

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
505 THEODORE LEVIN UNITED STATES COURTHOUSE
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NOTICE OF PROPOSED AMENDMENTS TO LOCAL RULES

At their regular meeting on October 2, 2017, the Judges of the United States District Court for the Eastern District of Michigan approved for publication and comment amendments to LR 5.3, Civil Material Filed Under Seal.

Please note the proposed amendments to LR 5.3 consist of substantial changes, essentially substituting and replacing the existing rule. The text of the proposed rule is below. To review the existing rule, please visit the Court's website at www.mied.uscourts.gov.

In order to be assured consideration, comments in writing, which may include recommended changes to the proposed amended rule, should be received by the Court no later than December 1, 2017. Comments may be sent to Local_Rules@mied.uscourts.gov or to Local Rules, 505 Theodore Levin United States Courthouse, 231 W. Lafayette Boulevard, Detroit, Michigan 48226.

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 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, 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 (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 section (B)(iii) 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(c)(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 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 documents.

October 12, 2017