

LR 5.6 FILING DOCUMENTS UNDER SEAL IN CIVIL CASES

(a) Application of Rule.

- (1) A document may be filed under seal in a civil case only as provided by statute or rule, or with leave of court.
- (2) This rule does not require a party to file any document under seal, but sets forth the procedures used when a party seeks to file a document under seal.
- (3) This rule does not affect a party's obligation to redact personal identifiers under Federal Rule of Civil Procedure 5.2 or LR 5.5, ~~nor~~or any statutory, contractual, or other obligation to keep information confidential.

(b) **Electronic Filing Required.** All documents filed in a civil case — whether sealed or not — must be filed in compliance with the CIVIL ECF PROCEDURES GUIDE.

(c) What May Be Temporarily Sealed.

~~(1)~~—A party may ~~seek to~~ file a document under temporary seal only if the document contains ~~confidential information~~.

~~(2)~~ “~~Confidential information~~” is information that:

~~(A)~~(1) the filing party contends is confidential or proprietary;

~~(B)~~(2) has been designated as confidential or proprietary by another party, by a nonparty, or under a non-disclosure agreement or protective order; or

~~(C)~~(3) is otherwise entitled to protection from disclosure under a statute, rule, order, or other legal authority.

(d) Procedure for Filing Under Temporary Seal ~~In~~in Connection ~~With Motions Governed By~~with LR 7.1 or LR 72.2.

(1) *Filing Under Temporary Seal.* A party seeking to file a document under seal in connection with a motion under LR 7.1 or an objection under LR 72.2 must first file the document under temporary seal. That party must file the temporarily sealed document separately so that the document is assigned its own docket number. (e.g., ECF No. 15 or ECF No. 15-3).

(A) Redacted Public Version. A party filing a document under temporary seal must contemporaneously and publicly file:

- (i) a version of that document with the ~~confidential~~ information described in LR 5.6(c) redacted; or

(ii) a statement that the entire document is confidential or that redaction is impracticable.

(B) ~~Expiration of~~ Temporary Seal. A While Case is Pending. Except as provided in LR 5.6(d)(1)(C), or as otherwise ordered by the court, a document filed under temporary seal remains under temporary seal until the latest of the following:

(i) 28 days after entry of the magistrate judge's order disposing of the joint motion regarding continued sealing under LR 5.6(d)(2);

(ii) 21 days after entry of the magistrate judge's order disposing of a motion for further consideration under LR 5.6(d)(3); or

(iii) entry of the district judge's order disposing of an objection under LR 5.6(d)(4).

(C) Temporary Seal upon Disposition of Case. A document that is under temporary seal at the time that the case is disposed of – such as by remand, transfer, dismissal, or entry of judgment – will remain sealed unless the court orders otherwise.

(2) *Joint Motion Regarding Continued Sealing.* Within 21 days after the filing of the final memorandum authorized by LR 7.1 or response authorized by LR 72.2 in connection with the underlying motion or objection, the parties must file a completed Joint Motion Regarding Continued Sealing Form.

(A) Joint Motion's Contents. The joint motion must list by docket number each document filed under temporary seal in connection with the underlying motion or objection and, for each such document:

(i) briefly describe the document;

(ii) precisely identify:

a) the information that the parties agree should remain sealed;

b) the information that the parties agree should be unsealed; and

c) the information about which the parties disagree;

~~(ii)~~ (iii) explain why the parties agree that the ~~document or~~ information ~~in the document~~ should remain sealed or be unsealed or, if the parties disagree, briefly explain each party's position; and

~~(iii)~~(iv) identify any nonparty who has designated the document or information in the document as confidential or proprietary.

(B) Party to File Joint Motion. Unless the parties agree or the magistrate judge orders otherwise, the party who filed the first document under temporary seal in connection with the underlying motion or objection must file the joint motion.

(C) Order on Joint Motion. The magistrate judge will ordinarily rule on the joint motion without oral argument. A party or nonparty who objects to the order must file a motion for further consideration under LR 5.6(d)(3).

(D) Notice to Nonparties. If the magistrate judge orders the unsealing of information that a nonparty has designated as confidential or proprietary, the party who filed that information under temporary seal must, within 7 days after entry of the order, serve on the nonparty a copy of the document containing that information and the order.

(3) *Motion for Further Consideration of Sealing.* Within 28 days after entry of the magistrate judge's order disposing of a joint motion regarding continued sealing under LR 5.6(d)(2), a party or nonparty may file a motion for further consideration by the magistrate judge. If the motion for further consideration relates to information that a nonparty has designated as confidential or proprietary, the movant must serve on that nonparty a copy of the motion and all documents filed in support of the motion. The motion for further consideration is a nondispositive motion governed by LR 7.1(b).

(4) *Objection to Order Disposing of Motion for Further Consideration of Sealing.* A party or nonparty may object to a magistrate judge's order disposing of a motion for further consideration of sealing, but only if that party or nonparty filed or opposed the motion. The objection is governed by LR 72.2(a).

