

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In Re: Procedure for Moving to Seal or Redact.

Case No: 6:18-mc-22-Orl-GJK

STANDING ORDER REGARDING MOTIONS TO SEAL OR REDACT

To establish an orderly and efficient procedure for parties moving to seal or redact information filed with the Court,¹ it is **ORDERED** that the parties shall adhere to the following procedures, unless and until superseded by another order:

Occasionally, it is necessary to file information with the Court in support of or in opposition to a motion that may not be appropriate for filing on a public docket (“Protected Information”). The party that claims the information constitutes Protected Information is not necessarily the same party that is relying on the Protected Information to support or oppose a motion. In these circumstances, communication, cooperation, and coordination between counsel are required. At the earliest opportunity, the party relying on the Protected Information should notify the party claiming protection that it intends to submit the Protected Information to the Court. The party intending to submit the Protected Information should specify the information, using Bates-stamped numbers, transcript pages and line numbers, or other means of particularly identifying the information. The party claiming that the information is Protected Information and with personal knowledge of the facts supporting that contention should then promptly file a motion to seal or redact the Protected Information. Once notified that the opposing party intends to submit the

¹ This Order does not apply to trial proceedings.

Protected Information to the Court, the party claiming that the information is Protected Information has fourteen days to file a motion to seal or redact the Protected Information. If no motion to seal or redact is filed within that time, then the opposing party may presume that there is no objection to the information appearing on the public docket.

Local Rule 1.09(a) provides the framework for filing items under seal, which states:

Unless filing under seal is authorized by statute, rule, or order, a party seeking to file under seal any paper or other matter in any civil case shall file and serve a motion, the title of which includes the words "Motion to Seal" and which includes (i) an identification and description of each item proposed for sealing; (ii) the reason that filing each item is necessary; (iii) the reason that sealing each item is necessary; (iv) the reason that a means other than sealing is unavailable or unsatisfactory to preserve the interest advanced by the movant in support of the seal; [and] (v) a statement of the proposed duration of the seal ...

The Court may not seal an item for more than one year, unless the moving party shows good cause for a longer time period. Local Rule 1.09(c).

The Eleventh Circuit Court of Appeals criticized this Court for sealing information without adequate support and scrutiny. *United States v. Valenti*, 987 F.2d 708, 715 (11th Cir. 1993). The party moving to seal or redact should file copies of the Protected Information under seal, and, to protect the public's interest, file redacted copies with the motion. If a request for filing under seal is made, the Eleventh Circuit precedent setting forth the governing standard and the public's interests as well as the requirements of Local Rule 1.09 should be addressed. *See United States v. Rosenthal*, 763 F.2d 1291, 1293 (11th Cir. 1985); *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978); *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1311-12 (11th Cir. 2001); *Globe Newspaper Co. v. Superior Court for Norfolk Cnty.*, 457 U.S. 596, 606-07 (1982); *Microlumen, Inc. v. Allegrati*, Case No. 8:07-cv-350-T-17TBM, 2007 WL 1247068 (M.D. Fla. Apr. 30, 2007).

Additionally, the moving party should include a log that contains the same information as the one described in Standing Order 6:18-mc-20-Orl-GJK Regarding Privileged and Protected Information, which cross-references each item to an affidavit setting forth the specific factual basis for sealing or redacting the item. Motions to seal or redact will be closely scrutinized, and if the support for sealing or redacting is inadequate or the designations are overbroad, then they will be rejected. Because the public interest is at stake, there will be no protection for anything other than specific information that needs to be protected. Redaction is ordinarily how protection is balanced with the public's right to access. For each item, the moving party must explain why filing each item is necessary; why sealing or redacting each item is necessary; and why means other than sealing or redaction is unavailable or unsatisfactory to protect privacy interests. Local Rule 1.09(c). When explaining why sealing or redacting each item is necessary, the moving party shall provide a *specific factual basis* as to the confidential nature of each item. The specific factual basis cannot be based on the parties' prior stipulation or agreement, as the parties do not have the right to agree on what judicial records should be sealed. *Wilson v. Am. Motors Corp.*, 759 F.2d 1568, 1571 (11th Cir. 1985). Such bases should also be supported by affidavits executed by those having personal knowledge of the items sought to be sealed or redacted, explaining: 1) why such information is confidential; 2) what is done to keep such information confidential; 3) whether such information has been made available to others with restrictions, including descriptions of the people who have access to the information, whether that access was restricted, and if so, what means were used to restrict the access, and whether the information was shared with any outside organizations with or without restrictions; and 4) whether such information outweighs the public's common law right of access. Conclusory statements are insufficient to meet the moving party's burden, and the Court will not accept statements without some form of verified support. *See generally United States v.*

Raybould, 130 F. Supp. 2d 829, 833 (N.D. Tex. 2000). Motions to seal or redact must also contain a proposed duration of the seal, explain why the degree of the requested seal does not infringe on the public's right of access, and a memorandum of legal authority supporting the seal, with citations to authority.

The Court expects full compliance with this Order. Anything less than full compliance will result in denial of the motion to seal or redact.

DONE and **ORDERED** in Orlando, Florida, on March 13, 2018.



GREGORY J. KELLY
UNITED STATES MAGISTRATE JUDGE