



UNITED STATES DISTRICT COURT

Southern District of Indiana

Laura A. Briggs, Clerk
Gregory M. Barnes, Chief Deputy Clerk

Birch Bayh Federal Building
& U.S. Courthouse
46 East Ohio Street, Room 105
Indianapolis, IN 46204
(317) 229-3700

104 U.S. Courthouse
921 Ohio Street
Terre Haute, IN 47807
(812) 231-1840

304 U. S. Courthouse
101 NW Martin Luther King Blvd.
Evansville, IN 47708
(812) 434-6410

Lee H. Hamilton Federal Building
& U.S. Courthouse
121 West Spring Street
New Albany, IN 47150
(812) 542-4510

November 13, 2015

NOTICE

TO: THE PUBLIC AND MEMBERS OF THE PRACTICING BAR FOR THE SOUTHERN DISTRICT OF INDIANA

Pursuant to 28 U.S.C. ' 2071 and Rule 83 of the Federal Rules of Civil Procedure, the United States District Court for the Southern District of Indiana hereby gives public notice of the following:

The Local Rules Advisory Committee for the Southern District of Indiana has recommended, and the District Court has authorized release for a period of **public comment through December 13, 2015**, the revision of certain Local Rules of the United States District Court for the Southern District of Indiana. Unless otherwise indicated, as seen in this Notice **redline** text is added and **struck** text is deleted. The proposed revisions are as follows:

- A.** The word “**document(s)**” shall replace “**paper(s)**”, where appropriate, throughout the Local Rules for the Southern District of Indiana.
- B. Subparagraph (i) of Local Rule 4-6 – Representation of Indigent Litigants -** shall be **amended** as follows:

(i) Expenses. The court will reimburse an attorney up to \$500 for itemized copy, mail, telephone, travel, and expert-witness expenses that the attorney incurs while representing a litigant under this rule. But the court, in its discretion, may reimburse an attorney up to \$1,000 for these expenses. To receive reimbursement, the attorney must file a petition and appropriately itemize the expenses. The court will not reimburse an attorney for expenses that the attorney could recover from a source other than the litigant. **In exceptional circumstances, an attorney may request preapproval for additional funds to cover expenses.**

C. Subparagraph (a) of Local Rule 5-1 – Format of Documents Presented for Filing
- shall be amended as follows:

(a) Filing. A paper or item submitted in relation to a matter within the court's jurisdiction is deemed filed upon delivery to the office of the clerk in a manner prescribed by these rules or the Federal Rules of Civil Procedure or authorized by the court. Any submission directed to a Judge or Judge's staff, the office of the clerk or any employee thereof, in a manner that is not contemplated by this rule and without prior court authorization is prohibited.

Local Rules Advisory Committee Comments
Re: 2015 Amendment

In certain instances, the court will direct the parties to submit items directly to chambers (e.g., confidential settlement statements). However, absent specific prior authorization, counsel and litigants should not submit letters or documents directly to chambers, and such materials should be filed with the clerk.

D. Local Rule 5-11 – Filing Under Seal – Civil Cases - shall be amended as follows:

(a) Filing Cases Under Seal. To seal a case, a party must file a motion requesting that the court seal the case with a proposed order at or before the time the party files its initial pleading. The clerk will seal the case until the court rules on the motion. If the court denies the motion, the clerk will unseal the case ~~21~~14 days after service of the order, absent a Fed. R. Civ. P. 72(a) objection; motion to reconsider; or notice by a party of an intent to file an interlocutory appeal.

(b) Filing Documents Under Seal - General Rule. The clerk may not maintain under seal any document unless authorized to do so by statute, rule, or court order. Once a document is sealed, the clerk may not, without a court order, allow anyone to see it other than:

(1) the court and its staff;

(2) the clerk's staff; and

(3) the attorneys who have appeared and any pro se party in the case in which the document has been filed.

(c) Redaction in Lieu of Filing Under Seal.

(1) Documents redacted pursuant to Fed. R. Civ. P. 5.2(a) must not be filed under seal.

