

Judge Phyllis J. Hamilton
Courtroom 3, 3rd Floor

Kelly Collins, Courtroom Deputy
(510) 637-1296

STANDING ORDER REGARDING PROTECTIVE ORDERS AND ESI ORDERS

Proposed Protective Orders

1. The court will not approve a broad protective order that essentially gives each party carte blanche to decide which portions of the record will be sealed and, therefore, not made part of the public record. See Civ. L.R. 79-5; Citizens First Nat'l Bank v. Cincinnati Ins. Co., 178 F.3d 943 (7th Cir. 1999). Fed. R. Civ. P. 26(c) as well as the local rules require the court to determine whether good cause exists to seal any portion of the record. Therefore, all proposed protective orders submitted for court approval which contain provisions for filing documents under seal, must also provide a procedure for obtaining the sealing order that complies with Civ. L.R. 79-5.

Redline Comparisons

2. This district maintains a model stipulated protective order and a model order regarding the discovery of electronically stored information ("ESI").¹ When filing a proposed stipulated protective order or ESI order, the parties must also file a redline comparison of their proposed order against its respective model order. The subject redline must clearly show all tracked changes from the model order. Additionally, as required for all proposed orders, the parties must also send a Microsoft Word version of their order to pjhpo@cand.uscourts.gov.

Use of Confidential Documents at Trial

3. Any document will lose its confidential status if offered as an exhibit at trial, absent a showing of the "most compelling" reasons. See Manual for Complex Litigation § 21.432; Foltz v. State Farm Mut. Automobile Ins. Co., 331 F.3d 1122, 1135-36 (9th Cir. 2003). This rule applies despite any provision of a protective order to the contrary or any prior confidentiality designation assigned to such a document. Any party believing that a document, portions thereof, or witness testimony should remain confidential during trial must request in advance of trial that the court take extraordinary measures to protect the confidentiality of that information. The request must be made in writing and filed no later than the date on which pretrial papers are due.

¹ <https://www.cand.uscourts.gov/forms/model-protective-orders/>
<https://cand.uscourts.gov/forms/e-discovery-esi-guidelines/>