file thirty days following final disposition (including direct appeal) of the action, unless the court (upon motion) orders otherwise. Any order permitting a settlement agreement to be maintained under seal longer than 30 days must set a date for unsealing.

Northern and Southern Districts of Mississippi Local Rule 83.6

Sealing of Court Records.

(A) *Court Records Presumptively in Public Domain.* Except as otherwise provided by statute, rule, or order, all pleadings and other materials filed with the court (“court records”) shall become a part of the public record of the court.

(B) *When and How Sealed; Redactions.* Court records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of the court specifying those court records, categories of court records, or portions thereof, which shall be placed under seal. The court may, in its discretion, receive and review any document *in camera* without public disclosure thereof and, in connection with any such review, determine whether good cause exists for the sealing of the document. Unless the court orders otherwise, the party seeking sealing shall file with the court redacted versions of court records when only a portion thereof is to be sealed.

(C) *Criminal Matters; Unsealing.* The Office of the United States Attorney shall present to the court a proposed order in connection with any indictment, complaint, or bill of information that the United States Attorney wishes to file under seal. Unless otherwise ordered by the Court, indictments, complaints, and bills of information filed under seal shall be unsealed after all defendants have made an appearance before the court.

(D) *Duration of Sealing.* Court records filed under seal in civil and criminal actions shall be maintained under seal for thirty days following final disposition (including direct appeal) of the action. After that time, all sealed court records shall be unsealed and placed in the case file unless the court, upon motion, orders that the court records be maintained under seal beyond the thirty-day period. All such orders shall set a date for unsealing of the court records.

MISSOURI

State of Missouri

Missouri Circuit Court of Jackson County [Sixteenth Judicial Circuit] Rule 100.4.14

Sealing Records by Protective Order of the Court

1. A protective order entered in any cause shall be by independent order, titled “Protective Order” and shall: identify with particularity the item(s) that are to be sealed or specify that the entire case file is to be sealed, and identify the person(s) to whom access to the sealed item(s) is permitted without order of the court.

2. When a protective order is entered in any cause, the party requesting such an order shall deliver a copy of the protective order to the Director of the Department of Civil Records.

3. A pleading, paper or document affected by a previously entered protective order shall carry the notation: “sealed by order of court ____, 19__” conspicuously in the caption of the filing, below the assigned case number. If the filing is protected by the order but the entire case file folder is not sealed, the filing shall be secured in an 8 ½” x 14” envelope containing: the caption of the case, a notation of the protective order as stated above, and the nature of the document being filed. In addition, the filing must be accompanied by a pleading designated “Notice of Filing Sealed Document” which shall identify the nature of the pleading, paper or document and the party filing the same.

4. Any item affected by a protective order shall be filed with the Director of the Department of Civil Records.

Eastern District of Missouri

Analysis: The court must find that good cause exists before ordering a settlement agreement to be placed under seal. A sealed settlement agreement may not remain under seal indefinitely. Unless otherwise ordered by the court, a settlement agreement filed under seal will be placed in the public file thirty (30) days after a final order or other disposition has been issued in a civil action in the district court, or thirty (30) days after the receipt of a mandate from the court of appeals in a case in which an appeal has been taken. Prior to the expiration of the thirty day period following the termination of a case, a party may move for an order of the court either extending the seal for a specified additional time period or returning the sealed settlement agreement to the filing party upon a showing of good cause.

Local Rule 83–13.05(A)

Pleadings and Documents Filed Under Seal, Pleadings and Documents in Civil Cases.

(1) Upon a showing of good cause in a written motion of any party, the court may order that a document or series of documents filed in a civil case be received

and maintained by the clerk under seal. The clerk of court shall maintain such documents in a restricted area apart from the case file to which the public has access. Unless the docket reflects prior entry of an order to file under seal or the party offering a pleading or document presents the clerk with an order of the court authorizing a filing under seal or a motion for such order, all pleadings and documents received in the office of the clerk shall be filed in the public record of a civil case, except as otherwise required by law.

(2) Not less than thirty (30) days after a final order or other disposition has been issued in a civil action in the district court, or thirty (30) days after the receipt of a mandate from the court of appeals in a case in which an appeal has been taken, the clerk shall place in the public file all documents previously filed under seal, unless otherwise ordered by the court. Prior to the expiration of the thirty day period following the termination of a case, a party may move for an order of the court either extending the seal for a specified additional time period or returning sealed documents to the filing party upon a showing of good cause.

Western District of Missouri

No relevant local rule.

MONTANA

State of Montana

Montana Code Section 2-9-303

Compromise or Settlement of Claim Against State

(1) The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge shall approve the compromise settlement.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

Montana Code Section 2-9-304

Compromise or Settlement of Claim Against Political Subdivision

(1) The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

District of Montana

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule.

Local Rule 77.6

Filing Under Seal

Unless otherwise provided by statute or rule, no case or document shall be filed under seal without prior approval by the Court. If a filing under seal is requested, a written application and a proposed order shall be presented to the judge along with the document submitted for filing under seal. Unless otherwise ordered by the Court, the application and proposed order and document shall not be served on opposing parties. The original and judge's copy of the document shall be sealed in separate envelopes with a copy of the title page attached to the front of each envelope. Conformed copies need not be placed in sealed envelopes.

NEBRASKA

State of Nebraska

No relevant statute or rule.

District of Nebraska

No relevant local rule.

NEVADA

State of Nevada

Nevada Statutes Section 41.0375

Agreement to Settle: Prohibited Contents; Required Contents; Constitutes Public Record; Void Under Certain Circumstances.

1. Any agreement to settle a claim or action brought under NRS 41.031 or against a present or former officer or employee of the state or any political subdivision, immune contractor or state legislator:

(a) Must not provide that any or all of the terms of the agreement are confidential.

(b) Must include the amount of any attorney's fees and costs to be paid pursuant to the agreement.

(c) Is a public record and must be open for inspection pursuant to NRS 239.010.

2. Any provision of an agreement to settle a claim or action brought under NRS 41.031 or against a present or former officer or employee of the state or any political subdivision, immune contractor or state legislator that conflicts with this section is void.

District of Nevada

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule.

District of Nevada Local Rule 9018

Secret, Confidential, Scandalous, or Defamatory Matter

(a) Papers submitted for the court’s *in camera* inspection shall be accompanied by a captioned cover sheet complying with LR 9004, indicating that it is being submitted *in camera*. Counsel shall provide to the court an envelope of sufficient size into which the *in camera* papers can be sealed without being folded. Counsel shall be permitted to tender to the clerk of the court papers *in camera* without a prior court order authorizing same.

(b) The court will review the *in camera* submission and enter an appropriate order directing that it be filed under seal, be made part of the official public file, or be permitted to be withdrawn. In the event the court orders such paper sealed, the moving party shall submit an order in compliance to LR 9022, which order shall be docketed by the clerk.

NEW HAMPSHIRE

State of New Hampshire

New Hampshire Rules of Court, Guidelines for Public Access to Court Records, Guideline I

Introduction

It is the express policy of the Judicial Branch of New Hampshire to allow public access to court records. This policy is intended to recognize and effectuate the public’s rights to access proceedings under the New Hampshire Constitution. . . .

New Hampshire Rules of Court, Guidelines for Public Access to Court Records, Guideline II

Records Subject to Inspection

A presumption exists that all court records are subject to public inspection. The public right of access to specific court records must be weighed and balanced against nondisclosure interests as established by the Federal and/or New Hampshire Constitution or by statutory provision granting or requiring confidentiality. Unless otherwise ordered by the court, the following categories of cases shall not be open to public inspection . . . and any other record to be kept confidential by statute, rule or order. Before a court record is ordered sealed, the court must determine if there is a reasonable alternative to sealing the record and must use the least restrictive means of accomplishing the purpose. Once a court record is sealed, it shall not be open to public inspection except by order of the court. Any case records not subject to disclosure except upon order of the court shall be kept in a separate section of the court files, accessed only by the court and the clerk’s staff.

District of New Hampshire

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule. The court may specify the duration of the sealing order in the court's order sealing the settlement agreement.

District of New Hampshire Local Rule 83.11

Sealed Documents

(a) *Filings, Orders, and Docket Entries.* All filings, orders, and docket entries shall be public unless:

- (1) a filing, order, or docket entry must be sealed pursuant to state law, federal law, the Federal Rules of Criminal or Civil Procedure, or these rules;
- (2) a filing, order, or docket entry has been sealed by order of another court or agency; or
- (3) this court issues an order sealing a filing, order, or docket entry.

(b) *Levels of Sealed Filings, Orders, and Docket Entries.*

(1) Level I. Filings, orders, and docket entries sealed at Level I may be reviewed by any attorney appearing in the action without prior leave of court.

(2) Level II. Filings, orders, and docket entries sealed at Level II may be reviewed only by the filer or, in the case of an order, the person to whom the order is directed without prior leave of court.

(c) *Motions to Seal.* A motion to seal must be filed before the sealed material is submitted or, alternatively, the item to be sealed may be tendered with the motion and both will be accepted provisionally under seal, subject to the court's subsequent ruling on the motion. The motion must explain the basis for sealing, specify the proposed duration of the sealing order, and designate whether the material is to be sealed at Level I or Level II. Any motion to seal, upon specific request, may also be sealed if it contains a discussion of the confidential material. If the court denies the motion to seal, any materials tendered under provisional seal will be returned to the movant.

(d) *Filing Procedures.* All material submitted by a party either under seal or requesting sealed status, provisionally or otherwise, shall be placed in a sealed envelope with a copy of the document's cover page affixed to the outside of the envelope. The party shall designate the envelope with a conspicuous notation such as "DOCUMENTS UNDER SEAL," "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent. If the basis for the document's sealed status is not apparent, an explanatory cover letter should also be attached to alert the clerk's staff of its special status.

Parties cannot seal otherwise public documents merely by agreement or by labeling them "sealed."

NEW JERSEY

State of New Jersey

No relevant statute or rule.

District of New Jersey

No relevant local rule.

NEW MEXICO

State of New Mexico

New Mexico Rules of Court, Local Rule of the First Judicial District Court 1-208

Sealing of Court Files

A. It is the policy of the court to allow free public access to official court files of each case docketed and filed in the First Judicial District.

B. No court file, except those matters required by law to remain confidential, shall be ordered sealed from public inspection, except in extraordinary cases to be determined by the court:

- (1) Upon a written and verified application for the sealing of such file;
- (2) A showing of good cause; and
- (3) A showing that significant and irreparable harm will result unless the file is sealed.

C. Every file sealed in accordance with this rule shall be unsealed after one hundred and eighty (180) days unless the order sealing the file is extended upon a showing of good cause.

New Mexico Rules of Court, Local Rule of the Eighth Judicial District Court 8-207

Sealing of Court Files

[Similar to First Judicial District Court LR1-208 except for following provision: "Every order sealing a court file shall state the reasons therefor, and shall state the duration of the time within which the file shall be sealed."]

New Mexico Rules of Court, Local Rule of the Second Judicial District Court 2-111.

Sealing of Court Records

The court's policy is to allow public access to official court files and other records. Accordingly, no court file or other record shall be sealed from public inspection, with the exception of records containing matters made confidential by law and court clinic records. In extraordinary cases the court may seal a file or other record upon a party's written motion or the court's own motion, and showing of good cause. The sealed records shall remain part of the court file or other record.

District of New Mexico

No relevant local rule.

NEW YORK

State of New York

Uniform Rules for the New York State Trial Courts, Section 216.1

Sealing of Court Records

(a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard.

(b) For purposes of this rule, “court records” shall include all documents and records of any nature filed with the clerk in connection with the action. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders as set forth in CPLR 3103(a).

Eastern District of New York

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. A settlement agreement filed under seal in a case that has been closed since 1995, and after February 21, 2001, a settlement agreement sealed in a civil case that has been closed for at least 5 years, will be indexed and archived at the Federal Records Center and remain sealed for 20 years at which time it will be disposed of after notice has been given to the Court.

Eastern District of New York Administrative Order 2001-02

In re Sealed Records (E.D.N.Y. February 21, 2001)

Whereas the Clerk of Court has within his possession in the Clerk’s Office vault scores of boxes of sealed records in civil and criminal cases that have been closed for at least five (5) years;

it is ORDERED that all sealed records in civil and criminal cases that have been closed through calendar year 1995 be indexed and archived at the Federal Records Center, and remain sealed, with disposition within prescribed guidelines, after twenty years’ time and upon prior notice to the Court,

and it is further ORDERED that records sealed in civil and criminal cases after the effective date of this Order be reviewed periodically and when closed for at least five (5) years, also shall be indexed and archived at the Federal Records Center.

SO ORDERED.

Northern District of New York

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational requirements imposed by this rule. A settlement agreement sealed by court order will remain under seal until the court enters a subsequent order unsealing the settlement agreement, either on its own motion or in response to a motion of a party.

Northern District of New York Local Rule 83.13

Sealed Matters

Cases may be sealed in their entirety, or only as to certain parties or documents, when they are initiated, or at various stages of the proceedings. The court may on its own motion enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reason(s) why the document, party or entire case should be sealed, together with a proposed order for approval by the assigned judge. The proposed order shall include language in the “ORDERED” paragraph stating the referenced document(s) to be sealed and should include the phrase “including this sealing order.” Upon approval of the sealing order by the assigned judge, the clerk shall seal the document(s) and the sealing order. A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the order. Once a document or case is sealed by court order, it shall remain under seal until subsequent order, upon the court’s own motion or in response to the motion of a party, is entered directing that the document or case be unsealed.

Southern District of New York

No relevant local rule.

Western District of New York

No relevant local rule.

NORTH CAROLINA

State of North Carolina

North Carolina General Statutes Section 132-1.3.

Settlements made by or on behalf of public agencies, public officials, or public employees; public records.

(a) Public records, as defined in G.S. 132-1, shall include all settlement documents in any suit, administrative proceeding or arbitration instituted against any agency of North Carolina government or its subdivisions, as defined in G.S. 132-1, in connection with or arising out of such agency’s official actions, duties or responsibilities, except in an action for medical malpractice against a hospital facility. No agency of North Carolina government or its subdivisions, nor any coun-

sel, insurance company or other representative acting on behalf of such agency, shall approve, accept or enter into any settlement of any such suit, arbitration or proceeding if the settlement provides that its terms and conditions shall be confidential, except in an action for medical malpractice against a hospital facility. No settlement document sealed under subsection (b) of this section shall be open for public inspection.

(b) No judge, administrative judge or administrative hearing officer of this State, nor any board or commission, nor any arbitrator appointed pursuant to the laws of North Carolina, shall order or permit the sealing of any settlement document in any proceeding described herein except on the basis of a written order concluding that (1) the presumption of openness is overcome by an overriding interest and (2) that such overriding interest cannot be protected by any measure short of sealing the settlement. Such order shall articulate the overriding interest and shall include findings of fact that are sufficiently specific to permit a reviewing court to determine whether the order was proper.

