

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NOTICE TO THE BAR

PROPOSED AMENDMENTS TO
THE LOCAL CIVIL RULES

Notice is hereby given to the Bar and all interested parties that the United States District Court for the District of New Jersey proposes to make the following amendments to the following Local Civil Rules:

Civ. RULE 5.3 PROTECTIVE ORDERS AND PUBLIC ACCESS UNDER CM/ECF – *(Due to the substantial revisions to L.Civ.R. 5.3, the publication of a redlined version comparing the current and amended rule would be impracticable. Therefore, only the amended version will be posted.)*

Civ. RULE 16.1 PRETRIAL CONFERENCES; SCHEDULING; CASE MANAGEMENT

Civ. RULE 26.1 DISCOVERY

The full text of the proposed amendments can be found on the Court's website www.njd.uscourts.gov.

Comments regarding this proposal are to be submitted by August 30, 2016 to:

William T. Walsh, Clerk
United States District Court
Martin Luther King, Jr. Federal Building
and Courthouse
P.O. Box 419
Newark, NJ 07101

FOR THE COURT
Jerome B. Simandle
Chief Judge

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” include 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 or 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 to 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 publically 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 72.1c(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 publically 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

- (1) This subsection applies to transcript 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 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/courtReporters.html> at form DNJ-CMECF-000__. 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 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 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 is in good faith believes that the confidential information entitled to be sealed pursuant to L.Civ.R.5.3(3)(9) to temporarily seal the contents of the transcript of that proceeding pending the party's review of the transcript 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 _____ and shall apply to all motions under this rule.

New text is bold, deleted text is stricken.

Civ. RULE 16.1 PRETRIAL CONFERENCES; SCHEDULING; CASE

MANAGEMENT (a) Scheduling Conferences -- Generally

(1) Conferences pursuant to Fed. R. Civ. P. 16 shall be conducted, in the first instance, by the Magistrate Judge, unless the Judge otherwise directs. The initial conference shall be scheduled within 60 days of filing of an initial answer, unless deferred by the Magistrate Judge due to the pendency of a dispositive or other motion.

(2) The Magistrate Judge may conduct such other conferences as are consistent with the circumstances of the particular case and this Rule and may revise any prior scheduling order for good cause.

(3) At each conference each party not appearing pro se shall be represented by an attorney who shall have full authority to bind that party in all pretrial matters.

(4) The Magistrate Judge may, at any time he or she deems appropriate or at the request of a party, conduct a settlement conference. At each such conference attorneys shall ensure that parties are available, either in person or by telephone, and as the Magistrate Judge directs, except that a governmental party may be represented by a knowledgeable delegate.

(5) Conferences shall not be conducted in those civil cases described in L.Civ.R. 72.1(a)(3)(C) unless the Magistrate Judge so directs.

(b) Scheduling and Case Management Orders

(1) At or after the initial conference, the Magistrate Judge shall, after consultation with

counsel, enter a scheduling order which may include, but need not be limited to, the following:

(A) dates by which parties must move to amend pleadings or add new

parties; (B) dates for submission of experts' reports;

(C) dates for completion of fact and expert discovery;

(D) dates for filing of dispositive motions after due consideration whether such motions may be brought at an early stage of proceedings (i.e., before completion of fact discovery or submission of experts' reports);

(E) a pretrial conference date; ~~and~~

(F) any designation of the case for arbitration, mediation, appointment of a special master or other special procedure; **and**

(G) limitations on the scope of preservation, as well as ~~The scheduling order may further include such limitations~~ on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs.

Absent objection of a party or a form of order submitted on consent, wither of which must be set forth in a proposed discovery plan submitted pursuant to Federal Rule of Civil Procedure 26(f)(2), a scheduling order entered pursuant to this subsection on or after [THE DATE OF ADOPTION OF THIS AMENDED VERSION OF THIS RULE] shall be deemed to incorporate an order pursuant to Federal Rule of Evidence 502(d) that:

(i) The production of materials, inadvertent or otherwise, shall not be deemed a waiver of attorney-client privilege or work product protection in this civil action or in any other federal or State proceeding.

(ii) Nothing in (i) above shall limit the right of a party or subpoenaed nonparty to conduct a reasonable review of materials for relevance or otherwise in response to a discovery request or requests.

(2) (deleted by order of 9/23/97)

(3) The Magistrate Judge shall advise each party of the provisions of L.Civ.R. 73.1(a).

