

Overview of Filing Documents Under Seal in a Non-Sealed Civil Case

The most common circumstance that requires navigation of new Central District Local Rule 79-5 (effective December 1, 2015) related to under seal filings is when a party seeks to file documents that have been designated as confidential pursuant to a protective order. To file these documents under seal, counsel must first seek leave to file under seal. This document gives an overview of the steps required to do that.¹

PLEASE NOTE:

THIS OVERVIEW DOES NOT APPLY TO LESS COMMON CIRCUMSTANCES, SUCH AS:

Filing any document under seal in a criminal case.

Filing a case-initiating document under seal. (Under seal complaints are rare. Consult Local Rule 79-5.2.1(a).)

Filing any document in an under-seal civil case. (Consult Local Rule 79-5.2.1(b).)

In camera documents. (These are rare. Consult Local Rule 79-6.)

OVERVIEW OF STEPS REQUIRED TO FILE UNDER SEAL

I. IDENTIFY YOUR ROLE (L.R. 79-5.2.2(a)-(b))

Determine if you are both the Filing Party and the Designating Party. (*Compare* L.R. 79-5.2.2(a) *with* L.R. 79-5.2.2(b).) This overview includes the additional steps required in the most common circumstance, where the Filing Party differs from the Designating Party.

II. GIVE NOTICE (L.R. 79-5.2.2(b))

Where the Filing Party differs from the Designating Party, the Filing Party must give notice to the Designating Party of the intent to seek leave to file a document under seal three days before filing the Application to do so. The purpose of this notice is “to eliminate or minimize the need for filing under seal by means of redaction,” and also to

¹ This document is not a substitute for a full understanding of the Court’s Local Rules.

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give the Designating Party time in which to prepare a Declaration to support an under-seal filing if one is necessary.

III. FILE A PROPERLY SUPPORTED APPLICATION (L.R. 79-5.2.2(a))

A properly supported application usually consists of five documents: three documents filed publicly and two documents filed non-publicly. The Guide referred to in footnote 1, *supra*, provides detailed, step-by-step instructions (with screen-shot illustrations) on how to do this.

Although the Local Rule 79-5 refers to presentation in “paper format,” documents previously presented in paper format are now almost always submitted to the CRD for processing by emailing them in PDF format to the chambers email address.

A. PUBLIC DOCUMENTS

Application for Leave to File Document Under Seal (public filing)

Unless the Application and Proposed Order expressly state that the entire document is proposed to be filed under seal, a Public Redacted Version of the Document to be Filed Under Seal (public filing) (conspicuously labeled “REDACTED VERSION OF DOCUMENT PROPOSED TO BE FILED UNDER SEAL”)

Proposed Order (public filing)

B. NON-PUBLIC DOCUMENTS

Declaration in Support (non-public filing)

Unredacted Version of Document to be Filed Under Seal (non-public filing) (confidential portions highlighted) (conspicuously labeled “UNREDACTED VERSION OF DOCUMENT PROPOSED TO BE FILED UNDER SEAL”)

IV. EMAIL (L.R. 5-4.4.2)

Email a Proposed Order (in proper format) to the appropriate chambers’ email address.

V. SERVE NON-PUBLIC DOCUMENTS (L.R. 5-3.1.2 & 79-5.3)

Because electronic service will be effectuated only as to the publicly filed documents, the filing party must serve any non-publicly filed documents, together with the Notice of Electronic Filing (“NEF”), on all relevant parties.

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VI. DELIVER MANDATORY CHAMBERS COPIES (L.R. 5-4.5)²

VII. FILE DECLARATION (DESIGNATING PARTY) (L.R. 79-5.2.2(b)(i))

No later than four days after the filing of the Application, the Designating Party is required to file a Declaration supporting the filing of the designated materials under seal.

VIII. RECEIVE COURT'S RULING (L.R. 79-5.2.2(c))

After issuance of the Court's ruling, in most cases, the Filing Party **MUST TAKE ACTION** to make an appropriate filing, and must do so **WITHIN THREE DAYS**. The required action differs based upon whether the Court grants the Application, denies the Application, or grants in part and denies in part the Application. (L.R. 79-5.2.2(a).)

A. IF APPLICATION IS GRANTED

If Court **GRANTS** the Application, the Filing Party must **PREPARE** and **E-FILE UNDER SEAL** an unredacted, non-highlighted version of the document, properly labeled with "**FILED UNDER SEAL PURSUANT TO ORDER OF COURT DATED _____**"

LINK filing to Court Order authorizing filing Under Seal.

LINK filing to associated publicly filed document.

SERVE any documents filed under seal, together with the NEF. **(L.R. 5-3.1.2 & 79-5.3)**

DELIVER MANDATORY CHAMBERS COPIES. (L.R. 5-4.5)

B. IF THE APPLICATION IS DENIED

If the Court **DENIES** the Application, the Filing Party must either: **PREPARE** and *publicly* **E-FILE** an unredacted, non-highlighted version, **OR** the Filing Party must **UNDERSTAND** that the document that was sought to be filed under seal will not be considered by the Court.

LINK filing to relevant previously filed document.

DELIVER MANDATORY CHAMBERS COPIES. (L.R. 5-4.5)

² Although the Local Rule is broader, the Court requires mandatory chambers copies only in the case of voluminous exhibits, defined as over 50 pages. Such exhibits must be indexed and tabbed, but need not be blue-backed. Voluminous exhibits over 200 pages must be placed in three-ring binders. When placed in three-ring binders, two-sided printing is permitted.

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C. IF THE APPLICATION IS GRANTED IN PART AND DENIED IN PART

If the Court **GRANTS IN PART AND DENIES IN PART** the Application, the Filing Party must **E-FILE** a revised redacted version on the public docket that redacts only the material the Court has identified as subject to under seal protection. The Filing Party must also **PREPARE** and **E-FILE UNDER SEAL** an unredacted, non-highlighted version of the document, properly labeled with “**FILED UNDER SEAL PURSUANT TO ORDER OF COURT DATED _____**”

LINK filing to Court Order authorizing filing Under Seal.

LINK filing to associated publicly filed document.

SERVE any documents filed under seal, together with the NEF. (**L.R. 5-3.1.2 & 79-5.3**)

DELIVER MANDATORY CHAMBERS COPIES OF VOLUMINOUS EXHIBITS. (L.R. 5-4.5); *supra* note 1.

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Chambers Email Address for Proposed Orders (MS Word Format)

jls_chambers@cacd.uscourts.gov

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