



# 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

December 1, 2014

### NOTICE

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

The Court has considered the recommendation of the Local Rules Advisory Committee that certain Local Rules be amended, and the Clerk issued a Public Notice on October 31, 2014, regarding the proposed amendments. The Court has considered the proposed amendments and the comments received.

Therefore, 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 that the following amendments to the Local Rules of this Court are adopted, effective **January 1, 2015**. Unless otherwise indicated, as seen in this Notice ~~redline~~ text is added and ~~struck~~ text is deleted. The proposed amendments are as follows:

**A. Subparagraphs (d)(1) and (2) of Local Rule 5-1 – Format of ~~Documents~~Papers Presented for Filing will be amended as follows:**

**(d) Non-Electronic Filings.**

**(1) *Form, Style, and Size of Papers.*** Any paper that is not filed electronically must:

- be flat, unfolded, and on good-quality, 8.5" x 11" white paper;
- be single-sided;
- not have a cover or a back;
- ~~must~~ be (if consisting of more than one page) fastened by paperclip or binder clip and may not be stapled;
- be two-hole punched at the top with the holes 2 ¾" apart and appropriately centered; and

- include the original signature of the *pro se* litigant or attorney who files it.

(2) **Request for Nonconforming Fastening.** If a paper cannot be ~~fastened~~~~stapled~~ or bound as required by this rule, a party may ask the ~~clerk~~~~court~~ for ~~permission~~~~leave~~ to fasten it in another manner. The party must make such a request before attempting to file the paper with nonconforming fastening.

**B. Subparagraph (e) of Local Rule 5-3 – Eligibility, Registration, Passwords for Electronic Filing; Exemption from Electronic Filing will be amended as follows:**

**(e) Exemption from Participation.** The court may exempt attorneys from using the ECF system in a particular case for good cause. An attorney must file a petition for ECF exemption and a CM/ECF technical requirements ~~exemption~~ questionnaire **in each case in which the attorney seeks an exemption.** (~~†The CM/ECF technical requirements exemption questionnaire is both of which are~~ available on the court's website, [www.insd.uscourts.gov](http://www.insd.uscourts.gov)). ~~in each case in which the attorney seeks an exemption.~~

**C. Local Rule 5-11 – Filing Papers Under Seal – is deleted in its entirety and replaced with the following new Rule:**

**Local Rule 5-11 - Filing Under Seal – Civil Cases**

**(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 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/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

(C) 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). If the designating party fails to file such Statement or Brief, then the filing party must notify the court of that failure. 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 14 days, absent Fed.R.Civ.P. 72(a) objection, motion to reconsider, appeal, or further court order.

#### **Local Rules Advisory Committee Comments Re: 2014 Amendment**

The 2014 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 (7<sup>th</sup> Cir. 2014); *Bond v. Utreas*, 585 F.3d 1061 (7<sup>th</sup> Cir. 2009); and *Baxter International, Inc. v. Abbott Laboratories*, 297 F.3d 544 (7<sup>th</sup> Cir. 2002).

Note: Adopted effective January 1, 2015.

**D. Subparagraph (k) of Local Rule 56-1 – Summary Judgment Procedure** will be amended as follows:

**(k) Notice Requirement for *Pro Se* Cases.** A party seeking summary judgment against an unrepresented party must file and serve ~~that party with~~ the notice contained in Appendix A.

**E. Appendix A – Notice Regarding Right to Respond to and Submit Evidence in Opposition to Motion for Summary Judgment** will be amended as follows:

S.D. Indiana--Appendix A

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA

_____	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
_____	)	
	)	
Defendant.	)	

**NOTICE REGARDING RIGHT TO RESPOND TO AND SUBMIT EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

[Moving party(ies)] has/have filed a motion seeking summary judgment. This means that the [moving party(ies)] seek(s) to have some part or all of this lawsuit decided against you without a trial. This motion is based on the evidence presented in the affidavits and documents attached to or referenced in the motion for summary judgment or based on the argument that you are unable to offer admissible evidence in support of your claim.

