

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
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NOTICE OF AMENDMENTS TO LOCAL RULES

At their regular meeting on February 5, 2018, the Judges of the United States District Court for the Eastern District of Michigan approved the following local rules effective March 1, 2018.

- Amended - LR 5.3 Civil Material Filed Under Seal
- Amended - LR 83.31 Conduct in Federal Court Facilities
- New - LR 83.32 Possession and Use of Electronic Devices in Federal Court Facilities

Pursuant to Fed. R. Civ. P. 83, the proposed new amendments were previously published for comment.

LR 5.3 Civil Material Filed Under Seal

(a) Sealing Items Authorized by Statute or Rule. When a statute or rule authorizes filing a document or other item under seal in a civil case, the item may be filed without a court order, according to the following procedure:

(1) A separate notice of filing under seal must be filed before filing an item under seal.

(2) The notice must include:

(A) a citation of the statute or rule authorizing the seal;

(B) an identification and description of each item submitted under seal; and

(C) a statement establishing that the items are within the statute or rule authorizing the sealing.

(b) Sealing Items Not Authorized by Statute or Rule.

(1) Except as allowed by statute or rule, documents (including settlement agreements) or other items may not be sealed except by court

order. A party or other person may not file or tender to the clerk an item proposed for sealing under this subrule unless the Court enters an order permitting sealing.

(2) A party or other person seeking to file a document under seal in a civil case under this ~~subsection~~ section must file and serve a motion to authorize sealing that is narrowly tailored to seek sealing in accord with applicable law.

(3) Procedure for Moving to File Under Seal.

(A) Motion. Any motion to file under seal must contain:

(i) an index of documents which are proposed for sealing and, as to each document, whether any other party objects;

(ii) a description of any non-party or third-party privacy interests that may be affected if the documents or portions thereof to be sealed were publicly disclosed on the court record;

(iii) whether the proposed sealed material was designated as 'confidential' under a protective order and by whom;

(iv) for each proposed sealed exhibit or document, a detailed analysis, with supporting evidence and legal citations, demonstrating that the request to seal satisfies controlling legal authority;

(v) a redacted version of the document(s) to be sealed, filed as an exhibit to the motion, unless the proponent of filing is seeking to file the entire document under seal, in which case a blank sheet shall be filed as an exhibit. The redacted version must be clearly marked by a cover sheet or other notation identifying the document as a "REDACTED VERSION OF DOCUMENT(S) TO BE SEALED"; and

(vi) an unredacted version, filed as a sealed exhibit, of the document that is sought to be filed under seal. Under ~~to this subsection,~~ section the unredacted version may be filed under seal for the limited purpose of resolving the motion to seal without a prior court order. The unredacted version must be clearly marked by a cover sheet or other notation identifying the document as an "UNREDACTED VERSION OF DOCUMENT(S) TO BE SEALED PURSUANT TO LR 5.3(b)(3)(B)(iii)." The unredacted version must clearly indicate, by highlighting or other method, the portions of the document which are the subject of the motion.

(B) If the Court has not ruled on the sealing motion by the time the underlying filing must be made (e.g., a motion or brief or exhibits attached thereto), said filing shall have redactions matching those submitted under ~~section~~ paragraph (A)(v).

(C) Disposition of Sealing Motion.

(i) The Court may grant a motion to seal only upon a finding of a compelling reason why certain documents or portions thereof should be sealed.

(ii) If the Court grants the sealing motion in whole or in part, the Court's sealing order shall specifically reference each document (or portion thereof) as to which sealing was granted. These documents may be considered by the Court with regard to the underlying filing. The moving party shall promptly file each document authorized for sealing in lieu of or as an exhibit to the underlying filing.

(iii) If the Court denies in part or in whole the sealing motion:

(1) The unredacted documents filed under seal under paragraph (B)(iii) ~~(b)(3)(A)(vi)~~ remain sealed for purposes of preserving the record with regard to the court's ruling on the sealing motion.

(2) The court will not consider or rely on the unredacted version of the documents sought to be sealed and as to which the sealing motion was denied, unless the moving party promptly files the unredacted version.

(3) The court may determine that it can rule on the underlying filing without regard to any documents sought to be sealed and as to which sealing was denied (i.e., based upon the redacted document), in which case it may rule on the filing without further action by the parties.