(4) In a civil action arising under 18 U.S.C. §§1961-1968, the Judge or Magistrate Judge may require a RICO case statement to be filed and served in the form set forth in Appendix O.

(c) Initial Conferences -- L.Civ.R. 201.1 Arbitration Cases

At the initial conference in cases assigned to arbitration pursuant to L.Civ.R. 201.1(c) the Magistrate Judge shall enter a scheduling order as contemplated by L.Civ.R. 16.1(b) except that no pretrial date shall be set. Only an initial conference shall be conducted prior to a demand for trial de novo pursuant to L.Civ.R. 201.1(g), except that the Magistrate Judge may conduct one or more additional conferences if a new party or claim is added, or an unanticipated event occurs affecting the schedule set at the initial conference.

(d) (deleted by order of 9/23/97)

(e) Trial Briefs

Trial briefs shall be served upon counsel and delivered to the Court as directed in the pretrial order or otherwise.

(f) Conference to Resolve Case Management Disputes

(1) Counsel shall confer to resolve any case management dispute. Any such dispute not resolved shall be presented by telephone conference call or letter to the Magistrate Judge. This presentation shall precede any formal motion.

(2) Cases in which a party appears pro se shall not be subject to L.Civ.R. 16.1(f)(1) unless the Magistrate Judge so directs. In such cases case management disputes shall be presented by formal motion consistent with L.Civ.R. 16.1(g).

(g) Case Management -- Motions

(1) Case management motions must be accompanied by an affidavit or other document complying with 28 U.S.C. § 1746 certifying that the moving party has conferred with the opposing party in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the Court and that the parties have been unable to reach agreement. The affidavit or other document complying with 28 U.S.C. § 1746 shall set forth the date and method of communication used in attempting to reach agreement.

(2) L.Civ.R. 7.1 shall apply to case management motions, except that no reply papers shall be allowed except with the permission of the Magistrate Judge. Unless oral argument is to be heard under L.Civ.R.16.1(g)(3), the Magistrate Judge may decide the motion on the basis of the papers received when the deadline for submitting the opposition has expired.

(3) No oral argument shall be heard except as permitted expressly by the Magistrate Judge assigned to hear the motion. In the event oral argument is required, the parties shall be notified by the Court. Oral argument may be conducted in open court or by telephone conference, at the discretion of the Magistrate Judge. Any party who believes that a case management motion requires oral argument shall request it in the notice of motion or in

response to the notice of motion, and so notify the Court in writing at the time the motion or opposition thereto is filed.

Amended: September 23, 1997, June 19, 2013

Source: L.Civ.R. 16.1(a) - G.R. 15.A.; L.Civ.R. 16.1(b) - G.R. 15.B.3-6; L.Civ.R. 16.1(c) - G.R.

15.C.; L.Civ.R. 16.1(d) - G.R. 15.D.; L.Civ.R. 16.1(e) - G.R. 27.C.; L.Civ.R. 16.1(f) - G.R. 15.E.2-3; L.Civ.R. 16.1(g) - G.R. 15.F.1, 3-4.

New text is bold, deleted text is stricken.

Civ. Rule 26.1 DISCOVERY

(a) Discovery - Generally

All parties shall conduct discovery expeditiously and diligently. **In addition, all discovery conducted shall be proportional to the needs of the case, considering the factors set forth in Federal Rule of Civil Procedure 26(b)(1).**

(b) Meeting of Parties, Discovery Plans, and Initial Disclosures

(1) The requirements currently codified in Fed. R. Civ. P. 26(a) and (f) pertaining to required disclosures, meetings of parties, and submission of discovery plans, shall apply to all civil cases ~~filed after December 1, 1993 and to all civil cases pending on December 1, 1993 that have not had their initial scheduling conference prior to January 20, 1994;~~ , except ~~that these requirements shall not apply to~~ those civil cases described in L.Civ.R. 72.1(a)(3)(C) in which scheduling conferences are not normally held, unless the judicial officer otherwise directs. The judicial officer may modify or suspend these requirements in a case for good cause.

