

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 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:

- (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) 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 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.

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).

Note: Adopted effective January 1, 2015.