



UNITED STATES DISTRICT COURT

Southern District of Indiana

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Alison M. Chestovich, Chief Deputy Clerk

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& U.S. Courthouse
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Indianapolis, IN 46204
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Terre Haute, IN 47807
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Lee H. Hamilton Federal Building
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121 West Spring Street
New Albany, IN 47150
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May 16, 2023

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 13, 2023**, 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 5-11 - 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 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 or been appointed on appeal, 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:~~

(2) The title of the document must clearly indicate that it is filed under seal. If the title cannot be publicly disclosed, an appropriate way to identify the document on the public docket must be identified directly below the title.

~~(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) 3) if a motion requesting that it be sealed does not accompany the document, identification of the~~ If a statute, rule, or court order authorizes ~~the document to be sealed, the first paragraph of the document must identify with specificity the statute, rule, or court order.~~ authorizes the document to be sealed, the first paragraph of the document must identify with specificity the statute, rule, or court order. A protective order does not authorize a party to file a document under seal.

(24) Unless the sealed filing is authorized by statute, rule, or prior court order (other than a protective order) under subsection (3), 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) serve an unredacted and complete version of the document upon all counsel and pro se parties.

(35) The designating party(ies) identified according to subsection (42)(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 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.

(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 21 days, absent Fed. R. Civ. P. 72(a) objection, motion to reconsider, appeal, or further court order.

B. 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,~~ **The court requires** all initial extensions of the following deadlines ~~must to~~ be accomplished by a Notice of **Parties' First** Extension of Time (without a proposed order), rather than by motion, unless **another** party affirmatively objects to extending the deadline or subsection (b) of this rule applies:

- 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.

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 Parties' First 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 Parties' First 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. Local Rule 37-1 – Discovery Disputes shall be amended as follows:

(a) **Required Actions Prior to Court Involvement.** Prior to involving the court in any discovery dispute, including disputes involving depositions, counsel must confer in a good faith attempt to resolve the dispute. If any such dispute cannot be resolved in this manner, counsel shall contact the chambers of the assigned Magistrate Judge to determine whether the Magistrate Judge is available to resolve the discovery dispute by way of a telephone conference or other proceeding prior to counsel filing a formal discovery motion. When the dispute involves an objection raised during a deposition that threatens to prevent completion of the deposition, any party may recess the deposition to contact the Magistrate Judge's chambers.

(b) **Requirements of Motion to Compel.** In the event that the discovery dispute is not resolved at the conference, counsel may file a motion to compel or other motion raising the dispute. Any motion raising a discovery dispute must contain a statement setting forth the efforts taken to resolve the dispute, including the date, time, and place of any discovery conference and the names of all participating parties. The court may deny any motion raising a discovery dispute that does not contain such a statement.

~~(c) Pro Se Parties.~~ Discovery disputes involving *pro se* parties are not subject to S.D. Ind. L.R. 37-1.

D. Local Rule 81-1 – Notice of Removal and Response in Diversity Cases shall be amended as follows:

(a) Notice Requirement. Every notice of removal based, in part or in whole, on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) must include:

(1) a statement that the amount in controversy, exclusive of interest and costs at issue satisfies the jurisdictional amount requirement; and

(2) a listing of the citizenship of each party.

(b) Response. Within 30 days after the filing of the notice of removal, every plaintiff who has not filed a motion to remand must file a statement responding to the notice of removal’s allegations as to the citizenship of the parties and the amount in controversy. If the plaintiff lacks sufficient information upon which to form a belief about those allegations despite meeting and conferring in good faith with the removing party about them, the plaintiff may so state.

(c) Fed. R. Civ. P. 7.1 Not Satisfied. Including this information in the notice of removal or the response does not satisfy the requirements of Fed. R. Civ. P. 7.1(a)(2). Any disclosure statement required by Rule 7.1(a)(2) must be filed as a separate document.

(ed) Burden of Proof. Nothing in this rule alters the burden of proof with respect to jurisdictional allegations.

E. Local Rule 83-5 – Bar Admission shall be amended as follows:

(a) Authority to Practice Before the Court.

