

## **GUIDELINES FOR PROPOSED PROTECTIVE ORDERS SUBMITTED TO JUDGE YARBROUGH**

In certain cases, the parties may agree that discovery should be governed by a protective order limiting the disclosure, use, and dissemination of confidential information. If all of the parties agree concerning the need for a protective order and its scope and form, their counsel should file a stipulated motion for protective order with the proposed protective order attached as an exhibit to the motion. The parties must also email a copy of their proposed protective order (in Word format) to [yarbroughproposedtext@nmd.uscourts.gov](mailto:yarbroughproposedtext@nmd.uscourts.gov). If the proposed protective order is appropriate, the Court will sign and enter it. If it is not appropriate, the Court will, in its discretion, deny the motion, notify counsel of any objectionable language or provisions, or modify and enter a revised protective order.

If the parties disagree concerning the need for a protective order and/or its scope or form, the party or parties seeking such an order should file an opposed motion for protective order with the proposed protective order attached as an exhibit to the motion. Where there is an objection to the scope or form of a proposed order, the party or parties opposing the motion shall, in their written response to the motion, provide the Court with proposed language that would resolve their specific objections to the order's scope or form.

The following guidelines have been developed to assist the parties in drafting stipulated protective orders.

### **A. Compliance with Fed. R. Civ. P. 26(c)**

Ensure that the proposed protective order provides a sufficient basis for the Court to find that good cause exists for the Court to enter the order pursuant to Federal Rule of Civil Procedure 26(c).

### **B. Scope of the Protective Order**

Ensure that the scope of the proposed protective order is narrowly tailored and specific. The proposed protective order should clearly reflect that its provisions only apply to the named categories of documents, information, items, or materials specifically set forth in the protective order.

### **C. Provisions for Filing Documents Containing Confidential Information Under Seal**

The proposed protective order shall not contain a blanket provision that requires or allows the parties to file documents containing confidential information under seal without the

Court's approval. In short, there is a strong presumption in favor of the public's access to filed documents. The mere designation of information as confidential pursuant to a protective order is insufficient to overcome this presumption. Thus, where the sealing of documents is not explicitly mandated by law or regulation, a document will only be sealed if the Court finds that there is good cause to withhold the specific document in question from the public by sealing it. Where a document containing information subject to a protective order is included in a pleading filed with the Court, the party filing such pleading should also file a motion to seal the document.

**D. Introduction of Documents Containing Confidential Information into Evidence**

The proposed protective order should not attempt to limit the Court's judgment or discretion in any way regarding the treatment, handling, or admission of documents containing confidential information at a hearing or trial.

**E. Application to Non-Parties**

The proposed protective order should not indicate that it necessarily binds non-parties or that the Court necessarily has jurisdiction over non-parties to enforce the protective order's provisions. This is because the terms of a protective order are not automatically binding on non-parties. The parties may, however, attach a form agreement to the proposed protective order and a non-party may agree to be bound by the terms of the protective order by signing the agreement. The protective order may also include provisions that protect confidential information, documents and materials produced by a non-party or parties who are later added to the action.

**F. Jurisdiction**

The proposed protective order should not provide that the Court has continuing jurisdiction over the protective order upon final disposition of the case. However, if the parties agree to be bound by its terms after the litigation ends, the protective order may appropriately state that its provisions will continue in force after the litigation terminates.

**G. Instructions to the Clerk of the Court**

The proposed protective order should not direct the Clerk of the Court to return or destroy confidential documents that are filed in the case.

**H. Court Personnel and Jurors**

The proposed protective order should neither state nor imply that it is binding on court personnel or jurors.