

RULE 10. PROCEDURES FOR HANDLING RESTRICTED DOCUMENTS

(a) Definitions

The following definition shall apply in interpreting this rule: (1) A "suppressed document" is a document or an exhibit filed in a proceeding in this Court to which access has been restricted either by a written order, including a protective order, or by local Criminal Rule 1.04 (e).

(2) A "sealed document" is a suppressed document which the court has directed is to be maintained within a sealed enclosure such that access to the document requires breaking the seal of the enclosure.

(3) A "document awaiting expunction" is a document or an exhibit in a proceeding which the court has ordered held for possible expunction pursuant to 21 U.S.C. 844(b)(2) but for which the period for holding prior to final destruction has yet to pass.

(4) A "restricted document" is a suppressed document or a document awaiting expunction.

(5) A "protective order" is an order which provides that certain documents or exhibits to be filed with the court at a future date may be filed as suppressed or sealed documents as determined by the order.

(b) Clerk to maintain secure filing area for restricted documents

The clerk shall maintain restricted documents separately from the files of documents to which access has not been restricted. Any area used to store restricted documents 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.

(c) Order suppressing documents

The court may on written motion and for good cause shown enter an order directing that one or more documents to be used in a proceeding be suppressed. The prohibition against filing discovery materials established by Rule 18 of these Rules shall apply to materials covered by a protective order. The order shall also specify the persons, if any, who are to have access to the documents without further order of court. In addition the order shall specify one of the following:

(1) that the document is to be returned to a person specified in the order in the same fashion as is provided for in Rule 33 c of these Rules concerning the return of exhibits, provided that if the person to

whom it is to be returned fails to remove the document after notice, it shall be destroyed; or,

(2) the date or conditions under which the document is to be un-suppressed and made part of the public file of the proceedings; or,

(3) that the clerk is to bring the matter of the disposition of the suppressed document to the court's attention following the closing of the case and either (i) the expiration of the time to file a notice of appeal, if no appeal was filed, or (ii) if an appeal was filed, the filing of the mandate or final order from the court of appeals if the case is not reopened as a result of the terms of the mandate or order.

The minute order accompanying the order entered pursuant to this section shall set forth any qualifications as to access and disposition of the documents contained in the order.

(d) Filing of suppressed documents

The clerk shall designate in writing deputies authorized to accept suppressed documents either from chambers or for filing pursuant to protective orders. Any documents tendered for filing under the terms of a protective order shall be subject to the prohibition against filing discovery materials provided for in Rule 18 of these Rules. Where the materials tendered under protective order are tendered in a sealed enclosure, the following statement shall be written on the enclosure: "This is not material relating to discovery."

Materials accepted for filing as suppressed shall be maintained in a secure area until collected by one of the deputies designated in section b of this Rule. 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.

(e) Docketing suppressed documents

Where a suppressed document is filed in a proceeding for which a docket is maintained, an entry will be made on the docket indicating that a suppressed or sealed document has been filed, but no further description will be made on the docket. Orders and minute orders directing the suppression or sealing of a document will be docketed in the usual manner.

(f) Sealed documents

Where a document is ordered to be sealed, it is to be delivered for filing pursuant to section d of this Rule 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 suppressed materials pursuant to section b of this Rule will forthwith deliver the document to the courtroom deputy assigned to the judicial officer to whose calendar the proceedings in 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 suppressed 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 suppressed materials pursuant to section b of this Rule 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. If the person wishes to break the seal and inspect the document, he or she 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 resealing of the document.

(g) Maintenance of grand jury documents

The clerk shall maintain documents arising out of or connected with grand jury proceedings as suppressed documents subject to the provisions of this Rule, Rule 1.04 of the Criminal Rules of this Court, and Rule 6 of the Federal Rules of Criminal Procedure. Such documents shall be maintained for not less than ten years following the date of filing or entry if not related to a specific grand jury proceeding. Documents in proceedings assigned a grand jury number shall be maintained for at least ten years following the commencement of the proceeding as indicated by the GJ number.

