

N.D. Ind. L.R. 5-3 Filing Under Seal or Ex Parte

- (a) **General Rule.** The clerk may not maintain a filing under seal unless authorized to do so by statute, court rule, or court order.

- (b) **Filing Cases Under Seal.**
 - (1) ***Papers Required.*** To seal a case, a party must:
 - (A) simultaneously file directly with the clerk:
 - (i) the initial pleadings;
 - (ii) a motion requesting that the court seal the case;
 - (iii) a proposed order; and
 - (B) otherwise comply with the *CM/ECF User Manual*.
 - (2) ***Treatment of Case Pending Ruling.*** When the clerk receives a new case with a motion to seal it, the clerk must seal the case pending a ruling on the motion.
 - (3) ***If Motion Is Denied.*** If the court denies the motion, the clerk must immediately unseal the case and may do so without first notifying the filing party.

- (c) **Ex Parte and Sealed Filings.**
 - (1) ***In a Civil Case.*** To file a sealed document (other than an initial filing) or a document ex parte in a civil case, a party must file it electronically as required by the *CM/ECF User Manual*.
 - (2) ***In a Criminal Case.***
 - (A) The following documents may be filed under seal without motion or further order of the court provided counsel has a good faith belief that sealing is required to ensure the safety, privacy or cooperation of a person or entity, or to otherwise protect a substantial public interest:
 - (i) Documents filed pre-indictment;

- (ii) Documents filed in a sealed case post-indictment and prior to the first defendant being arrested;
- (iii) Requests for search warrants, including warrants for tracking devices;
- (iv) Requests for interception of communications pursuant to 18 U.S.C. § 2516;
- (v) Requests for phone record information pursuant to 18 U.S.C. § 2703;
- (vi) Requests for tax return information pursuant to 26 U.S.C. § 6103;
- (vii) Motions for sentence variance or reduction based on substantial assistance pursuant to Fed. R. Crim. P. 35 or U.S.S.G. § 5K1.1, including supporting documents; ~~and~~
- (viii) Motions for competency exam; ~~and~~
- (ix) Motions for fees and expenses pursuant to 18 U.S.C. § 3006A.

(B) When the documents identified above are filed under seal pursuant to this Rule, the filing party must place the words “under seal” below the case number on the document.

~~(C)~~ **To file a sealed document, other than those specified in N.D. Ind. L.R. 5-3(c)(2)(A), a party must file it electronically as required by the *CM/ECF User Manual*. Other than the documents identified above, documents may be sealed if and only if they are subject to a prior protective order or are accompanied by a contemporaneous motion to seal, which motions may be filed under seal if necessary, by using the following procedure:**

- ~~(i)~~ electronically file a “Notice of Manual Filing;”
- ~~(ii)~~ affix the Notice of Electronic Filing (NEF) of Notice of Manual Filing to the envelope’s exterior. The contents of the envelope should include:

- ~~(a) a motion for leave to file the document under seal;~~
 - ~~(b) a proposed form of Order for the motion for leave to file the document under seal; and~~
 - ~~(c) the motion or document to be filed under seal.~~
- ~~(iii) deliver the document to the clerk in an envelope without folding it;~~
- ~~(iv) counsel must provide an original for the clerk's office and a copy for the judge of each of the documents contained within the envelope.~~

Local Rules Advisory Committee Comments
Re: 2022 Amendment

The text of Rule 5-3(c)(2)(C) was amended to remove text indicating that sealed criminal filings should be made on paper. The revisions clarify that sealed criminal filings must now be made electronically, consistent with the Court's General Order No. 2013-8 and the CM/ECF User Manual. Rule 5-3(c)(2)(A) was revised to reflect that motions for fees and expenses under 18 U.S.C. § 3006A can appropriately be filed under seal without motion.

