

Motions to Seal Documents Regarding Expert Witnesses and Other Services in Dependency and Termination Cases Pending Fact Finding

Policy for Applying State v. McEnroe to Motions to Seal Expert Orders:

The Supreme Court has held that, when the court denies a motion to seal, the moving party may withdraw the documents. Therefore, the moving party must receive notice, before the documents are filed in the court file, that the motion to seal has been denied. Currently, the great majority of these documents are first sent to the Office of Public Defense (OPD). OPD decides whether or not to appoint or fund the service. If a motion to seal accompanies the pleadings, OPD sends the proposed order to seal and proposed protective order, if any, and the motion and declaration for the services and OPD's decision to the Clerk's Office. The Clerk's Office reviews the documents to ensure that the proposed seal order correctly identifies the documents sought to be sealed. The Clerk's Office then sends the documents to Chief Criminal or Chief Juvenile for a decision on the motion to seal. If the court grants the motion to seal, the motion and orders are filed. If the court grants a protective order, the bailiff scans the order and e-mails it to defense counsel who is responsible for arranging for service on the county.

Following McEnroe the process will be:

1. If no motion to seal is sought, defense presents to OPD a motion and proposed order for expert or other services other than counsel, CrR 3.1(f), LCrR 3.1(f), JuCR 9.3. If the proposed order is accompanied by a motion to seal, defense sends the documents first to the Chief Criminal Judge or Chief Juvenile Judge. Proposed orders with motions to seal must be submitted by email to the Chief Criminal Judge or Chief Juvenile Judge unless the attorney receives specific permission from the judge to submit as a hard copy; the proposed order to seal should be the first document in the e-mailed packet. Counsel must assure that the name of the document contained in the proposed order to seal and a proposed protective order, if any, must exactly match the name of the document in the caption and the date submitted; failure to do so may result in the clerk not sealing the documents in spite of an order to seal.
2. If the Chief Criminal Judge or Chief Juvenile Judge grants the proposed order to seal, the judge will print and sign the order, file the order to seal and send, via encrypted e-mail, a copy of the order to seal and the motion and proposed order for expert services to OPD (OPDexpertservices@kingcounty.gov); defense counsel will be copied by encrypted e-mail. OPD will, upon ruling on the motion for services, send all of the documents, including the copy of the order to seal, to the Clerk's Office for procedural review and filing. If the Clerk's Office detects an error, the Clerk's Office may return the document to the Chief Judge.
3. If the Chief Criminal Judge or Chief Juvenile Judge denies the proposed order to seal, the court will file the order denying sealing and return the motion and a copy of the order denying sealing to defense counsel. Defense may then submit the pleadings to OPD without a proposed order to seal or submit an amended motion and proposed order with a motion to seal to the Chief Judge.