UCLA School of Law

20-CV-T

EUGENE VOLOKH
GARY T. SCHWARTZ PROFESSOR OF LAW

SCHOOL OF LAW
BOX 951476
LOS ANGELES, CALIFORNIA 90095-1476
(310) 206-3926
volokh@law.ucla.edu

August 7, 2020

Dear Members of the Advisory Committee:

I attach a proposed Rule 5.3, which would govern the sealing and unsealing of court records in civil cases. Every federal Circuit recognizes a strong presumption of public access to court records, under which any sealing of documents or parts of documents must be narrowly tailored to an overriding interest, such as the protection of trade secrets or medical privacy. This presumption of openness (founded in both the common law and the First Amendment[1]) is needed so the public can supervise the public court system, and better understand how courts operate.

More than 80 U.S. Districts have created local rules governing sealing, and this proposal borrows heavily from those local rules. But a uniform rule governing sealing is needed: despite these local rules and the largely unanimous case law disfavoring sealing, records are still sometimes sealed erroneously, for reasons that fall short of what the public access precedents require. This leads to inconsistencies and uncertainties in the justice system—parties in districts where there is no local rule governing sealing, for instance, might think they are entitled to more privacy than the case law permits.

And having a clear and detailed Rule would be especially helpful here because sealing decisions are often made without adversary briefing. Though sealing restricts the public's rights of access, members of the public are not always available to intervene in such cases.

The Reporters Committee for Freedom of the Press and the Electronic Frontier Foundation also sign on to the proposal. The proposal itself was written by me, and by my invaluable student coauthor, Jennifer Wilson; the Reporters Committee contributed to the draft.

Sincerely,

Eugene Volokh

Eugene Volokh

[1] Every Circuit that has considered the question has held that the right of access is protected by the First Amendment as well as the common law. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 124 (2d Cir. 2006); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1061 (3d Cir. 1984); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1178 (6th Cir. 1983)*Matter of Continental Illinois Securities Litigation*, 732 F.2d 1302, 1314 (7th Cir. 1984).

[Aug. 6, 2020 draft, by Eugene Volokh (volokh@law.ucla.edu) and Jennifer Wilson; the Reporters Committee for the Freedom of the Press and the Electronic Frontier Foundation also endorse this proposal.]

F.R.C.P., Proposed Rule 5.3

(a) PRESUMPTION OF PUBLIC ACCESS TO COURT RECORDS**.** Unless the court orders otherwise, all documents filed in a case shall be open to the public (except as specified in Rule 5.2 or by statute).[1] Motions to file documents under seal are disfavored and discouraged.[2] Redaction and partial sealing are forms of sealing, and are also governed by this rule, except insofar as they are governed by Rule 5.2. [Proposed Advisory Committee Note: This rule is intended to incorporate the First Amendment and common-law rights of access, and to provide at least as much public access as those rights currently provide.]

(b) REQUIREMENTS FOR SEALING A DOCUMENT. At or before the time of filing,[3] any party may move to seal a document in whole or in part.

(1) Any party seeking sealing must make a good faith effort to seal only as much as necessary to protect any overriding privacy, confidentiality, or security interests.[4] Sealing of entire case files, docket sheets,[5] or entire documents[6] is rarely appropriate. When a motion to seal parts of a document is granted, the party filing the document must file a publicly accessible redacted version of the document.[7]

(2) If the interests justifying sealing are expected to dissipate with time, the party seeking sealing must make a good faith effort to limit the sealing to the shortest necessary time, and the court must seal the document for the shortest necessary time.[8]

(3) There is an especially strong presumption of public access for court opinions, court orders,[9] dispositive motions,[10] pleadings,[11] and other documents that are relevant or material to judicial decisionmaking or prospective judicial decisionmaking.[12]

(4) Because sealing affects the rights of the public, no document filed in court may be sealed in whole or in part merely because the parties have agreed to a motion to seal or to a protective order, or have otherwise agreed to confidentiality.[13]

(c) RETROACTIVE SEALING. Sealing of a document that has already been openly filed is allowed only in highly unusual circumstances, such as when information protected under Rule 5.2 is erroneously made public.[14]

(d) PUBLIC FILING OF MOTIONS TO SEAL. A motion to seal must be publicly filed[15] and must include a memorandum that:

(1) Provides a general description of the information the party seeks to withhold from the public.[16]

(2) Demonstrates compelling reasons to seal the documents,[17] stating with particularity[18] the factual and legal reasons that secrecy is warranted and explaining why those reasons overcome the common law and First Amendment rights of access.[19]

(3) Explains why alternatives to sealing, such as redaction, are inadequate.[20]

(4) States the requested duration of the proposed seal.[21]

(d) NOTICE AND WAITING PERIOD.