(c) Except for confidential communications as provided in G.S. 132-1.1, the term “settlement documents,” as used herein, shall include all documents which reflect, or which are made or utilized in connection with, the terms and conditions upon which any proceedings described in this section are compromised, settled, terminated or dismissed, including but not limited to correspondence, settlement agreements, consent orders, checks, and bank drafts.

Eastern District of North Carolina

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. If counsel fails to retrieve the sealed settlement agreement after the action concludes and all appeals are completed, within 30 days after final disposition the court may order the settlement agreement to be unsealed upon 10 days’ notice by mail to counsel for all parties.

Eastern District of North Carolina Local Civil Rule 79.2 Sealed Documents.

(a) *Filing Sealed Documents.* Absent statutory authority, no cases or documents may be sealed without an order from the court. A party desiring to file material under seal must first file a motion seeking leave to file the information under seal, or have a court-approved protective order in place.

(b) *Proposed Sealed Documents.* All proposed, sealed material which accompanies a Motion to Seal shall be received by the clerk and temporarily sealed, pending a ruling on the motion to seal. The filing of a Motion to Seal documents will toll the time for filing the material. If the Motion to Seal is allowed, the sealed material shall be filed on the same date as the order allowing the filing under seal. If the motion to file the material under seal is denied, the movant will be given an option of retrieving the material or having it filed the same date as the order denying the filing under seal.

(c) *Docketing Sealed Documents.* When material is filed under seal, the docket will indicate generically the type of document filed under seal, but it will not contain a description that would disclose its identity.

(d) *Return of Sealed Materials.* After the action concludes and all appeals have been completed, counsel is charged with the responsibility of retrieving and maintaining all sealed documents. Upon 10 days notice by mail to counsel for all parties, and within 30 days after final disposition, the court may order the documents to be unsealed and they will thereafter be available for public inspection.

(e) *Form.* All under seal or potentially under seal documents shall be delivered to the clerk's office enclosed in a red envelope, marked with the case caption, case number, and a descriptive title of the document, unless such information is to be, or has been, among the information ordered sealed. Additionally, the following information will be prominently displayed:

SEALED PURSUANT TO THE
PROTECTIVE ORDER
ENTERED ON ___/___/98

or

PROPOSED SEALED MATERIAL:
SUBMITTED PURSUANT TO MOTION
TO SEAL FILED ON ___/___/98

Middle District of North Carolina

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Within 30 days after the time for appeal has expired or 30 days after an appeal has been decided, the Clerk may return a sealed settlement agreement to the parties or destroy it. If the case file is transferred to the GSA for records holding, the court cannot assure the confidentiality of a sealed settlement agreement.

Local Rule 83.5(c)

Disposition of Exhibits, Sealed Documents, and Filed Depositions by Clerk.

Any exhibit, sealed document, disk, or filed deposition in the clerk's custody more than 30 days after the time for appeal, if any, has expired, or an appeal had been decided and mandate received, may be returned to the parties or destroyed by the clerk. Complaints, answers, motions, responses and replies, whether sealed or not, must be forwarded to the General Services Administration for permanent storage. The confidentiality of sealed documents cannot be assured after the case file is transferred to the General Services Administration for records holding.

Western District of North Carolina

Analysis: No restriction on court’s authority to seal a settlement agreement. At final disposition of the case, a sealed settlement agreement will be unsealed unless the court orders otherwise.

Western District of North Carolina Local Rule 5.1.

Filing of Papers, Presenting Judgments, Orders, and Communications to Judge and Sealed Records.

(D) Sealed Matters.

(1) *New Civil Cases.* A civil complaint may be sealed at the time the case is filed if the complaint is accompanied by an ex parte motion of the plaintiff/petitioner accompanied by an order sealing the case. The case will be listed on the clerk’s index as Sealed Plaintiff vs. Sealed Defendant.

(2) *Pending Cases.* A pending case may be sealed at any time upon motion of either party and execution by the court of a written order. Unless otherwise specified in the order, neither the clerk’s case index nor the existing case docket will be modified.

(3) *Documents.* Documents ordered sealed by the court or otherwise required to be sealed by statute shall be marked as such within the document caption and submitted together with the judge’s copy prepared in the same manner. If the document is sealed pursuant to a prior order of the court, the pleading caption shall include a notation that the document is being filed under court seal and include the order’s entry date.

No document shall be designated by any party as “filed under seal” or “confidential” unless:

- (a) it is accompanied by an order sealing the document;
- (b) it is being filed in a case that the court has ordered sealed; or
- (c) it contains material that is the subject of a protective order entered by the court.

(4) *Case Closing.* Unless otherwise ordered by a court, any case file or documents under court seal that have not previously been unsealed by the court order shall be unsealed at the time of final disposition of the case.

(5) *Access to Sealed Documents.* Unless otherwise ordered by the court, access to documents and cases under court seal shall be provided by the clerk only pursuant to court order. Unless otherwise ordered by the court, the clerk shall make no copies of sealed case files or documents.

NORTH DAKOTA

State of North Dakota

North Dakota Supreme Court Administrative Rule 41

Access to Judicial Records

Section 1. *Policy.* Judicial records are generally open to the public for examination, inspection, and copying during regular office hours, subject to reasonable

inspection restrictions to ensure the integrity of those records. . . . This rule seeks to balance the competing interests of disclosure and confidentiality by providing guidelines to courts and court personnel in determining the accessibility of judicial records in the custody of the judicial system. . . .

Section 5. *Other Prohibitions or Limitations on Disclosure.* Records subject to inspection, examination, and copying under Section 3 and not exempt from disclosure under Section 4, may be prohibited or limited from disclosure by order of the court on a case-by-case basis. In ruling on whether specific records should be disclosed or sealed by order of the court, the court shall determine and make a finding of fact as to whether the interest for closure exceeds the interest in public disclosure. If the court prohibits or limits a disclosure, it must fashion the least restrictive exception from disclosure. In applying these rules, the court is referred to traditional legal concepts in the law of North Dakota. . . .

Section 9. *Motion Regarding Sealing of Records.* Any person, or the court on its own motion, may move, in the judicial proceeding in which records are filed, to seal or unseal a part or all of the records in the proceeding. The custodial judge shall hear the motion after the moving party gives notice of the hearing to all parties to the proceeding and any other person designated by the judge. The custodial judge shall issue a written decision on the motion to seal or unseal records, which the court may reconsider, alter, or amend at any time. A record that is the subject of a motion to seal is confidential until a written decision on the motion is issued.

District of North Dakota

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Unless otherwise ordered by the court, the clerk must return a settlement agreement filed under seal to the submitting party, upon entry of a final judgment or termination of appeal, if any.

District of North Dakota Local Rule 5.1(F)

Sealed Documents and Files

(1) The clerk must return documents filed under seal in civil actions to the party submitting them, upon entry of a final judgment or termination of appeal, if any, unless otherwise ordered by the court.

(2) The clerk must retain custody of documents filed under seal in criminal cases, unless otherwise ordered by the court.

(3) The clerk must retain custody of entire files which are permanently sealed by statute or court order.

NORTHERN MARIANA ISLANDS

Commonwealth of the Northern Mariana Islands

No relevant statute or rule.

District Court for the Northern Mariana Islands

No relevant local rule.

OHIO

State of Ohio

No relevant statute or rule.

Northern District of Ohio

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Unless the court orders to continue the seal for a specified period, the court will order the settlement agreement to be unsealed 30 days after the case is terminated or any appeal, whichever is later.

Northern District of Ohio Local Civil Rule 5.2

Filing Documents Under Seal

No document will be accepted for filing under seal unless a statute, court rule, or prior court order authorizes the filing of sealed documents. If no statute, rule, or prior order authorizes filing under seal, the document will not be filed under seal.

Materials presented as sealed documents shall be in an envelope which shows the citation of the statute or rule or the filing date of the court order authorizing the sealing, and the name, address, and telephone number of the person filing the documents.

If the sealing of the document purports to be authorized by court order, the person filing the documents shall include a copy of the order in the envelope. If the order does not authorize the filing under seal, or if no order is provided, the Clerk will unseal the documents before filing them. Before unsealing the documents, the Clerk will notify the person whose name and telephone number appears on the envelope in person (if he or she is present at the time of filing) or by telephone. The filer may withdraw the documents before 4:00 p.m. the day the Clerk notifies him or her of the defect. If not withdrawn, the documents will be unsealed and filed.

New cases submitted for filing without a signed sealing order will be assigned a new case number, District Judge and Magistrate Judge. The Clerk, without further processing, will send the file to the assigned District Judge for a sealing order. If a sealing order is signed, the Clerk will enter as much information as is permitted by the sealing order into the system to open and identify the case.

Thirty days after the termination of the case or any appeal, whichever is later, sealed documents and case will be unsealed pursuant to court order, unless either a motion to continue the seal for a specified period of time or a motion to withdraw the document is filed and granted by the Court.

Southern District of Ohio

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Unless the court orders otherwise, counsel must withdraw the sealed settlement agreement within six months after final termination of the action; if not withdrawn by counsel, the Clerk will dispose of the settlement agreement after the six month withdrawal period has expired.

Southern District of Ohio Local Rule 79.3

Sealed, or Confidential Documents

(a) Unless otherwise ordered or otherwise specifically provided in these Rules, all documents submitted for a confidential *in camera* inspection by the court, which are the subject of a Protective Order, which are subject to an existing order that they be sealed, or which are the subject of a motion for such orders, shall be submitted to the Clerk securely sealed in an envelope approximately 9 x 12" in size, or of such larger size as needed to accommodate the documents.

(b) The envelope containing such documents shall contain a conspicuous notation that it carries "DOCUMENTS UNDER SEAL," "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent.

(c) The face of the envelope shall also contain the case number, the title of the court, a descriptive title of the document and the case caption, unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope shall also contain the date of any order, or the reference to any statute permitting the item to be sealed. The date of filing of an order formally sealing documents, submitted in anticipation of such an order, shall be added by the Clerk when determined.

(d) The Clerk's file stamp and appropriate related information or markings shall be made on the face of the envelope. Should the document be ordered opened and maintained in that manner in the case records, the actual date of filing will be noted on the face of the document by the Clerk and the envelope retained therewith.

(e) Sealed or confidential documents shall be disposed of in accordance with Rule 79.2.

Southern District of Ohio Local Rule 79.2

Disposition of Exhibits, Models, Diagrams, Depositions, and Other Materials

(a) *Withdrawal By Counsel.* All models, diagrams, depositions, photographs, x-rays and other exhibits and materials filed in an action or offered in evidence shall not be considered part of the pleadings in the action and, unless otherwise ordered by the Court, shall be withdrawn by counsel without further Order within six (6) months after final termination of the action.

(b) *Disposal By The Clerk.* All models, diagrams, depositions, x-rays and other exhibits and materials not withdrawn by counsel shall be disposed of by the Clerk as waste at the expiration of the withdrawal period.

OKLAHOMA

State of Oklahoma

Oklahoma Statutes Title 51, Section 158

Settlement or Defense of Claim – Effect of Liability Insurance

A. The state or a political subdivision, after conferring with authorized legal counsel, may settle or defend against a claim or suit brought against it or its employee under this act subject to any procedural requirements imposed by statute, ordinance, resolution or written policy, and may appropriate money for the payment of amounts agreed upon. When the amount of any settlement exceeds Ten Thousand Dollars (\$10,000.00), and any payment required by the settlement will not be paid through an applicable contract or policy of insurance, the settlement shall not be effective until approved by the district court and entered as a judgment as provided by law. . . . Judgments, orders, and settlements of claims shall be open public records unless sealed by the court for good cause shown.

Eastern District of Oklahoma

No relevant local rule.

Northern District of Oklahoma

Analysis: The court must find that good cause exists before ordering a settlement agreement to be placed under seal. A sealed settlement agreement may remain under seal indefinitely; no durational limitations imposed by this rule. Only the court or a court order can unseal the settlement agreement.

Northern District of Oklahoma Local Rule 79.1(D)

Sealing of Records

No pleading, document, or record shall be placed under seal without a prior, specific order of the court finding good cause to do so. No seal shall be lifted, except by the court, or by court order.

Western District of Oklahoma

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule.

Frequently Asked Questions (www.okwd.uscourts.gov/faq)

Filing Documents

What is the procedure for filing a motion/document under seal?

When filing a motion/document under seal, you should follow these steps:

- * Place the motion/document to be sealed in an open, large manila envelope.
- * Prepare a cover motion requesting permission to file your motion/document under seal.

* Attach the cover motion by stapling it outside the envelope containing the motion/document to be sealed.

* File the motion/document to be sealed at the intake counter. The intake clerk will stamp both the documents and will immediately give it to the Chief Deputy Clerk or the Operations Manager for docketing and delivery to the presiding judge or magistrate judge.

*Once the judge or magistrate judge has ruled upon the cover motion to seal, the sealed motion/document will be sealed and placed in the vault or, in the case of denial of the motion, will be placed in the case file.

OREGON

State of Oregon

No relevant statute or rule.

District of Oregon

No relevant local rule.

PENNSYLVANIA

Commonwealth of Pennsylvania

No relevant statute or rule.

Eastern District of Pennsylvania

No relevant local rule.

Middle District of Pennsylvania

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Unless good cause is shown, the court will unseal a settlement agreement that is still under seal after the case is terminated no later than two years after the final judgment or the exhaustion of all appeals.

Middle District of Pennsylvania Local Rule 79.5

Unsealing of Civil Cases/Documents

Unless good cause is shown, all civil cases and/or documents in those cases which still remain under seal after the case is terminated will be unsealed by the court no later than two (2) years after the final judgment and/or the exhaustion of all appeals.

Western District of Pennsylvania

No relevant local rule.

PUERTO RICO

Commonwealth of Puerto Rico

No relevant statute or rule.

District of Puerto Rico

No relevant local rule.

RHODE ISLAND

State of Rhode Island

General Laws of Rhode Island, Section 38-2-14

Information Relating to Settlement of Legal Claims

Settlement agreements of any legal claims against a governmental entity shall be deemed public records.

District of Rhode Island

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule. The settlement agreement will remain under seal until the court vacates or amends the order to seal.

District of Rhode Island Amended General Order #2002-01 (January 31, 2003) Motions to Seal

A motion to seal shall be accompanied by the document(s) sought to be sealed and a written memorandum not exceeding 5 pages which sets forth the basis for seeking an order to seal. Upon receipt of a motion to seal and the supporting memorandum, the clerk shall docket the items received and transmit them immediately to the chambers of the judge to whom the case has been assigned. Any opposition to the motion to seal likewise shall be docketed and transmitted to the judge to whom the case has been assigned. If the Court grants the motion to seal, all documents sealed shall be placed in an envelope and a copy of the Court's order shall be affixed thereto. The sealed envelope and its contents shall be retained by the clerk in a secure location until such time as the Court vacates or amends the order to seal. If the Court denies the motion to seal, the document shall be placed in the Court file in accordance with this Order and the Local Rules.

SOUTH CAROLINA

State of South Carolina

No relevant statute or rule.