(2) The initial meeting of parties as required in Fed. R. Civ. P. 26(f) shall be convened at least 21 days before the initial scheduling conference, and the proposed discovery plan under Fed. R. Civ. P. 26(f)(3) shall be generated at that meeting and delivered to the Magistrate Judge within 14 days after the meeting of parties. The parties shall submit their Fed. R. Civ. P. 26(f) discovery plan containing the parties' views and proposals regarding the following:

(a) Any changes in timing, form, or requirements of mandatory disclosures under Fed. R. Civ. P. 26(a);

(b) The date on which mandatory disclosures were or will be made;

(c) The anticipated ~~substantive~~ scope of discovery, **considering the proportionality factors set forth in Federal Rule of Civil Procedure 26(b)(1)** ~~including both discovery relevant to the claims and defenses and discovery relevant to the subject matter of the dispute;~~

(d) Whether any party will likely request or produce computer-based or other digital information, and if so, the parties' discussions of the issues listed under the Duty to Meet and Confer in L. Civ. R. 26.1(d)(3) below;

- (e) The date by which discovery should be completed;
- (f) Any needed changes in limitations imposed by the Federal Rules of Civil Procedure, local rule, or standing order;
- (g) Any orders, such as data preservation orders, protective orders, **or orders reflecting agreements under Federal Rule of Evidence 502** etc., which should be entered;
- (h) Proposed deadline for joining other parties and amending the pleadings;
- (i) Proposed dates for filing motions and for trial;
- (j) Whether the case is one which might be resolved in whole or in part by voluntary arbitration (pursuant to L. Civ. R. 201.1 or otherwise), mediation (pursuant to L. Civ. R. 301.1 or otherwise), appointment of a special master or other special procedure.

The parties shall make their initial disclosures under Fed. R. Civ. P. 26(a)(1) within 14 days after the initial meeting of the parties, unless otherwise stipulated or directed by the Court. Such discovery plans and disclosures shall not be filed with the Clerk.

(c) Discovery Materials

(1) Initial and expert disclosure materials under Fed.R.Civ.P.26(a)(1) and 26(a)(2), transcripts of depositions, interrogatories and answers thereto, requests for production of documents or to permit entry onto land and responses thereto, and requests for admissions and answers thereto shall not be filed until used in a proceeding or upon order of the Court. However, all such papers must be served on other counsel or parties entitled thereto under Fed.R.Civ.P.5 and 26(a)(4).

(2) Pretrial disclosure materials under Fed.R.Civ.P.26(a)(3) shall be incorporated by reference into the order entered after any final pretrial conference under Fed.R.Civ.P.16(d).

(3) In those instances when such discovery materials are properly filed, the Clerk shall place them in the open case file unless otherwise ordered.

(4) The party obtaining any material through discovery is responsible for its preservation and delivery to the Court if needed or ordered. It shall be the duty of the party taking a deposition to make certain that the officer before whom it was taken has delivered it to that party for preservation and to the Court as required by Fed. R. Civ. P. 30(f)(1) if needed or so ordered.

(d) Discovery of Digital Information Including Computer-Based Information

(1) Duty to Investigate and Disclose. Prior to a Fed. R. Civ. P. 26(f) conference, counsel shall review with the client the client's information management systems including computer-based and other digital systems, in order to understand how information is stored and how it can be retrieved. To determine what must be disclosed pursuant to Fed. R. Civ. P. 26(a) (1), counsel

shall further review with the client the client's information files, including currently maintained computer files as well as historical, archival, back-up, and legacy computer files, whether in current or historic media or formats, such as digital evidence which may be used to support claims or defenses. Counsel shall also identify a person or persons with knowledge about the client's information management systems, including computer-based and other digital systems, with the ability to facilitate, through counsel, reasonably anticipated discovery.

(2) Duty to Notify. A party seeking discovery of computer-based or other digital information shall notify the opposing party as soon as possible, but no later than the Fed. R. Civ. P. 26(f) conference, and identify as clearly as possible the categories of information which may be sought. A party may supplement its request for computer-based and other digital information as soon as possible upon receipt of new information relating to digital evidence.

(3) Duty to Meet and Confer. During the Fed. R. Civ. P. 26(f) conference, the parties shall confer and attempt to agree on computer-based and other digital discovery matters, including the following:

(a) Preservation and production of digital information; procedures to deal with inadvertent production of privileged information; whether restoration of deleted digital information may be necessary; whether back up or historic legacy data is within the scope of discovery; and the media, format, and procedures for producing digital information;

(b) Who will bear the costs of preservation, production, and restoration (if necessary) of any digital discovery.

Amended: March 14, 2001, October 6, 2003

Source: L.Civ.R. 26.1(a) - G.R. 15.E.1; L.Civ.R. 26.1(b) - G.R. 15.B.1-2; L.Civ.R. 26.1(c) - G.R. 15.G.