(1) Motions to seal shall be posted on the court's website, or on a centralized website maintained by several courts, within a day of filing.[22]

(2) The court shall not rule on the motion until at least 7 days after it is posted, so that objections may be filed by parties or by others,[23] unless the motion explains with particularity why an emergency decision is required.

(e) ORDERS TO SEAL. If a court determines that sealing is necessary, it must state its reasons with particularized findings supporting its decision.[24] Orders to seal must be narrowly tailored to protect the interest that justifies the order.[25] Orders to seal should be fully public except in highly unusual circumstances;[26] and if they are in part redacted, any redactions should be narrowly tailored to protect the interest that justifies the redaction.

(f) UNSEALING, OR OPPOSING SEALING.

(1) Sealed documents may be unsealed at any time on motion of a party or any member of the public, or by the court sua sponte, after notice to the parties and an opportunity to be heard, without the need for a motion to intervene.[27]

(2) Any party or any member of the public may object to a motion to seal, without the need for a motion to intervene.[28]

(3) The motion to unseal or the objection to a motion to seal shall be filed in the same case as the sealing order or the motion to seal, regardless of whether the case remains open or has been closed.[29]

(4) All sealed documents will be deemed unsealed 60 days after the final disposition of a case,[30] unless the seal is renewed.

(5) Any motion seeking renewal of sealing must be filed within 30 days before the expected unsealing date,[31] and the moving party bears the burden of establishing the need for renewal of sealing.[32]

[END]

---

[1] *See, e.g.*, *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978) (noting a "general right to inspect and copy public records and documents, including judicial records and documents"); *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 141 (2d Cir. 2016) ("the presumption of access to judicial records is secured by two independent sources: the First Amendment and the common law"); *Hartford Courant v. Pellegrino*, 380 F.3d 83, 91 (2d Cir. 2004) (noting that the public and press have a "qualified First Amendment right to attend judicial proceedings and to access certain documents"); *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 659 (3d Cir. 1991) ("the First Amendment, independent of the common law, protects the public's right of access to the records of civil proceedings"); *Virginia Dept. of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004) ("The right of public access to documents or materials filed in a district court derives from two independent sources: the common law and the First Amendment"); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983) ("the First Amendment and the common

law do limit judicial discretion" "to seal court documents"); *Matter of Continental Illinois Securities Litigation*, 732 F.3d 1302, 1308-09 (7th Cir. 1984) (the public has a First Amendment and common law right of access to judicial records in civil cases); U.S. Ct. of App. 7th Cir. IOP 10 ("Except to the extent portions of the record are required to be sealed by statute or a rule of procedure, every document filed in or by this court (whether or not the document was sealed in the district court) is in the public record unless a judge of this court orders it to be sealed"); U.S. Ct. of App. 9th Cir. R. 27-13(a) ("This Court has a strong presumption in favor of public access to documents . . . the presumption is that every document filed in or by this Court (whether or not the document was sealed in the district court) is in the public record unless this Court orders it to be sealed").

