

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**Notice for Comment on Proposed Amendments
to the Local Rules for the Eastern District of Louisiana**

Public Notice is hereby given of proposed amendments to the Local Rules of the United States District Court for the Eastern District of Louisiana (as shown below). The old language is lined-through in red text and the new language is underlined in blue text.

The current Local Rules may be viewed in their entirety on the court's website at the following link: <http://www.laed.uscourts.gov/localrules/localrules.htm>.

Proposed Amendments to Local Civil Rules

LR 7.5 Response and Memorandum

Each party opposing a motion must file and serve a memorandum in opposition to the motion with citations of authorities no later than eight days before the noticed submission date. If the opposition requires consideration of facts not in the record, counsel must also file and serve all evidence submitted in opposition to the motion with the memorandum. The party that filed the motion may file and serve a reply brief in support of the motion no later than three working days before the noticed submission date. Motions shall be decided by the court on the basis of the record, including timely filed briefs and any supporting or opposing documents filed therewith.

LR 78.1 ~~Motions Days~~ Submission Dates and Oral Argument

~~Wednesday of each week, or such other day as the court may designate from time to time by order, is motion day. On this day, motions will be scheduled for submission and oral arguments conducted, if requested and permitted. Motions may also be designated for submission and/or hearing at some other time by order of the individual judge to whom the action is allotted. On motion day, the court also considers reviews from magistrate judges' rulings, contradictory motions requiring action by the court after hearing and other matters required by law or court order to be heard and determined summarily.~~ Each section of court will designate dates on which motions will be scheduled for submission.

Oral arguments on motions will be conducted, if requested and permitted. Oral arguments will be scheduled at the specific date and time set by order of the individual judge to whom the action is allotted.

Any party seeking oral argument must file either contemporaneously with the filing of the motion or opposition memorandum to a motion, or within three days after receipt of the opposition memorandum to a motion, a separate written request for oral argument. Oral argument will be permitted in such cases ~~without further order of~~ only if ordered by the court, ~~unless the court advises the parties, as soon as practicable, that the request for oral argument is denied.~~

LR 5.6 Procedure for Filing Documents Under Seal

- (A) In recognition of the right of the public to access material filed with the court, ~~N~~no document or other tangible item, or portion thereof, may be filed under seal without the filing of a separate motion and order to seal, unless authorized by ~~law~~ federal statute or prior court order in the same case expressly authorizing the party to file certain documents (or portions thereof) under seal. All reasonable alternatives to filing under seal must be explored, including a line-by-line analysis of the documents or other tangible item (including documents marked confidential under a protective order) to redact only the truly sensitive information rather than simply seeking to file the entire document or other item under seal. The redacted document or other item may then be publicly filed, with the unredacted version filed under seal.
- (B) A party must file a motion to seal a document or other tangible item at the same time that the party submits the document or other tangible item. Filing a motion to seal permits the party to provisionally file the document or other tangible item under seal, pending the court's ruling on the motion to seal.
- (C) Motions to seal an entire pleading or brief are disfavored and will be granted only in extraordinary circumstances. Parties should not routinely seek to file even portions of a pleading or brief under seal. For redacted pleadings and briefs, the following procedure applies:
 - (1) the party shall redact the confidential information from the pleading or brief and file the redacted version on the public docket; and
 - (2) the party shall also file the unredacted pleading or brief under seal, as an attachment to a Motion to File Under Seal. The unredacted version must include the phrase "FILED UNDER SEAL" prominently marked on the first page and must highlight the portions for which sealing is sought.

- (D) Any motion ~~providing prospectively~~ for filing other materials under seal (including attachments to pleadings, motions or briefs) must be accompanied by a non-confidential supporting memorandum, ~~a notice of the request to seal~~, and a proposed order. The proposed order must recite the findings required by governing case law to support the proposed sealing. The mere fact that certain information or material has been marked as confidential pursuant to a protective order is not dispositive of whether the information or material will be sealed when filed with the court, and reference to a stipulation or protective order is not sufficient to establish the necessity of sealing any document or other tangible item.
- (1) A motion to seal a document that movant has designated as confidential (as opposed to a document designated as confidential by another party, as discussed in subsection (2) below) must be filed as a Motion to File Under Seal. The motion must include the following: ~~The non-confidential memorandum and proposed order must include:~~
- (a) A non-confidential description of the portions of the document sought ~~what is~~ to be sealed (e.g., personal identifiers in medical records);
 - (b) A statement as to why sealing is necessary;
 - (c) Reference to governing case law; and
 - (d) A statement of the period of time the party seeks to have the matter maintained under seal and how the matter is to be handled upon sealing.

