

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE: Amendment of Local Civil   :  
      Rules   :     O R D E R

The Court being vested with authority pursuant to 28 U.S.C. § 2071 & Rule 83 of the Federal Rules of Civil Procedure to make and amend local rules; proposed amendments to Local Civil Rules having been submitted to the Lawyers Advisory Committee and the public for comment; no comments having been received, and the proposed amendments having been approved by the Board of Judges;

It is on this 30th day of September, 2016, ORDERED that the Local Civil Rules are amended to read:

Civ. RULE 5.3 CONFIDENTIALITY ORDERS AND RESTRICTING PUBLIC ACCESS UNDER CM/ECF

(a) Scope of Rule

- (1) This rule shall govern any request by a party or parties to seal, or otherwise restrict public access to, any materials filed with the Court or utilized in connection with judicial decision-making. This rule shall also govern any request by a party or parties to seal, or otherwise restrict public access to, any judicial proceedings.
- (2) As used in this rule, “materials” includes all documents of any nature and in any medium. “Judicial proceedings” includes hearings and trials but does not include conferences in chambers.
- (3) This rule shall not apply to any materials or judicial proceedings which must be sealed or redacted pursuant to statute or other law.

(b) Confidentiality Order

- (1) Parties may enter into written agreements to keep materials produced in discovery confidential and to return or destroy such materials as agreed by parties and as allowed by law.
- (2) Parties may submit to a district judge or magistrate judge an agreed-on form of order

which embodies a written agreement as described above.

- (3) No form of order submitted by parties shall supersede the provisions of this rule with regard to the filing of materials or judicial proceedings. The form of order may, however, provide for the return or destruction of discovery materials as agreed by parties. The form of order shall be subject to modification by a district judge or magistrate judge at any time.
- (4) Any order under this section shall be filed electronically under the designation “confidentiality order.”
- (5) Any dispute regarding the entry of an order, or the confidentiality of discovery materials under any order, under this section shall be brought before a magistrate judge pursuant to L. Civ. R. 37.1 (a)(1).
- (6) Absent extraordinary circumstances, a party shall not file a motion or other materials with redacted information, absent a confidentiality order which expressly grants leave to file under seal or other appropriate leave of Court.

(c) Motion to Seal or Otherwise Restrict Public Access

- (1) Form of Motion. Any request by a party, parties or nonparty to file materials under seal, or otherwise restrict public access to, any materials or judicial proceedings shall ordinarily be made on notice, by a single, consolidated motion on behalf of all parties, unless otherwise ordered by the Court on a case-by-case basis, including any non-party which has produced materials as to which it seeks to restrict public access. No brief is necessary in support or in opposition to the motion unless a party believes it will assist the Court. The single, consolidated motion shall include all information required by (c)(3) below. Any motion and supporting papers to seal or otherwise restrict public access shall be available for review by the public.
- (2) Timing
  - (i) Not later than 21 days after the first filing of redacted materials, the parties shall confer in an effort to narrow or eliminate the materials or information that may be the subject of a motion to seal.
  - (ii) Any motion to seal or otherwise restrict access made under this rule shall be filed by the party seeking to seal materials, unless the parties otherwise agree. Any such motion shall be (a) filed within 14 days following the completed briefing of the materials sought to be sealed or as may be ordered by the Court; and (b) filed electronically under the designation “motion to seal materials” or “motion to seal judicial proceedings,” and shall be returnable on the next available motion date.
  - (iii) In any action in which materials have been filed temporarily under seal pursuant to (c)(4) of this rule, and the motion or other filing which includes such materials is resolved or otherwise terminated before all briefing is completed, the party filing such materials shall have a continuing obligation to file a motion to seal. Such motion shall be filed within 14 days following the date on which the last of such materials was filed under temporary seal, or as

may otherwise be ordered by the Court.

- (3) Contents of Motion. Any motion papers shall include as part of an affidavit, declaration, certification or other documents of the type referenced in 28 U.S.C. §1746, which shall be based on personal knowledge as required by Local Civil Rule 7.2(a), an index, substantially in form suggested by Appendix U, describing with particularity:
  - (a) the nature of the materials or proceedings at issue;
  - (b) the legitimate private or public interest which warrant the relief sought;
  - (c) the clearly defined and serious injury that would result if the relief sought is not granted;
  - (d) why a less restrictive alternative to the relief sought is not available;
  - (e) any prior order sealing the same materials in the pending action; and
  - (f) the identity of any party or nonparty known to be objecting to the sealing request.

Such index shall also include, as to each objection to seal any material:

- (g) the materials to which there is an objection;
- (h) the basis for the objection; and
- (i) if the material or information was previously sealed by the Court in the pending action, why the materials should not be maintained under seal.

Proposed Findings of Fact and Conclusions of Law shall be submitted with the motion papers in the proposed order required by (c)(6) below. Any party opposing the sealing request shall submit an alternative proposed order including the party's Proposed Findings of Fact and Conclusions of Law.