(2) When any of the confidential information in a document is

irrelevant or immaterial to resolution of the matter at issue, the filing party may redact, by blacking out, the confidential information in lieu of filing under seal. Any party who files such a redacted document must serve an unredacted and complete version of the document upon all counsel and pro se parties.

(d) Filing Documents Under Seal - Procedure.

(1) To file a document under seal, a party must file it electronically as required under section 18 of the *ECF Policies and Procedures Manual* unless exempt from electronic filing under S.D. Ind. L.R. 5-2(a) or 5-3(e). In either case, the party must include a cover sheet as the first page for each document being filed under seal that must include:

(A) the case caption;

(B) the title of the document, or an appropriate name to identify it on the public docket if the title cannot be publicly disclosed;

(C) the name, address, and telephone number of the person filing the document; and

(D) if a motion requesting that it be sealed does not accompany the document, identification of the statute, rule, or court order authorizing the document to be sealed. A protective order does not authorize a party to file a document under seal.

(2) Unless the sealed filing is authorized by statute, rule, or prior court order (other than a protective order), a party filing a document under seal must contemporaneously:

(A) file a Motion to Maintain Document(s) Under Seal, and

(i) if the filing party designated the subject information confidential, a Brief in Support that complies with the requirements of subsection (e), and a redacted (confidential portions blacked out) public version of the document that is being filed under seal; and/or

(ii) if the filing party did not designate the subject information confidential, an identification of the designating party(ies); and

~~(B) file a redacted (confidential portions blacked out) public version of the document that is being filed under seal; and~~

~~(BC)~~ serve an unredacted and complete version of the document upon all counsel and pro se parties.

(3) The designating party(ies) identified according to subsection (2)(A)(ii) must, within 14 days of service of the Motion to Maintain Document(s) under Seal, file a Statement Authorizing Unsealing of Document (or specific portions thereof) and/or a Brief in Support that complies with the requirements of subsection (e): and a redacted (confidential portions blacked out) public version of the document that was designated as confidential and filed under seal. If the designating party fails to file ~~such a supporting~~ Statement or Brief, then the filing party must notify the court of that failure. The court may summarily rule on the (d)(2)(A) motion to seal if the designating party does not file the required Statement or Brief. Such failure will result in unsealing the document(s).

(e) Brief in Support. A Brief in Support must not exceed 10 pages in length, without prior leave of court, and must include:

(1) identification of each specific document or portion(s) thereof that the party contends should remain under seal;

(2) the reasons demonstrating good cause to maintain the document, or portion(s) thereof, under seal including:

(A) why less restrictive alternatives to sealing, such as redaction, will not afford adequate protection;

(B) how the document satisfies applicable authority to maintain it under seal; and

(C) why the document should be kept sealed from the public despite its relevance or materiality to resolution of the matter; and

(3) a statement as to whether maintenance of the document under seal is opposed by any party; and

(4) a proposed order as an attachment.

(f) Opposition to Maintenance Under Seal. Any opposition to a Motion to Maintain Document(s) Under Seal must be filed within 14 days of service of the Brief in Support. Any Brief in Opposition must not exceed 10 pages in length. A member of the public may challenge at any time the maintenance of a document filed under seal.

(g) Denial of Motion to Maintain Under Seal. If the court denies the motion, the clerk will unseal the document(s) after ~~214~~ 214 days, absent Fed. R. Civ. P. 72(a) objection, motion to reconsider, appeal, or further court order.

Local Rules Advisory Committee Comment Re: 2015 Amendment

The 2015 revision includes a more detailed procedure for obtaining permission from the court to maintain filed documents under seal in civil matters. Filings under seal in criminal matters are the subject of new Local Criminal Rule 49.1-2. The parties are encouraged to consider and confer regarding redaction whenever practical and possible to avoid multiple filings of the same document and unnecessary motion practice. Parties should note that a protective order does not authorize a party to file or maintain a document under seal. In addition, the parties should follow Seventh Circuit guidance on the legal parameters for maintaining documents under seal enunciated in cases such as *City of Greenville, Illinois v. Syngenta Crop Protection, LLC*, 764 F.3d 695 (7th Cir. 2014); *Bond v. Utreas*, 585 F.3d 1061 (7th Cir. 2009); and *Baxter International, Inc. v. Abbott Laboratories*, 297 F.3d 544 (7th Cir. 2002).