[2] D. Utah Civ. R. 5-3 ("The records of the court are presumptively open to the public. The sealing of pleadings, motions, memoranda, exhibits, and other documents or portions thereof . . . is highly discouraged"); E.D. Va. L. Civ. R. 5 ("Motions to file documents under seal are disfavored and discouraged"); W.D. Tex. CV-5.2 ("Motions to keep pleadings, motions, or other submissions requesting or opposing relief from the court under seal are disfavored"); E.D. Okla. L. Civ. R. 79.1 ("It is the policy of this Court that sealed documents, confidentiality agreements, and protective orders are disfavored"); W.D. Mich. R. 10.6; *see also* W.D.N.C. L Civ. R. 6.1 ("To further openness in civil case proceedings, there is a presumption under applicable common law and the First Amendment that materials filed in this Court will be filed unsealed"); C.D. Ill. R. 5(10) ("The Court does not approve of the filing of documents under seal as a Gen. matter"); *see also* D.C. Colo. L. Civ. R. 7.2 ("unless restricted by statute, rule of civil procedure, or court order, the public shall have access to all documents filed with the court and all court proceedings"); N.D. Flor. Gen. Rules, rule 5.5 ("each case file and each document filed in it is public unless one of these provides otherwise: a statute, court rule, administrative order, or order in the case"); S.D. Ga. LR 7.9 ("[e]xcept as required or allowed by statute or rule, no matter may be placed under seal without permission of the court"); N.D. Ind. L.R. 5-3 ("The clerk may not maintain a filing under seal unless authorized to do so by statute, court rule, or court order"); E.D. Mich. R. 5.3(b) ("[e]xcept as allowed by statute or rule, documents (including settlement agreements) or other items may not be sealed except by court order"); D. Minn. L.R. 5.6 ("A document may be filed under seal in a civil case only as provided by statute or rule, or with leave of court"); N.D. Miss. ("Except as otherwise provided by statute, rule, or order, all pleadings and other materials filed with the court ("court records") become part of the public record of the court"); D. N.H. R. 83.12 ("All filings, orders, and docket text entries shall be public unless sealed by order of court or statute"); W.D.N.C. L. Civ. R. 6.1 ("to further openness in civil case proceedings, there is a presumption under applicable common law and the First Amendment that materials filed in this Court will be filed unsealed"); N.D. Okla. L. Civ. R. 79.1 ("strongly urg[ing] attorneys to present all arguments . . . in unsealed pleadings"); E.D. Tenn. L.R. 26.2 ("Except as otherwise provided by statute, rule, or order, all pleadings and other papers of any nature filed with the Court . . . shall become part of the public record of this court."); D. Vt. R. 5.2 ("Cases or court documents cannot be sealed without a court order. Otherwise, all official files in the court's possession are public documents"); W.D. Wash. L. Civ. R. 5(g) ("There is a strong presumption of public access to the court's files. This rule applies in all instances where a party seeks to overcome the policy and presumption by filing a document under seal"); S.D.W .Va. L.R. Civ. P. 26.4 ("The rule requiring public inspection of court documents is necessary to allow interested parties to judge the court's work product in the case assigned to it"); E.D. Wis. L.R. 79 ("The Court will consider any document or material filed with the Court to be public unless, at the time of filing, it is accompanied by a separate motion"); E.D. Ky. R. 5.7 ("all documents filed in district court should be available for the public to access . . . restricting public access can only occur in limited circumstances, as set forth in this Rule"); *see also* The Sedona Conference, *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases*, 8 SEDONA CONF. J. 141, 153 (2007) (requiring "compelling circumstances" to restrict access); E.D. La. ("No document or other tangible item may be filed under seal without the filing of a separate motion and order to seal"); S.D. W.Va. L.R. Civ. P. 26.4 ("The rule may be abrogated only in exceptional circumstances"); E.D.N.C. R. 79.2 ("No document may be filed under seal except upon entry of an order of the court either acting sua sponte or specifically granting a request to seal that document"); *see also* S.D. Ohio R. 5.2.1 ("Unless permitted by statute, parties cannot file documents under seal without

leave of court"); W.D. Pa. L. CvR 5.2 ("A party wishing to file any document under seal must obtain prior leave of court for each document that is requested to be filed under seal"); N.D. Miss. R. 79.4 ("No document may be filed under seal except upon entry of an order of the court either acting sua sponte or specifically granting a request to seal that document").

[3] E.D. Wis. Gen. L.R. 79 ("The Court will consider any document or material filed with the Court to be public unless, at the time of filing, it is accompanied by a separate motion").

[4] W.D. Wash. L. Civ. R. 5(g) ("a party must explore all alternatives to filing a document under seal" and "only in rare circumstances should a party file a motion, opposition, or reply under seal"); *see also* D.R.I. L.R. Gen. 102(b) ("parties must consider whether redaction would be sufficient"); M.D. Tenn. L.R. 5.03 ("motion must demonstrate compelling reasons to seal documents and that sealing is narrowly tailored"); *see also* D. Utah Civ.R.5-3 (requests to seal must be "narrowly tailored"); 9th Cir. R. 27-13(e) ("the motion shall request the least restrictive scope of sealing and be limited in scope to only the specific documents or portion of documents that merit sealing, for example, propose redaction of a single paragraph or limit the request to a portion of a contract")

[5] *Doe v. Public Citizen*, 749 F.3d 246, 268 (4th Cir. 2014) ("The ability of the public and press to inspect docket sheets is a critical component to providing meaningful access to civil proceedings"); *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 85 (2d Cir. 2004) (holding "state court practice of sealing certain docket sheets, as well as entire case files" violated the First Amendment); *In re State-Record Co., Inc.*, 917 F.2d 124, 129 (4th Cir. 1990) ("[W]e cannot understand how the docket entry sheet could be prejudicial . . . this information, harmless as it may be, has . . . been withheld from the public. Such overbreadth violates one of the cardinal rules that closure orders must be as narrowly tailored as possible.").

