

# Sealing Documents: Revisions to Local Civil Rule 5 in the Eastern District

by Kristan B. Burch

Those practicing in United States District Court for the Eastern District of Virginia (“Court”) should be aware of a recent amendment to Local Civil Rule 5 which affects the process for sealing court filings.

On November 13, 2015, the Court proposed amendments to Local Civil Rule 5 which is titled “Request to File Documents under Seal and the Handling of Documents under Seal.” Based on comments received after November 13, 2015, the Court made some additional changes to the proposed amendments, and the revised local rule became effective January 11, 2016. The Announcement issued by the Court along with the revised local rule are accessible from the Court’s website.<sup>1</sup> The Court also revised the Electronic Case Filing Policies and Procedures for the electronic filing of sealed documents in civil cases to address the changes to Local Civil Rule 5.<sup>2</sup>

The revisions to Local Civil Rule 5 include, but are not limited to, the following:

- Local Civil Rule 5(B) addresses when documents are filed under seal pursuant to a governing statute, rule, or order. In response to comments received after November 13, 2015, it was revised to exempt cases filed under seal pursuant to the False Claims Act, 31 U.S.C. § 3730(b), from a party’s requirement to file a notice available to the public stating that a filing has been made under seal and describing what information is being filed under seal when filing a portion or all of documents under

seal. The last sentence of Local Civil Rule 5(B) states that if the Court determines that the cited statute, rule, or order does not provide for filing under seal, the Court “may order that the document or a portion of it be filed in the public record.”

- Local Civil Rule 5(C) addresses motions to file under seal and states in the first sentence that such motions “to file under seal are disfavored and discouraged.” Additional new language indicates that an agreement of the parties that a document should be filed under seal or designated as confidential during discovery “is not, by itself, sufficient justification for allowing a document or other material to be filed under seal.” The last sentence of the first paragraph of Local Civil Rule 5(C) states that “[b]lanket sealing of entire briefs, documents, or other papers is rarely appropriate.”
- An additional sentence has been added to Local Civil Rule 5(C), indicating that failure to file a timely motion to seal “may result in the document being placed in the public record.” Also a sentence has been added which states that if the Court determines that “the appropriate standards for filing material under seal have not been satisfied,” the Court “may order that the material be filed in the public record.”
- In addition to the prior requirement for a memorandum supporting a motion to file under seal, under Local Civil Rule 5(C), a party

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must provide “appropriate evidentiary support for the sealing request” and “an analysis of the appropriate standard to be applied for the specific filing, and a description of how that standard has been satisfied.”

- When a party files a motion to file materials under seal because another party has designated those materials as confidential, the designating party must file a response to the motion to seal which complies with the requirements of Local Civil Rule 5(C) along with a proposed order.
- The non-confidential notice filed with the motion to file under seal must inform the parties and non-parties that they may submit memoranda in support or in opposition to the motion within seven (7) days after the filing of the motion to seal.
- In addition to complying with the prior requirements for any document delivered to the Clerk’s Office or a judge’s chambers that contains information which is subject of an existing sealing order or a motion to seal, the party must include the ECF docket number of the sealed materials.

The revisions to the Electronic Case Filing Policies and Procedures include the following:

- Chapter Three was revised to add blocks for “Criminal Case Sealed Documents” and “Civil Case Sealed Documents”. Under the “Civil Case Sealed Documents” block on page 19, a distinction is made between “sealed civil cases” and “public civil cases.” In sealed civil cases, sealed filings are exempt from electronic filings and must be filed in paper form in a sealed envelope. In public civil cases, sealed documents must be electronically filed.
- Chapter Three was revised on page 21 in the

Civil Case Exceptions chart to clarify that only documents in sealed civil cases are submitted in paper by the filer and not made available electronically.

- Chapter 7 was revised at page 57 to add “Sealed Documents in public cases” as one of the categories of civil documents that may be filed electronically.

The best way to ensure compliance with Local Civil Rule 5 is to review the revised Local Civil Rule 5 and revised Electronic Case Filing Policies and Procedures before requesting to file documents under seal in the Eastern District. ♦

**(ENDNOTES)**

1. <http://www.vaed.uscourts.gov/notices/Announcement%2001072016.pdf>
2. <http://www.vaed.uscourts.gov/ecf/E-FilingPoliciesandProcedures-new.htm>