(e) Procedure for Filing Other Documents Under Seal. A party who seeks leave of court to file a document under seal other than in connection with a motion under LR 7.1 or an objection under LR 72.2 must obtain direction from the court on the procedure to be followed.

[Adopted effective February 27, 2017; amended _____, 2018]

2018 Advisory Committee Note to LR 5.6

These amendments clarify that the procedures of LR 5.6 also apply to objections under LR 72.2.

LR 5.6 – REDLINE OF PROPOSED AMENDMENTS (Nov. 2018)

LR 5.6(d)(1) clarifies that the document filed under temporary seal must be filed as a separate document (e.g., ECF No. 15) or as a separate attachment (e.g., ECF No. 15-3) so that parties, nonparties, and the court can refer to it by a unique number. Further guidance on the mechanics of filing documents under temporary seal may be found in the Civil ECF Procedures Guide.

LR 5.6(d)(1)(C) has been added to address what happens to a document that is under temporary seal upon the disposition of the case. This situation will arise when a document is filed under temporary seal and the case is disposed of — such as by remand, transfer, dismissal, or entry of judgment — before the process described in LR 5.6(d)(2) has run its course. LR 5.6(d)(1)(C) provides that, in that situation, the document will remain sealed unless a court orders otherwise. Thus, if a magistrate judge orders a document to be unsealed, and the case is subsequently disposed of *before* the deadline in LR 5.6(d)(1)(B), the document will remain sealed even if no party has opposed the magistrate judge’s order. But if a magistrate judge orders a document to be unsealed, and the case is disposed of *after* the deadline in LR 5.6(d)(1)(B), the document will be unsealed and will remain unsealed. Parties should bear this in mind when, for example, they settle a case before the deadline in LR 5.6(d)(1)(B). If the parties will not be able to finalize the settlement papers and obtain dismissal before that deadline, any party that seeks continued sealing must either continue with the process described in LR 5.6(d)(2) or move to extend the temporary seal until the case is dismissed.

LR 5.6(d)(2) makes clear that when only part of a document contains confidential information, the parties must identify precisely what information must remain sealed and what information may be disclosed. The parties must do so either by specifying where the information is located in the document or by proposing redactions. For example, if part of a document can be disclosed, the parties either must briefly describe what part can be disclosed and what part cannot be disclosed (e.g., “the email can be disclosed except for the second sentence of the third paragraph on the first page”), or must file proposed redactions illustrating what part of the document can be disclosed and what part cannot be disclosed. It is now permissible, and parties are encouraged, to file with the Joint Motion Regarding Continued Sealing proposed redactions of any document to allow the court to determine precisely what information must remain sealed and what information may be unsealed. This provision is an exception to the statement in the 2017 Advisory Committee Note that the Joint Motion Regarding Continued Sealing form is the “only document that may be filed.” Proposed redactions must be filed under seal and in compliance with the Civil ECF Procedures Guide. The procedure established by LR 5.6(d) does not apply to proposed redactions.

All other amendments are intended to be stylistic only.

2017 Advisory Committee Note to LR 5.6

LR 5.6 is a new rule regarding the filing of information under seal in civil cases. The new rule addresses two problems with current practice:

First, the court has never established a uniform process for filing information under seal in civil cases. As a result, current practice is haphazard, varying from judge to judge and case to case. In fact, parties sometimes file information under seal in civil cases without seeking or receiving the permission of a judge.

Second, parties have been filing too much information under seal in civil cases, in part because of confusion over the difference between protective orders and sealing orders. As a general matter, the public does not have a right of access to information exchanged in discovery; thus, protective orders are often quite broad, covering entire documents or sets of documents produced during discovery, even when most or all of the contents are not particularly sensitive. But the public does have a qualified right of access to information that is filed with the court. Even if such information is covered by a protective order, that information should not be kept under seal unless a judge determines that a party or nonparty’s need for confidentiality outweighs the public’s right of access.

This rule is intended to reduce the amount of information that is sealed in civil cases and to ensure that no information is sealed without the permission of a judge.

LR 5.6 – REDLINE OF PROPOSED AMENDMENTS (Nov. 2018)

Subdivision (a). LR 5.6(a) provides that a document may be filed under seal only as provided by statute or rule, or with leave of court. This rule does not *require* any party to file any information under seal. Rather, this rule simply provides the procedures that a party must follow when the party seeks to file information under seal to protect its own interests or to comply with a statutory, contractual, or other obligation to keep information confidential. The procedures set forth in this rule need not be followed by a party who is merely redacting personal identifiers in compliance with Fed. R. Civ. P. 5.2 or LR 5.5.

Subdivision (b). LR 5.6(b) provides that every document filed in a civil case—whether under seal or not—must be filed electronically and in compliance with the Civil ECF Procedures Guide. A document may not be filed in paper form unless such filing is authorized by the Guide.

