



Memorandum of Understanding: **Electronic Filing of Certain Sealed Applications and Orders**

This Memorandum of Understanding ("MOU") is entered into by the Clerk of the United States District Court for the District of Columbia ("USDC") and the United States Attorney's Office for the District of Columbia ("USAO-DC"). The purpose of this MOU is to set forth the procedures for the electronic filing of sealed applications for orders for: (1) pen register and trap and trace devices ("PRTTs"); (2) electronic communications and records and/or nondisclosure, pursuant to the Stored Communications Act, 18 U.S.C. § 2701, *et seq.*; and (3) search warrants, pursuant to Federal Rule of Criminal Procedure 41 (hereafter referred to collectively as "sealed applications").

A. Background:

Until now, sealed applications have been filed in paper form with the USDC Clerk's Office. The Chief Judge of the United States District Court for the District of the Columbia has requested that the Clerk's Office and the USAO-DC consult on mechanisms to facilitate a transition to the electronic filing of certain sealed applications and orders. The USDC Clerk's Office has developed a secure process by which sealed applications may be electronically docketed by the USAO-DC and reviewed by the duty Magistrate Judge, and sealed orders may be electronically signed and filed. On April 10, 2017, the Clerk's Office and the USAO-DC initiated a testing phase of electronic processing of certain sealed applications.

B. Limited Scope:

1. The electronic filing of sealed applications is limited to the types of applications listed in **ATTACHMENT A**, which will be updated as appropriate. All other sealed applications will continue to be submitted for consideration in paper form.
2. All sealed applications submitted on weekends, outside of normal business hours, or in exigent circumstances, including those of types otherwise approved for electronic filing, may be submitted for consideration in paper form.

C. Process:

Effective immediately, the following process will be followed for the electronic filing of certain sealed applications from the USAO-DC:

1. To file a sealed application, an Assistant United States Attorney ("AUSA") or other authorized employee of the USAO-DC will open a sealed Miscellaneous ("MC") case on the USDC Case Management/Electronic Case Files ("CM/ECF") system *in accordance with written instructions* provided by the Clerk's Office.¹ The opening of a new sealed MC case will cause the system to generate a case opening report in the USDC Clerk's Office.

¹ Beginning in 2018, sealed applications opened as MC cases will be given an additional designation specifying the type of sealed application (*e.g.*, MC-PRTT will be used to reference pen register and trap and trace applications).

2. Designated Clerk's Office staff will review new sealed MC case opening reports twice a day during regular business hours, at approximately 10:00 a.m. and 2:00 p.m., and will perform quality control to identify any errors in the case opening. Once quality control has been completed, the Clerk's Office will grant the designated AUSA or authorized employee docket access and notify him or her via email that the sealed application and proposed order may be filed.
3. The AUSA or authorized employee will then docket the sealed application and proposed order *in accordance with written docketing instructions* provided by the Clerk's Office.
4. Designated Clerk's Office staff will identify new sealed applications and proposed orders twice a day during regular business hours, at 10:00 a.m. and 2:00 p.m., and will perform quality control on any such applications and proposed orders. Once quality control has been completed, Clerk's Office staff will assign the matter(s) to the duty Magistrate Judge and, following internal protocols, forward electronically any new applications and proposed orders to the duty Magistrate Judge for consideration.
5. Upon execution by the duty Magistrate Judge of an order either granting or denying an application, designated Clerk's Office staff will electronically certify and docket the order.
6. The USAO-DC will be advised through a notice of electronic filing (NEF) when an order has been signed and docketed.

D. Standard Format of Captions for Sealed Applications and Orders:

1. The case captions for sealed applications and orders will follow standard formats, as agreed upon by the USDC Clerk's Office and the USAO-DC. Each standard caption shall contain variable items of information, depending on the type of application. For example, applications for pen register/trap and trace orders shall contain: (1) the number of target telephone lines, subscriber accounts and/or devices that are the subject of the application; (2) the type of target (*e.g.*, landline/cellular/mobile telephone, email account, cell tower or other facilities or devices) subject to the application; (3) the service provider to which the order would be directed; and (4) the primary offense statute(s) under investigation. In addition, any sealed application for a non-disclosure order related to a grand jury subpoena must include reference in the caption to the grand jury subpoena and the subpoena's identifying number, if any.
2. Except as provided for in subsection (3), the USAO-DC AUSA or authorized employee must enter the standard caption, including the information responsive to these variables, when initiating or making successive applications in a sealed MC case. Every document filed by an AUSA in a particular MC case shall use the same caption.
3. An AUSA may opt to omit one or more variables in the caption if disclosure of that information is considered by the USAO-DC to pose a risk of compromising an ongoing investigation.

E. Public Reporting of Caption Information for Sealed MC Cases:

1. The USDC Clerk's Office will generate biannually reports via CM/ECF reflecting the docket numbers and case captions associated with sealed applications ("MC docket reports"), except for applications related to the non-disclosure of grand jury subpoenas. Beginning as soon as practicable, these MC docket reports for sealed applications will be made publicly available on March 31 and September 30 of each year in electronic form.
2. The MC docket reports will contain docket numbers and case captions associated with certain sealed applications filed during the six-month period ending six months before the issuance of the report.

For example, a sealed application filed in November 2018 would be included in the semi-annual report issued on September 30, 2019.

3. Any internal tracking or reference numbers used by the USAO-DC (e.g., "USAO #" or "USAO Ref. #") that are placed outside the caption of a sealed application will not be disclosed in the regular release of MC docket reports. Any such internal tracking or reference numbers are intended to remain under seal and shall not be disclosed.

F. Exception to Local Criminal Rules:

Sealed applications and orders filed electronically pursuant to this MOU are exempted from the requirements of Local Criminal Rule 49(e)(1) and (e)(4) that such documents be filed in paper form.

Signed and agreed:



Angela D. Caesar
USDC Clerk of Court
Date: 8/15/17



Jonathan M. Malis
Chief, Criminal Division, USAO-DC
Date: 8/15/17

ATTACHMENT A

Sealed Applications and Orders Subject to Electronic Filing MOU

USAO-DC is authorized to file sealed documents pursuant to the following authorities electronically, as of the dates indicated and subject to the terms and conditions of this MOU:

1. As of August 15, 2017, sealed applications, proposed orders and related documents pursuant to 18 U.S.C. § 3122-27 for pen registers and trap and trace devices;
2. As of September 14, 2017, sealed applications, proposed orders and related documents pursuant to 18 U.S.C. § 2703(d);
3. As of May 10, 2018, sealed applications, proposed orders, and related documents pursuant to 18 U.S.C. § 2705(b) for nondisclosure orders for grand jury subpoenas;
4. As of May 10, 2018, sealed applications, proposed orders and related documents pursuant to 18 U.S.C. § 3512 for orders pursuant to 18 U.S.C. § 2703(d).

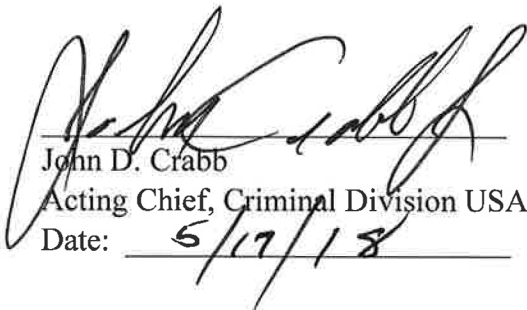
Signed and agreed:



Angela D. Caesar

USDC Clerk of Court:

Date: 5/18/18



John D. Crabb

Acting Chief, Criminal Division USAO-DC

Date: 5/17/18