E. Local Criminal Rule 12-1 – Authority of United States Magistrate Judges - shall be renumbered to **Local Criminal Rule 58-1**, and shall be amended in its entirety as follows:

Local Criminal Rule 58-1 - Authority of United States Magistrate Judges in Criminal Matters

(a) Authority of Magistrate Judges. The authority of United States magistrate judges in criminal misdemeanor matters is governed by 18 U.S.C. § 3401 et seq., 28 U.S.C. § 636(a), and this Rule.

(b) Class A Misdemeanors.

i. **Special designation; Order of Reference.** The magistrate judges are hereby specially designated to try persons accused of, and sentence persons convicted of, Class A misdemeanor offenses. A magistrate judge may exercise this jurisdiction following an Order of Reference issued by the district judge.

ii. **Consent.** Both parties seeking an Order of Reference shall file, jointly or severally, their respective consents to proceed before the magistrate judge. The district judge may issue the Order of Reference in the judge's discretion.

iii. **Procedure.** The magistrate judge must advise the defendant of his/her right to trial, judgment and sentencing by the district judge, conduct all other proceedings required by 18 U.S.C. § 3401(b), and obtain the defendant's informed consent on the record.

(c) Petty Offenses (Class B and C Misdemeanors and infractions). The magistrate judge is authorized by statute and this Rule to conduct all proceedings relating to petty offenses without necessity of consent by the defendant or Order of Reference.

Local Rules Advisory Committee Comment Re: 2015 Amendment

Renumbering Explanatory Note: This is technical amendment. Local Rules are generally numbered consistently with the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, when practical. Fed. R. Crim. P. 12 applies to Pleadings and Motions. Consequently, this Rule is renumbered to become Local Criminal Rule 58-1, which achieves consistency with Fed. R. Crim. P. 58, Petty Offenses and Other Misdemeanors.

F. Local Criminal Rule 49.1-2 – Filing Under Seal – shall be amended as follows:

(a) Maintaining Cases Under Seal. There is a presumption upon the initial appearance of a defendant on a sealed charging instrument that the entire case, including a multi-defendant case in which the defendant is the first to appear, should be unsealed. To maintain a case under seal, no later than at the time of the initial appearance, a party must file a motion and brief in support establishing good cause why the court should maintain the case under seal following the procedures set forth in subsections (d) and (e). The clerk will maintain a seal on the case until the court rules on the motion. If the court denies the motion, the clerk will unseal the case ~~214~~ days after service of the Order, absent Fed.R.Crim.P. 59(a) objection, motion to reconsider, ~~or~~ notice by a party of an intent to file an interlocutory appeal, or further court order.

(b) Filing Documents Under Seal - General Rule. Unless authorized in subsection (c), other rule, statute or court order, the clerk may not maintain under seal any document. Once a document is sealed, the clerk may not, without a court order, allow anyone to see it other than:

(1) the court and its staff;

(2) the clerk's staff; and

(3) the attorney(s) who has/have appeared in the individual defendant's case to which the document pertains.

(c) No Separate Motion Necessary. The following documents may be filed under seal without motion or further order of the court, provided counsel has a good faith belief that sealing is required to ensure the safety, privacy or cooperation of a person or entity, or to otherwise protect a substantial public interest:

(1) charging instruments (e.g., complaint, information, indictment) and accompanying documents (prior to the initial appearance of the defendant as set forth above in subsection (a));

(2) warrant-type applications (e.g., arrest warrants, search warrants, pen registers, trap and trace devices, tracking orders, cell site orders, and wiretaps under 18 U.S.C. §§ 2516 and 2703);

- (3) motions for tax return information pursuant to 26 U.S.C. § 6103;
- (4) documents filed in grand jury proceedings;
- (5) documents filed in juvenile proceedings;
- (6) plea agreements that reference a defendant's cooperation and related documents, whether filed by the government or the defendant;
- (7) motions for sentence variance filed pursuant to Fed. R. Crim. P. 35(b) or U.S.S.G. § 5K1.1, and supporting or related documents, such as a motion for temporary custody;
- (8) motions for competency evaluation and related documents, filed under the provisions of Fed. R. Crim. P. 12.2 and 18 U.S.C. § 4241.