Subdivision (c). LR 5.6(c)(1) provides that a party may not seek to file information under seal unless that information is “confidential.” LR 5.6(c)(2) defines “confidential information.”

Subdivision (d). LR 5.6(d) establishes a four-step procedure to determine whether information filed in connection with a motion under LR 7.1 will be sealed.

Step One (LR 5.6(d)(1)). A party who seeks to file a document under seal must first file the document under temporary seal. The document must be filed separately, so that parties, nonparties, and the court can refer to the document by its own docket number.

When a party files a document under temporary seal, the party must at the same time publicly file either (1) a version of that document with the confidential information redacted or (2) a statement that the entire document is confidential or that redaction is impracticable.

The redaction requirement should not pose an onerous burden in connection with most discovery disputes. LR 5.6(d)(1)(A) does not require redaction when “the entire document is confidential.” LR 5.6(c)(2) defines “confidential information” to include information that “has been designated as confidential or proprietary . . . under a . . . protective order.” Thus, if an entire document has been designated as confidential under a protective order (as is often the case), that document need not be redacted. A large share of discovery disputes involve such documents.

Outside of the context of discovery disputes, parties should only rarely file a statement that a document cannot be redacted. If a document reasonably can be redacted, the document must be redacted.

After a document is filed under temporary seal, LR 5.6(d)(1)(B) ensures that the document will remain under temporary seal until the court makes a final decision about whether the document should remain sealed.

Step Two (LR 5.6(d)(2)). After all memoranda and other documents pertaining to the underlying motion have been filed, all parties must together file a single Joint Motion Regarding Continued Sealing. The joint motion must be filed within 21 days after the filing of the final memorandum authorized by LR 7.1. The joint motion must be filed using the Joint Motion Regarding Continued Sealing Form, which is available on the court’s website. That form is the only document that may be filed; no other filings, including the filings contemplated by LR 7.1, are required or permitted in connection with the joint motion. The party who first filed a document under temporary seal in connection with the LR 7.1 motion bears the responsibility for filing the joint motion.

LR 5.6 – REDLINE OF PROPOSED AMENDMENTS (Nov. 2018)

The joint motion must address every document that has been filed under temporary seal, even if all parties agree that a document may be unsealed. The parties must do three things with respect to each temporarily sealed document: First, the parties must briefly describe the document (e.g., “09/23/2016 email from A. Jones to B. Smith”). Second, the parties must *briefly* explain why they agree that the document should remain sealed or be unsealed—or, if the parties disagree, the parties should *briefly* explain each party’s position. (The parties should bear in mind that, before a final decision is made to seal or unseal a document, every party and affected nonparty will have an opportunity to fully brief the issue.) Third, the parties must identify any nonparty who has designated the document or information in the document as confidential or proprietary.

The magistrate judge will rule on the joint motion in an order that will specify whether and to what extent each document will remain sealed. The magistrate judge will almost always rule without oral argument, so the parties need not contact the magistrate judge to schedule a hearing. If the magistrate judge orders the unsealing of information that a nonparty has designated as confidential or proprietary, the party who filed that information under temporary seal must, within seven days after entry of the order, serve on the nonparty a copy of the document containing that information and the order. This will give the nonparty a chance to challenge the decision to unseal its information.

No party or nonparty may ask the district judge to review the magistrate judge’s order. Instead, a party or nonparty who objects to the order must first file a motion for further consideration under LR 5.6(d)(3). An order disposing of a motion for further consideration is reviewable by the district judge.

Step Three (LR 5.6(d)(3)). After the magistrate judge rules on the joint motion, any party or any nonparty whose information has been ordered unsealed or who otherwise objects to the magistrate judge’s ruling may file a motion for further consideration by the magistrate judge. The nonparty may file such a motion without intervening in the case under Fed. R. Civ. P. 24. If the motion for further consideration relates to information that a nonparty has designated as confidential or proprietary, the movant must serve on that nonparty a copy of the motion and all documents filed in support of the motion (unless, of course, the movant is the nonparty that designated the information as confidential or proprietary).

A motion for further consideration by the magistrate judge is a nondispositive motion governed by LR 7.1(b); it is not a motion for reconsideration under LR 7.1(j). At this point, any party or nonparty who objects to the unsealing (or sealing) of information will have a full opportunity to brief the issue.

Step Four (LR 5.6(d)(4)). After the magistrate judge disposes of the motion for further consideration, any party or nonparty who filed or opposed that motion may file an objection to the magistrate judge’s order. Such an objection is governed by LR 72.2(a).

Subdivision (e). The procedure provided by LR 5.6(d) applies only when a party seeks leave to file under seal a document in connection with a motion under LR 7.1. That procedure does not apply when a party seeks leave to file a document under seal in another context, such as when a party seeks leave to file a trial exhibit under seal. In such circumstances, the party should seek direction from the judge about how the party should request the judge’s permission to file the document under seal.