

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

FERNANDO GALINDO
CLERK OF COURT

REBECCA BEACH SMITH
CHIEF JUDGE

ANNOUNCEMENT

**In Re: Local Civil Rule 5
Effective January 11, 2016**

On November 13, 2015, the Court proposed amendments to Local Civil Rule 5, and invited public comment. After a review of the comments received, the Court made clarifications to the proposed amendments, to address several of the issues that were raised.

In advance of the January 11, 2016 effective date of the new rule, please find the following:

- A summary of the clarifications made to the proposed amendments;
- the upcoming new Local Civil Rule 5 (with the clarifications highlighted in red); and,
- the procedures for the electronic filing of sealed documents in civil cases.

The *Local Rules for the United States District Court, Eastern District of Virginia*, located on the Court's website, will be updated on January 11, 2016, to include the new Local Civil Rule 5.

The *Electronic Case Filing Policies and Procedures*, also located on the Court's website, will be updated on January 11, 2016, to include the procedures for the electronic filing of sealed documents in civil cases.

Fernando Galindo
Clerk of Court

SUMMARY OF CLARIFICATIONS

After reviewing the many thoughtful comments submitted in response to the publication of the proposed amendments to Local Civil Rule 5, the Court has made some clarifications to address several of the issues raised in the comments.

In order to comply with the provisions in the False Claims Act, 31 U.S.C. § 3730(b), the public notice requirement in paragraph (B) shall not apply in a False Claims Act case while the case remains under seal.

The sentence providing that failure to file a timely motion to seal may result in the document being placed in the public record has been moved into the second paragraph in (C) to clarify that the motion to seal should be filed contemporaneously with the material for which sealing is requested.

An additional provision has been included in paragraph (C)(2) concerning the need for appropriate evidentiary support for the sealing request.

The seven (7) day time period for filing a memorandum in support of or in opposition to the motion seal has been clarified by adding “after the filing of the motion to seal” to alleviate any ambiguity as to when the seven day time period begins.

Paragraph (E) has been revised to include a requirement that the corresponding ECF docket number of the sealed material be included on the container delivering the material to the Court.

The provision relating to a motion to have an entire case kept under seal has been modified to reflect that either paragraph (B) or (C) may be applicable.

While revisions were not made in response to several comments, the Court would like to reiterate that the good faith consultation requirement applies to all motions, including a motion to file a document under seal. In addition, the amended version of Local Civil Rule 5 requires that the party designating the material as confidential must file a memorandum addressing the items in paragraph (C) (2), (3), and (4). Finally, the amended version of Local Civil Rule 5 is intended to alleviate the need to file a notice of a hearing including in the Alexandria Division. If the Court determines that additional briefing or a hearing is necessary, the parties will be notified.

The accompanying revised version of Local Civil Rule 5 will become effective on January 11, 2016.

LOCAL CIVIL RULE 5

REQUESTS TO FILE DOCUMENTS UNDER SEAL AND THE HANDLING OF DOCUMENTS UNDER SEAL

(A) Unless otherwise provided by law, Court rule, or prior order of the Court, no document or portion of a document may be filed under seal unless the filer has complied with the procedures set forth herein.

(B) **As Provided by Law:** A party filing a document or a portion of a document under seal pursuant to a governing statute, rule, or order shall note on the face of the document that it or a portion of it is being filed under seal pursuant to a statute, rule, or order. **Other than in cases filed under seal pursuant to the False Claims Act, 31 U.S.C. § 3730(b),** at the time of the filing, the filer shall also file a notice available to the public stating that a filing has been made under seal and identifying the statute, rule, or order authorizing the filing under seal and describing what information is being filed under seal. If the Court determines that the cited statute, rule, or order does not provide for the filing under seal, the Court may order that the document or a portion of it be filed in the public record.

(C) **Motions to File Under Seal:** Motions to file documents under seal are disfavored and discouraged. Agreement of the parties that a document or other material should be filed under seal or the designation of a document or other material as confidential during discovery is not, by itself, sufficient justification for allowing a document or other material to be filed under seal. Anyone seeking to file a document or other material under seal must make a good faith effort to redact or seal only as much as necessary to protect legitimate interests. Blanket sealing of entire briefs, documents, or other papers is rarely appropriate.

A document or a portion of a document not covered by section (B) may be filed under seal only if a motion to file under seal pursuant to this section is filed contemporaneously with the material for which sealing is requested. **Failure to file a timely motion to seal may result in the document being placed in the public record.** The document or portion of a document that is the subject of a motion to seal and any confidential memorandum submitted therewith will be treated as sealed pending a determination by the Court on the motion to seal. Where sealing is sought for less than an entire document or filing, an unsealed, redacted version of the document or filing shall be filed in the public record.