With the exception of charging documents addressed in subsection (c)(1), such documents shall remain under seal subject to further order of the court.

(d) Separate Motion Necessary - Filing Documents Under Seal - Procedure.

(1) To file a document under seal, a party must file it electronically as required under section 18 of the *ECF Policies and Procedures Manual* unless excused from electronic filing under S.D. Ind. L.R. 5-2(a) and 5-3(e). In either case, the party must include a cover sheet as the first page for each document being filed under seal that must include:

(A) the case caption;

(B) the title of the document, or an appropriate name to identify it on the public docket if the title cannot be publicly disclosed; and

(C) the name, address, and telephone number of the person filing the document.

(2) Except as provided under subsection (c), a party filing a document under seal must contemporaneously:

(A) file a Motion to Maintain Document(s) Under Seal, and

(i) if the filing party designated the subject information confidential, *e.g.*, a trade secret, proprietary information, or a business practice or procedure, a Brief in Support that complies with the requirements of subsection (e); and/or

(ii) if the filing party did not designate the subject information confidential, an identification of the designating party(ies); and

(B) unless the motion is to be considered *ex parte*, in which case no service is required, serve an unredacted and complete version of the sealed document upon all counsel and *pro se* parties.

(3) The designating party(ies) identified according to subsection (2)(A)(ii) must, within 14 days of service of the Motion to Maintain Document(s) under Seal, file a Statement Authorizing Unsealing of Document (or specific portions thereof), or a Brief in Support that complies with the requirements of subsection (e). If the designating party fails to file such Statement or Brief, then the filing party must notify the court of that failure. The court may summarily rule on the (d)(2)(A) motion to seal if the designating party does not file the required Statement or Brief. Such failure will result in unsealing the document(s).

(e) Brief in Support. A Brief in Support must not exceed 10 pages in length and must include:

(1) identification of the case and/or each specific document or portion(s) thereof that the party contends should remain under seal;

(2) the reasons demonstrating good cause to maintain the case and/or document, or portion(s) thereof, under seal including:

(A) why less restrictive alternatives to sealing, such as redaction, will not afford adequate protection; and

(B) how the case and/or document satisfies applicable authority for it to be maintained under seal; and

(C) the time period for which the case and/or document should remain sealed; and

(3) a statement as to whether maintenance of the case and/or document under seal is opposed by any party or why such party's position is unknown; and

(4) a proposed order as an attachment.

(f) Opposition to Maintenance Under Seal. The filing of an Opposition to a Motion to Maintain Case or Document(s) Under Seal is governed by S.D. Ind. L.R. 7-1, but the time for response is triggered by the filing of the Brief in Support. Any Brief in Opposition must not exceed 10 pages in length.

(g) Denial of Motion to Maintain Under Seal. If the court denies the motion, the clerk will unseal the document(s) ease-1421 days after service of the Order, absent Fed. R. Crim. P. 59(a) objection, motion to reconsider, ~~or~~ notice by a party of an intent to file an interlocutory appeal, or further court order.

Local Rules Advisory Committee Comments Re: 2015 New Rule

New Local Criminal Rule 49.1-2 replaces Local Rule 5-11 for filing cases and/or documents under seal in criminal matters and includes a list of documents that may be filed under seal without a motion and a detailed procedure for obtaining permission from the court to maintain cases and filed documents under seal. Whenever practical, the parties should confer regarding redaction in lieu of filing sealed documents. In addition, the rule encourages the parties to follow Seventh Circuit guidance on the legal parameters for maintaining cases and documents under seal.

Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before **December 13, 2015**, and should be sent to:

Local Rule Comments
Office of the Clerk
105 U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204
or via email: LocalRules@insd.uscourts.gov