(4) The court may determine that justice requires, in order to adjudicate the underlying filing, that a party file additional materials. The court may adjust briefing and hearing schedules accordingly.

(iv) Statements made in any motions or responses to motions filed under this rule are not admissible by any party to prove or

disprove any element of a disputed claim or to impeach by a prior inconsistent statement or contradiction. An order adjudicating a motion filed under this rule does not create any presumption on any substantive issue in the case.

(c) Unsealing Documents. When the Court orders an item unsealed, the clerk will make it publicly available as any other public document.

COMMENTS: Attorneys are cautioned that attempts to circumvent this rule may result in the imposition of sanctions.

Sealed settlement agreements are covered by ~~LR 5.3(e)(1)~~ LR 5.3(b)(1). Generally, except in extraordinary circumstances, the sealing of settlement agreements is disfavored.

Protective orders are covered under LR 26.4.

The delivery of papers filed under seal to Federal Court facilities must be in accordance with LR 83.31(a)(3)(B). (7/1/08)

Other material provided by statute, e.g., Qui Tam cases, are not covered by this rule.

Documents filed electronically must comply with the Court's ECF Policies and Procedures (Appendix ECF to these rules).

COMMENTS TO ~~2017~~ 2018 REVISIONS:

Attorneys are cautioned that there is a strong presumption in favor of openness as to court records. The burden of overcoming this presumption is borne by the party that seeks to seal documents on the court record. The burden is a heavy one and only the most compelling reasons can justify non-disclosure of judicial records.

For further guidance on the legal standards governing filing under seal, see *Shane Group, Inc. v.*

Blue Cross Blue Shield of Michigan, 825 F.3d 299 (6th Cir. 2016), *Beauchamp v. Fed. Home Loan Mortgage Corp.*, 658 Fed. App'x 202 (6th Cir. 2016), and *Rudd Equipment Co. v. John Deere Const. & Forestry Co.*, 834 F.3d 589 (6th Cir. 2016).

Parties are encouraged to consider redaction of documents to excise those portions which are deemed confidential and thus avoid a sealing motion. Parties are expected to confer in detail before a sealing motion is filed in order to reduce the number of documents which are the subject of the motion and to otherwise reach agreement on the relief requested. ~~Third parties which produced documents under a protective order should be notified, in accord with the terms of the protective order, should a party wish to file the third-party's document.~~

October 12, 2017

LR 83.31 Conduct in Federal Court Facilities

(c) Cameras and Recording Devices

(1) The taking of photographs in connection with any judicial proceeding and the recording or broadcasting of judicial proceedings by radio, television or other means is prohibited.

(A) As used in this rule, "judicial proceeding" includes proceedings before district, bankruptcy or magistrate judges, and sessions of the grand jury.

(B) As used in this rule, "in connection with any judicial proceeding" includes all participants ~~in~~ and persons in the vicinity of a judicial proceeding while they are in a courtroom, judicial chambers, or its their environs.

~~(e) — Laptop Computers. Laptop computers are permitted in federal court facilities, but may not be used in any courtroom without the written permission of the appropriate judicial officer.~~

~~(f) — Cellular Telephones and Other Communication Devices:~~

~~(1) — Policy Governing Non-Attorneys. Except as provided in (2) and other court orders, cellular telephones and any other device with wireless communication capabilities, hereinafter “phones”, are not permitted in federal court facilities.~~

~~(2) — Policy Governing Attorneys. An attorney appearing in connection with any judicial proceeding or presenting evidence of bar membership may bring a phone into a federal court facility. The United States Marshal, his deputies, and court security officers may demand from any individual in possession of a phone identification in aid of enforcement of this rule, and if the identification does not satisfy the officer that the person in possession of a phone is authorized in accordance with the terms of this rule to bring the phone or use it in a court space, the officer may refuse admittance to any person in possession of a phone. The following conditions shall apply:~~

~~(A) — the phone may not be used and must be turned off except in designated areas of the court facility; and~~

~~(B) — the phone cannot be initiated, “answered,” examined or otherwise manipulated while in a courtroom; and~~

~~(C) — the phone may be used for communication only in posted designated areas; and~~

~~(D) — any camera-like function or audio recording capability of a phone is subject to the provisions of (c) of this Rule (i.e., strictly prohibited except with the specific permission of the court).~~

