



Chambers of

Judge EUGENE A. GASIORKIEWICZ

Presiding Judge Racine County Circuit Court Branch II

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MEMO REGARDING SEALING RECORDS Wis. Stat. § 801.21

Mandatory e-filing has gone smoothly in Racine County but there will be some glitches. I recently was confronted with one such issue in a civil matter pending before my court. I share this memo with Wisconsin lawyers so that this “glitch” is not replicated.

In the case referenced the defense counsel sought sealing of materials filed in the complaint and subsequently filed materials by the defense in support of a motion to dismiss and a motion for summary judgment. The need for sealing was the alleged confidential nature of the material referenced or filed in support of the pending motions to dismiss and summary judgment. Unfortunately, the moving party did not file any proposed order to either seal the materials or temporarily seal the materials until a scheduled hearing before my court. The Court granted, *sua sponte*, a temporary “seal” of the materials until a hearing could be conducted before the Court. Neither the Court nor counsel for the moving party or opposing party sought a hearing date on this issue prior to the scheduled hearing on the motion to dismiss and motion for summary judgment.

Unbeknownst to the moving parties' counsel or the court, based on the temporary seal order issued by the court, plaintiffs' counsel was unable to access the moving and supporting papers on the motion to dismiss or motion for summary judgment. Counsel who could not access the documents "assumed" that the issue would be addressed by the Court at the scheduled hearing date for the motion to dismiss and summary judgment, some two months after the party was aware that he could not access the moving papers. Needless to say, this required rescheduling of the matter and an amended order by the Court allowing, with gag order restrictions, access to the temporarily sealed materials to allow a response.

This matter could have been rectified by the following:

1. Every request for sealing of documents, even a request for a temporary sealing, should be accompanied by an appropriate proposed order allowing opposing counsel access with sufficient "gag" restrictions of the material.
2. Counsel who are unable to access sealed or temporarily sealed materials can and should seek immediately clarification or relief from the Court so as not to delay the filing or responses
3. Those seeking the sealing of records, temporarily or permanently, should familiarize themselves with Wis. Stats. §§ 801.19, 801.20 and 801.21.

Judge Gasiorkiewicz
February 12, 2018