[6] 1st Cir. R. 11.0(c)(2) ("Rather than automatically requesting the sealing of an entire brief, motion, or other filing, litigants should consider whether argument relating to sealed materials may be contained in separate supplemental brief, motion, or filing"); *see also* 4th Cir. R. 25(c)(3)(B) ("When sealed material is included in a brief, motion, or any document other than an appendix, two versions of the document must be filed: (i) a complete version under seal in which the sealed material has been distinctively marked and (ii) a redacted version of the same document for the public file"); W.D. Mich. R. 10.6 ("The court strongly resists the sealing of entire civil pleadings, motions or briefs, as it is rare that the entire document will merit confidential treatment"); 10th Cir. R. 25.6(B) ("Redaction is preferable to filing an entire document under seal"); E.D. Va. L. Civ. R.5 ("Anyone seeking to file a document under seal must make a good faith effort to redact or seal only as much as necessary to protect legitimate interests. Blanket sealing is rarely appropriate"); *see also In re Providence Journal Co., Inc.*, 293 F.3d 1, 12 (1st Cir. 2002) ("there is no need to discard the baby with the bath water"; "[w]here a particularized need for restricting public access to legal memoranda exists, that need can be addressed by the tailoring of appropriate relief"); *In re National Prescription Opiate Litigation*, 927 F.3d 919, 939 (6th Cir. 2019) (reversing district court sealing order and requiring district court, before sealing documents, to "explain . . . why the seal itself is no broader than necessary") (internal quotation marks and citations omitted); *Matter of New York Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987) (in a criminal case, "wholesale sealing of motion papers was more extensive than necessary to protect defendants' fair trial rights, their privacy interests, and the privacy interests of third persons"); *U.S. v. Corbitt*, 879 F.2d 224, 228 (7th Cir. 1989) (in criminal case, "the public's right to inspect judicial documents may not be evaded by the wholesale sealing of court papers"); *Tafoya v. Martinez*, 787 F.Appx.501, 506 (10th Cir. 2019) ("Mr Tafoya is correct that sensitive information about the victim should be protected, but his request for wholesale sealing of Volumes IV, V, and VI of the Appendix is overbroad"); *IDT Corp. v. eBay*, 709 F.3d 1220, 1224-25 (under the common law, remanding for district court to "evaluate whether redaction was a reasonable alternative to sealing the entire complaint"); *Baxter Intern., Inc. v. Abbott Laboratories*, 297 F.3d 544, 545 (7th Cir. 2002) (criticizing motion to seal that "did not attempt to separate genuinely secret documents from others in the same box or folder that could be released without risk"); The Sedona Conference, *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases*, 8 SEDONA CONF. J. 141, 156 (2007) (https://thesedonaconference.org/sites/default/files/publications/141-188%20WG2_0.pdf)

("an entire document a party requests to file under seal should not be sealed if, as a practical matter, confidentiality can be adequately protected by more limited means").

[7] D. Haw. L.R. 5.2 (motion must "state that a redacted version of the document will be filed in the public record concurrent with the motion to seal"); *see also* E.D. Mich. L.R. 5.3(b) (requiring parties to file "redacted versions of documents to be sealed"); N.D.N.Y. L.R. 83.13(a) ("[t]he party should also attach to the application or file separately a redacted version of any document that is to contain the sealed material"); D. Utah CivR 5-3 ("[u]nless otherwise ordered by the court, a party must first publicly file a redacted version of the Document"); N.D. Cal. L.Civ.R. 79-5(d)(1)(C) (requiring parties to file a "redacted version of the document that is sought to be filed under seal").

[8] S.D. Ga. L.R. 79.7.

[9] *Union Oil Co. of Cal. v. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000) ("[I]t should go without saying that the judge's opinions and orders belong in the public domain."); *Doe v. Public Citizen*, 749 F.3d 246, 267 (4th Cir. 2014) (same); *Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.,* 26 F. Supp. 2d 606, 612 (S.D.N.Y. 1998) ("There is a particularly strong presumption of public access to [judicial] decisions . . . The Court's decisions are adjudications — direct exercises of judicial power the reasoning and substantive effect of which the public has an important interest in scrutinizing"); 6th Cir. R. 25(h) ("An order or opinion is generally part of the public record"); 9th Cir. R. 27-13(j) ("This Court will presumptively file any disposition publicly, even in cases involving sealed materials"); Fed. Cir. R. IOP 9(7) ("all opinions and orders, precedential and nonprecedential, are public records of the court and shall be accessible to the public"); *see also* The Sedona Conference, *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases*, 8 SEDONA CONF. J. 141, 159 (2007) (https://thesedonaconference.org/sites/default/files/publications/141-188%20WG2_0.pdf) (the "qualified right of access to judgments, judicial opinions and memoranda, and orders issued by a court that can only be overcome in compelling circumstances").