District of South Carolina

Analysis: The court is explicitly prohibited from sealing a settlement agreement.

District of South Carolina Local Rule 5.03

Service and Filing of Pleadings and Other Papers, Filing Documents Under Seal

Absent a requirement to seal in the governing rule, statute, or order, any party seeking to file documents under seal shall follow the mandatory procedure described below. Failure to obtain prior approval as required by this Rule shall result in summary denial of any request or attempt to seal filed documents. Nothing in this Rule limits the ability of the parties, by agreement, to restrict access to documents which are not filed with the Court. See Local Civil Rule 26.08.

(A) A party seeking to file documents under seal shall file and serve a “Motion to Seal” accompanied by a memorandum. See Local Civil Rule 7.04. The memorandum shall:

(1) identify, with specificity, the documents or portions thereof for which sealing is requested;

(2) state the reasons why sealing is necessary;

(3) explain (for each document or group of documents) why less drastic alternatives to sealing will not afford adequate protection; and

(4) address the factors governing sealing of documents reflected in controlling case law. E.g., *Ashcraft v. Conoco, Inc.*, 218 F.3d 288 (4th Cir. 2000); and *In re Knight Publishing Co.*, 743 F.2d 231 (4th Cir. 1984). A non-confidential descriptive index of the documents at issue shall be attached to the motion. A separately sealed attachment labeled “Confidential Information to be Submitted to Court in Connection with Motion to Seal” shall be submitted with the motion. This attachment shall contain the documents at issue for the Court’s *in camera* review and shall not be filed. The Court’s docket shall reflect that the motion and memorandum were filed and were supported by a sealed attachment submitted for *in camera* review.

(B) The Clerk shall provide public notice of the Motion to Seal in the manner directed by the Court. Absent direction to the contrary, this may be accomplished by docketing the motion in a manner that discloses its nature as a motion to seal.

(C) No settlement agreement filed with the court shall be sealed pursuant to the terms of this Rule.

SOUTH DAKOTA

State of South Dakota

No relevant statute or rule.

District of South Dakota

No relevant local rule.

TENNESSEE

State of Tennessee

Local Rules of Practice for the Circuit Court, Chancery Court, Criminal Court and Probate Court of Davidson County, Rule 7.02

Papers, Documents or Files Under Seal

All papers, documents and files shall be available for public inspection except as specifically exempted by court order or statute. The motion seeking such an order must contain sufficient facts to overcome the presumption in favor of disclosure.

Comment: The standards relating to the appropriateness of sealing documents and/or court files is set forth in *Ballard v. Herzke*, 924 S.W.2d 652 (Tenn. 1996).

Eastern District of Tennessee

Analysis: The court must find that good cause exists before ordering a settlement agreement to be placed under seal. Unless the court, upon motion, orders otherwise, a settlement agreement filed under seal will be unsealed and placed in the case file 30 days following final disposition (including direct appeal) of the action. If the court orders that a settlement agreement is to be maintained under seal longer than 30 days, the court order must set a date for unsealing the settlement agreement.

Eastern District of Tennessee Local Rule 26.2

Sealing of Court Records.

(a) *Public Record.* Except as otherwise provided by statute, rule or order, all pleadings and other papers of any nature filed with the Court (“Court Records”) shall become a part of the public record of this court.

(b) *Procedure.* Court Records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of the Court specifying those Court Records, categories of Court Records, or portions thereof which shall be placed under seal. The Court may, in its discretion, receive and review any document in camera without public disclosure thereof and, in connection with any such review, determine whether good cause exists for the sealing of the document. Unless the Court orders otherwise, the parties shall file with the Court redacted versions of any Court Record where only a portion thereof is to be placed under seal.

(c) *Criminal Matters.* . . .

(d) *Expiration of Order.* Court Records filed under seal in civil and criminal actions shall be maintained under seal for thirty (30) days following final disposition (including direct appeal) of the action. After that time, all sealed court re-

cords shall be unsealed and placed in the case file unless the Court, upon motion, orders that the Court Records be maintained under seal beyond the thirty (30) days. All such orders shall set a date for the unsealing of the Court Records.

Middle District of Tennessee

No relevant local rule.

Western District of Tennessee

No relevant local rule.

TEXAS

State of Texas

Texas Government Code Section 552.022

Categories of Public Information; Examples

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law: . . .

(18) a settlement agreement to which a governmental body is a party.

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is expressly made confidential under other law.

Texas Rule of Civil Procedure 76a

Sealing Court Records

1. *Standard for Sealing Court Records.* Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed. Other court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all of the following:

(a) a specific, serious and substantial interest which clearly outweighs:

(1) this presumption of openness;

(2) any probable adverse effect that sealing will have upon the general public health or safety;

(b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

2. *Court Records.* For purposes of this rule, court records means:

(a) all documents of any nature filed in connection with any matter before any civil court, except:

(1) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;

(2) documents in court files to which access is otherwise restricted by law;

(3) documents filed in an action originally arising under the Family Code.

(b) Settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government.

(c) discovery, not filed of record, concerning matters that have a probably adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to reserve bona fide trade secrets or other intangible property rights.

3. *Notice.* Court records may be sealed only upon a party's written motion, which shall be open to public inspection. The movant shall post a public notice at the place where notices for meetings of county governmental bodies are required to be posted, stating: that a hearing will be held in open court on a motion to seal court records in the specific case; that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case; a brief but specific description of both the nature of the case and the records which are sought to be sealed; and the identity of the movant. Immediately after posting such notice, the movant shall file a verified copy of the posted notice with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Texas.

4. *Hearing.* A hearing, open to the public, on a motion to seal court records shall be held in open court as soon as practicable, but not less than fourteen days after the motion is filed and notice is posted. Any party may participate in the hearing. Non-parties may intervene as a matter of right for the limited purpose of participating in the proceedings, upon payment of the fee required for filing a plea in intervention. The court may inspect records in camera when necessary. The court may determine a motion relating to sealing or unsealing court records in accordance with the procedures prescribed by Rule 120a.

5. *Temporary Sealing Order.* A temporary sealing order may issue upon motion and notice to any parties who have answered in the case pursuant to Rules 21 and 21a upon a showing of compelling need from specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant before notice can be posted and a hearing held as otherwise provided herein. The temporary order shall set the time for the hearing required by paragraph 4 and shall direct that the movant immediately give the public notice required by paragraph 3. The court may modify or withdraw any temporary order upon motion by any party or intervener, notice to the parties, and hearing conducted as soon as practicable. Issuance of a temporary order

shall not reduce in any way the burden of proof of a party requesting sealing at the hearing required by paragraph 4.

6. *Order on Motion to Seal Court Records.* A motion relating to sealing or unsealing court records shall be decided by written order, open to the public, which shall state: the style and number of the case; the specific reasons for finding and concluding whether the showing required by paragraph 1, has been made; the specific portions of court records which are to be sealed; and the time period for which the sealed portions of the court records are to be sealed. The order shall not be included in any judgment or other order but shall be a separate document in the case; however, the failure to comply with this requirement shall not affect its appealability.

7. *Continuing Jurisdiction.* Any person may intervene as a matter of right at any time before or after judgment to seal or unseal court records. A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. An order sealing or unsealing court records shall not be reconsidered on motion of any party or intervener who had actual notice of the hearing preceding issuance of the order, without first showing changed circumstances materially affecting the order. Such circumstances need not be related to the case in which the order was issued. However, the burden of making the showing required by paragraph 1, shall always be on the party seeking to seal records.

8. *Appeal.* Any order (or portion of an order or judgment) relating to sealing or unsealing court records shall be deemed to be severed from the case and a final judgment which may be appealed by any party or intervener who participated in the hearing preceding issuance of such order. The appellate court may abate the appeal and order the trial court to direct that further public notice be given, or to hold further hearings, or to make additional findings. . . .

Eastern District of Texas

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Thirty days after the civil action has been finally disposed of by the appellate courts or thirty days from the date the appeal time lapsed, the clerk may destroy the paper original of the settlement agreement after the clerk has scanned it. The clerk will maintain the database and prevent unauthorized access to the scanned settlement agreement for the foreseeable future.

Eastern District of Texas Local Rule CV-79

Books and Records Kept by the Clerk

(a) *Disposition of Exhibits And/or Sealed Documents by the Clerk.* Thirty days after a civil action has been finally disposed of by the appellate courts or from the date the appeal time lapsed, the clerk is authorized to take the following actions: . . .

(2) *Sealed Documents.* Scan the original documents into electronic images that are stored on the court’s computer system in lieu of maintaining the original paper copies. The clerk shall ensure that the database of scanned im-

ages is maintained for the foreseeable future, and that no unauthorized access of the stored images occurs. Once a document has been scanned, the paper original will be destroyed.

Northern District of Texas

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Unless the court orders otherwise, a sealed settlement agreement will be unsealed 60 days after final disposition of the case.

Northern District of Texas Local Rule 79.3

Ex Parte and Sealed Documents

(a) Unless exempted by subsection (b) of this rule –

(1) An ex parte document, or a document that a party desires to be filed under seal, shall not be filed by the clerk under seal absent an order of a judge of the court directing the clerk to file the document under seal. The term "document," as used in this rule, means any pleading, motion, other paper, or physical item that the Federal Rules of Civil procedure permit or require to be filed.

(2) A party who desires to file a document under seal must at the time the document is presented to the clerk for filing either present a motion to file the document under seal or demonstrate that a judge has ordered that the document be filed under seal. If no judge has been assigned to a case in which a motion is filed, the clerk may direct the motion to the duty judge or to another judge of the court for consideration.

(3) The clerk of court shall defer filing an ex parte document, or document that a party desires to be filed under seal, until a judge of the court has ruled on the motion to file the document under seal.

(b) The clerk shall file under seal any document that a statute or rule requires or permits to be so filed.

Northern District of Texas Local Rule 79.4

Disposition of Sealed Documents

Unless an order of the court otherwise directs, all sealed documents will be deemed unsealed 60 days after final disposition of a case. A party who desires that such a document remain sealed must move for this relief before the expiration of the 60-day period. The clerk may store, transfer, or otherwise dispose of unsealed documents according to the procedure that governs publicly available court records.

Southern District of Texas

No relevant local rule.

Western District of Texas

No relevant local rule.

UTAH

State of Utah

Utah Code 1953 Section 63-2-405

Confidential Treatment of Records for Which No Exemption Applies

(1) A court may, on appeal or in a declaratory or other action, order the confidential treatment of records for which no exemption from disclosure applies if:

(a) there are compelling interests favoring restriction of access to the record; and

(b) the interests favoring restriction of access clearly outweigh the interests favoring access. . . .

Utah Code 1953 Section 63-2-909

Records Made Public After 75 Years

(1) The classification of a record is not permanent and a record that was not classified public under this act shall become a public record when the justification for the original or any subsequent restrictive classification no longer exists. A record shall be presumed to be public 75 years after its creation. . . .

District of Utah

Analysis: The court must find that good cause has been shown before ordering a settlement agreement to be sealed. A sealed settlement agreement may not remain under seal indefinitely. Unless otherwise ordered by the court, a sealed settlement agreement will be unsealed upon final disposition of the case.

District of Utah Local Civil Rule 5–2

Filing Cases and Documents Under Court Seal

(a) *General Rule.* On motion of one or more parties and a showing of good cause, the court or, upon referral, a magistrate judge may order all or a portion of the documents filed in a civil case to be sealed.

(b) *Sealing of New Cases.*

(1) *On Ex Parte Motion.* A case may be sealed at the time it is filed upon ex parte motion of the plaintiff or petitioner and execution by the court of a written order. The case will be listed on the clerk’s case index as Sealed Plaintiff vs. Sealed Defendant.

(2) *Civil Actions for False Claims.* When an individual files a civil action on behalf of the individual and the government alleging a violation of 31 U.S.C. Section 3729, the clerk will seal the complaint for a minimum of sixty (60) days. Extensions may be approved by the court on motion of the government.

(c) *Sealing of Pending Cases.* A pending case may be sealed at any time upon motion of either party and execution by the court of a written order. Unless the court otherwise orders, neither the clerk’s automated case index nor the existing case docket will be modified.

(d) *Procedure for Filing Documents Under Seal.* Documents ordered sealed by the court or otherwise required to be sealed by statute must be placed unfolded in an

envelope with a copy of the cover page of the document affixed to the outside of the envelope. The pleading caption on the cover page must include a notation that the document is being filed under court seal. The sealed document, together with a judge’s copy prepared in the same manner, must be filed with the clerk. No document may be designated by any party as Filed under Seal or Confidential unless:

- (1) it is accompanied by a court order sealing the document;
- (2) it is being filed in a case that the court has ordered sealed; or
- (3) it contains material that is the subject of a protective order entered by the court.

(e) *Access to Sealed Cases and Documents.* Unless otherwise ordered by the court, the clerk will provide access to cases and document under court seal only on court order. Unless otherwise ordered by the court, the clerk will make no copies of sealed case files or documents.

(f) *Disposition of Sealed Documents.* Unless otherwise ordered by the court, any case file or documents under court seal that have not previously been unsealed by court order will be unsealed at the time of final disposition of the case.

VERMONT

State of Vermont

Vermont Rules of Court, Rules for Public Access to Court Records, Section 7 Exceptions

(a) *Case Records.* Except as provided in this section, the presiding judge by order may grant public access to a case record to which access is otherwise closed, may seal from public access a record to which the public otherwise has access or may redact information from a record to which the public has access. All parties to the case to which the record relates, and such other interested persons as the court directs, have a right to notice and hearing before such order is issued, except that the court may issue a temporary order to seal or redact information from a record without notice and hearing until a hearing can be held. An order may be issued under this section only upon a finding of good cause specific to the case before the judge and exceptional circumstances. In considering such an order, the judge shall consider the policies behind this rule. If a statute governs the right of public access and does not authorize judicial discretion in determining to open or seal a record, this section shall not apply to access to that record.

...

(c) *Appeals.* Appeals from determination under this section shall be made to the Supreme Court. Report’s Notes: Section 7(a) states an exception to the general access policy stated in Section 4 of these rules. Under this provision the presiding judge is authorized to allow access to an otherwise closed record or to seal, or redact information contained in, an open record. It also sets forth the process and standards that apply whenever the court considers such actions. . . . The exception permits the court to use its discretion when addressing special situations

that cannot be anticipated and specifically dealt with in these rules. However, this authority should be exercised by the court only in truly exceptional situations and only for good cause. It is not intended that the exception be used to create new categories of records or information that are generally closed to the public. This exception does not apply if the access issue is governed by a statute that does not authorize judicial discretion. . . .

District of Vermont

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule.

District of Vermont Local Rule 83.8

Sealed Documents

(a) *Order Required.* All official files in the possession of the court are considered to be public documents available for inspection unless otherwise ordered. Cases or documents cannot be sealed without an order from the court.

(b) *Filing Procedure.* To request that a filing be sealed, a separate Motion to Seal must accompany the specific item to be sealed.

