



# UNITED STATES DISTRICT COURT

## Southern District of Indiana

Roger A. G. Sharpe, Clerk  
Alison M. Chestovich, 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

May 20, 2021

### NOTICE

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

Pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 57 of the Federal Rules of Criminal 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 June 21, 2021**, 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. **Local Rule 5-12 - Social Security Appeals** - shall be **amended** as follows:

**(a) Social Security Appeals - Initial Process.** Where a complaint for administrative review is filed pursuant to 42 U.S.C. § 405(g) concerning benefits under the Social Security Act, by agreement with the United States Attorney, no actual service of initial process (i.e., summons and complaint) will be required in any case, unless otherwise ordered. The Social Security Administration will treat notification through the court's Case Management and Electronic Filing System (CM/ECF) as service under Rule 4 of the Federal Rules of Civil Procedure.

**(b) Response to Complaint.** The Social Security Administration must respond to a complaint for administrative review of an agency determination about Social Security benefits within 60 days after notification of the filing of the complaint through the court's CM/ECF by filing either 1) a motion to dismiss or 2) the certified administrative record. The filing of the certified administrative record will suffice as the Social Security Administration's answer to the complaint.

**(c) Briefing Schedule.** The plaintiff will have fifty-six (56) days from the date of the court's scheduling order to file a brief in support of the complaint. The defendant will have fifty-six (56) days after service of the plaintiff's brief to file a response, and the plaintiff will have twenty-eight (28) days to file a reply. Motions for extension are disfavored absent compelling circumstances.

**B. Subparagraph (a) of Local Rule 6-1 – Extensions of Time** – shall be amended as follows:

**(a) Automatic Initial Extension.** Except as provided in subsection (b) of this rule, all initial extensions of the following deadlines must be accomplished by a Notice of Extension of Time (without a proposed order), rather than by motion, unless a party affirmatively objects to extending the deadline:

- the deadline for filing a response to a pleading as defined by Fed. R. Civ. P. 7(a); **and**
- the deadline for responding to any written request for discovery or admissions; **and**
- ~~the deadline for filing a brief in a bankruptcy appeal.~~

No initial extension of these deadlines may exceed 28 days. The party to whom the deadline applies must file a Notice of Extension of Time that:

- (1) confirms that the deadline has not been previously extended;
- (2) sets forth the original deadline and the new deadline and confirms that the extension is for 28 or fewer days;
- (3) confirms that the extension does not interfere with the Case Management Plan, scheduled hearings or trials, or other deadlines set by court order; and
- (4) as to each other party who has appeared in the case, state either that (1) the party's counsel has agreed to the extension; or (2) the filing attorney attempted to reach the party's counsel (or the party if pro se) but was unable to do so, providing the dates, times and manner of all attempts to reach opposing counsel.

**(b) Pro Se Parties.** Filing of a Notice of Extension of Time pursuant to subsection (a) of this rule is optional in any case in which there is a pro se party who is not in default. A party opting not to file a Notice of Extension of Time must file a motion for any extension of a deadline in such cases.

**(c) Motion Required.** Unless subsection (a) of this rule applies, a request for an extension of time not made in open court or at a conference must:

- (1) be made by written motion;
- (2) state the original deadline and the requested deadline;
- (3) state the reasons for the requested extension and explain why those reasons constitute good cause (or excusable neglect if the motion is made after the deadline has expired) as required by Federal Rule of Civil Procedure 6(b); and
- (4) if all parties are represented by counsel, either:
  - (A) state that there is no objection to the extension; or
  - (B) describe all attempts made to obtain an agreement to the extension and state whether opposing counsel objects to it.

C. **Subparagraph (c) of 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 21 days after service of the Order, absent Fed. R. Crim. P. 59(a) objection, motion to reconsider, 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 or been appointed on appeal 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~~ documents that reference or relate to 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), 18 U.S.C. § 3553(e), or U.S.S.G. § 5K1.1, and supporting or related documents, including motions for temporary custody and sentencing memoranda;~~

~~(7)(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-;

(8) victim impact statements and related documents, including documents containing the names, addresses, and/or payment information of restitution payees.

With the exception of charging documents addressed in subsection (c)(1), such documents will 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.

**(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) 21 days after service of the Order, absent Fed. R. Crim. P. 59(a) objection, motion to reconsider, notice by a party of an intent to file an interlocutory appeal, or further court order.

Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before **June 21, 2021**, and should be sent to:

Roger A. G. Sharpe, Clerk of Court  
United States District Court  
Birch Bayh Federal Building and U.S. Courthouse  
46 East Ohio Street, Room 105  
Indianapolis, IN 46204  
or via email: [LocalRules@insd.uscourts.gov](mailto:LocalRules@insd.uscourts.gov)