[10] *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 142 (2d Cir. 2016) ("where documents directly affect an adjudication or are used to determine litigants' substantive legal rights, the presumption of access is at its zenith, and thus can be overcome only by extraordinary circumstances") (cleaned up); *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 661 (3d Cir. 1991) ("the right of public access applies to the material filed in connection with a motion for summary judgment," and collecting cases); *Parson v. Farley*, 352 F. Supp. 3d 1141, 1153 (N.D. Okla. 2018) (if a document is "attached to a dispositive motion," that "renders it highly relevant to the adjudicative process").

[11] *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 142 (2d Cir. 2016).

[12] S.D. Ind. L.R. 5-11 (requiring statement of "why document should be kept sealed from the public despite its relevance or materiality"); *see also* The Sedona Conference, *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases*, 8 SEDONA CONF. J. 141, 153 (2007) (https://thesedonaconference.org/sites/default/files/publications/141-188%20WG2_0.pdf) (there is a qualified right of access to "documents filed with a court that are relevant to adjudicating the merits of a controversy"); *US v. Amodeo*, 71 F.3d 1044, 1049-50 ("the weight to be given the presumption of access must be governed by the role of the material at issue in the exercise of Article III judicial power and the resultant value of such information to those monitoring the courts"); *Ctr. for Auto Safety v. Chrysler Grp., LLC,* 809 F.3d 1092, 1099 (9th Cir. 2016) (focusing on whether the information for which sealing is sought is "more than tangentially related to the underlying cause of action"); *Leucadia, Inc. v. Applied Extrusion Tech, Inc.*, 998 F.3d 157, 165 (3d Cir. 1993) ("there is a presumptive right of access to pretrial motions of a nondiscovery nature, whether preliminary or dispositive, and the material filed in connection therewith"); *Romero v. Drummond Co., Inc.*, 48 F.3d 1234, 1246 (11th Cir. 2007) (focusing on whether information at issue "is related . . . to the merits of the underlying controversy" or to "the conduct of the court"); *Matter of Krynicki*, 983 F.2d 74, 75 (7th Cir. 1992) ("[i]nformation that is used at trial or otherwise becomes the basis of decision enters the public record") (Easterbrook, J., in chambers); *Baxter Intern., Inc. v. Abbott Laboratories*, 297 F.3d 544, 548 (7th Cir. 2002) (First Amendment right of access applies to "materials that formed the basis of the parties' dispute and the district court's resolution"); *Romero v. Drummond Co. Inc.*, 480 F.3d 1234, 1246 ("[a] motion that is presented to the court to invoke its powers or affect its

decisions, whether or not characterized as dispositive, is subject to the public right of access") (internal quotation marks and citations omitted).

[13] M.D. Tenn. L.R.5.03 ("even if unopposed, must specifically analyze in detail, document-by document, the propriety of secrecy, providing factual support and legal citations"); D.C.Colo.L. Civ. R.7.2 (stipulations are insufficient to seal the record); D. Conn. R. 5.3(e) (also prohibiting sealing by stipulation); N.D. Miss. R. 79.4 ("no document may be sealed merely by stipulation of the parties"); D.U.Civ.R5-3 ("stipulation or blanket protective order that allows a party to designate documents as sealable will not suffice"); E.D. Va. L. Civ. R.5 (agreement of the parties is not sufficient justification to seal the record"); 9th Cir. R. 27-13(a) ("The Court will not seal a case or document based solely on the stipulation of the parties"); *Leucadia, Inc. v. Applied Extrusion Technologies, Inc.*, 998 F.2d 157, 165 (3d Cir. 1993) (noting need "to protect the legitimate public interest in filed materials from overly broad and unjustifiable protective orders agreed to by the parties for their self-interests"); *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 252 (4th Cir. 1988) ("once the documents are made part of a dispositive motion, such as a summary judgment motion, they lose their status of being raw fruits of discovery") (internal quotation marks and citations omitted).

[14] "'Once the cat is out of the bag, the ball game is over.'" *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 n.11 (2d Cir. 2004). "Secrecy is a one-way street: Once information is published, it cannot be made secret again." *In re Copley Press, Inc.*, 518 F.3d 1022, 1024 (9th Cir. 2008) (so stating in a criminal case); *see also Gambale*, 377 F.3d at 144 ("We simply do not have the power, even if we were of the mind to use it if we had, to make what has thus become public private again. The genie is out of the bottle, albeit because of what we consider to be the district court's error. We have not the means to put the genie back.) (citations omitted); *SmithKline Beecham Corp. v. Pentech Pharms., Inc.*, 261 F. Supp. 2d 1002, 1008 (N.D. Ill. 2003) (refusing to redact information that had previously been disclosed in a court opinion because "the cat is out of the bag"); *Constand v. Cosby*, 833 F.3d 405, 410 (3d Cir. 2016) ("appeals seeking to restrain further dissemination of publicly disclosed information is moot" because "[p]ublic disclosure cannot be undone") (internal quotation marks and citations omitted); *see also Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 834-835 ("[n]o meaningful relief was available" where "[t]he information that Appellants [sought] to keep private ha[d] been publicly available on the Internet in hard copy for nearly five years" and "unidentified" people "may have retained copies or reproduced the disclosures"); Charles Alan Wright et al., 13C *Federal Practice & Procedure* § 3533.3.1 n.35 (3d ed. 2008) (collecting cases where relief was denied because the information had already been made public).