- (4) Temporary Sealing Pending Decisions on the Motion to Seal; Redacted Public Filings. Any materials deemed confidential by a party or parties and submitted under temporary sealing subject to a motion to seal or otherwise restrict public access shall be filed electronically under the designation "confidential materials" and shall remain sealed until such time as the motion is decided, subject to Local Civil Rule 72.1(c)(1)(C). When a document filed under seal contains both confidential and non-confidential information, an unredacted version shall be filed under seal, and a version with only the confidential portions redacted shall be filed publicly within one day of the filing of the unredacted version.
- (5) Intervention. Any interested person may move to intervene pursuant to Fed. R. Civ. P. 24(b) before the return date of any motion to seal or otherwise restrict public access or to obtain public access to materials or judicial proceedings filed under seal.
- (6) Sealing Order. Any order or opinion on any motion to seal or otherwise restrict public access shall include findings on the factors set forth in (c)(3) above as well as other findings required by law and shall be filed electronically under the designation "order" or "opinion to seal." Such orders and opinions may be redacted. Unredacted orders and opinions may be filed under seal, either electronically or in other medium.
- (7) Required Filing to Conform to Order. To the extent that any order or opinion grants less than the full relief sought for any document filed in redacted form, within 14 days

after the order or opinion, or as otherwise directed by the Court, the filing party of the redacted materials shall file an amended redacted document or documents, reflecting the rulings of the Court.

- (8) Denial of Motion to Seal. To the extent any order or opinion denies a motion to seal material that has been filed under temporary seal, such material shall be unsealed by the Clerk of Court following the 14-day period set forth in Local Civil Rule 72.1(c)(1)(C), unless a notice of appeal is timely filed.
- (9) Emergent Application. Notwithstanding the above, on emergent application of a party, parties, nonparties or sua sponte, a district judge or magistrate judge may seal or otherwise restrict public access to materials or judicial proceedings on a temporary basis. The district judge or magistrate judge shall do so by written order which sets forth the basis for the temporary relief and which shall be filed electronically under the designation "temporary order to seal." The sealing party shall have 14 days from entry of the order to file a motion to seal, in accordance with this rule. Any interested person may move pursuant to L. Civ. R. 7.1 and Fed. R. Civ. P. 24 (b) to intervene, which motion shall be made returnable on the next available return date.
- (10) Failure to Timely File. When a motion to seal or otherwise restrict public access is not timely filed in accordance with this rule, the Court may direct that the filings be publicly available without notice.

(d) Settlement Agreements

- (1) No party or parties shall submit a proposed settlement agreement for approval by a district judge or magistrate judge unless required to do so by statute or other law or for the purpose of retaining jurisdiction.
- (2) Any settlement agreement filed with the Court or incorporated into an order shall, absent an appropriate showing under federal law, be deemed a public record and available for public review.

(e) Dockets

No docket shall be sealed. However, entries on a docket may be sealed pursuant to the provisions of this rule.

(f) Web Site

The Clerk shall maintain for public review on the official Court PACER site a consolidated report which reflects all motions, orders, and opinions described by this rule.

(g) Transcripts/Digital Recordings

- (1) This subsection applies to transcript/digital recording redactions which are separate and

apart from the redaction of personal identifiers mandated by Federal Rule of Civil Procedure 5.2 and the Court's Electronic Case Filing Policies and Procedures.

- (2) A motion to redact and seal any part or all of a transcript/digital recording shall satisfy the standards for sealing set forth in L.Civ.R. 5.3(c). All motions to redact and seal any transcript shall be deemed to apply to the original record as defined in 28 U.S.C. § 753. Any transcript that is the subject of a motion to redact and seal shall be temporarily sealed by the Clerk's Office, pending the Court's determination of the motion. Because transcripts are not available on PACER for ninety (90) days, the party filing the motion to redact and seal shall not electronically file its proposed redacted version of the transcript as part of its motion papers, but shall instead submit same directly to Chambers for the appropriate judge's review. If the motion to redact and seal is granted, the party filing the motion shall submit to the court reporter/transcription agency a Statement of Redaction and Sealing pursuant to L.Civ.R.5.3, available at <http://www.njd.uscourts.gov/forms.html> at form DNJ-CMECF-009. After receiving same, unless the entire transcript has been ordered sealed, the court reporter/transcription agency shall submit the redacted version of the transcript to the Clerk of the Court for filing on ECF. All other motion papers shall be available for public review in accordance with L.Civ.R.5.3(c)(1).
- (3) To prevent public access to any transcript/digital recording that is the subject of a motion to redact and seal, the party filing the motion to seal shall serve a copy of the Notice of Motion to Seal on the appropriate court reporter/transcription agency with a cover letter indicating that the transcript/digital recording is the subject of a pending motion to seal and should not be made available to the public until the pending motion is decided by the Court.
- (4) Any party who in good faith believes that the confidential information entitled to be sealed pursuant to L.Civ.R.5.3(c) was discussed during a recorded judicial proceeding may make an application pursuant to L.Civ.R. 5.3(c)(9) to temporarily seal the contents of the transcript/digital recording of that proceeding pending the party's review of the transcript/digital recording and filing of a formal motion to redact and seal. Absent such an application being made and granted, any purchased transcript shall be available for viewing in its unredacted state at the court public terminal until a formal motion to redact and seal is filed.

(h) Effective Date

This rule shall be effective as of September 30, 2016 and shall apply to all motions under this rule.

FOR THE COURT:



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JEROME B. SIMANDLE  
Chief Judge

