

GUIDELINES FOR THE FILING OF CONFIDENTIAL INFORMATION IN CIVIL CASES

These Guidelines apply to the filing of sealed documents under New Local Rule 5.4. As noted in the Commentary to that Local Rule, case law protects generally the right of public access to documents filed in court, both under the First Amendment and common law. The Procedures in Local Rule 5.4 are designed to ensure that those rights are appropriately considered and protected. The Commentary to Local Rule 5.4 further notes that parties to a civil case may enter into confidentiality agreements for purposes of discovery, but must still follow the procedures set out in Local Rule 5.4 for documents filed with the Court.

Local Rule 5.4 and these guidelines are meant to better ensure (1) that the public's right of access to court filings is considered and protected; (2) that the Court has an adequate record from which to assess the merits of requests to seal; and (3) that the process of making and determining such requests maintains a docket that is orderly and accessible to the public, the litigants, and the Court.

The following guidelines are offered to assist litigants with the process of requesting confidential treatment of information in the course of filing documents on the CM/ECF system. The Clerk's Office realizes that Local Rule 5.4 may create challenges for litigants, because the rule has procedures that were not previously the practice in this District. Consequently, we encourage you to contact the Clerk's Office at 336-332-6000 should you have any questions. If you have any suggestions for change to the local rules, please submit your comments to LocalRuleComments@ncmd.uscourts.gov.

If filing ...	Then
<p>What if I am filing a document or attachment that includes “personal data identifiers” (social security numbers, dates of birth, financial account numbers) that are specifically protected by Federal Rule of Civil Procedure 5.2, Federal Rule of Criminal Procedure 49.1 or similar statutory authority?</p>	<p>Redact the personal data identifiers as provided by the applicable Federal Rule, and file the document in its redacted form. This document will be publicly available.</p> <p>If the redacted information is <u>not material</u> to your filing, you do NOT need to separately file an unredacted version of the document.</p> <p>If the redacted information is <u>material</u> to your filing, separately file a sealed version of the unredacted document so the Court has access to the material-but-confidential information. Use the CM/ECF “Sealed Unredacted Documents” event to docket all of the unredacted documents. No Motion to Seal is required. The unredacted document will not be publicly available.</p>
<p>What if I am filing a document listed in Local Rule 5.4(g) that may be sealed without a Motion and Order?</p>	<p>File the document using the appropriate SEALED document event in CM/ECF.</p> <p>If the document is filed under Local Rule 5.4(g)(1), note on the face of the document(s) the statute, rule or order providing for the sealing of the document. Failure to note the sealing authority on the face of the document may result in having to refile the document.</p>

If filing ...	Then
<p>What if I am filing a document that is not listed in Local Rule 5.4(g) but contains information that I believe is confidential?</p>	<p>For pleadings, motions, briefs, and attachments, redact the portions of the document that you believe are confidential and place the word “Redacted” on the face of the document. If confidentiality is claimed as to an attachment in its entirety, include a sheet so noting for each such attachment (a PDF document that reads, <i>e.g.</i>, “Confidential Exhibit G Customer List to be filed under seal”). File the redacted document(s) on CM/ECF using the appropriate event as you normally would. This will be a public document.</p> <p>In order to file the unredacted documents under seal, you will need to file a “Motion to Seal Document.” This motion should “include a non-confidential description of what is to be sealed, identifying the documents or portions thereof as to which sealing is requested.” See LR 5.4(a). The Motion to Seal is a public document. You will also need to file a Brief and Affidavit that includes the information set out in Local Rule 5.4(b), demonstrating why sealing is necessary. This Brief and Affidavit may be filed on CM/ECF as a SEALED Brief.</p> <p>You should file complete, unredacted versions of the document(s) when you file the Motion to Seal. Use the CM/ECF “Sealed Unredacted Documents” event to docket all of the unredacted documents. Do not attempt to docket sealed documents as attachments to unsealed documents.</p> <p>After the judge makes a ruling on the Motion to Seal Document, (1) review the Order on the Motion to Seal; and (2) re-file ONLY those documents the judge orders be publicly available.</p>

