

FILING UNDER SEAL

49.01: *Filing Documents under Seal*. The following procedures are mandatory and apply to any request to file documents under seal. Failure to follow the procedures set forth below 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 or order, to restrict access to documents which are not filed with the Court.

- (A) Pre-authorized filing under seal
 - (1) If a governing rule, statute, or order provides for filing documents under seal, the party filing such documents shall designate in the caption that the document is to be filed under seal and shall identify the rule, statute, or order which authorizes the filing under seal.¹ If the party is relying on an order not entered in the case at issue, a copy of that order shall be attached.
 - (2) *Ex parte* applications for subpoenas under Fed. R. Crim. P. 17(b) are subject to the automatic sealing provisions under the procedures of the preceding paragraph.
- (B) In all other cases, counsel shall follow the rules set out below.
 - (1) A party seeking to file documents under seal shall file and serve a “Motion to Seal” accompanied by a memorandum and the attachments set forth below in subparagraphs (2) and (3). The memorandum shall:
 - (a) identify, with specificity, the documents or portions thereof for which sealing is requested;
 - (b) state the reasons why sealing is necessary;
 - (c) explain (for each document or group of documents) why less drastic alternatives to sealing will not afford adequate protection;
 - and (d) address the factors governing sealing of documents reflected in controlling case law. *E.g., Ashcroft v. Conoco, Inc.*, 218 F.3d 288

¹ A number of criminal rules and statutes require or authorize filing under seal. These include but are not limited to: (1) Fed. R. Crim. P. 6(e) (concerning material relating to grand jury proceedings or investigations); (2) 18 U.S.C. § 2510 *et seq.* (dealing with court-approved electronic surveillance); (3) 18 U.S.C. app 3 §§1-16 (Classified Procedures Act, or “CIPA”); (4) 50 U.S.C. § 1801 *et seq.* (Foreign Intelligence Surveillance Act or “FISA”).

(4th Cir. 2000); and *In re Knight Publishing Co.*, 743 F.2d 231 (4th Cir. 1984).

- (2) The motion shall be accompanied by (a) a non-confidential descriptive index of the documents at issue and (b) counsel's certification of compliance with this rule.
- (3) A separately sealed attachment labeled "Confidential Information to be Submitted to Court in Connection with Motion to Seal" shall be submitted with the motion. The sealed 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.
- (4) 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.