The motion to file under seal shall be accompanied by a non-confidential supporting memorandum, a separate non-confidential notice that specifically identifies the motion as a sealing motion, and a non-confidential proposed order. The proposed order shall recite the findings required by governing case law to support the proposed sealing. The non-confidential memorandum shall include:

- (1) A non-confidential description of what material has been filed under seal;
- (2) A statement why sealing is necessary, and why another procedure will not suffice, **as well as appropriate evidentiary support for the sealing request;**

(3) References to the governing case law, an analysis of the appropriate standard to be applied for that specific filing, and a description of how that standard has been satisfied;

(4) Unless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and how the matter is to be handled upon unsealing.

A confidential memorandum may also be submitted.

When a party moves to file material under seal because another party has designated that material as confidential, the party designating the material as confidential must file a response to the motion complying with requirements (2), (3), and (4) above along with a proposed order.

The notice shall be identified as a notice of filing a motion to seal and it shall inform the parties and non-parties that they may submit memoranda in support of or in opposition to the motion within seven (7) days **after the filing of the motion to seal**, and that they may designate all or part of such memoranda as confidential. Any information designated as confidential in a supporting or opposing memorandum will be treated as sealed pending a determination by the Court on the motion to seal. The notice shall also state that any person objecting to the motion must file an objection with the Clerk within seven (7) days after the filing of the motion to seal and that if no objection is filed in a timely manner, the Court may treat the motion as uncontested.

After the seven (7) day time period for filing a response or any objection to the motion to seal and any further briefing ordered by the Court, the Court will determine whether the material should remain under seal. The Court may require the filer or the person designating material as confidential to present further argument why certain material should remain under seal. If the Court determines that the appropriate standards for filing material under seal have not been satisfied, it may order that the material be filed in the public record.

(D) Whenever a party files a document under seal, the filer must deliver a paper copy of all pleadings and documents relating to the motion to seal to the presiding District Judge or Magistrate Judge for review. When the proceedings are concluded, the Court will either destroy the paper copies containing the confidential material or direct counsel to retrieve them.

(E) Any document that is delivered to the Clerk's Office or to a judge's chambers that contains information that is the subject of an existing sealing order or is the subject of a motion to seal, shall be securely sealed with the container clearly labeled "UNDER SEAL." The case number, case caption, a reference to any statute, rule, order, or motion relating to the filing, **the corresponding ECF docket number of the sealed material**, and a non-confidential descriptive title of the document shall also be noted on the container.

(F) A motion to have an entire case kept under seal shall be subject to the requirements and procedures of sections (B) **or (C), as applicable**.

(G) Nothing in this Local Civil Rule limits the ability of the parties, by agreement, to restrict access to documents which are not filed with the Court.

(H) Trial exhibits, including documents previously filed under seal, and trial transcripts will not be filed under seal except upon a showing of necessity demonstrated to the trial judge.

Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases

Introduction

Sealed **documents** in public civil cases are to be electronically filed in accordance with Local Civil Rule 5. Sealed **cases** will remain inaccessible and all documents in sealed cases must be filed on paper. The filing party is responsible for serving all sealed documents and attachments on opposing counsel in compliance with the Federal Rules of Civil Procedure.

Sealed documents will be remotely inaccessible to counsel and pro se litigants but the docket entry itself will be accessible to the public.

Motions to seal are public documents and are not noticed for hearing. The Court may require additional briefing or argument.

Whenever a document is filed under seal, the filer must deliver a copy of the document filed under seal and all pleadings and documents relating to the motion to seal to the chambers of the presiding judge for review. When the proceedings are concluded, the Court will either destroy the paper copies containing confidential information or direct counsel to retrieve them.

Effective Date

January 11, 2016

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Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

Exceptions

Exceptions must be filed on paper and delivered to the Clerk’s office labeled “Under Seal” and shall be securely sealed with the container clearly labeled “Under Seal.” The case number, case caption, a reference to any statute, rule, order, or motion relating to the filing and a non-confidential descriptive title of the document shall also be noted on the container.

The types of documents that are exceptions to electronic filing of sealed documents in civil cases are:

- Documents filed in sealed cases,
 - In Camera Documents,
 - Social Security Administrative Records, and
 - Sealed documents filed by pro se litigants.
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Sealed Filing Events

Sealed filing events have been created for use when filing sealed documents.

Caution: If the sealed filing event is not used to electronically file the sealed document, then the document will be available to the public.

The sealed filing events must be used to file the sealed documents to ensure that only the court can access the documents.