~~(3) — District Judge Authority. A district judge may institute another policy in his or her courtroom, including requiring that attorneys store their cellular telephones in chambers during court proceedings. A district judge located in a court facility at a duty station away from the Theodore Levin Courthouse in Detroit, Michigan may make appropriate orders regulating the possession and use of phones in the buildings in which he or she presides.~~

~~(4) — Co-located Court Facilities. Court facilities in the Eastern District of Michigan that are co-located with other government agencies shall be governed by this rule concerning the possession and use of phones in all court spaces, and the rules prescribed herein shall take precedence over other rules applicable elsewhere in the building.~~

~~(5) — Violations.~~

~~(A) — Attorney Discipline. An attorney violating this rule may be subject to discipline, including debarment, in accordance with Local Rule 83.22.~~

~~(B) — Confiscation. A violation of this rule, including without limitation unauthorized possession of a phone, use of a phone in an unauthorized space, possession of a phone in an audible mode, and failing to turn off a phone when required, SHALL result in immediate confiscation of the phone. Any judicial officer may order confiscation of a phone. Any United States Marshal or Deputy Marshal or court security officer may also confiscate a phone.~~

~~(C) — Contempt of Court. A violation of this rule may be punished as criminal contempt of court. A violation that disrupts a judicial proceeding may be punished by summary proceedings.~~

~~(6) — Relief from Confiscation of a Phone. An attorney whose phone has been confiscated may apply in writing within twenty-eight (28) days after confiscation for return of the phone. The application shall be made to the judicial officer whose proceedings were disturbed by the violation, or, if there is no such judicial officer, to the chief judge. The judicial officer may grant or refuse the request. If the judicial officer determines that no~~

~~violation of this rule occurred, he or she shall order the phone returned. If a violation has occurred and the request for return is granted, the judicial officer shall assess an appropriate monetary payment as a condition of returning the phone. Confiscated phones that are not returned, either because no request has been made within the time provided or the request for return has been denied, shall be disposed of in a manner directed by the chief judge.~~

~~(7) — Consent to Provisions. Any attorney bringing in a phone shall be determined to have consented to the provisions of this rule.~~

~~(g e) Communication Recording Devices. Subject to LR 83.32, Communication recording devices (tape and audio recorders and devices and dictating devices) are prohibited from federal court facilities unless otherwise ordered by a judge in a particular case.~~

~~(h) — Pagers; Beepers. Pagers and beepers are permitted in federal court facilities, but must be programmed to an inaudible mode.~~

~~(i f) Access to Federal Court Facilities Outside of Regular Court Hours.~~

~~(j g) Compliance.~~

January 26, 2018

LR 83.32 Possession and Use of Electronic Devices in Federal Court Facilities

(a) Definitions

(1) "Electronic Device" means:

(A) a Personal Electronic Device;

(B) a General Purpose Computing Device; and

(C) any other device that is capable of being used for

(i) wireless communication;

(ii) receiving, creating, capturing, storing, retrieving, sending, or broadcasting any signals or any text, sound, or images;

(iii) accessing the internet or any other network or off-site system or equipment for communicating or for storing or retrieving information; or

(iv) gathering, recording, storing, receiving, transmitting, or processing data or information by electronic means.

(2) "Personal Electronic Device" includes any cellular telephone, smart phone, and any other comparable device. For purposes of this Rule, this definition excludes those devices that constitute a "General Purpose Computing Device", as defined in this Rule.

(3) "General Purpose Computing Device" includes any laptop, iPad or similar tablet device, any electronic computing device, and any other comparable device. For purposes of this Rule, this definition excludes those devices that constitute a "Personal Electronic Device," as defined in this Rule.

(4) "Federal Court facility" includes any facility occupied by the United States District Court ~~or the United States Bankruptcy Court for the Eastern District of Michigan~~, or any temporary facility occupied by a judicial officer of the Eastern District of Michigan, but not the United States Bankruptcy Court.

(5) "Environs" for purposes of this Rule encompass United States Courthouse properties in their entirety including all entrances to and exits from such buildings. It does not include public sidewalks outside of such properties.

(6) "Court Official" means a judicial officer, the United States Marshal and deputy marshals, court security officers, and an employee of the United States District Court for the Eastern District of Michigan.

(7) "Judicial Proceedings" includes proceedings before district, bankruptcy or magistrate judges, and sessions of the grand jury.