(1) *Rule.* Only members of the court’s bar may represent parties before the court.

(2) *Exceptions.*

(A) *Pro Se.* A nonmember may represent him or herself in a case.

(B) *U.S. Government Attorneys.* A nonmember who is an attorney may represent the United States, or an officer or agency of the United States.

(C) *Pro Hac Vice.* Attorneys admitted *pro hac vice* pursuant to Local Rule

83-6 may represent parties in a case.

(3) Foreign Legal Consultants. Foreign legal consultants may not be admitted to practice in the court (despite the provisions of Rule 5 of the Indiana Rules for the Admission to the Bar and the Discipline of Attorneys).

(b) Bar Membership. The bar consists of those persons who:

(1) have been admitted by the court to practice pursuant to subsection (c); and

(2) have not resigned or been disbarred or suspended from the bar.

(c) Admission.

(1) Who May Be Admitted. An attorney admitted to practice by the United States Supreme Court or the highest court in any state may become a member of the court's bar when sponsored by a current member of this court's bar.

(2) Character. An applicant will be admitted to the bar if the court – after being assured by a member or by the report of a committee appointed by the court – is satisfied that the applicant:

(A) has good personal and professional character; and

(B) is a member in good standing of the bar in every jurisdiction where the applicant is admitted to practice.

(3) Entry on Court's Records. The attorney's admission will be entered on the court's records and the court will issue a certificate to that effect only after the applicant:

(A) completes the process and procedures in PACER for admission and electronic filing in this court;

(B) takes a prescribed oath or affirmation;

(C) pays the required fees (~~law clerks to the court's judges and attorneys representing the United States are exempt from these fees~~);

(D) provides complete contact information; and

(E) updates his or her contact information in PACER within 5 business days of any change.

(d) Fee Exemptions. Attorneys representing the United States, Federal

Defenders, Federal Community Defenders, and law clerks of this court and the Northern District of Indiana are exempt from any fees for admission to practice in this court.

~~(d)~~**(e) Local Counsel.** The court may require an attorney residing outside the district to retain, as local counsel, a member of the court's bar who resides in the district.

~~(e)~~**(f) Standards.** The Indiana Rules of Professional Conduct and the *Seventh Circuit Standards of Professional Conduct* (an appendix to these rules) govern the conduct of those practicing in the court.

~~(f)~~**(g) Sanctions.** Attorneys may be disbarred or suspended from practicing in the court for good cause, but only after having an opportunity to be heard. They may also be reprimanded as provided for in the court's Rules of Disciplinary Enforcement.

Note: Amended November 8, 2021, to reflect procedural changes associated with the court's adoption of the NextGen CM/ECF system. Amended July 1, 2023, to reflect the existing practice exempting certain attorneys from payment of the admission fee.

F. Local Criminal Rule 12-2 – Assignment of Related Cases shall be amended as follows:

(a) Conditions for Reassignment. A criminal case may be reassigned to another judge if it is found to be related to a lower-numbered criminal case assigned to that judge and each of the following criteria is met:

~~(1) all defendants in each of the cases are the same, or if the defendants are not all the same but at least one is the same,~~the cases share one or more common defendant(s) or the cases are based upon the same set of facts, events or offenses;

(2) the handling of both cases by the same judge is likely to result in an overall saving of judicial resources; and

(3) neither case has progressed to the point where reassigning a case would likely delay substantially the proceedings in either case, or the court finds that the assignment of the cases to the same judge would promote consistency in resolution of the cases or otherwise be in the interest of justice.

(b) Motion to Reassign. A motion for reassignment based on relatedness may be filed by any party to a case. The motion must be filed with and will be decided by the judge to whom the lowest numbered case of the claimed related set is assigned for trial or other final disposition. If the set includes both felony cases, and one or more misdemeanors assigned to a magistrate judge, then the motion must be filed with, and will be decided by the district judge assigned to the lowest numbered felony case in the set. Copies of the motion must be served on all parties and on the judges for all of the

affected cases. The motion must:

(1) set forth the points of commonality of the cases in sufficient detail to indicate that the cases are related within the meaning of subsection (a), and

(2) indicate the extent to which the conditions required by subsection (a) will be met if the cases are found to be related.