(c) *Documents Filed Under Protective Order.* Any party filing a prospectively sealed document must place the document in a sealed envelope and affix a copy of the document’s cover page (with confidential information deleted) to the outside of the envelope. The party must designate the envelope with a conspicuous notation such as “DOCUMENTS SUBJECT TO PROTECTIVE ORDER,” or the equivalent.”

VIRGIN ISLANDS

Territory of the United States Virgin Islands

No relevant statute or rule.

District Court for the Virgin Islands

No relevant local rule.

VIRGINIA

Commonwealth of Virginia

No relevant statute or rule.

Eastern District of Virginia

No relevant local rule.

Western District of Virginia

Analysis: No restriction on court’s authority to seal a settlement agreement. A sealed settlement agreement may not remain sealed indefinitely. Unless a District

Judge or Magistrate Judge expressly provides otherwise, a sealed settlement agreement will be unsealed within thirty (30) days from the date that it was ordered sealed.

Western District of Virginia Local Rules XIII.A

Standing Order *in re* Unsealing of Documents Placed Under Seal With The Court.

This Standing Order governs the unsealing of documents, pleadings and files (except presentence reports, pretrial service reports, psychiatric and psychological reports and any other matter required by statute or rule of court to be sealed) placed under seal with the Court in criminal, civil or miscellaneous matters unless the provisions of this Order are expressly countermanded by a District Judge or Magistrate Judge in a matter pending before him or her. Nothing in this Standing Order shall be construed to prevent a District Judge or Magistrate Judge from expressly excepting a document, pleading or file pending before him or her from this Standing Order. This Standing Order is not retroactive.

Unless a District Judge or Magistrate Judge of this Court expressly orders to the contrary in a matter pending before him or her, it is hereby ORDERED as follows as to documents, pleadings and files that have been ordered sealed:

- (1) search warrants are to be unsealed within twenty-four (24) hours of execution;
- (2) arrest warrants are to be unsealed after execution;
- (3) indictments are to be unsealed within thirty (30) days of return of the indictment or when all defendants are in custody or summoned, whichever is sooner;
- (4) criminal complaints are to be unsealed within thirty (30) days off issuance or when all defendants are in custody or summoned, whichever is sooner;
- (5) motions to seal shall be unsealed when the documents, pleadings or files to which they pertain are unsealed;
- (6) all other documents, pleadings and files are to be unsealed within thirty (30) days from the date of the order to seal; and
- (7) each defendant shall be provided an unredacted copy of the charges against him or her even if the matter is otherwise sealed.

Unless a District Judge or Magistrate Judge expressly orders to the contrary in a matter pending before him or her, the sealing of any document, pleading or file shall be considered only upon written motion.

It is further ORDERED that the Clerk of the Court shall maintain a list of sealed matters assigned to each District Judge and Magistrate Judge for that Judge's review.

The Clerk is directed to enter this order in the order books for each division of this Court and to send certified copies to the District Judges, Magistrate Judges and United States Attorney for this District.

ENTERED this 19th day of December 1997.

WASHINGTON

State of Washington

Washington Court Rule 15

Destruction and Sealing of Court Records

(a) *Purpose and Scope of the Rule.* . . . The clerk shall maintain all documents and materials filed with the court, and shall make available for public examination all files, cases, records, documents, or materials which have not been ordered destroyed or sealed. . . .

(c) *Grounds and Procedure for Requesting the Sealing or Destruction of Court Records.* . . .

(2) *Civil Cases.* . . .

(B) *Sealing of Files or Records.* On motion of any party to a civil proceeding, or on the court's own motion, and after reasonable notice to the non-moving party and a hearing, the court may order the sealing of any files and records in the proceeding (i) to further an order entered under CR 12(f) or a protective order entered under CR 26(c); or (ii) under compelling circumstances where justice so requires.

(d) *Grounds and Procedure for Requesting the Unsealing of Sealed Records.* . . .

(2) *Civil Cases.* After the entry of an order to seal all or part of a court file in a civil proceeding, the records shall be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof of compelling circumstances, or pursuant to RCW 4.24 or CR 26(j). . . .

(e) *Clerk's Duties.* . . .

(2) *Sealing of Entire File.* Upon receipt of a court order to seal the entire file under the primary control of the clerk, the clerk shall:

(A) Seal the automated file.

(B) Seal the file and secure it and all subsequently filed documents from public access except for the order to seal. . . .

(4) *Sealing of Specified Documents.* Upon receipt of a court order to seal specified documents or material within a file under the primary control of the clerk, the clerk shall:

(A) On the automated docket, preserve the docket code, document title, document or subdocument number and date of the original documents or material;

(B) Remove the documents or material from the file, seal them, and return them to the file under seal or store separately, substituting a filler sheet for the removed sealed document. In the event the document ordered sealed exists in a microfilm, microfiche or other storage medium, the clerk shall limit access to the alternate storage medium so as to prevent unauthorized viewing of the sealed document; and

(C) File the order to seal.

(D) If the file is made available for examination, the clerk shall prevent access to the sealed records before the rest of the file is made available.

Eastern District of Washington

No relevant local rule.

Western District of Washington

Analysis: In order to seal a settlement agreement, the court must find that the strong presumption in favor of public access has been overcome by a compelling showing that this presumption has been outweighed by the facts justifying the need to seal the settlement agreement. A sealed settlement agreement cannot remain sealed indefinitely. If the court has ordered only the settlement agreement in a civil action to be placed under seal, the court will return the sealed settlement agreement to the submitting counsel or party after the case has terminated and the time for appeal has run. In civil actions in which the court ordered that the entire case file including the settlement agreement be placed under seal, the court will destroy the sealed case file after the case has terminated, the time for appeal has run, and the parties were given 60 days' notice.

Western District of Washington Local Civil Rule 5 Service and Filing of Pleadings and Other Papers

(g) *Sealing of Court Records.*

(1) This rule sets forth a uniform procedure for sealing court files, cases, records, exhibits, specified documents, or materials in a court file or record. There is a strong presumption of public access to the court's files and records which may be overcome only on a compelling showing that the public's right of access is outweighed by the interests of the public and the parties in protecting files, records, or documents from public review. Nothing in this rule shall be construed to expand or restrict statutory provisions for the sealing of files, records, or documents.

(2) The court may order the sealing of any files and records on motion of any party, on stipulation and order, or on the court's own motion. If no defendant has appeared in the case, the motion to seal may be presented ex parte. The law requires, and the motion and the proposed order shall include, a clear statement of the facts justifying a seal and overcoming the strong presumption in favor of public access.

(3) Each document to be filed under seal must be submitted in a separate envelope, clearly identifying the enclosed document and stating that the document is "FILED UNDER SEAL." For example, if both the motion and the accompanying affidavit should be filed under seal, the two documents must be submitted in separate, clearly marked envelopes so that each may be entered on the docket. If only one exhibit or document needs to be filed under seal, only that exhibit or document should be submitted in an envelope.

(4) Sealed files and records, or any part thereof, shall remain sealed until the court orders unsealing on stipulation of the parties, motion by any party or intervener, or the court's own motion. Any party opposing the unsealing must make a compelling showing that the interests of the parties in protecting files, records, or documents from public review continue to outweigh the public's right of access.

(5) If the court orders the sealing of any files or documents pursuant to the above provisions, the clerk shall:

(A) file the order to seal;

(B) seal the file, record, or documents designated in the order to seal and secure it from public access;

(C) in civil actions in which only portions of the file have been placed under seal, return sealed documents to the submitting counsel or party after the case has concluded and the time for appeal has run;

(D) in civil actions in which the entire file has been placed under seal, destroy the sealed file after the case has concluded, the time for appeal has run, and the parties have been given sixty days' notice of the proposed destruction.

WEST VIRGINIA

State of West Virginia

No relevant statute or rule.

Northern District of West Virginia

No relevant local rule.

Southern District of West Virginia

No relevant local rule.

WISCONSIN

State of Wisconsin

No relevant statute or rule.

Eastern District of Wisconsin

Analysis: No restriction on court's authority to seal a settlement agreement. A sealed settlement agreement may remain sealed indefinitely; no durational limitations imposed by this rule.

General Local Rule 79.4

Confidential Matters

(b) All documents which a judge or magistrate judge has ordered to be treated as confidential must be filed in a sealed envelope conspicuously marked "SEALED".

(c) Subject to General L.R. 83.9(c) and Civil L.R. 26.4, the Court will consider all documents to have been filed publicly unless they are accompanied by a separate motion requesting that the documents, or portions thereof, be sealed by the Court.

(d) All documents which a party seeks to have treated as confidential, but as to which no sealing order has been entered, must be filed in a sealed envelope conspicuously marked “Request for Confidentiality Pending,” together with a motion requesting an appropriate order. The separate motion for sealing must be publicly filed and must generally identify the documents contained in the sealed envelope. The documents must be transmitted by the Clerk of Court in a sealed envelope to the judge or magistrate judge, together with the moving papers. If the motion is denied, the documents must be filed by the Clerk of Court in an open file, unless otherwise ordered by the judge or magistrate judge assigned to the case.

Western District of Wisconsin

No relevant local rule.

WYOMING

State of Wyoming

No relevant statute or rule.

District of Wyoming

No relevant local rule.

Appendix B

Analyses of Case Records for Sealed Settlement Agreements

This appendix includes descriptions of cases with sealed settlement agreements, based on our review of unsealed court files. Because this is a work in progress, we have descriptions of cases in only a few districts at this time.

Method

We decided to look at cases terminated over a two-year period. Because we include all calendar months there are unlikely to be any hidden seasonal biases. Looking at two years of terminations ensures that our data will not be based only on an idiosyncratic year.

We are downloading all docket sheets for cases terminated in 2001 and 2002,¹ except for cases in the Northern Mariana Islands, because docket sheets are not available electronically for that district.

Our search for sealed settlement agreements is a process of step-by-step elimination – upon closer and closer review – of cases that do not have sealed settlement agreements.

We search each district's docket sheets for the word "seal." The search finds "seal," "sealed," "unseal," etc., including "Seal," "Seale," etc. in a party name. Docket *entries* (and headers) with the word "seal" in them are extracted and assembled into a text file. If a docket *sheet* has the word "seal" in it, then we also search for the word "settle" (which will find "settle," "settled," "settlement," etc.), extract docket *entries* with the word "settle" in them, and assemble them into the same text file as the docket entries with the word "seal" in them. Naturally, some docket entries will have both the word "seal" in them and the word "settle" in them.

We examine the text file assembled for a district containing docket entries with the word "seal" and docket entries with the word "settle" from dockets with the word "seal." If the docket entries from the same case suggest that the case might or does have a sealed settlement agreement, then we read the entire docket sheet for that case. Sometimes, for example,

¹ At the beginning of this project we looked only at cases terminated in 2001 and the first half of 2002, because we did not yet have electronic data on terminations in the second half of 2002.

a docket entry merely says “sealed document,” and review of other docket entries is necessary to determine what the sealed document might be.²

The types of sealed documents filed that this process eliminates include sealed documents filed at the beginning of *qui tam* actions and sealed attachments to discovery motions, motions for summary judgment, and motions in limine.

When we review a complete docket sheet, we determine two things. First, we determine whether the case might or does include a sealed settlement agreement. If it might, or does, then we identify which documents in the case file to review in order to learn what the case is about and to learn as much as possible about the sealed settlement agreement. Generally we review complaints, cross- and counterclaims, court opinions, and documents pertaining, or possibly pertaining, to the settlement.

This appendix includes descriptions of cases that we believe contain sealed settlement agreements. We summarize relevant local rules and we also interview the clerk of court and sometimes members of the clerk’s staff to determine if there are any special local practices not captured by the local rules.

To do this project we put the 93 districts with electronic docket sheets³ in a modified random order. At the top of the list, we put North Carolina, in order to begin our work with the district that is home to the subcommittee’s chair⁴ so that his additional knowledge about cases in his district would serve as a check on our work. After that we put three states including districts with particularly interesting local rules – Michigan, Florida, and South Carolina.⁵ The only other modification to random order was to

² For this project, researchers who examine docket sheets and court documents all have law degrees – either a J.D. or an M.L.S. (master of legal studies, which typically requires approximately one year of law school). Tim Reagan reviewed documents from districts in Michigan, North Carolina, South Carolina, and Virginia; Marie Leary reviewed documents from Idaho; Shannon Wheatman reviewed documents from districts in Florida and Washington; Natacha Blain reviewed documents from districts in Minnesota and Mississippi.

³ This excludes the Northern Mariana Islands.

⁴ The Honorable Brent McKnight is magistrate judge for the Western District of North Carolina.

⁵ The Eastern District of Michigan has a rule calling for the unsealing of settlement agreements after two years. E.D. Mich. L.R. 6.4. The Southern District of Florida provides for the sealing of documents for no longer than five years, “absent extraordinary circumstances.” S.D. Fla. Gen. L.R. 5.4.B.2. The District of South Carolina has a brand new rule forbidding the sealing of settlement agreements. D.S.C. L.R. 5.03(C). Of course, by “particularly interesting,” we mean particularly interesting with respect to this project.

move some of the larger districts – such as districts in New York and Pennsylvania – down the list a bit so that we would be more experienced by the time we got to them. Table B shows our progress on the 18 districts at the head of our modified random list.

Table B. Research Progress

District	Docket Sheets Searched for "Seal"	Docket Entries Examined	Docket Sheets Read	Documents Examined
North Carolina Eastern	NC-E	NC-E	NC-E	NC-E
North Carolina Middle	NC-M	NC-M	NC-M	NC-M
North Carolina Western	NC-W	NC-W	NC-W	NC-W
Michigan Eastern	MI-E	MI-E	MI-E	MI-E
Michigan Western	MI-W	MI-W	MI-W	MI-W
Florida Middle	FL-M	FL-M	FL-M	
Florida Northern	FL-N	FL-N	FL-N	FL-N
Florida Southern	FL-S	FL-S	FL-S	FL-S
South Carolina	SC	SC	SC	SC
Idaho	ID	ID	ID	ID
Minnesota	MN	MN	MN	
Washington Eastern	WA-E	WA-E	WA-E	WA-E
Washington Western	WA-W			
Virginia Eastern	VA-E	VA-E	VA-E	
Virginia Western	VA-W	VA-W	VA-W	VA-W
Guam				
Mississippi Northern	MS-N	MS-N	MS-N	
Mississippi Southern				
Total	16	15	15	11

The following pages contain case descriptions along with information about local rules and practices. For each state we include a brief description of state rules that would apply in state court to provide local context for the federal rules. For each district we briefly summarize local rules and practices and provide statistics on how many cases we searched to find sealed settlement agreements. For some districts, we have only prelimi-

nary statistics at this point, but are working to add case descriptions as court files become available.

FLORIDA

Florida's Sunshine in Litigation statute forbids confidential or sealed agreements that conceal a public hazard. Fla. Stat. § 69.081. The sealing of court documents otherwise must be "no broader than necessary to protect the interests" justifying sealing, Fla. R. Jud. Admin. 2.051(c)(9)(B), and there must be "no less restrictive measures . . . available," *id.* R. 2.051(c)(9)(C).

