

# **GUIDELINES FOR THE FILING OF CONFIDENTIAL INFORMATION IN CIVIL CASES**

These Guidelines apply to the filing of sealed documents under Amended Local Rule 5.4 and New Local Rule 5.5. 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 and 5.5 are designed to ensure that those rights are appropriately considered and protected. In addition, Local Rule 5.4 and 5.5 require the parties to discuss the handling of confidential materials and file a report early in the process, to reduce the filing of materials under seal and to provide for an orderly procedure.

Local Rules 5.4 and 5.5 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 2021 Amendments involve three main changes to the Local Rules:**

- (1) The Parties must meet and confer and file a separate **Report under Local Rule 5.5** early in the case. The Parties should discuss possible confidentiality issues, ways to reduce the need for sealing (by redaction of unnecessary information, stipulations, etc.), and a proposal(s) for handling motions to seal.

This Report must be filed when the Rule 26(f) Report is filed, or within 10 days of the filing of the first Motion to Seal in the case.

As noted in Local Rule 5.5, the Parties may propose the default procedure requiring a separate meet and confer at least two days prior to filing another parties' confidential documents, or the Parties may propose alternatives, including, for example, use of a Joint Appendix filed after the briefing on a motion is complete, with a single motion to seal for confidential items contained in the Joint Appendix. Note that under any proposal, documents may not be filed on the docket under seal unless accompanied by a simultaneous Motion to Seal, and the party claiming confidentiality must establish the need for sealing under the applicable legal standards, with supporting evidence.

This new requirement under Local Rule 5.5 is designed to (i) require the Parties to discuss and address confidentiality issues early in the case, including discussion of ways to reduce the need for sealed documents; and (ii) give the Parties the ability to propose alternative procedures that still comply with the applicable legal standards, particularly in cases involving more complicated or extensive sealing issues.

- (2) The Party filing a Motion to Seal must complete and submit a **Local Rule 5.4 Checklist** to the assigned district judge’s ECF mailbox within 3 days of filing a Motion to Seal.

This checklist helps the Court identify where the public version and sealed version are located on the ECF docket, confirms that the sealed version is marked by highlighting of the sealed portions, confirms that the procedural steps have been followed, and includes a summary chart for reference.

- (3) For clarity on the docket, when filing sealed documents, the filing party should file **two complete sets of documents**, one public and one under temporary seal. The public version should have placeholders or redactions clearly designating where portions have been sealed, and the sealed version should have highlighting on the portions for which sealing is sought.

For example, a Motion for Summary Judgment with supporting brief that includes portions to be sealed and five attachments, two of which are to be sealed, would result in four ECF documents, hypothetically beginning with Document #50 as follows:

50            Motion for Summary Judgment  
51            Brief in Support of Motion for Summary Judgment (redacted)  
              51-1    Exhibit A – Deposition of Jim Smith (redacted)  
              51-2    Exhibit B – Jim Smith Lab Report  
              51-3    Exhibit C – Affidavit of expert Mary Smith  
              51-4    Exhibit D – Customer List (redacted)  
52            Motion to Seal  
53            **SEALED** Brief in Support of Motion for Summary Judgment  
              (highlighted to reflect redactions)  
              53-1    Exhibit A – Deposition of Jim Smith (highlighted)  
              53-2    Exhibit B – Jim Smith Lab Report  
              53-3    Exhibit C – Affidavit of expert Mary Smith  
              53-4    Exhibit D – Customer List (highlighted)

Note that #53 includes the entirety of the filing, even the parts that were publicly filed at #51, and the ECF attachment numbers are consistent. This allows the Court to access the Brief and supporting materials at #53, with clear designation of which portions are sought to be sealed (by highlighting), and also allows easier reference to both the public and sealed versions. The Exhibits should include short public descriptions, and the descriptions in the sealed version should mirror the public version.

If the Motion to Seal needs to be accompanied by a separate sealed filing in support under Local Rule 5.4(c)(3), or a later filing in support by the party claiming confidentiality under Local Rule 5.4(c)(4)(b), that filing would be a fifth ECF document.

These 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 Rules 5.4 and 5.5 may create challenges for litigants, given the additional 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](mailto:LocalRuleComments@ncmd.uscourts.gov).

<b>If filing ...</b>	<b>Then ....</b>
<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(d) 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(d), 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>

What if I am filing a document that is not listed in Local Rule 5.4(d) but contains information that I believe is confidential?

If you have a Local Rule 5.5 Report and Order, follow the provisions of that Order.

Under the default, 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, *e.g.*, “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.

In order to file the unredacted documents under seal, file a “Motion to Seal Document.” This motion should include a non-confidential description of what is to be sealed, with a sufficient basis and evidentiary support. See LR 5.4(c). The Motion to Seal is a public document. A separate brief is not required, but if confidential information needs to be discussed or provided, it may be filed on CM/ECF as a SEALED Supplement.

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 a sealed version of the public filing that includes the unredacted documents. Do not attempt to docket sealed documents as attachments to unsealed documents.

Complete the Local Rule 5.4 Checklist and **submit it to the assigned district judge’s ECF mailbox within 3 days.**

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.

If there is no Rule 5.5 Report, meet and confer with the other parties within 10 days to discuss confidentiality issues and ways to reduce the need for filing documents under seal, and submit a Rule 5.5 Report to govern future sealing requests.

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>If you have a Local Rule 5.5 Report and Order, follow the provisions of that Order.</p> <p>If your Local Rule 5.5 Report adopts the default procedure, confer with the party claiming confidentiality at least 2 days prior to filing. 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. <u>See</u> LR 5.4(c). The Motion to Seal is a public document.</p> <p>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 a sealed version of the public filing that includes the unredacted documents. Do not attempt to docket sealed documents as attachments to unsealed documents.</p> <p>Complete the Local Rule 5.4 Checklist <b>and submit it to the assigned district judge’s ECF mailbox within 3 days.</b></p> <p>The party claiming confidentiality will have 14 days to file a Response to the Motion to Seal, with a sufficient showing and evidentiary support, demonstrating why sealing is necessary. If confidential information needs to be discussed or provided, the filing may be made under seal.</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 <b>ONLY</b> those documents the judge orders be publicly available.</p> <p>If no Rule 5.5 Report was previously submitted, then within 10 days after filing the Motion to Seal, meet and confer with the other parties to discuss confidentiality issues and ways to reduce the need for filing documents under seal, and submit a Rule 5.5 Report to govern future sealing requests.</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>Participate in discussion and submission of a Local Rule 5.5 Report for submission of confidential documents. Consider ways to reduce the need for sealing with agreed redactions of non-material matter, stipulations to avoid the need for filing confidential documents, and narrowing claims of confidentiality to avoid the need for sealing.</p> <p>If the Rule 5.5 Report adopts the default procedure, confer with the party filing the document 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 Response and supporting material demonstrating why sealing is necessary. This Response may be filed on CM/ECF as a SEALED brief.</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(d) (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. Highlight the sections redacted on the unredacted version of the document to show the Court what has been redacted.
4. The provisions set out above must be followed even if the parties consent to sealing.
5. When docketing a sealed document, provide electronic access to CM/ECF attorney filers who are entitled to view the document.
6. 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.

7. Motions to seal should also be accompanied by evidentiary support such as an affidavit establishing the factual basis for the motion. Remember that statements in briefs are not evidence.