[15] E.D. Wis. Gen. L.R. 7.9 ("must be publicly filed"); *see also* 1st Cir. R. 11.0(c)(2) ("A motion to seal . . . should not itself be filed under seal") E.D. Va. Loc. Civ. R. 5 (requiring a "non-confidential description of what material must be filed"); W.D.N.C. L. Civ. R. 5.1 (requiring a "non-confidential description of material sought to be sealed"); E.D. La. L.R. 5.6 (requiring a "non-confidential memorandum"); C.D. Cal. LR 79-6 ("motion must be "docketed in the public record"); The Sedona Conference, *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases*, 8 SEDONA CONF. J. 141, 161 (2007) (https://thesedonaconference.org/sites/default/files/publications/141-188%20WG2_0.pdf) ("Notice of motions to seal and supporting materials should be reflected in the publicly available docket")

[16] E.D. Wis. Gen. L.R. 7.9 ("must . . . describe the Gen. nature of the information withheld"); *see also* W.D. Va. R. 9 ("written motion must include . . . a generic, non-confidential information of the doc to be sealed") ; D.S.C. R. 5.03 (motion must be accompanied by a non-confidential description of the documents"); D.N.J. R. 5.3 (movants must state the "nature of materials or proceedings at issue"); D. Mont. R. 5.2 (motion to seal must be "filed in the public record"); N.D. Miss. R. 79.4 (requires "non-confidential description of what is to be sealed"); The Sedona Conference, *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases*, 8 SEDONA CONF. J. 141, 161 (2007) (https://thesedonaconference.org/sites/default/files/publications/141-188%20WG2_0.pdf) ("Notice of motions to seal and supporting materials should be reflected in the publicly accessible docket")

[17] M.D. Tenn. L.R. 5.03 ("motion must demonstrate compelling reasons to seal documents and that sealing is narrowly tailored"); *see also* E.D. Okla. L. Civ. R. 79.1 ("relief sought shall be narrowly

tailored to serve the specific interest sought to be protected"); D.N.J. R. 5.3 (requiring a "clearly defined and serious injury that would result if the relief sought is not granted"); E.D. Mich. R. 5.3(b) ("Court may grant a motion to seal only upon a finding of compelling reason why certain documents or portions thereof should be sealed"); *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (under the common law, "compelling reasons" required to seal judicial records); *Flynt v. Lombardi*, 885 F.3d 508, 511 (applying "compelling reasons" standard under common-law right of access)

[18] D. Me. R. 7(A) ("motion shall propose specific findings as to the need for sealing"); 3d Cir. R. 106.0(a) ("the party must file a motion setting forth with particularity the reasons why sealing is deemed necessary").

[19] M.D. Tenn. L.R.5.03 ("even if unopposed, must specifically analyze in detail, document-by document, the propriety of secrecy, providing factual support and legal citations"); *see also See* W.D. Tex. CV-5.2 ("sealing motion must . . . state the factual basis for the requested sealing order"); S.D. W.Va. L.R. Civ. P. 26.4 (requiring "a discussion of the propriety of sealing, giving due regard to the parameters of common law and First Amendment rights of access as interpreted by the Supreme Court and our Court of Appeals"); *see also* W.D. Wash. L. Civ. R. 5(g) (requiring "a specific statement of applicable legal standard and reasons for keeping a document under seal, with evidentiary support from declarations where necessary"); E.D. Va. L.R. 5 (requiring "references to governing case law" and "an analysis of appropriate standard for that specific filing" and "a description of how that standard has been satisfied"); D.S.C. R. 5.03 ("memorandum must . . . state the reasons sealing is necessary" and "address the factors governing sealing of documents reflected in controlling case law"); D.S.D. L.R. 7.1 (motion must include "proposed reasons supported by specific factual representations"); M.D. Pa. Gen. R. 5.8 (motion to file under seal must include "a statement of legal and factual justifications for the proposed order"); E.D. Okla. L. Civ. R. 79.1 ("motion must contain sufficient facts to overcome the presumption in favor of disclosure" and sealed documents "may be approved by the Court only upon a showing that the legally protected interest of a party, non-party, or witness outweighs the compelling public interest in disclosure of records"); W.D.N.C. L. Civ. R. 6.1 (requiring a "statement indicating why sealing is necessary"); M.D.N.C. L.R. 5.4 (brief must "address the factors governing sealing of documents reflected in governing case law"); N.D.N.Y. R. 83.13 (requires movant to "set[] forth the reason(s) that the referenced material should be sealed under the governing legal standard"); D.N.H. R. 83.12 (motion must provide "factual and legal basis" for sealing); D. Mont. R. 5.2 (any person who files a document under seal must "certify[y] that sealing is appropriate to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances and with due regard to the public's right of access"); D. Md. R. 105.11 ("motion shall include . . . proposed reasons supported by specific factual representations to justify the sealing"); E.D. La. L.R. 5.6 (requiring "reference to governing case law"); S.D. Ind. L.R. 5-11 (brief in support must include "how document satisfies applicable authority"); C.D. Ill. R. 5.(10) ("motion must include an explanation of how the document meets legal standards for filing sealed documents"); D. Haw. L.R. 5.2 ("motion must . . . set forth the factual basis for sealing a document, specify applicable standard for sealing and how that standard has been met"); S.D. Fla. R. 5.4 ("motion must set forth 'factual and legal basis for departing from the policy that Court filings are public"); D. Colo. L. Civ. R. 7.2 (motion must "identify a clearly defined and serious injury that would result if access is not restricted"); E.D. Cal. R. 141 (requiring motion to "set forth the statutory or other authority for sealing")