(h) Destruction of grand jury documents

From time to time the clerk may petition the Chief Judge for leave to destroy documents arising out of or connected with grand jury proceedings. The petition shall contain a list of the GJ numbers for documents arising out of specific proceedings and a reasonable description of any documents other than those arising out of specific proceedings for which permission to destroy is sought. The clerk shall provide the United States Attorney with a copy of the petition. If the United States Attorney wishes to defer the destruction of some or all of the documents referred to in the petition, a written response to the petition setting forth the reasons for the requested deferral must be filed with the Chief Judge within fourteen days of the date the copy of the clerk's petition was transmitted to the United States Attorney. The Chief Judge may grant the petition for destruction, or direct that consideration of the destruction of some or all of the items specified in the petition be deferred for an additional year at the end of which the clerk may again petition for authority to destroy the documents.

The petition for leave to destroy the documents, the response of the United States Attorney, and any order of the Chief Judge dealing with the petition and response are, except as otherwise ordered, suppressed documents.

(i) Disposition of non-grand jury suppressed documents

When a case is closed in which an order was entered pursuant to section c of this Rule, the clerk shall, in compliance with the terms of the order, either return the suppressed document to the specified party, or un-suppress the document, or bring the document to the attention of the court for a determination of the disposition of the document. Where the latter action is to be taken, the court will enter an order specifying that the document is to be disposed of in one of the following ways:

- (1) the clerk will return the document to a specified person in the same fashion as is provided for in Rule 33 c of these Rules concerning the return of exhibits; or,
- (2) the document will be un-suppressed and made part of the public record of the proceedings; or,
- (3) where the document is in a case belonging to a class of cases in which records of proceedings are destroyed a specified number of years after closing pursuant to the *Schedule for the Disposition of Court Records*, the clerk will maintain it as suppressed until the record of proceedings is destroyed and thereafter destroy it; or

(4) where the document is in a case belonging to a class of cases in which the records of proceedings are permanently retained pursuant to the *Schedule for the Disposition of Court Records* but is not a document of the class normally made part of the permanent record of proceedings, the clerk will maintain it as a suppressed document for an additional ten years and then destroy it; or,

(5) where the document is in a case belonging to a class of cases in which records of proceedings are permanently retained pursuant to the *Schedule for the Disposition of Court Records* and is a document of the class normally made part of the permanent record of proceedings, the clerk will maintain it as a suppressed document for a period not exceeding twenty years at the end of which the document shall be un-suppressed and made a part of the public record of the proceedings; or

(6) where the document is in a case belonging to a class of cases in which records of proceedings are permanently retained pursuant to the *Schedule for the Disposition of Court Records* and is a document of the class normally made part of the permanent record of proceedings, the court will make a written finding that the document should never be un-suppressed and direct the clerk to maintain it as a suppressed document for a period not exceeding twenty years and, thereafter, to destroy it.

(j) Sanctions

Employees of the court are expressly forbidden to perform any of the following acts:

(1) entering an area designated for the storage of restricted documents without the authorization required by section b of this Rule;

(2) assisting any person who is not authorized access pursuant to section b of this Rule to an area designated for the storage of restricted documents to gain or to attempt to gain access to such an area;

(3) accepting for filing any suppressed document when not specifically authorized to do so pursuant to section d of this Rule;

(4) permitting any person who is not specifically authorized to have access to a restricted document to examine such a document, or to provide such a person with a copy of such a document; and

(5) leaving a restricted document unattended in an area other than one secured pursuant to section b or d of this Rule such that persons not authorized access to the document could readily gain access to it.

Employees of the court who knowingly perform any of these acts shall be subject to disciplinary action, including dismissal. Persons who are not employees of the court who seek to coerce or induce any employee of the court to perform any of these acts shall be punished by contempt of court.

(Adopted, effective Feb. 23, 1987)