Middle District of Florida

No relevant local rule.

Statistics: 10,306 cases searched; 362 cases (3.5%) had the word "seal" in their docket sheets; 54 complete docket sheets (0.52%) were reviewed; actual documents were examined for 27 cases (0.26%).

Northern District of Florida

No relevant local rule.

Statistics: 2,264 cases searched; 107 cases (4.7%) had the word "seal" in their docket sheets; 10 complete docket sheets (0.44%) were reviewed; actual documents were examined for 5 cases (0.22%); 4 cases (0.18%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

United States v. Clinical Practice Assoc. (FL-N 1:96-cv-00116 filed 06/25/1996).

Qui tam action under the False Claims Act for fraudulent Medicare billing. Many filings in this case are under seal, including the settlement agreement, but not the complaint.

Rzepka v. Daimler Chrysler (FL-N 5:00-cv-00023 filed 02/01/2000).

Motor vehicle action against another driver and the manufacturer and distributor of plaintiffs' Dodge Caravan for wrongful death in a rollover accident. Plaintiffs alleged that design defects caused the plastic roof to cave in, windows to burst, and the restraint system to fail. A sealed settlement agreement was filed.

Thomas v. Florida Power Corp. (FL-N 4:00-cv-00231 filed 06/14/2000).

Employment discrimination case for hostile work environment on the basis of race. The harassment included hanging two rope nooses in the workplace. A sealed settlement agreement was attached to the consent order of dismissal.

Blankenship v. Gilchrist County (FL-N 1:01-cv-00052 filed 05/16/2001).

Employment discrimination case involving sexual harassment by a former deputy sheriff. The plaintiff alleged that some employees of the Sheriff's Department made inappropriate and unwelcome sexual advances towards her and that after she reported the harassment she was made a target of ridicule and retaliation. At the pretrial conference a settlement agreement was reached and the announcement and transcript of the settlement agreement were sealed.

Southern District of Florida

"Unless the Court's sealing order permits the matter to remain sealed permanently, the Clerk will dispose of the sealed matter upon expiration of the time specified in the Court's sealing order by unsealing, destroying, or returning the matter to the filing party." S.D. Fla. Gen. L.R. 5.4.D. "Absent extraordinary circumstances, no matter sealed pursuant to this rule may remain sealed for longer than five (5) years from the date of filing." *Id.* R. 5.4.B.2.

A large proportion of the sealed settlement agreements in this district are in cases under the Fair Labor Standards Act. Settlement agreements in such cases are filed for court approval to comply with *Lynn's Food Sores Inc. v. United States*, 679 F.2d 1350 (11th Cir. 1982).

Statistics: 12,005 cases searched; 495 cases (4.1%) had the word "seal" in their docket sheets; 165 complete docket sheets (1.3%) were reviewed; actual documents were examined for 81 cases (0.67%); 73 cases (0.61%) appear to have sealed settlement agreements.⁶

⁶ Two of these cases are companion cases, described together.

Cases with Sealed Settlement Agreements

Arnold Palmer Enterprises v. Gotta Have It (FL-S 1:97-cv-00978 filed 04/14/1997).

Trademark infringement action involving sale of unlicensed photographs and false reproductions. A sealed document was filed a week before the case was dismissed. In the order of dismissal the court retained jurisdiction to enforce the settlement agreement. A sealed settlement agreement apparently was filed.

Parris v. Miami Herald (FL-S 1:97-cv-02524 filed 08/05/1997).

Wrongful termination action under the Family Medical Leave Act. Seventeen days after the settlement conference a sealed document was filed and the case was dismissed. Four days after the case was dismissed an amended order of dismissal was filed stating that the court would retain jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

Sosa v. American Airlines (FL-S 1:97-cv-03863 filed 12/03/1997).

Airplane action for wrongful death of a passenger on a flight that crashed at the Cali, Colombia, airport, allegedly due to lack of ground navigational aids. The case settled for \$1,000,000 and details of the settlement were provided in the guardian ad litem report. A sealed document was filed the same day the case was dismissed. A sealed settlement agreement apparently was filed.

United States v. University of Miami (FL-S 1:97-cv-04304 filed 12/19/1997).

Qui tam action under the False Claims Act for fraudulent Medicare billing. A sealed document was filed four days prior to an order dismissing the case. In the order for dismissal “all other presently existing contents of the Court’s file” (except the complaint) were to remain sealed. A sealed settlement agreement apparently was filed.

Rando v. Slingsby Aviation (FL-S 1:98-cv-02224 filed 09/22/1998).

Wrongful death action against manufacturer of fuel injection system and manufacturer and distributor of airplane in which an Air Force Academy cadet was killed when a Firefly Aircraft crashed. The case was dismissed as to the distributor of the airplane. Plaintiffs alleged the aircraft had a faulty fuel system. In March 1999, a joint stipu-

lation of dismissal was ordered for the manufacturer of the fuel injection system. A sealed document was filed two days prior to dismissal. A sealed settlement agreement apparently was filed. In April 2001, a settlement agreement was reached with the manufacturer of the airplane. In the order of dismissal the court retained jurisdiction to enforce the terms of this settlement agreement.

Martin v. Underwood Karcher (FL-S 1:99-cv-01440 filed 05/19/1999).

Employment action for sexual harassment and wrongful termination after plaintiff reported harassment. A sealed document was filed six days before the joint stipulation of dismissal. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

First Impressions v. All That Style (FL-S 1:99-cv-02353 filed 08/26/1999).

Trademark action removed from state court in which defendant allegedly marketed and sold a theater-style chair and falsely represented this product as identical to plaintiff's "CineLounger." In the order of dismissal the court approved the settlement agreement. A sealed document was filed the same day the case was dismissed. A sealed settlement agreement apparently was filed.

Oviedo v. Crystal Art (FL-S 1:99-cv-02391 filed 08/31/1999).

Action, removed from state court, under the Fair Labor and Standards Act by a crystal art assembler for failure to pay overtime wages. A sealed settlement agreement was filed.

United States v. Bon-Bone Medical (FL-S 9:99-cv-08841 filed 10/08/1999).

Qui tam action under the False Claims Act for fraudulent Medicare billing. Sealed documents were filed the same day the case was dismissed.

Island Developers v. Martin Lumber (FL-S 1:99-cv-02969 filed 11/03/1999).

Contract action removed from state court involving breach of implied warranty when defective wood windows were installed. In the

order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. Two months after the case was dismissed a sealed document was filed the same day the plaintiff filed a motion to expedite enforcement of the settlement agreement. A sealed settlement agreement apparently was filed. The court denied the motion for oral argument and the plaintiff withdrew the motion to expedite enforcement since the parties resolved the issue.

Hays v. Martinengo (FL-S 1:99-cv-03000 filed 11/08/1999).

Admiralty action by owners of a motorboat for exoneration from or limitation of liability arising from an accident which resulted in the death of three people. A sealed document was filed four days after the order approving the settlement. A sealed settlement agreement apparently was filed.

Regalado v. Airmark Engines (FL-S 0:99-cv-07579 filed 11/29/1999); *Acevedo v. Airmark Engines* (FL-S 0:99-cv-07590 filed 11/29/1999).

Two airplane personal injury and product liability actions for wrongful death against manufacturer and distributor of an aircraft for installing an incorrect fuel pump system which allegedly caused the aircraft to crash, killing the pilot. The court appointed a guardian ad litem to approve the minor child of decedents' settlement agreement. In the minutes of the motion to approve a settlement hearing it was noted that the "parties will file settlement under seal." In the order dismissing the case the court retained jurisdiction for 60 days to enforce the terms of the settlement agreement. A sealed document was filed one week after the case was dismissed. A sealed settlement agreement apparently was filed.

Gornescu v. United Cable (FL-S 0:99-cv-07637 filed 12/15/1999).

Action under the Fair Labor Standards Act by a cable company employee for failure to pay overtime wages. A sealed settlement agreement was filed.

DC Comics v. Burglar Alarm (FL-S 0:99-cv-07641 filed 12/16/1999).

Trademark action involving the "Batman" logo against a burglar alarm company. A sealed settlement agreement was filed as an attachment to the order of dismissal.

Zurich-American Insurance v. Perez (FL-S 1:00-cv-00559 filed 02/10/2000).

Action for declaratory judgment regarding disputes over an insurance contract where distributor demanded a refund of the deposit on undelivered vehicles. A sealed document was filed three days before the case was dismissed. The order of dismissal refers to a “Confidential Settlement Agreement and Release.” A sealed settlement agreement apparently was filed.

Guillen v. Northwest Airlines (FL-S 1:00-cv-01300 filed 04/06/2000).

Action for damages for personal injuries suffered by a three-year-old child when a flight attendant spilled hot coffee on her. In the guardian ad litem report the settlement amount of \$145,000 was disclosed. The sealed settlement agreement was filed as an attachment to the guardian’s report.

Jacobs v. Pine Crest Preparato (FL-S 0:00-cv-06564 filed 04/21/2000).

Employment action for wrongful termination of a teacher based on gender and age. A sealed settlement agreement was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Williams v. Office Depot (FL-S 1:00-cv-01466 filed 04/24/2000).

Employment civil rights action where a black plaintiff sued a former employer for race discrimination and wrongful termination. One day after the stipulation of dismissal was filed a sealed document was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

Johns v. Viking Life-Saving (FL-S 1:00-cv-01998 filed 06/05/2000).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed document was filed one week before the case was dismissed. The order of dismissal approved the settlement agreement. A sealed settlement agreement apparently was filed.

Mencia v. Crystal Art (FL-S 1:00-cv-02053 filed 06/08/2000).

Class action under the Fair Labor Standards Act by warehouse employees for failure to pay overtime wages. A sealed settlement agreement was filed.

Sakr v. University of Miami (FL-S 1:00-cv-02294 filed 06/28/2000).

Action under the Americans with Disabilities Act alleging defendant dismissed plaintiff from a doctoral program on account of his disability. Plaintiff's counsel filed an emergency motion to enforce the settlement agreement, alleging that plaintiff had agreed to accept the settlement reached at the settlement conference but later refused to sign the agreement. The defendant filed an emergency motion to seal the settlement agreement and filed a sealed copy of the agreement. The motion to enforce the settlement agreement was denied. Subsequently, the court granted the defendant's motion for summary judgment. The plaintiff filed an appeal one month after the case was dismissed and the appeal currently is pending.

Dolan v. Ancicare PPO (FL-S 0:00-cv-07099 filed 08/03/2000).

Employment discrimination case based on sexual harassment and retaliation. The joint stipulation for dismissal asked the court to retain jurisdiction to enforce the settlement agreement. The order of dismissal does not contain any language of retaining jurisdiction. One month after the case was dismissed a sealed document was filed. A sealed settlement agreement apparently was filed.

Runnels v. The City of Miami (FL-S 1:00-cv-02930 filed 08/10/2000).

Civil rights action for wrongful death that occurred when a police officer killed a man threatening to commit suicide. The decedent was alone in his house when the police officer shot him through a window. A sealed document was filed one week before the notice of settlement. A sealed settlement agreement apparently was filed.

Association for Disabled Americans v. Beekman Towers (FL-S 1:00-cv-02951 filed 08/14/2000).

Action under the Americans with Disabilities Act for an injunction requiring defendant to remove from its hotel architectural barriers to the physically disabled. A sealed settlement agreement was

filed. The court retained jurisdiction to enforce the terms of the settlement agreement.

Rivera v. Lentine Marine (FL-S 2:00-cv-14266 filed 08/30/2000).

Action under the Fair Labor Standards Act by a mechanic for failure to pay minimum wage and overtime wages. A sealed settlement agreement was filed.

American Disability Ass'n v. Mavis Development (FL-S 0:00-cv-07278 filed 09/05/2000).

Action for injunctive relief seeking enforcement under the Americans with Disabilities Act for defendant to remove from its commercial property architectural barriers to the physically disabled. A sealed document was filed two days before the case was dismissed. In the order dismissing the case the court retained jurisdiction to enforce the stipulation for settlement. A sealed settlement agreement apparently was filed.

Genao v. Joe Allen Miami (FL-S 1:00-cv-03689 filed 10/02/2000).

Class action under the Fair Labor Standards Act by kitchen workers for failure to pay minimum wage and overtime wages. A sealed settlement agreement was filed.

Singh-Chaitan v. Nova Southeastern (FL-S 1:00-cv-04553 filed 11/30/2000).

Employment action where a black office manager sued a former employer for race discrimination. In the order of dismissal the court retained jurisdiction to enforce the settlement agreement. A sealed settlement agreement was filed as an attachment to the plaintiff's motion to enforce the settlement agreement. The parties were unable to agree on a separate settlement agreement that was to be the final settlement agreement, so the plaintiff wanted to enforce the original settlement agreement. The defendant filed a motion to compel a settlement agreement revising the confidentiality provision. The court granted the plaintiff's motion to enforce the original settlement agreement and denied the defendant's motion to compel a revised settlement agreement. The defendant filed a revised sealed settlement agreement as an attachment to a renewed motion to compel a settlement agreement. The defendant objected to the court order enforcing the original settlement agreement and the court heard oral arguments on this issue.

After oral argument the parties amicably resolved the dispute involving the confidentiality clause. The court retained jurisdiction to enforce the terms of the settlement agreement.

Darch v. Cafe Iguana (FL-S 1:00-cv-04813 filed 12/18/2000).

Class action under the Fair Labor Standards Act by restaurant workers for failure to pay minimum wage and overtime wages. A sealed document was filed two weeks after the notice of settlement was filed by plaintiff. A sealed settlement agreement apparently was filed.

United States v. Kantor (FL-S 0:00-cv-07851 filed 12/19/2000).

Qui tam action under the False Claims Act for fraudulent Medicare billing. A sealed document was filed three days before the case was dismissed. A sealed settlement agreement apparently was filed.

Barnuevo v. BNP Paribas (FL-S 1:01-cv-00005 filed 01/02/2001).

Action under the Fair Labor Standards Act by bank employee for failure to pay overtime wages. A sealed document was filed the same day the case was dismissed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

Egli v. Martino Tire Co. (FL-S 9:01-cv-08013 filed 01/04/2001).

Action under the Fair Labor Standards Act by an automobile repair shop employee for failure to pay overtime wages. A sealed settlement agreement was filed. The order of dismissal stated “the documents filed under seal shall remain under seal until the closing of this case, at which time they shall be destroyed.”

Weiss v. Ferraro (FL-S 2:01-cv-14025 filed 01/22/2001).

Action under the Fair Labor Standards Act by a legal assistant for failure to pay overtime wages. A sealed settlement agreement was filed.

Rodriguez v. Fresh King (FL-S 1:01-cv-00304 filed 01/23/2001).

Class action under the Fair Labor Standards Act by warehouse employees for failure to pay overtime wages. A sealed document was filed the same day the case was dismissed. A sealed settlement agreement apparently was filed.