[20] 10th Cir. R. 25.6(A)(2) (motions to seal must "explain why the sensitive information cannot be reasonably redacted in lieu of filing the entire document under seal"); *see also* 4th Cir. R. 25(c)(2)(B)(ii) ("Any motion to seal filed with the Court of Appeals shall . . . explain why a less drastic alternative to sealing will not afford adequate protection"); S.D. W.Va. L.R. Civ. P. 26.4 ("reasons why alternatives to sealing such as redaction are inadequate"); W.D. Va. R. 9 (requiring parties seeking to seal the record to state "why alternatives are inadequate"); D.S.D. L.R. 7.1 (motion must include "an explanation why alternatives to sealing would not provide sufficient protection"); W.D.N.C. L. Civ. R. 6.1 ("motion must include "statement indicating . . . why there are no alternatives"); M.D.N.C. L.R. 5.4 (brief must "explain for each document or group or documents why less drastic alternatives to sealing will not afford adequate protection"); D. Mont. R. 5.2 (motion must "state why it is not feasible to

redact"); D.Md. R. 105.11 ("motion shall include . . . an explanation of why alternatives will not provide sufficient protection"); D. Colo. L. Civ. R. 7.2 (motion must "explain why alternatives aren't practicable")

[21] S.D. W.Va. L.R. Civ. P. 26.4 ("requested duration of proposed seal"); *see also* E.D. Va. L.R.5 (requiring time period for which seal is requested); W.D.N.C. L. Cv. R. 6.1 (requiring "statement indicating how long it should be sealed"); M.D.N.C. L.R. 5.4 (brief must "state whether permanent sealing is sought, and if not, state time period"); D.N.H. 83.12 (motion must "propose[] a duration"); N.D. Miss. R. 79.4 (must state "time period sought for sealing"); D. Me. R. 7(A) ("motion shall propose specific findings as to . . . the duration the document(s) should be sealed"); E.D. La. L.R. 5.6 (requiring "statement of the period of time the party seeks to have the matter maintained under seal"); E.D. Cal. (requiring motion to set forth "the requested duration")

[22] D. Colo. L. Civ. R. 7.2 (motions shall be posted on court website the day after they are filed); *see also* E.D. La. L.R. 5.6 ("the clerk must provide public notice by docketing the motion as set forth in the non-confidential description")

[23] 4th Cir. R. 25(c)(2)(C) ("A motion to seal filed with the Court of Appeals will be placed on the public docket for at least 5 days before the Court rules on the motion"); *see also* D.Md. R. 105.11 ("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"); E.D. Va. L. Civ. R. 5 ("notice shall inform parties and non-parties that they may submit memoranda in support or opposition within (7) days"); D. Colo. L. Civ. R. 7.2 (3-day rule); The Sedona Conference, *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases*, 8 SEDONA CONF. J. 141, 170 (2007) (https://thesedonaconference.org/sites/default/files/publications/141-188%20WG2_0.pdf) ("The court should hear and decide motions to seal admitted trial exhibits after other parties have had time to oppose the request, or non-parties have had time to request leave to intervene to oppose the request. Absent the most exigent circumstances, trial courts should deny any request for denial of access that is not made in time to allow such notice"); *Doe v. Public Citizen*, 749 F.3d 246, 272 (4th Cir. 2014) ("the law in this Circuit requires a judicial officer to . . . provide public notice of the sealing request and a reasonable opportunity for the public to voice objections")

[24] W.D.N.C. L. Civ. R.6.1; *see also* The Sedona Conference, *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases*, 8 SEDONA CONF. J. 141, 165 (2007) (https://thesedonaconference.org/sites/default/files/publications/141-188%20WG2_0.pdf) ("The trial court should also make findings of fact and conclusions of law adequate to justify the closure").

