

NEWS FROM U.S. DISTRICT COURT

July 29, 2010

This newsletter is being sent using a new feature in CM/ECF that allows the Court to send notices directly to counsel from the system. Please let me know if you prefer the old way.
Joe Haas

MOTIONS TO SEAL: As CM/ECF has evolved, our internal procedures have evolved as well. The Clerk's Office has utilized a number of procedures to handle motions to seal and the documents that counsel are requesting to have sealed; even using different procedures for civil and criminal cases. We now have a system in place that we think will work for all case types. One thing that has been consistent is that we do not allow sealed documents to be filed electronically. All motions to seal and the documents to which they refer still need to be brought to the Clerk's Office for filing. From now on, the Clerk's Office will file the motion to seal as a public document which will be accessible by all counsel. The attachment to the motion (the subject of the motion) will not be accessible by any counsel in the case. If the court grants the motion to seal, the Clerk's Office will re-file the attachment under seal using a new document number. Electronic notice of the filing of the sealed document will be sent but counsel will not be able to access the sealed document. If the court denies the motion to seal, the Clerk's Office will take no further action with respect to the attachment unless ordered to do so by the court.

MOTIONS v. STIPULATIONS: With electronic filing there has been confusion regarding motions and stipulations. Attorneys often file documents captioned as "Stipulation" or "Stipulation and Order" when in reality these documents are motions. Black's Law Dictionary defines a motion as an application requesting a court to make a specified ruling or order. A stipulation, by contrast, does not require court action. If you fail to docket a pleading as a motion and instead select the Stipulation event found under the heading Other Documents and under Other Filings, the pleading will not appear on the court's pending motion report. The proper way to file any request seeking court action is to select an event under the heading Motions found under Motions and Related Filings.

PROTECTIVE ORDERS: Fed.R.Civ.P. 26 (c) provides the court with a variety of alternatives when it comes to protective orders. In many cases the court enters the proposed order that was filed by counsel with language that is based on section (H) of the rule. These proposed orders frequently require that materials filed subject to the protective order be filed in sealed envelopes endorsed with the case caption, a generic description of the contents and the words "CONFIDENTIALSUBJECT TO COURT ORDER." In addition, the proposed order may include a procedure that the producing party may follow to seek the return of the material at the conclusion of the case. It might be useful for counsel to know what happens to documents filed with the Clerk in paper form. Upon filing, the Clerk's Office opens the sealed envelope to scan and file the documents in CM/ECF. The documents are filed as sealed documents so only court users have access. Secondly, because the court no longer stores paper documents, the originals are shredded. If you want the material returned, please make that request at the time of filing. In that case, your motion, proposed order and your caption on the envelope should indicate that you would like the material returned after it is scanned.