Artcom Technologies v. Mastec (FL-S 1:01-cv-00351 filed 01/29/2001).

RICO action involving a management buyout with allegations of conversion, fraud, and breach of fiduciary duty. A sealed settlement agreement was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Biosample v. Biosamplex (FL-S 9:01-cv-08107 filed 02/06/2001).

Trademark action concerning the sale of “biological products.” The court ordered a permanent injunction against the defendant’s use of the trademark Biosamplex. A sealed settlement agreement was filed. In the order of dismissal the court retained jurisdiction to enforce the injunction and settlement agreement.

Flores v. Albertson’s (FL-S 1:01-cv-00534 filed 02/09/2001).

Class action under the Fair Labor Standards Act by grocery store employees for failure to pay overtime wages. A sealed document was filed two days before the case was dismissed. In the order of dismissal the court approved the settlement agreement. A sealed settlement agreement apparently was filed.

Stortini v. LDC General Contract (FL-S 1:01-cv-00531 filed 02/09/2001).

Action under the Fair Labor Standards Act by a construction worker for failure to pay overtime wages. A sealed settlement agreement was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Doe v. Metropolitan Health (FL-S 1:01-cv-00546 filed 02/12/2001).

Civil rights action arising from refusal to disclose a minor’s AIDS diagnosis to the minor. A sealed document was filed the same day the case was dismissed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

Access Now v. Winn-Dixie (FL-S 1:01-cv-00764 filed 02/21/2001).

Action for injunctive relief seeking enforcement under the Americans with Disabilities Act for defendant to remove from its grocery stores architectural barriers to the physically disabled. A sealed document was filed one day before the case was dismissed. In the or-

der of dismissal the settlement was approved and the court ordered the settlement agreement to be returned to the parties rather than be permanently under seal.

Pierre-Louis v. Archon Residential (FL-S 1:01-cv-00794 filed 02/22/2001).

Employment civil rights action removed from state court where a black maintenance worker sued his former employer for race discrimination and wrongful termination. A sealed document was filed five days before the case was dismissed. In the order of dismissal the court approved the settlement agreement and retained jurisdiction to enforce the settlement agreement. A sealed settlement agreement apparently was filed.

Jones v. Air Compressor Works (FL-S 9:01-cv-08164 filed 02/23/2001).

Action under the Fair Labor Standards Act by an office manager for failure to pay overtime wages. A sealed document was filed on the same day the case was dismissed. The order dismissing the case approved the settlement agreement. A sealed settlement agreement apparently was filed.

Taks v. Martinique 2 (FL-S 9:01-cv-08199 filed 03/05/2001).

Employment action by a general manager alleging hostile work environment due to sexual harassment and wrongful termination based on age and disability. In the order of dismissal the court approved the settlement agreement. A sealed settlement agreement apparently was filed.

Planet Solution v. European Cosmetics (FL-S 0:01-cv-06448 filed 03/21/2001).

Trademark action removed from state court filed under the Uniform Trade Secrets Act involving trade secrets for cleaning products. The complaint also included Florida statutory and common law claims. In August 2002, seventeen days after the order granting a stay pending arbitration, the court granted the joint stipulation of dismissal and permanent injunction. In March 2003, the defendant filed a motion to seal the settlement agreement in order for the court to rule upon the motion to vacate the permanent injunction on grounds that the plaintiff breached the terms of the confidential settlement agree-

ment. A sealed settlement agreement was filed along with the motion to vacate. No other documents were filed in the case.

Vigo v. American Sales (FL-S 1:01-cv-01245 filed 03/26/2001).

Action under the Fair Labor Standards Act by a security guard for failure to pay overtime wages. A sealed settlement agreement was filed. In the amended order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Lil Joe Records v. Worldwide Pants (FL-S 1:01-cv-01377 filed 04/05/2001).

Copyright action involving the use of a sound recording on “The Late Show with Craig Kilborn.” A sealed document was filed five days before the notice of settlement was filed. The court retained jurisdiction for 60 days to enforce the settlement agreement. A sealed settlement agreement apparently was filed.

Aguilera v. Quail Investments (FL-S 1:01-cv-01384 filed 04/06/2001).

Class action under the Fair Labor Standards Act by restaurant employees for failure to pay overtime wages. A sealed document was filed the same day the case was dismissed. A sealed settlement agreement apparently was filed.

Brito v. Shoma Development (FL-S 1:01-cv-01421 filed 04/10/2001).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed settlement agreement was filed as an attachment to the notice of stipulation for voluntary dismissal. In the order approving settlement the court ordered that the settlement agreement remain under seal until the case was dismissed.

Signal Communications v. Motorola (FL-S 0:01-cv-06676 filed 04/25/2001).

Contract action removed from state court involving breach of a non-competition covenant of an asset purchase agreement of a two-way Radio Service Division. The joint stipulation of dismissal notes that the parties entered into a separate settlement agreement. A sealed document was filed three days before the case was dismissed. In the order of dismissal the court retained jurisdiction to enforce the settlement agreement. A sealed settlement agreement apparently was filed.

Taylor v. Arrowpac (FL-S 1:01-cv-01948 filed 05/11/2001).

Employment civil rights action where a black plaintiff sued his employer for race discrimination. A sealed settlement agreement was filed and the plaintiff asked for the enforcement of the settlement agreement 11 days later. The day after the motion to enforce the settlement agreement was filed the motion was withdrawn. In the final order of dismissal the court retained jurisdiction for 90 days to enforce the terms of the settlement agreement.

Medley Industria v. Da Matta (FL-S 1:01-cv-02132 filed 05/24/2001).

Action involving breach of contract involving repayment for sponsorship and support of defendant's career as a race car driver. A sealed document was filed one day before the joint stipulation of dismissal was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

Israel v. Mayrsohn (FL-S 1:01-cv-02172 filed 05/25/2001).

Employment action under the Americans with Disabilities Act by a disabled employee alleging wrongful termination. A sealed document was filed on the same day the case was dismissed. In the order of dismissal the court retained jurisdiction only to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed. Three months after the case was dismissed the final judgment ordered that the defendant pay \$15,876 to the plaintiff.

Morkos Group v. Amoco Oil Co. (FL-S 0:01-cv-06911 filed 05/29/2001).

Contract action for breach of "Right of First Option to Purchase when Available for Sale" by an independent contractor for a gasoline station. The sealed settlement agreement was filed as an exhibit to the notice regarding settlement. In the order dismissing the case the court retained jurisdiction to enforce the terms of the settlement agreement. On the same day the case was dismissed the court granted the defendant's motion to enforce the settlement agreement. The plaintiff filed an appeal five months after the case was dismissed and the appeal currently is pending.

Dede v. City Furniture (FL-S 1:01-cv-02696 filed 06/25/2001).

Class action under the Fair Labor Standards Act by furniture store employees for failure to pay overtime wages. A sealed settlement agreement was filed.

Fort Lauderdale Auto Leasing v. Sunshine Auto Rentals (FL-S 1:01-cv-02682 filed 06/25/2001).

Trademark action concerning the use of the service mark “Sunshine” by a rental car company. The court granted the parties’ joint motion for stipulated permanent injunction. A sealed settlement agreement was filed.

Vargas v. Shoma Development (FL-S 1:01-cv-02738 filed 06/27/2001).

Action under the Fair Labor Standards Act by a construction worker for failure to pay minimum wage and overtime wages. A sealed settlement agreement was filed.

Fleurimond v. United Enterprises (FL-S 1:01-cv-02938 filed 07/06/2001).

Class action under the Fair Labor Standards Act by construction workers for failure to pay overtime wages. The confidential settlement agreement was filed under seal with a motion to enforce the settlement agreement. The court denied the motion to enforce on the grounds that the defendant had satisfied its obligations. The parties’ request that the settlement agreement be returned was granted. The court ordered that the motion to file the settlement agreement under seal be unsealed and that the docket entry referring to a “sealed document” also be unsealed to reflect that the sealed document was a settlement agreement.

National Installers v. Harris (FL-S 1:01-cv-02964 filed 07/06/2001).

Action for declaratory judgment regarding disputes under the Fair Labor Standards Act for failure to pay overtime wages. A joint stipulation of settlement ordered that the “Settlement Agreement is to remain permanently under seal.”

Tapia v. Extendicare Homes (FL-S 1:01-cv-03104 filed 07/17/2001).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed document was filed on the same day the

case was dismissed. A sealed settlement agreement apparently was filed.

Tyson v. Martin Tire Co. (FL-S 9:01-cv-08661 filed 07/19/2001).

Class action under the Fair Labor Standards Act by service managers of an auto repair shop for failure to pay overtime wages. A sealed settlement agreement was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Giraldo v. One World (FL-S 1:01-cv-03172 filed 07/20/2001).

Action under the Fair Labor Standards Act for failure to pay overtime wages and retaliatory discharge after plaintiff complained of non-payment. A sealed settlement agreement was attached to the motion for fees and costs.

Palco Labs v. Vitalcare Group (FL-S 1:01-cv-03480 filed 08/10/2001).

Patent infringement case involving an adjustable tip for a blood lancet device. The court granted the plaintiff's motion for permanent injunction. A sealed settlement agreement was filed and the order of dismissal noted that the settlement agreement will be unsealed on June 4, 2006.

McConnel v. Capri Miami Beach Hotel Condo (FL-S 1:01-cv-03572 filed 08/20/2001).

Wrongful termination based on the Pregnancy Discrimination Act. The case was dismissed in April 2002 and the court retained jurisdiction to enforce the terms of the settlement agreement. In May 2002, a sealed settlement agreement was attached to the first motion to enforce the settlement agreement for \$89,500. The court placed a lien on a property of the defendant's sister company as security for the balance of the judgment. In July 2002 there was a renewed motion to enforce the settlement agreement. A final judgment ordered the defendant to transfer the lien of the property to the defendant as security for the balance of judgment for \$57,000. Defendants were denied the motion for relief from the final judgment. In December 2002 a third motion to enforce the settlement agreement sought sanctions of the unpaid outstanding judgment of \$51,000. The last document filed on the docket sheet in February 2003 involves a plaintiff's memorandum

on the effect of bankruptcy by the defendant's sister company on the outstanding judgment.

Mastercard International v. T&T Sports (FL-S 1:01-cv-03632 filed 08/24/2001).

Contract action involving fraudulent misrepresentations and breaches of material provisions in a written contract for media promotional rights to a sporting event. A sealed settlement agreement was filed.

Stubbs v. Art Express (FL-S 1:01-cv-03760 filed 09/05/2001).

Action under the Fair Labor Standards Act by an employee of a custom art framing business for failure to pay overtime wages. A sealed document was filed two days before the case was dismissed. The order of dismissal approved the settlement agreement. A sealed settlement agreement apparently was filed.

Sanchez v. Drusco (FL-S 1:01-cv-03796 filed 09/07/2001).

Class action under the Fair Labor Standards Act by employees of an export company for failure to pay overtime wages. Three weeks after the case was dismissed the court granted a motion to extend time to sign settlement papers. A sealed document was filed one day after the order to extend time. A sealed settlement agreement apparently was filed.

Rivera v. KB Toys (FL-S 0:01-cv-07607 filed 10/17/2001).

Class action under the Fair Labor Standards Act by assistant store managers for failure to pay overtime wages. A sealed document was filed two days before the case was dismissed. In the final order of dismissal the court states it considered the settlement agreement before dismissing the case. A sealed settlement agreement apparently was filed.

Alvarez v. Professional Aviation (FL-S 1:01-cv-04444 filed 10/30/2001).

Action under the Fair Labor Standards Act by a flight dispatcher for failure to pay overtime wages. A sealed settlement agreement was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Baumgarten v. Children's Center (FL-S 1:01-cv-05040 filed 12/17/2001).

Action under the Fair Labor Standards Act by a psychiatric aide for minimum wage and failure to pay overtime wages. A sealed settlement agreement was filed.

Marinaro v. Miller (FL-S 0:02-cv-60089 filed 1/22/2002).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed settlement agreement was filed as an attachment to the motion to seal the settlement agreement. Parties asked the court to destroy the motion to seal, motion to approve the sealed settlement agreement, and the settlement agreement when the court entered the order to dismiss. In the order dismissing the case the court retained jurisdiction to enforce the terms of the settlement agreement for 60 days, but did not mention destroying any documents.

Nunez v. Acosta Tractors (FL-S 1:02-cv-20417 filed 02/06/2002).

Action under the Fair Labor Standards Act by a dirt digger operator for failure to pay overtime wages. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement for 60 days. Sealed documents were filed four and 11 days after the case was dismissed. A sealed settlement agreement apparently was filed.

Reyes Cigars v. Adworks of Boca (FL-S 9:02-cv-80290 filed 04/30/2002).

Contract action against advertising company for intentionally shutting down plaintiff's e-commerce Web site in breach of an agreement that the plaintiff would own the rights to the Web site. The plaintiff's request for injunctive relief to reinstate the Web site was denied. A sealed document was filed four days before the case was dismissed. A sealed settlement agreement apparently was filed.

IDAHO

The sealing of court records in Idaho state courts requires written findings justifying the sealing. Idaho Ct. Admin. R. 32(f).

District of Idaho

Absent a court order to the contrary, sealed documents are returned to the submitting party at the end of the case. D. Idaho L.R. 5.3(f).

Statistics: 1,005 cases searched; 289 cases (29%) had the word “seal” in their docket sheets; 8 complete docket sheets (0.80%) were reviewed; actual documents were examined for 5 cases (0.50%); 4 cases (0.40%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Bursch v. Residential Funding Corp. (ID 99-cv-00385 filed 09/03/1999).

Class action under the Truth in Lending Act by plaintiffs who entered into loan transactions pursuant to a home sales program under which defendants allegedly “marked up” the cost of construction materials. Following mediation the parties agreed to a confidential settlement agreement and pursuant to Local Civil Rule 5.3, the court sealed the agreement.

EEOC v. JR Simplot Co. (ID 99-cv-00439 filed 09/30/1999).

Employment discrimination case challenging an English language reading skills test as having an adverse impact on Hispanic and Asian-American employees and applicants. The court approved a consent decree, which was not sealed. Provisions of the consent decree required the EEOC to file with the court as a separate exhibit the specific amount of lost wages and interest each claimant was entitled to and a list of claimants who timely returned the claim form. One year later the court agreed to seal the exhibit and incorporate it as part of the consent decree.

Shinski v. McDonnell-Douglas Corp. (ID 00-cv-00280 filed 05/23/2000).

Product liability action against manufacturer of a helicopter for wrongful death in a crash. The court approved and sealed the settlement agreement.

McKee v. Young (ID 00-cv-00713 filed 12/08/2000).

Motor vehicle action against a truck driver and the truck’s owner for injuries sustained when the semi-truck and trailer rear-ended the

plaintiff's vehicle. A stipulation of compromise and settlement was filed and sealed.

MICHIGAN

State court records may be sealed only upon a showing of good cause, Mich. Ct. R. 8.119(F)(1)(b), "consider[ing] the interests of the public as well as of the parties," *id.* R. 8.119(F)(2). "A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record." *Id.* R. 8.119(F)(5).