(8) "Bona fide members of the press" means a person that has obtained press credentials authorized by the court.

(b) Permitted and Prohibited Practices

(1) General Policy - Except as provided in subparagraph (2), below, Electronic Devices are not permitted in federal court facilities.

(2) Exempted Persons - Subject to subparagraph (c), below, the following persons are permitted to carry and use Electronic Devices within federal court facilities in the Eastern District of Michigan:

(A) Officers of the Court - Attorneys appearing in their official capacity as officers of the Court, and law students practicing under LR 83.21.

(B) Building tenants - Employees and visiting employees of the federal court facility.

(C) U.S. Marshal's Service personnel - Including Court Security Officers and contract guards, only if consistent with performance standards.

(D) Other federal, state, local law enforcement - When appearing in their official capacity.

(E) GSA approved contractors - By written notice to the U.S. Marshals Service, the General Service Administration Property Manager or his designee may authorize an individual or contract group to possess a cellular telephone, laptop computer, or other wireless communication device for the purpose of maintaining or enhancing the facility, to include repair and alterations.

(F) Jurors - Grand jury members, petit jury members, and persons appearing as directed pursuant to a jury summons may carry a Personal Electronic Device, but may not use the device in any way except upon permission of a judicial officer.

(G) Judicial authority - Upon request to the court, a judicial officer may issue an order granting permission to an individual or group, such as pro se litigants, otherwise not authorized to possess and use an Electronic Device. The U.S. Marshal shall be notified of such order.

(H) Members of the Press - Bona fide members of the press who present official credentials satisfactory to the U.S. Marshal.

(3) Judicial Authority. A judicial officer may institute another policy in his or her courtroom, including requiring that attorneys store their Personal Electronic Device in chambers during Judicial Proceedings. A judicial officer located in a court facility at a duty station away from the Theodore Levin U.S. Courthouse in Detroit, Michigan may make appropriate orders regulating the possession and use of Electronic Devices in the buildings in which he or she presides, but only with the consent of all judicial officers in that court facility.

(4) Chief Judge Delegated Authority. The Chief Judge may delegate authority to other court officials to grant permission to an individual or group otherwise not authorized to possess, and use an Electronic Device. The U.S. Marshal shall be notified of such permission.

(5) Co-located Court Facilities. Court facilities in the Eastern District of Michigan that are co-located with other government agencies shall be governed by this rule concerning the possession and use of Personal Electronic Devices in all court spaces, and the rules prescribed herein shall take precedence over other rules applicable elsewhere in the building.

(c) Conditions for authorized use of Personal Electronic Devices

Unless express permission to the contrary is given by the presiding judicial officer, the following conditions and restrictions apply to those individuals authorized to carry a Personal Electronic Device:

(1) While in a courtroom, Personal Electronic Devices shall be in the "off" position (i.e., completely powered down) at all times.

(2) The device may not be used and must be turned off except in designated areas of the court facility.

(3) The device cannot be initiated, "answered," or examined or manipulated (for text messaging or otherwise) while in a courtroom.

(4) The device may be used for communication by non-building tenants only in designated areas. Designated areas will be identified by each court facility by administrative order, to be posted prominently in each facility and on the court's Internet website.

(5) The Personal Electronic Device may not be used for purposes of taking pictures or making any audio or video recording.

(6) Prospective jurors and seated jurors may bring into a Federal Court facility their Personal Electronic Device, and electronic book readers of any kind, including but not limited to Kindles, Nooks, iPads, and any type of electronic tablet reading device, but may not use the device on any way

except upon permission of a judicial officer. No juror may use an electronic device to access the Internet in any Federal Court facility or its environs.

(d) Conditions for authorized use of General Purpose Computing Devices

(1) The use of personally owned General Purpose Computing Devices in the courtrooms of this district during Judicial Proceedings (except grand jury proceedings) is permitted, limited to counsel, and pro se litigants (as authorized under (b)(2)(G)) and only in support of the proceedings before the Court. The Judicial Officer may at any time limit the use of electronic devices during or before Judicial Proceedings.

(2) All devices must be set to mute before entering the courtroom. No sounds will be permitted.

(3) Taking photographs, and making video and/or audio recordings of any type are strictly prohibited.

(4) Internet access is not provided for personally owned devices and counsel should come prepared with all needed material loaded on the device prior to the commencement of court. A user may NOT access the Internet by any wireless means while in the courtroom.