You have the right to file a response to the motion. Each of the facts stated in the “Statement of Material Facts Not in Dispute” which accompanies the motion for summary judgment will be accepted by the court as being true unless you submit your own affidavits or other admissible evidence disputing those facts. Your response may also dispute the admissibility of the evidence relied on in support of the motion for summary judgment. *However, a failure to properly respond will be the same as failing to present any evidence in your favor at a trial.*

You must file and serve a copy of your response to the motion for summary judgment by [date certain equal to 28 days after service of the motion, plus 3 days if served by mail] or by other such date ordered by the court. If you need more time to respond, you must file a motion with the court asking for more time before the deadline expires. The court may, but is not required to, give you more time.

Your response must also comply with all other portions of [Federal Rule of Civil Procedure 56](#), and with Local Rule 56-1, copies of which are attached. Please note that for these rules you are considered a “party,” the “non-moving party” and/or the “non-movant.”

[Insert Federal Rule of Civil Procedure 56]

[Insert Local Rule 56-1]

Like other documents filed with the court, your response must comply with Southern District of Indiana Local Rule 5-1, which provides:

**(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 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.

**(b) General.** Any pleading, motion, brief, affidavit, notice, or proposed order filed with the court, whether electronically or with the clerk, must:

- be plainly typewritten, printed, or prepared by a clearly legible copying process;
- have at least 1-inch margins;
- use at least 12-point type in the body of the paper and at least 10-point type in footnotes;
- be double spaced (except for headings, footnotes, and quoted material);
- have consecutively numbered pages;
- include a title on the first page;
- if it has four or more exhibits, include a separate index that identifies and briefly describes each exhibit;
- if it is a form of order, include a statement of service, in the format required by S.D. Ind. L.R. 5-5(d) in the lower left corner of the paper; and
- in the case of pleadings, motions, legal briefs, and notices, include the name, complete address, telephone number, facsimile number (where available), and e-mail address (where available) of the *pro se* litigant or attorney who files it.

**(c) Electronic Filings.** Any paper submitted via the court's electronic case filing (ECF) system must be:

- in .pdf format;
- converted to a .pdf file directly from a word processing program, unless it exists only in paper format (in which case it may be scanned to create a .pdf document);
- submitted as one or more .pdf files that do not exceed 10 megabytes each (consistent with the *CM/ECF Policies and Procedures Manual*); and
- otherwise prepared and filed in a manner consistent with the *CM/ECF Policies and Procedures Manual*.

**(d) Non-Electronic Filings.**

**(1) Form, Style, and Size of Papers.** Any paper that is not filed electronically must:

- be flat, unfolded, and on good-quality, 8.5" x 11" white paper;
- be single-sided;
- not have a cover or a back;
- be (if consisting of more than one page) fastened by paperclip or binder clip and may not be stapled;
- be two-hole punched at the top with the holes 2 ¾" apart and appropriately centered; and
- include the original signature of the *pro se* litigant or attorney who files it.

**(2) Request for Nonconforming Fastening.** If a paper cannot be fastened or bound as required by this rule, a party may ask the clerk for permission to fasten it in another manner. The party must make such a request before attempting to file the paper with nonconforming fastening.

**(e) Nonconforming Papers.** The clerk will accept a paper that violates this rule, but the court may exclude the paper from the official record.

**F.** The numbering format for **Local Criminal Rules 1.1 through 57.1** will be **restyled** – “dashes” will **replace** the “periods”.

**G.** New **Local Rule Local Criminal Rule 49.1-2 - Filing Under Seal** – will be **adopted**, as follows:

**Local Criminal Rule 49.1-2 - Filing Under Seal**

**(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 14 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.

**(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. 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 case 14 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.

### **Local Rules Advisory Committee Comments Re: 2014 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.

Note: Adopted effective January 1, 2015.