Eastern District of Michigan

Sealed settlement agreements become unsealed two years after the date of sealing, absent an order to the contrary. E.D. Mich. L.R. 5.4. Court staff members say that the rule is difficult to implement, because no rule specifies that sealed settlement agreements be designated as anything other than a sealed document, so it is difficult to know what documents are covered by the rule. Sealed *discovery* documents are returned or unsealed 60 days after the case is over. *Id.* R. 5.3.

Statistics: 7,072 cases searched; 152 cases (2.1%) had the word "seal" in their docket sheets; 37 complete docket sheets (0.52%) were reviewed; actual documents were examined for 15 cases (0.21%); 13 cases (0.18%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Herman Miller Inc. v. Palazzetti Imports and Exports (MI-E 2:96-cv-75833 filed 06/25/1996).

Trademark and trade dress action concerning high-quality reproductions of Eames chairs and ottomans. There was a jury trial, a judgment, an appeal, and a remand. On the eve of the second trial the case settled pursuant to a sealed settlement agreement "to remain under seal for a period of ten (10) years" (until January 3, 2013).

Smith v. Chrysler Financial Corp. (MI-E 2:97-cv-76338 filed 06/25/1996).

Employment case. [File requested from records center in Chicago.]

Relume Corp. v. Dialight Corp. (MI-E 2:98-cv-72360 filed 06/09/1998).

Patent case. [Large file will take court some time to copy.]

Solomon v. City of Sterling Heights (MI-E 2:98-cv-73900 filed 09/04/1998).

Civil rights case where defendants include a city, police officers, and a newspaper. [Large file will take court some time to copy.]

Pasque v. Frederick (MI-E 2:99-cv-75113 filed 10/20/1999).

Motor vehicle action for wrongful killing of a bicyclist by a truck driver. A sealed document was filed the same day as a “settlement on the record,” and the case was dismissed on an approved settlement the following month. Five days before the settlement on the record, plaintiff filed a petition to determine settlement specifying a \$2 million settlement.

Wagner v. Ford Motor Co. (MI-E 2:99-cv-75567 filed 11/17/1999).

Employment discrimination case was dismissed without prejudice in November, with the court retaining jurisdiction for two months in the event that “the settlement is not consummated.” Two months later the court agreed to retain jurisdiction for an additional month. One month later – in early March – the court dismissed the case with prejudice. A sealed document was filed by the judge nearly two months later. This may be a sealed settlement agreement.

Fitch v. Sensormatic Electronics (MI-E 2:00-cv-71603 filed 04/03/2000).

Complaint under the Fair Labor Standards Act for wrongfully requiring field technicians to deduct one hour from each work day. A stipulated order for dismissal states that the court facilitated a settlement conference, which resulted in a confidential settlement agreement that the court will hold under seal. The docket sheet, however, does not show the filing of such an agreement.

Intra Corp. v. Air Gage Co. (MI-E 5:00-cv-60234 filed 04/19/2000).

Patent case concerning an “apparatus for inspecting an engine valve seat.” The case was dismissed with the court retaining jurisdiction to enforce a sealed settlement agreement.

Parkhill v. Starwood Hotels (MI-E 2:00-cv-71877 filed 04/24/2000).

Personal injury action for quadriplegic spinal cord injuries sustained while swimming in the ocean at defendant's hotel. The case settled, and approximately three months after the filing of the stipulated order of dismissal on the termination date a civil sealed matter of unknown contents was filed. This may be a sealed settlement agreement.

Hoy v. Pet Greetings (MI-E 2:00-cv-72308 filed 05/19/2000).

Patent case concerning edible pet greeting cards. Sealed matter filed same day as termination date. The unsealed judgment contains several terms of a settlement agreement, but states that some terms are sealed.

Baker v. Bollinger (MI-E 4:00-cv-40239 filed 06/26/2000).

Employment case against University of Michigan and some of its employees. The case file includes a protective order concerning confidential health information. The court granted the parties' joint motion for a stipulated permanent injunction and sealing of the record.

Smith v. City of Detroit (MI-E 4:00-cv-40273 filed 07/21/2000).

Civil rights action against Detroit for wrongful killing by a police officer. A sealed document was filed by the judge six days before the case was dismissed as settled. The case was dismissed without prejudice to give plaintiffs 60 days to move to enforce the settlement agreement if it is not consummated.

Allegiance Telecom v. Hopkins (MI-E 2:01-cv-74310 filed 11/09/2001).

Designated a trademark case, this is really a business tort case – with the seventh of eleven claims arising under the Lanham Act – against former employees for siphoning business. Sealed matter was filed nine days before the case was closed. The stipulated order for dismissal specifies the terms of settlement, but also refers to an “accompanying Confidential Settlement and Mutual General Release Agreement” and represents that an attached exhibit contains true information and is filed under seal.

Western District of Michigan

Documents may be filed under seal only with prior permission from the court, W.D. Mich. L. Civ. R. 10.6(a)-(b), and will be unsealed 30 days after termination of the case, absent an order to the contrary, *id.* 10.6(c).

Statistics: 2,025 cases searched; 122 cases (6.0%) had the word “seal” in their docket sheets (many of these included only docket entries made under the identification “seal” because the docket clerk had been accessing sealed documents in other cases, or only notation of whether a sealed mediation award was accepted or rejected); 7 complete docket sheets (0.35%) were reviewed; actual documents were examined for 4 cases (0.20%); 4 cases (0.20%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Tompkins v. Anderson (MI-W 4:99-cv-00124 filed 09/10/1999).

Fraud action concerning ownership and operation of a radio station. The case settled at a settlement conference, with the proceedings sealed. Eight months after the case was dismissed, plaintiffs moved to enforce the confidential settlement agreement. Plaintiffs attached the settlement agreement, which called for 23 monthly payments of \$500 from each defendant. Plaintiffs’ motion was denied on the ground that the court had not retained jurisdiction to enforce the settlement agreement.

C.S. Engineered Castings v. deMco Technologies (MI-W 4:01-cv-00024 filed 02/20/2001).

Negotiable instrument action for nonpayment of loans, with counterclaims for fraud and related injuries. The amount in controversy allegedly was \$75,000 in principal and \$2,445.45 in interest. The case settled, but plaintiff moved to enforce the confidential settlement agreement, claiming \$72,800 still owed. The motion stated that a copy of the confidential agreement would not be attached, but would “be delivered to the court for consideration with this motion.” The motion was unopposed and granted. It appears that the court subsequently filed the confidential settlement agreement under seal.

Stryker Corp. v. Neodyme Technologies Corp. (MI-W 4:01-cv-00031 filed 02/26/2001).

Contract action for failure to pay \$91,500 in invoices on hospital “goods and/or services.” The court agreed to file a confidential settle-

ment agreement under seal so that the court could retain jurisdiction to enforce it. The order to seal stated “that within 30 days after termination of the case, the Court will return the Settlement Agreement to either of the attorneys.” The motion to seal the settlement agreement was filed two days after the case was dismissed and the order was granted the following month. The docket sheet shows the sealed settlement agreement filed the same day as the order to seal and does not show a return of the sealed document. Less than two months later defendant filed a notice for bankruptcy protection.

Hale-DeLaGarza v. Spartan Travel Inc. (MI-W 1:01-cv-00557 filed 08/28/2001).

Employment action for persistent unwanted sexual advances. A minute docket entry states that a settlement was placed on the record under seal. A stipulated order dismissing the case gives no additional information.

MINNESOTA

No relevant state statute or rule.

District of Minnesota

Absent an order to the contrary, sealed documents should be reclaimed by the parties four months after the case is over if there is no appeal and 30 days after the case is over if there is an appeal. D. Minn. L.R. 79.1(d). The court will destroy documents not retrieved within 30 days of notice to retrieve them. *Id.* R. 79.1(e).

Statistics: 3,612 cases searched; 225 cases (6.2%) had the word “seal” in their docket sheets; 25 complete docket sheets (0.69%) were reviewed; actual documents were examined for 22 cases (0.61%).

MISSISSIPPI

No relevant state statute or rule.

Northern District of Mississippi

Court records may be sealed only upon a showing of good cause. N. & S. D. Miss. L.R. 83.6(B). Absent an order to the contrary, sealed documents are unsealed 30 days after the case is over. *Id.* R. 83.6(D). If a court orders a document sealed beyond that time period, the order “shall set a date for

unsealing.” *Id.* (Note that the Northern and Southern Districts of Mississippi have the same local rules.)

Statistics: 2,603 cases searched;⁷ 53 cases (2.0%) had the word “seal” in their docket sheets; 19 complete docket sheets (0.73%) were reviewed.

Southern District of Mississippi

Court records may be sealed only upon a showing of good cause. N. & S. D. Miss. L.R. 83.6(B). Absent an order to the contrary, sealed documents are unsealed 30 days after the case is over. *Id.* R. 83.6(D). If a court orders a document sealed beyond that time period, the order “shall set a date for unsealing.” *Id.* (Note that the Northern and Southern Districts of Mississippi have the same local rules.)

NORTH CAROLINA

North Carolina law disfavors confidential settlement agreements with state actors. “It is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law.” N.C. Gen. Stat. § 132-1(b). Public records include settlement documents in cases against state actors, except for medical malpractice actions against hospitals. *Id.* § 132-1.3(a). Confidential settlement agreements are proscribed in such cases. *Id.* Settlement documents may be sealed in these cases only upon a determination that (1) good cause overrides the presumption of openness and (2) the good cause cannot be achieved another way. *Id.* § 132-1.3(b).

Eastern District of North Carolina

The court amended its local rule on sealed documents effective January 1, 2003. Absent statutory authority, court filings may be sealed only on court order obtained by motion. E.D.N.C. L. Civ. R. 79.2(a). Sealed documents must be delivered to the court in red envelopes with three lines of specified text designating the date of filing and that the document is to be filed under seal. *Id.* 79.2(e). The docket designates “generically the type of document filed under seal, but it will not contain a description that would disclose its identity.” *Id.* 79.2(c). “After the action concludes and all appeals have been completed, counsel is charged with the responsibility of retrieving and maintaining all sealed documents. Upon 10 days notice by mail to counsel for all parties, and within 30 days after final disposition,

⁷ These data are based on a full two-year termination cohort.

the court may order the documents to be unsealed and they will thereafter be available for public inspection.” *Id.* 79.2(d).

Statistics: 2,143 cases searched; 112 cases (5.2%) had the word “seal” in their docket sheets (but 54 of these merely had Crown Cork and Seal Company as a party); 12 complete docket sheets (0.56%) were reviewed; actual documents were examined for 4 cases (0.19%); 3 cases (0.14%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Lloyd v. Newton (NC-E 7:00-cv-00034 filed 02/22/2000).

Housing/accommodations action under the Americans with Disabilities Act and state law for failure to rent a hotel room to a disabled person who has a service dog but who is not blind. The parties filed a consent protective order and the transcript of the settlement conference was sealed. The case ended in a stipulation of dismissal. Because the complaint included a claim for negligent supervision, settlement discussions may have included trade secrets on employee training.

Ramirez v. Beaulieu (NC-E 5:00-cv-00536 filed 07/25/2000).

Action by carpenters for unpaid wages under the Fair Labor Standards Act and state law. The parties reached a confidential settlement agreement and filed a joint stipulation of dismissal. The stipulation specified that if the plaintiff notified the court within 90 days that defendants had breached the agreement, then an attached sealed consent order would become effective. The 90 days elapsed without such notice and the case was closed.

Watson v. Life Insurance Co. of North America (NC-E 5:01-cv-00870 filed 11/07/2001).

ERISA action for wrongfully denied disability benefits to a processing clerk. Disabled beneficiary was represented by her mother, who had power of attorney. The case settled and the court approved the settlement. A sealed settlement agreement was filed.

Middle District of North Carolina

Sealed documents are sent to the records center in Atlanta along with the rest of the case file, where “[t]he confidentiality of sealed documents cannot be assured.” M.D.N.C. L.R. 83.5(c). At the end of the case, after the

opportunity for appeal is exhausted, the clerk sends the parties a notice that they may retrieve sealed documents.

Statistics: 1,724 cases searched; 50 cases (2.9%) had the word “seal” in their docket sheets; 5 complete docket sheets (0.29%) were reviewed; actual documents were examined for 5 cases (0.29%); 4 cases (0.23%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Queen v. rha Health Services (NC-M 1:00-cv-00101 filed 02/01/2000).

Class action under the federal Fair Labor Standards Act and state law by employees of residential facility for developmentally disabled adults alleging that the employees working a night shift were required to remain on premises without compensation for eight hours of their 18-hour shifts. The court dismissed the state law claims as preempted by the federal claim. The case settled and the parties filed a joint motion under seal for an order approving the settlement. Such an order was granted, but the order says nothing about the terms of the settlement.

Saine v. Bristol-Myers Squibb Co. (NC-M 1:00-cv-00271 filed 03/20/2000).

ERISA action by drug sales employee to challenge denial of short-term disability benefits sought because of migraine headaches. The court gave defendants summary judgment on the ERISA claim, but denied them summary judgment on a counterclaim for return of mistakenly issued salary checks. The parties settled the counterclaim before trial, but plaintiff apparently violated the settlement agreement (before the case was dismissed), so defendant employer moved for enforcement of the agreement, attaching the agreement as a sealed exhibit. Plaintiff apparently violated the court’s order to enforce the agreement by failing to return money and sales supplies, including a car, a computer, and drugs, so the employer moved for an order of contempt. The court did not rule on this motion, because the parties settled their dispute and filed a stipulated dismissal.

Parks v. Alteon Inc. (NC-M 1:00-cv-00657 filed 07/13/2000).

Product liability case where plaintiff sued drug companies for kidney failure allegedly resulting from an experimental diabetes drug.

The parties reached a confidential private settlement agreement, but one defendant apparently was late in making its settlement payment. The settlement agreement was filed under seal as an exhibit to a motion to enforce it. The case was dismissed without action on the motion.

Gaskins v. Carolina Manufacturer's Service (NC-M 1:00-cv-01219 filed 12/01/2000).

Employment civil rights action where black plaintiffs sued their employer for race discrimination. One plaintiff had second thoughts about the confidential settlement agreement and moved pro se to set it aside. Defendant attached a sealed copy of the settlement agreement to a motion to enforce it. The court ruled against plaintiff's motion and ordered her to pay a \$3,600 sanction to cover defendant's fees in enforcing the agreement.

Western District of North Carolina

Local Rule 5.1(D)(4) states: "Unless otherwise ordered by a court, any case file or documents under court seal that have not previously been unsealed by the court order shall be unsealed at the time of final disposition of the case." According to the clerk, sealed documents are not sent to the records center in Atlanta. If there were indeed an order to keep a document sealed, the court would probably keep the whole file, because there would be so few.