If filing ...	Then
<p>What if I am filing a document that includes information that another party has designated as confidential (for example, documents designated as confidential pursuant to a Confidentiality Agreement during discovery)?</p>	<p>First, confer with the party claiming confidentiality as required by Local Rule 5.4(c). If confidentiality is still claimed, redact the documents (or portions of the documents) for which confidentiality is claimed and file them as outlined above.</p> <p>In order to file the unredacted documents under seal, you will need to file a “Motion to Seal Document.” This motion should “include a non-confidential description of what is to be sealed, identifying the documents or portions thereof as to which sealing is requested.” See LR 5.4(a). The Motion to Seal is a public document. You do not need to file a Brief, but the Motion should include the information required by LR 5.4(c) and should be served on the party claiming confidentiality.</p> <p>You should file complete, unredacted versions of the document(s) when you file the Motion to Seal. Use the CM/ECF “Sealed Unredacted Documents” event to docket all of the unredacted documents. Do not attempt to docket sealed documents as attachments to unsealed documents.</p> <p>The party claiming confidentiality will have 14 days to file a Brief in accordance with LR 5.4(b), demonstrating why sealing is necessary.</p> <p>If there are voluminous confidential designations making it impossible to complete the consultation or redactions prior to the filing deadline, then file the sealed unredacted document along with a Motion to Seal and request/seek a short extension to complete the consultation and file redacted versions. When the redacted versions are filed, you should also file a sealed, unredacted version with redactions highlighted, to satisfy the requirement of LR 5.4(a) that you specifically identify the documents or portions thereof as to which sealing is requested.</p>

If filing ...	Then
<p>What if another party is filing a document that I have designated as “confidential” (for example, documents designated as confidential pursuant to a Confidentiality Agreement during discovery)?</p>	<p>Confer with the party filing the document as required by Local Rule 5.4(c) and narrow your confidentiality designation as much as possible. If the filing party files a redacted document and a Motion to Seal the unredacted document based on your claim of confidentiality, you will have 14 days to file a Brief in accordance with LR 5.4(b), demonstrating why sealing is necessary. This Brief and Affidavit may be filed on CM/ECF as a SEALED brief. Pursuant to LR 5.4(d), if you fail to file a brief or provide a reasonable basis for the claim of confidentiality, the filing party may request as sanctions the costs incurred in making the redaction and filing the Motion to Seal.</p>

GENERAL CONSIDERATIONS:

1. If paper courtesy copies of a sealed pleading are required pursuant to Local Rule 5.1, provide paper copies of both the redacted and unredacted versions of the document.
2. If the document is filed under Local Rule 5.4(g)(1) (no motion or order required to file the document under seal), do not use word processing or Adobe watermarks for noting authority for sealing a document or that a document is redacted.
3. When filing unredacted documents using the “Sealed Unredacted Documents” event, ensure that there is a sufficient description for each attachment. A document description should be brief but give enough information for someone looking at the text to ascertain what is included in the exhibit without opening the PDF, and to match it up for comparison purposes to the redacted copy filed publicly.
4. If there are just a few redactions on a lengthy document, mark the top of each page containing a redaction with “Redacted Page.”
5. Highlighting sections redacted on the unredacted version of the document is one of the clearest ways to show the Court what has been redacted.
6. The provisions set out above must be followed even if the parties consent to sealing.
7. When docketing a sealed document, provide electronic access to CM/ECF attorney filers who are entitled to view the document. The Clerk’s Office has created an instructional video at www.ncmd.uscourts.gov/sites/default/files/Videos/sealed.wmv for your reference.

8. CM/ECF filers who are given access in CM/ECF to view a sealed document must use their CM/ECF Filing password and login to view the document from a Notice of Electronic Filing (NEF). The PACER login and password will not allow the viewing of a sealed document in an NEF.
9. Often motions to seal should also be accompanied by an affidavit establishing the factual basis for the motion. This is always necessary when the basis for the motion is the alleged existence of confidential or proprietary business information. Remember that statements in briefs are not evidence.