



## Comments on proposed Local Rule 5.6

Anita Terry to: MnFedRules

Cc: Judge Paul Magnuson

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To the Rules Committee and the Clerk of Court:

The proposed amendments to Local Rule 5.6 are not only unwieldy and unworkable, but they will likely triple the already overburdened workload of our Court's magistrate judges. I urge the Rules Committee to reconsider these amendments to the Rule.

My first question on reading the proposed rule is whether it is indeed necessary. Certainly, there is anecdotal evidence that parties are seeking to file more documents under seal, but has anyone studied the issue to determine whether there in fact has been a large increase in under-seal filings? Perhaps the problem is not in the procedure for sealing documents in general, but rather the over-litigation in a few cases. I believe that this proposed Rule may be a solution in search of a problem and that, ultimately, the Rule will create far more problems than it solves.

If our goal is (as it always should be) to increase access to justice, I do not understand how requiring parties to go through more motion practice accomplishes that goal. Moreover, the motion practice envisioned by the new Rule is cumbersome and unnecessary. Three levels of review for a document to be filed under seal is over-litigation in the extreme, it seems to me.

In addition, asking magistrate judges to oversee documents filed in connection with dispositive motions, which are heard by the district judge, makes no sense. How can a magistrate judge know what is and is not pertinent to the dispositive motion? If this Rule is put into place, the Committee should ensure that the judge hearing the underlying motion is the judge to determine whether documents are to be filed under seal.

Finally, and perhaps most importantly, this Rule is overkill. For example, if a party needs to file a tax return in a case, something that everyone knows must be filed under seal, the party must go through a burdensome procedure and the magistrate judge must spend time reviewing something that is not controversial in the least. Why force every single sealed filing to go over the hurdles this Rule imposes? This Rule will undoubtedly increase the costs of litigation in the federal court, a place that is already out of reach for all but the most wealthy citizens and corporations. This is not justice.

Please consider the effect this Rule will have on our hardworking magistrate judges and on the parties who will be forced to incur additional attorneys fees in the service of form. There must be a better way to ensure that parties do not abuse the sealing process. Again, I urge the Court not to adopt this proposed amendment to Rule 5.6.

Sincerely,

s/ Anita L. Terry

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