

'Super-sealing' in federal court has new name, same result

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Lloyd George U.S. Courthouse (Las Vegas Review-Journal file)

[image](#)

At the federal courthouse, officials say they have no plans to change a long-running practice that allows the government to file court papers in total secrecy.

But they are changing one thing — the name.

According to Federal Court Clerk Lance Wilson, the term “super-sealing” has been officially deleted from the courthouse vernacular.

It has been replaced by “special processing,” a more accurate description of the practice, Wilson said last week.

The name change follows a Las Vegas Review-Journal story last month revealing super-sealing by the government. The decision was made jointly by Wilson and Chief U.S. District Judge Gloria Navarro, with input

from Nevada U.S. Attorney Daniel Bogden, whose office is the main beneficiary of the practice.

Despite its new name, the same courthouse rules that recently enraged a federal magistrate and others still apply. Documents will continue to be left off the electronic case management system and stored in the court vault.

And officials will continue to keep the public in the dark about the government filings, including the opposing parties in the cases.

In a May decision made public last month, U.S. Magistrate Cam Ferenbach ripped the government for working in secret to pry away millions of dollars in cash and assets seized from a Las Vegas gambler and his family in a decade-long bookmaking investigation.

Ferenbach chastised federal prosecutors for filing two separate civil forfeiture actions against Glen Cobb, his 82-year-old parents and his stepdaughter under "super seal" with no notice to anyone — not even the family it targeted.

Washington, D.C.-area lawyer David B. Smith, one of the country's foremost legal experts on civil forfeiture law, last week praised the magistrate's decision, calling him "brave" for standing up to federal prosecutors and even some of the federal judges higher up the ladder of justice in Las Vegas.

Smith called the super-sealing practice "appalling" and said it was "totally absurd" that the only change officials are making in the wake of its exposure is its name.

Smith, who once headed up all forfeiture litigation for the Justice Department, is working with Congress to reform the nation's oft-criticized civil forfeiture laws.

"This is the best example I know to show why Congress needs to restrict the ability of the government to file complaints under seal," he said.

Cases like this happen when judges and court clerks get too cozy with prosecutors, Smith said.

"If you leave it up to the judges to police this, they're not going to do it," he said. "Very few judges ask questions about this kind of thing. They tend to rubber stamp these requests."

The vast majority of court records are open under the long-established public right to know what its government is doing and the right of those accused of wrongdoing to know their accusers. Sometimes individual records are sealed to protect sensitive personal information or an ongoing investigation, but the case itself remains on the public docket.

In his decision, Ferenbach found the additional secrecy in the Cobb case "unacceptable" and "constitutionally abhorrent."

Prosecutors filed objections to Ferenbach's decision with the federal judge overseeing the civil forfeiture cases, arguing they were protecting sensitive information in the ongoing criminal investigation and did not violate the Cobb family's rights. Prosecutors later obtained indictments against the four relatives.

Bogden last week insisted that his office complies with Justice Department procedures for sealing court documents.

"Special processing is a procedure utilized by the clerk's office to ensure that sealed documents and information contained therein does not accidentally or mistakenly get released," Bogden said. "It is my understanding that

special processing is a procedure used throughout the nation by U.S. district courts and limits the access of court personnel to certain documents and provides for where those sealed documents will be stored.”

Wilson said that because of the sensitive nature of special processing cases, he doesn't want the majority of his employees to have access to the cases. So he has restricted access to a couple of seasoned staffers.

He said other federal courts in the West have the same practice but have varying names for it. Some refer to it as super-sealing, one calls it “miscellaneous” sealing, another just calls it sealing, one has no name for it and still another dubs it “court only access.”

No other courts, Wilson said, call it special processing.

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