The sealed filing events are:

- Sealed Memorandum In Support
- Sealed Attachment/Exhibit(s)
- Sealed Document
- Sealed Response/Reply/Opposition
- Sealed Motion (used **ONLY** when the sealed document to be filed is a sealed motion; do not use this event to file the motion seeking permission to seal. Use the “Motion to Seal” event found under the *Motions* category. For example, if filing a “Motion for Summary Judgment” under seal, use this event to file the “Motion for Summary Judgment” but use the “Motion to Seal” to seek permission to seal the “Motion for Summary Judgment.”)

These events can be found under the attorney *Civil Menu* in the category *Sealed Documents* except for the *Sealed Motion* event which can be found under the *Civil Menu* in the category *Motions*.

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Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

Notice Filing Events

In accordance with Local Civil Rule 5, two notice filing events were created as follows:

- *Notice of Under Seal Filing LCvR5(B)* to be used to electronically file Local Civil Rule 5(B) Notice and
- *Notice of Filing Sealing Motion LCvR5(C)* to be used to electronically file Local Civil Rule 5(C) Notice.

These events can be found on the Civil Menu under *Notices*. These filing events are public documents and should not contain any sealed information.

Service of Sealed Documents

Since the sealed document will not be accessible through the *Notice of Electronic Filing (NEF)*, the filing party is responsible for serving all sealed documents and attachments on the opposing counsel by other means. A certificate of service must be included with every filing and a copy of the NEF should be served with the sealed document.

Sealed Orders

Sealed orders will not be accessible remotely. Sealed orders will be mailed to attorneys and pro se litigants.

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Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

Steps for Filing Sealed Documents

If you are filing a document or portion of a document under seal pursuant to a governing statute, rule, or order, take the following steps:

Step	Action
1	File the document using the appropriate sealed filing event from the following selection: <ul style="list-style-type: none">• Sealed Motion• Sealed Memorandum In Support• Sealed Exhibit• Sealed Attachment• Sealed Response/Objection/Reply• Sealed Document <i>Note:</i> This document should be clearly marked “under seal.”
2	File the <i>Notice of Under Seal Filing LCvR 5(B)</i> (link to the sealed document) found under the <i>Notices</i> category. This document is available to the public.

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Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

Steps for Filing a Motion to Seal

If you are motioning to file a document under seal, take the following steps:

Step	Action
1	File the Motion to Seal using the motion to seal or motion to seal case, as appropriate, found under the motions category and upload the proposed order as an attachment to the motion to seal. <i>Note:</i> The motion to seal is a public document and should not contain any sealed information.
2	File the <i>Notice of Filing Sealing Motion LCvR 5(C)</i> (link to the motion to seal) found under the <i>Notices</i> category. This notice is available to the public.
3	File the document you wish to seal using the <i>Sealed Document</i> filing event (link to the motion to seal).
4	File the non-confidential memorandum in support of the motion to seal using the event <i>Memorandum In Support</i> found in the category <i>Responses/Replies/Memoranda</i> (link to the motion to seal).
5	File any confidential memorandum in support of the motion to seal using the sealed event <i>Sealed Memorandum In Support</i> (link to the motion to seal).

Oppositions/Responses

If you are filing a sealed document that responds, replies, or opposes a motion to seal, use the sealed filing event *Sealed Response/Reply/Opposition* to ensure that your document cannot be viewed by the public.

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Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

File Size of Documents

As with any electronic filing in the Eastern District of Virginia, your sealed document filing size is limited to PDF documents no larger than 10 megabytes (about 200 pages). The total number of megabytes in a submission, including attachments, must be no larger than 30 megabytes (about 600) pages. Each document in that submission must be no larger than 10 megabytes.

If the filing including attachments is larger than 30 megabytes, split your filing into submissions of no larger than 30 megabytes each.

Take the following steps to file **sealed** documents that are larger than 30 megabytes:

Step	Action
1	Break your document or filing, including attachments, into smaller PDF documents of no more than 10 megabytes each and into submissions of less than 30 megabytes each.
2	File the first submission as usual (as a main document with attachments) using the appropriate filing event.
3	Create formal document called <i>Continuation of Sealed Filing</i> that includes a <i>Certificate of Service</i> and your complete nine-element signature block.
4	File the <i>Continuation of Sealed Filing</i> using the sealed filing event <i>Sealed Attachment/Exhibit(s)</i> .
5	Upload the smaller PDF documents as attachments to the <i>Continuation of Sealed Filing</i> .

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Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

Correcting Mistakes

If you erroneously file a sealed document without using a sealed filing event or erroneously file a public document using a sealed filing event, contact the Clerk’s Office Operations Section Helpdesk for assistance.

The Clerk’s Office Operations Section Helpdesk is available from 8:30a.m. to 5:00p.m. Monday through Friday with the exception of federal holidays or closures.

Division	Helpdesk Contact Number
Alexandria	703-299-2101
Norfolk/Newport News	757-222-7201
Richmond	804-916-2220