Any objection to the motion must be filed within 7 days of the filing of the motion.

(c) **Order.** The judge must enter an order finding whether or not the cases are related, and, if they are, whether the higher numbered case or cases should be reassigned to that judge. Where the judge finds that reassignment should occur, the clerk must reassign the higher numbered case or cases to the judge deciding the motion and to whom the lowest numbered case is assigned. A copy of any finding on relatedness and whether or not reassignment should take place must be sent to each of the judges before whom any of the higher numbered cases are pending.

(d) **Scope of Reassignment Order.** An order under this rule reassigning cases as related does not constitute a joinder order under Fed. R. Crim. P. 13.

G. Local Criminal Rule 49-1 – Filing of Documents shall be amended as follows:

(a) **Electronic Filing.** Electronic filing of documents is generally required pursuant to Fed. R. Crim. P. 49(b)(3)(A).

(b) **Documents Exempt from Electronic Filing.** Any document that is exempt from electronic filing must be filed with the clerk and served on other parties in the case as required by Fed. R. Crim. P. 49(a)(4) and Fed. R. Crim. P. 49(b) as they relate to the service of non-electronic documents. Original documents consisting of more than one page must be fastened by paperclip or binder clip and may not be stapled. Copies for service on other parties must be stapled in the top left corner. Only the following documents are exempt from the electronic filing requirements of Fed. R. Crim. P. 49(b)(3):

(1) any case initiating document resulting in the assignment of a criminal or magistrate judge case number and/or any charging instrument, initiating or superseding, and accompanying documents;

(2) documents requiring the oath or affirmation of a law enforcement officer in the presence of a judge or magistrate judge;

(3) documents filed in open court;

- (4) documents filed by *pro se* defendants;
- (5) exhibits in a format that does not readily permit electronic filing (such as videos and large maps and charts);
- (6) documents that are illegible when scanned into PDF format;
- (7) documents filed in cases not maintained on the ECF system; and
- (8) any other documents that the court or these rules specifically allow to be filed directly with the clerk.

(c) Documents Requiring Hand Signatures. Waivers, plea agreements and other documents that require a defendant's signature or the signature of a person other than an attorney of record must be signed by hand and scanned into PDF format for electronic filing, pursuant to Local Rule 5-7(b).

Note: ~~Amended December 1, 2018, for consistency with amendments to Fed. R. Crim. P. 49, which become effective on December 1, 2018. Amended Fed. R. Crim. P. 49 addresses what papers must be served, service through the court's electronic filing system and by other electronic means, and when certificates of service are required. The amended Rule largely parallels the amendments to the Civil Rules on each of these subjects. Amended July 1, 2023 to reflect the proper title for magistrate judges.~~

H. **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 (f), 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) Electronic Filing Required. 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).

(d) Title. The title of the document must clearly indicate that it is filed under seal. If the title cannot be publicly disclosed, an appropriate way to identify the document on the public docket must be identified directly below the title.

(e) Prior Authorization to Seal. If a statute, rule, or court order authorizes the document to be sealed, the first paragraph of the document must identify with specificity the statute, rule, or court order. A protective order does not authorize a party to file a document under seal.

(f) No Separate Motion Necessary. No motion to seal is necessary for documents authorized under subsection (e). In addition, the following documents may also 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 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) documents that reference or relate to a defendant's cooperation;

(7) motions for competency evaluation and related documents, filed under the provisions of Fed. R. Crim. P. 12.2 and 18 U.S.C. § 4241; and

(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 (ef)(1), such documents will remain under seal subject to further order of the court.

(dg) 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 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~~

(21) Except as provided under subsection (ef), 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.

(32) The designating party(ies) identified according to subsection (12)(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.

(eh) 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.

(if) 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.

(ig) 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 13, 2023**, and should be sent to:

Roger A. G. Sharpe, Clerk of Court
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46 East Ohio Street, Room 105
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