Statistics: 1,663 cases searched; 71 cases (4.3%) had the word "seal" in their docket sheets; 16 complete docket sheets (0.96%) were reviewed; actual documents were examined for 9 cases (0.54%); 6 cases (0.36%) appear to have sealed settlement agreements.⁸

⁸ Five of these cases were consolidated together.

Cases with Sealed Settlement Agreements

Carr v. Louisiana-Pacific Corp. (NC-W 5:99-cv-23 filed 02/24/1999), consolidated with *Carr v. Louisiana-Pacific Corp.* (NC-W 5:99-cv-24 filed 02/24/1999), *Cardwell v. Louisiana-Pacific Corp.* (NC-W 5:99-cv-25 filed 02/24/1999), *Phillips v. Louisiana-Pacific Corp.* (NC-W 5:99-cv-26 filed 02/24/1999), and *Carr v. Louisiana-Pacific Corp.* (NC-W 5:99-cv-27 filed 02/24/1999).

Consolidated motor vehicle tort action in which five decedents' estates sued the alleged employers of a logging truck driver for decedents' deaths arising from a logging truck driver's becoming distracted while changing a tape in his cab. He veered into oncoming traffic and ran a church van off the road. Swerving back into the correct lane, the truck's logs spilled and crushed the van's five occupants. The district court granted summary judgment to defendants on the grounds that the driver was not their agent, and plaintiffs appealed. The case settled on appeal, and a North Carolina statute apparently required court approval of the settlement agreement, because one of the plaintiffs was a minor representing her father's estate. Terms of the settlement agreement are under seal.

J. M. Huber Corp. v. Potlatch Corp. (NC-W 3:02-cv-00034 filed 01/25/2002).

Trademark action concerning a plywood substitute called oriented strand board. The case was dismissed in reliance on a settlement agreement, which was sealed and filed as an exhibit to the order dismissing the case. The order included the statement that "The parties . . . consent to the Court retaining jurisdiction of this matter to enforce the terms of a confidential Settlement Agreement"

SOUTH CAROLINA

No relevant state statute or rule.

District of South Carolina

A new local rule prohibits the filing of a sealed settlement agreement. D.S.C. L.R. 5.03(C).

Statistics: 6,031 cases searched; 241 cases (4.0%) had the word "seal" in their docket sheets; 15 complete docket sheets (0.25%) were reviewed; ac-

tual documents were examined for 7 cases (0.12%); 7 cases (0.12%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Doe v. Florence School District (SC 4:99-cv-01007 filed 04/08/1999).

Civil rights action by a developmentally disabled 15-year-old girl for rape by a school security guard, who had been transferred to his current position from another school where parents had complained of his sexually harassing students. The court dismissed the case as settled and scheduled a settlement conference to approve the settlement agreement – there being a minor party – one week later. The settlement agreement is sealed.

Johnson v. Prime Inc. (SC 8:00-cv-01523 filed 05/17/2000).

Motor vehicle action against a truck driver and trucking companies for wrongful death caused by the truck's colliding with traffic stopped for road construction. Plaintiff dismissed the trucker and settled with the trucking companies, whose liability insurer paid the settlement. The court dismissed the action without prejudice and then conducted a sealed settlement conference two weeks later, dismissing the action with prejudice after the terms of the settlement apparently were satisfied.

Seeling v. Norfolk Southern Rwy. (SC 3:00-cv-01893 filed 06/14/2000).

Action under the Federal Employer's Liability Act by a trainman for unspecified injuries allegedly resulting from his employer's negligence in maintaining a safe working environment. Documents filed in the case indicate the trainman may have fallen off a train. The judge issued an order dismissing the case as "settled by the payment of a sum of money" and sealing "the record of this settlement, other than the fact of its existence."

Curry v. Fripp Co. (SC 9:00-cv-02579 filed 08/18/2000).

Contract action for payment of a \$4,500,000 commission on facilitating the sale of a golf course business. The court dismissed the action without prejudice as settled, retaining jurisdiction for 60 days to enforce the settlement agreement. Near the end of that 60-day period plaintiff filed a motion to enforce the agreement, attaching a

sealed copy of the agreement. Defendants apparently missed the first settlement payment of \$100,000 and raised objections concerning drafts of the settlement documents. Court documents indicate that other material terms of the settlement agreement concern stock certificates and a golf course. Seven months after the motion to enforce the court dismissed the case with prejudice as fully resolved.

Fanning v. Columbia Housing Authority (SC 3:00-cv-02833 filed 09/12/2000).

Housing action for disability discrimination. Plaintiff alleged that she was wrongfully denied public housing on the incorrect ground that she could not live without assistance. The court dismissed the action without prejudice as settled on February 6, 2001, retaining jurisdiction for 30 days to enforce the settlement. On March 20 the court dismissed the action as settled with prejudice, ordering “these documents” sealed. On April 12 the court again dismissed the action with prejudice.

Williams v. Ford Motor Co. (SC 2:00-cv-03398 filed 10/26/2000).

Motor vehicle product liability action for wrongful death resulting from a Ford Aerostar van’s rolling over. One plaintiff – who was not involved in the accident – represented himself as well as the estates of his late wife and his late 12-year-old daughter, who were killed. The other plaintiff was a 17-year-old son, who was injured. The court dismissed the action as settled without prejudice, retaining jurisdiction for 60 days to enforce the settlement. One month later plaintiffs moved to reopen the case so that the court could approve the settlement agreement with the minor plaintiff. The court approved the agreement. The amount of the settlement and plaintiffs’ attorneys’ contingency fee were sealed, but unsealed records show that 59% of the settlement went to the mother’s claim, 40% went to the daughter’s claim, and 1% went to the son’s claim.

White v. Daimler Chrysler Corp. (SC 2:00-cv-03803 filed 12/05/2000).

Motor vehicle product liability action alleging that defective designs of the roof and seatbelts of a Jeep Grand Cherokee caused the death of the driver and two passengers, and the injuries of two additional passengers, in a roll-over caused by another vehicle. The plaintiffs representing estates and a minor filed a sealed petition,

which was granted, along with a sealed order approving a settlement. The court dismissed the action as settled without prejudice, retaining jurisdiction for 60 days to enforce the settlement agreement. Three months later the court granted a motion under seal.

VIRGINIA

No relevant state statute or rule.

Eastern District of Virginia

No relevant local rule. Practices vary among the divisions – in Alexandria a document can be sealed by handwriting the word “sealed” on the document, but in Richmond a motion to seal is required. The district’s rules committee will consider a proposed uniform rule this spring.

Statistics: 11,456 cases searched; 234 cases (2.0%) had the word “seal” in their docket sheets; 43 complete docket sheets (0.38%) were reviewed; actual documents were examined for 38 cases (0.33%).

Western District of Virginia

A standing order “governs the unsealing of documents,” but a presiding judge may make exceptions. Sealing of a document generally may be considered “only upon written motion.” W.D. Va. L.R. XIII.A. Documents generally “are to be unsealed within thirty (30) days from the date of the order to seal.” *Id.*

Statistics: 2,602 cases searched; 73 cases (2.8%) had the word “seal” in their docket sheets; 31 complete docket sheets (1.2%) were reviewed; actual documents were examined for 23 cases (0.88%); 20 cases (0.77%) appear to have sealed settlement agreements.⁹

Cases with Sealed Settlement Agreements

Thompson v. Town of Front Royal (VA-W 5:98-cv-00083 filed 11/04/1998); *Blackman v. Town of Front Royal* (VA-W 5:99-cv-00017 filed 03/19/1999).

Employment race discrimination actions by a public works laborer and a public works carpenter who alleged overt and severe racism by the Director of Public Works and another supervisor. Parties agreed to a settlement at a settlement conference before a magistrate

⁹ These include a pair of companion cases, a pair of consolidated cases, and a trio of consolidated cases.

judge, who filed the terms of settlement under seal for review by the district judge, who in turn dismissed the action as settled.

Spanky's LLC v. Travelers Commercial Insurance Co. (VA-W 7:99-cv-00095 filed 02/11/1999), *consolidated with Spanky's of Virginia LLC v. Travelers Commercial Insurance Co.* (VA-W 7:99-cv-00096 filed 02/11/1999), *and Macher v. Travelers Commercial Insurance Co.* (VA-W 7:99-cv-00097 filed 02/11/1999).

Insurance action for a pattern of unreasonable practices by an adjuster. After mediation by a magistrate judge, a sealed memorandum of settlement was filed and the case was dismissed.

Rogers v. Pendleton (VA-W 7:99-cv-00164 filed 03/16/1999).

Civil rights action against two police officers for unlawful search and seizure when officers responded to a noise complaint of plaintiff's party. A sealed document was filed the same day as a stipulation of dismissal.

Carter Machinery Co. v. Time Collection Solutions (VA-W 7:99-cv-00255 filed 04/15/1999).

Contract and fraud action for a faulty payroll system. Defendant counterclaimed for unpaid bills. A memorandum of settlement was filed under seal and the case was dismissed four-and-a-half months later. Four months after that parties were ordered to remove sealed materials.

Dean v. Crescent Mortgage Corp. (VA-W 3:00-cv-00035 filed 04/19/2000).

Truth in lending action for defendant's refusal to let plaintiff rescind a \$400,000 loan secured by plaintiff's home. After a settlement conference before a magistrate judge a sealed settlement agreement was filed.

Green v. Ford Motor Co. (VA-W 3:00-cv-00049 filed 06/01/2000), *consolidated with Carey v. Ford Motor Co.* (VA-W 3:00-cv-00050 filed 06/01/2000).

Consolidated motor vehicle product liability actions against Ford and U-Haul for the wrongful death of the driver of a U-Haul truck and a passenger when the truck burst into flames – allegedly because of a design defect – in a roll-over accident apparently caused by the

driver's falling asleep at the wheel. Ford cross-claimed against U-Haul for destroying the damaged truck without letting Ford inspect it. The parties reached a confidential settlement agreement, which the court had to approve because Virginia law requires court approval of wrongful death settlements. (An action by an additional passenger who survived also was consolidated, but approval of the settlement in that case apparently was not necessary.) Several sealed documents subsequently were filed.

Longwall-Associates Inc. v. Wolfgang Preinfalk GmbH (VA-W 1:00-cv-00086 filed 06/23/2000).

Contract product liability action against German manufacturer of mining equipment. Defendant's North American distributor alleged that gearboxes sold to a third party were defective. Defendant counterclaimed for 767,520.96 DM and \$155,312 US in unpaid bills, plus additional damages. Four days after the court denied defendant's motion for partial summary judgment on two of plaintiff's five claims, a sealed document was filed and the case was closed as settled.

Lashea v. Ringwood (VA-W 7:00-cv-00556 filed 07/12/2000).

Prisoner petition against a prison nurse challenging the quality of medical care for appendicitis. The case settled and on the same day that a stipulation of dismissal was filed a sealed document was filed.

Village Lane Rentals LLC v. Capital Financial Group (VA-W 5:00-cv-00061 filed 07/13/2000).

Securities action by investors in a Texas apartment complex for false and misleading statements about the condition, occupancy rate, and profits of the complex. On the eve of trial an unsuccessful settlement conference was held in the morning and a sealed settlement conference was held in the afternoon. Approximately three weeks later a stipulated dismissal was filed and a sealed document was filed a week-and-a-half after that. This sealed document likely contained terms of the settlement agreement.

Hale v. Elcom of Virginia Inc. (VA-W 3:00-cv-00085 filed 09/28/2000).

Class action under the Fair Labor Standards Act against the CBS television affiliate in Richmond for denial of overtime compensation to television announcers. The parties settled and filed their settlement

agreement under seal for the court's approval pursuant to the court's order "and applicable law." The dismissal order disclosed that one provision of the settlement agreement was that plaintiff's counsel not represent "similarly-situated individuals in future litigation against the defendants."

Advance Stores Co. v. Exide Corp. (VA-W 7:00-cv-00853 filed 11/03/2000).

Breach of contract action by an auto parts retailer against a motor vehicle battery wholesaler. The case was litigated under a protective order with many sealed documents filed. The action was dismissed as settled the same day that a sealed settlement agreement was filed. Three sealed documents were filed three months later, and then an unsealed response to defendant's motion to enforce the agreement was filed. Six sealed documents of renewed litigation followed two to three months later with the matter ultimately dismissed again as settled.

Ebelt v. Dotson (VA-W 4:01-cv-00025 filed 05/04/2001).

Personal property damage action against a car dealer for odometer fraud. The parties filed a sealed document one day, and a sealed motion to dismiss the next day. On the third day the court dismissed the action as settled.

Comsonics Inc. v. TVC Communications Inc. (VA-W 5:01-cv-00053 filed 06/20/2001).

Patent infringement case concerning a portable sampling spectrum analyzer. A sealed settlement and licensing agreement was filed under seal and the case dismissed as settled.

American Red Cross v. Central Virginia Safety Concepts LLC (VA-W 3:01-cv-00068 filed 06/22/2001).

Contract action against former employees who started a competing health training business for improper use of confidential business information. A consent order of dismissal ordered defendants to refrain from soliciting new business from parties on a sealed list.

Smith v. Goodyear Tire & Rubber Co. (VA-W 4:01-cv-00041 filed 07/24/2001).

Employment discrimination action by a quality inspector at a tire plant against a supervisor for sexist harassment and against their employer for failure to stop it. After the case was referred to a magistrate judge for mediation two sealed documents and a sealed motion to dismiss were filed, followed by an order to dismiss the action as settled.

Epperly v. Southstar Corp. (VA-W 7:01-cv-00654 filed 08/27/2001).

Employment action by a person with epilepsy for wrongful failure to rehire because of disability. A memorandum of settlement was filed under seal and the case was dismissed.

WASHINGTON

State court documents may be sealed by motion and hearing. Wash. Ct. R. 15(c)(2)(B). Documents may “be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof of compelling circumstances, or pursuant to” discovery rules. Id. R. 15(d)(2).

Eastern District of Washington

No relevant local rule.

Statistics: 962 cases searched; 58 cases (6.0%) had the word “seal” in their docket sheets; 2 complete docket sheets (0.21%) were reviewed; actual documents were examined for 2 cases (0.21%); 2 cases have sealed settlement agreements (0.21%).

Cases with Sealed Settlement Agreements

United States v. Westinghouse Electronics (WA-E 2:96-cs-00171 filed 03/19/1996).

Qui tam action under the False Claims Act for fraudulently billing for workers’ fringe benefits. A sealed settlement agreement was filed.

Lohr v. Komatsu Electronic (WA-E 2:00-cs-00225 filed 06/29/2000).

Personal injury case in which two employees were seriously injured and one was killed when a pressure line exploded. Three minor plaintiffs in the case had guardians ad litem appointed as required by Washington statute to recommend to the court whether

their claims should be settled and the allocation of any proposed settlement funds. The court sealed five documents filed during the previous 30 days and ordered that “counsel shall file all further pleadings concerning settlement of this matter under seal.” A stipulation order dismissing the case gives no additional information.

Western District of Washington

Federal local rules.

Statistics: 4,657 cases searched; 557 cases (12%) had the word “seal” in their docket sheets.