



Submission of the Claim File: Seal or Redact?

For most insurance litigation, the majority of the evidence used by both sides comes from the claim file, also known as the administrative record in ERISA cases. The claim file represents the insurance carrier's written record of its handling and processing of an insurance claim. Obviously, this information is highly relevant whenever coverage or a claim is disputed. Moreover, in the case of life, health, or disability insurance cases, the claim file will also be full of personal and confidential information such as medical records and social security numbers.

The question becomes how best to utilize the information in the claim file during the course of litigation while still addressing the privacy concerns of a public court record. Generally, there are two courses of action. The first is to go through the entire record and redact any personal information, also known as "personal identifiers." See [Federal Rule of Civil Procedure 5.2\(a\)](#). This can be a very time consuming and expensive process since the claim file can easily encompass several hundred or thousand pages. The second course of action is to submit the claim file under seal. This is usually the quickest, easiest and most cost effective choice when dealing with confidential medical information. The downside to this course of action is that counsel must demonstrate to the court a "compelling reason" to file records under seal. See [Foltz v. State Farm Mut. Auto. Ins. Co.](#), 331 F.3d 1122, 1135 (9th Cir. 2003). Many federal courts have their own Local Rules regarding filing documents under seal. For example, in the [Central District of California, Local Rule 79-5.1](#) provides:

L.R. 79-5.1* Filing Under Seal - Procedures . Except when authorized by statute or federal rule, or the Judicial Conference of the United States, no case or document shall be filed under seal without prior approval by the Court. Where approval is required, a written application and a proposed order shall be presented to the judge along with the document submitted for filing under seal. The proposed order shall address both the sealing of the application and order itself, if appropriate. The original and judge's copy of the document shall be sealed in separate envelopes with a copy of the title page attached to the front of each envelope. Conformed copies need not be placed in sealed envelopes. Where under-seal filings are authorized by statute or rule, the authority therefor shall appear on the title page of the proposed filing. Applications and Orders to Seal, along with the material to be placed under seal, shall not be electronically filed but shall be filed manually in the manner prescribed by Local Rule 79-5. A Notice of Manual Filing shall also be electronically filed identifying materials being manually filed.

If you opt to file the claim file under seal, what constitutes a compelling reason to do so? At least one court in the Ninth Circuit has held that difficulty in redacting thousands of pages of documents does not, by itself, qualify as a "compelling reason." In [Nash v. Life Insurance Company of North America](#), 2010 WL 2044935 (Decided May 18, 2010), both parties submitted a joint motion to file a unredacted copy of the administrative record under seal, citing difficulty in redacting 4,500 pages of documents. The parties argued that redacting social security numbers, dates of birth, the names of minor children, and financial account numbers from the administrative record is "impracticable" However, despite being unopposed, the court nonetheless declined to grant the motion, stating:

Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents. Except for documents that are traditionally kept secret, there is a strong presumption in favor of access to court records. A party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by meeting the compelling reasons standard. That is, the party must articulate compelling reasons supported by specific factual findings, ... that outweigh the general history of access and the public policies favoring disclosure, such as the public interest in understanding the judicial process.

Id. (internal citations omitted). Although *Nash* is unpublished and can be factually distinguishable based on the contents of the claim file at issue, its holding should serve as a warning to future litigants to be wary about filing under seal. That does not mean that filing under seal is never appropriate. Instead, the lesson is to approach the court early in the litigation and seek permission to file under seal. The last thing any attorney wants to do on the eve of a motion filing deadline is to spend countless hours redacting documents.



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