[25] *See* The Sedona Conference, *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases*, 8 SEDONA CONF. J. 141, 165 (2007) (https://thesedonaconference.org/sites/default/files/publications/141-188%20WG2_0.pdf) ("Any restriction on public access ordered by the Court should be narrowly tailored").

[26] E.D. Cal. L.R. 141(d) ("the Court will file in the publicly available case file an order granting or denying the Request" to seal); *see also* W.D. Va. L.R. 9 (requiring that any order to seal must be docketed).

[27] C.D. Cal. LR 79-6; *see also* S.D. Ind. L.R. 5-11; D.R.I. LR Gen. 102(b); D.U.Civ.R. 5-3 ("the court may direct the unsealing of a document, with or without redactions, after notice to all parties and an opportunity to be heard")

[28] W.D. Va. R. 9 ("any person or entity, whether a party or not, may object to a motion to seal a document or may file a motion to unseal a document previously sealed"); *see also* W.D. Wash. L. Civ. R. 5(g) ("A non-party seeking access to a sealed document may intervene in a case for the purpose of filing a motion to unseal the document"); W.D.N.C. L. CvR 6.1 ("nothing in this rule limits the right of a party, intervenor, or non-party to file a motion to unseal"); S.D. Ind. L.R. 5-11 ("A member of the public may challenge at any time the maintenance of a document filed under seal"); D.Conn. R. 5(3)(e) ("Any non-party who either seeks to oppose a motion to seal or seeks to unseal a case or document subject to a sealing order, may move for leave to intervene in a civil action for the limited purpose of pursuing that relief. Motions for leave to intervene for purposes of opposing sealing, objections to motions to seal, and motions to unseal shall be decided expeditiously by the Court"); C.D. Cal. L.R. 79-

7 ("a nonparty seeking access may intervene in a case for the purpose of filing an application for disclosure of the document"); S.D. Ala. L.R. 5.2 ("Any person or entity, whether a party or not, may object to a motion to seal a document or may file a motion to unseal a document previously sealed"); The Sedona Conference, *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases*, 8 SEDONA CONF. J. 141, 162 (2007) (https://thesedonaconference.org/sites/default/files/publications/141-188%20WG2_0.pdf)("Nonparties may seek leave to intervene in a pending case to oppose a motion to seal, to have an existing sealing order modified or vacated, or to obtain a sealing order")

[29] *See, e.g.*, *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir. 1990) (allowing intervention three years after a case settled because "intervention was not on the merits, but for the sole purpose of challenging a protective order"); *Blum v. Merrill Lynch Pierce Fenner & Smith Inc.*, 712 F.3d 1349, 1354 (9th Cir. 2013) (five years); *EEOC v. Nat'l Children's Ctr.*, 146 F.3d 1042, 1047 (2d Cir. 1998) (two years); *Mokhiber v. Davis*, 537 A.2d 1100, 1105 (D.C. 1988) (four years, interpreting the D.C. equivalent of Fed. R. Civ. P. 24).

[30] N.D. Tex. L.R. 79.3 ("all sealed documents maintained on paper will be deemed unsealed 60 days after the final disposition of a case"); *see also* E.D. Pa. R. 51.5 (providing for unsealing "two years after the conclusion of the civil action"); W.D.N.C. L. Civ. R. 6.1 ("unless permanent sealing was ordered by the court, any sealed case file or documents may be subject to unsealing by the Court upon the closing of the case"); D. Kan. R. 79.4 (unsealing "10 years after entry of a final judgment or dismissal unless the court otherwise ordered at the time of such judgment or dismissal"); S.D. Flor. R. 5.4 ("[u]nless otherwise ordered by the Court for good cause shown, no order sealing any item pursuant to this section shall extend beyond one year"); N.D. Cal. R. 79-5 (automatic unsealing after 10 years); 3d Cir. R. 106.0(c)(2) (presumption of unsealing "without notice to the parties[] five years after the conclusion of the case")

[31] D. Kan. R. 79.4 ("any party may seek to renew the seal for an additional 10 years or less by filing a motion within 6 months of the time the seal is to be lifted")

[32] D. Kan. R. 79.4 ("There is a rebuttable presumption that the seal will not be renewed. The moving party bears the burden to establish an appropriate basis for renewing the seal.")