(5) Courtroom electrical outlets are ~~are~~ may not be available for use with personal electronic devices, and attorneys are encouraged to bring their devices to court fully charged. The electrical outlets located in attorney waiting rooms and other common space within the courthouse may be used to recharge devices as needed and as the outlets are available.

(6) Devices which distract from, interfere with or disrupt a proceeding will be removed from the courtroom.

(7) Devices which interfere with court equipment will be removed from the courtroom.

(8) No spectator or media representative will be permitted to use any electronic device inside the courtroom.

(9) The Court may at any time limit the use of electronic devices during or before Judicial Proceedings to avoid distraction or otherwise facilitate the proceedings.

(9) (10) Court Staff are not available to assist counsel with the use of personally owned Electronic Devices.

(10) (11) Counsel must follow any directives issued by court personnel with regard to the use of Electronic Devices in the courtroom.

(e) Prohibited Uses

(1) Except as allowed by this section, no Electronic Device may be used in a Federal Court facility to record sounds or images.

(2) Taking photographs or video recordings in connection with any Judicial Proceeding (including any participants in a Judicial Proceeding while they are in a courtroom or its environs), and the recording or broadcasting of Judicial Proceedings by radio or television or other means is prohibited.

(3) A judicial officer may authorize the use of electronic or photographic means for the presentation of evidence or for the perpetuation of the record. The judicial officer will provide by written notice to the United States Marshal that such permission has been granted.

(4) A district judge or magistrate judge may authorize:

(A) The broadcasting, televising, recording or photographing of investiture, ceremonial, or naturalization proceedings; and

(B) The radio or television broadcasting, audio or video recording or photographing of court proceedings, but only pursuant to a resolution of the Judicial Conference of the United States.

The judicial officer will provide by written notice to the United States Marshal that such permission has been granted.

(5) The General Service Administration (GSA) Property Manager or his designee can authorize an individual or contract group to possess a camera or recording device for the purpose of maintaining or enhancing the facility, to include repair and alterations. The GSA Property Manager must provide by written notice to the United States Marshal that such permission has been granted.

(f) Enforcement. The United States Marshal, his deputies, and court security officers may demand from any individual in possession of a cellular telephone or wireless communication device, to produce identification in aid of enforcement of this rule, and if the identification does not satisfy the officer that the person in possession of the device is authorized in accordance with the terms of this rule, the officer may refuse admittance to this person or confiscate the device or both.

(g) Violations.

(1) Attorney Discipline. An attorney violating this rule may be subject to discipline, including debarment, in accordance with Local Rule 83.22.

(2) Confiscation. A violation of this rule, including without limitation unauthorized possession of an Electronic Device, use of a Personal Electronic Device in an unauthorized space, possession of an Electronic Device in an audible mode, and failing to turn off an Electronic Device when required,

SHALL may result in immediate confiscation of the ~~phone~~ electronic device. Any judicial officer may order confiscation of an Electronic Device. Any United States Marshal, Deputy Marshal, or court security officer may also confiscate an Electronic Device.

(3) Contempt of Court. A violation of this rule may be punished as criminal contempt of court. A violation that disrupts a judicial proceeding may be punished by summary proceedings.

(4) Relief from Confiscation of an Electronic Device. A person whose Electronic Device has been confiscated may apply in writing within twenty-eight (28) days after confiscation for return of the Electronic Device. The application shall be made to the judicial officer whose proceedings were disturbed by the violation, or, if there is no such judicial officer, to the chief judge. The judicial officer may grant or refuse the request. If the judicial officer determines that no violation of this rule occurred, he or she shall order the Electronic Device returned. If a violation has occurred and the request for return is granted, the judicial officer shall assess an appropriate monetary payment as a condition of returning the Electronic Device. Confiscated Electronic Devices that are not returned, either because no request has been made within the time provided or the request for return has been denied, shall be disposed of in a manner directed by the chief judge.

(5) Consent to Provisions. Any person bringing into a Federal Court facility of its environs an Electronic Device shall be determined to have consented to the provisions of this rule.

(h) Suspension or Modification of This Rule During Heightened Security. The privileges conferred by this Rule shall be subject to suspension or modification without notice in the event that the U. S. Marshal's Service, the Court, or other federal agency declares a need for a heightened level of security at the courthouse.

February 5, 2018