



Ideas Advancing Freedom

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Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C. 20544

Re: Suggestion for a New Federal Rule of Civil Procedure Governing the Sealing of
Judicial Records

Dear Members of the Advisory Committee on Civil Rules:

I'm writing to enthusiastically endorse Prof. Nora Freeman Engstrom et al.'s proposal for a new Rule governing the sealing of judicial records. I have studied the law of sealing and pseudonymity closely, and have written extensively on the subject (see, e.g., *The Law of Pseudonymous Litigation*, 73 Hastings L.J. 1353 (2022)). This has led me to I think the proposal would be of great help both to judges and to litigants and their counsel.

As you know, every federal Circuit recognizes a strong presumption of public access to court records. But district courts, regrettably but unsurprisingly, often depart from their own Circuits' rules, as is demonstrated by the Engstrom et al. study as to sealing, coupled with David S. Ardia, *Sealed Justice: Federal Courts' Inconsistent Record-Sealing Rules and their Impact on Judicial Transparency*, 6 J. Free Speech L. 211 (2025). Nor have the District Courts' local rules solved this problem, as those studies demonstrate. The proposed new Rule would clarify the law and make it more consistent, both among Circuits and within each Circuit.

Two of the most important questions about any system of legal procedure are: (1) Is it generally open or is it generally confidential? (2) If it is generally open, when and how can particular aspects of a case be made confidential?

In our system, the answer to question 1 is clearly "generally open," but the answer to question 2 has proven elusive, at least in many courtrooms. The Rules of Civil Procedure should answer these questions, no less than they answer questions about pleadings, discovery, motions to dismiss, and other important procedural matters.

Please let me know if you have any follow-up questions for me about this, or about any other aspects of this excellent proposal.

Sincerely Yours,

A handwritten signature in cursive script that reads "Eugene Volokh". The signature is written in a dark ink and is positioned below the "Sincerely Yours," text.

Eugene Volokh

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