~~The proposed order must recite the findings required by governing case law to support the proposed sealings.~~

~~The movant may also submit a confidential memorandum for in camera review in support of the motion. Memoranda supporting or opposing the motion may be submitted and may be designated, in whole or in part, as confidential. Any confidential memoranda must be treated as sealed pending the ruling on the motion to seal.~~

~~The clerk must provide public notice by docketing the motion as set forth in the non-confidential description and date assigned for submission.~~

~~A party submitting a document or portion of a document for filing under seal pursuant to a governing statute, rule, or order must note on the face of the document that it or a portion of it is filed under seal pursuant to that statute, rule or order.~~

- (2) A motion to seal a document that has been designated as confidential by another party or non-party (the “Designating Party”) must be filed as a Motion

to Consider Whether Another Party's Material Should Be Sealed. Service of such motion must be made on the Designating Party on the same day as the filing of the motion. The motion must include:

- (a) Identification of each document or portions thereof for which sealing is sought, but need not include the information specified in subsection (1)(a)-(d) above. When the document or other tangible item to be sealed is a declaration or an exhibit to a document filed electronically, an otherwise blank page reading "EXHIBIT FILED UNDER SEAL" shall replace the exhibit in the document filed on the public docket, and the exhibit to be filed under seal shall be filed separately as an attachment to the Motion to File Under Seal as set forth herein.
 - (b) Within seven days of the filing, the Designating Party must file a statement and/or declaration setting forth the information described in subsection (1)(a)-(d). A Designating Party's failure to file a statement or declaration may result in the unsealing of the provisionally sealed document or other tangible item without further notice to the Designating Party.
 - (c) Any other party who wishes to file a response to the Motion to Consider Whether Another Party's Material Should Be Sealed must do so no later than 14 days after the motion is filed.
 - (d) If the court grants the motion to seal, the Designating Party must file a redacted version of the sealed document within 14 days of the order granting the motion to seal, which redacted version shall be linked to the original publicly filed motion.
- (E) An attorney electronically filing a document or other tangible item under seal must serve opposing counsel and any unrepresented parties with the unredacted document or tangible item by means other than the court's electronic filing system, as no service of sealed filings occurs via the court's CM/ECF system. The sealed document or other tangible item shall include a certificate of service reflecting the means by which service was made.
- (F) Upon filing a document under seal, the clerk must provide public notice by stating on the docket that the document is sealed.
- (G) When the court grants a motion to seal, the document or other tangible item will remain under seal until expiration of the seal or further order of the court. If the motion to file under seal is denied, the movant may file another motion to remove the document(s) from the record within seven days. If no such motion is timely filed, the document(s) must be filed as a public record

- (H) When a *pro se* party who is not an electronic filer wishes to manually file a ~~Each~~ document ~~filed~~ under seal, the *pro se* party must file a Motion to File Under Seal and ~~be~~ submit the document ~~ted~~ to the clerk's office securely sealed with the envelope container clearly labeled "UNDER SEAL." The case number, case caption, reference to any statute, rule or order permitting the item to be sealed and a non-confidential descriptive title of the document must also be noted on the envelope container.
- ~~(F) — A motion to have the entire case sealed is subject to the requirements and procedures of subsections (C) and (E) of this rule.~~
- (I) Nothing herein ~~in this Rule~~ restricts the parties from stipulating access to materials that are not filed with the court.
- (J) Except as permitted by law, trial exhibits (including documents previously filed under seal), and trial transcripts will not be filed under seal.

26.3 Initial Disclosures in Misappropriation of Trade Secret Cases

Except as otherwise ordered by the court, in addition to the initial disclosures required by FRCP 26(a), a party asserting that any trade secrets have been misappropriated must file under seal a Trade Secrets Identification Statement before trade-secret-related discovery begins.

- (A) Identification of Asserted Trade Secrets. A party claiming the existence of a trade secret must, before merits discovery begins (or, subject to paragraph D below with a motion for preliminary relief) identify in writing and serve on the parties, with a level of particularity that is reasonable under the circumstances, each asserted trade secret.

The required particularity of this identification differs from what may be adequate in a publicly filed pleading under applicable pleading rules such as FRCP 8. It must be sufficiently particularized to allow the other party to meaningfully compare the asserted trade secret to information that is generally known or readily ascertainable and to permit the parties and the court to understand what information is claimed to be the trade secret.

The identification should separate, to the extent practical, distinct trade secrets into numbered paragraphs. A document may be appended as a supplement to the identification but may not be used as a substitute for the identification unless the document itself is claimed to be the trade secret. In cases where an entire document or portions thereof constitutes the trade secret, the written identification must identify the content in such document or portions thereof in language sufficient to meet the standards herein.

- (B) Amendments. A party that has provided an initial identification under paragraph A above may amend that identification upon the agreement of the parties or upon motion establishing good cause.
- (1) Prior to any motion to amend, the parties must confer regarding the timing and terms of the proposed amendment. If the parties are unable to reach an agreement, the party proposing the amendment may apply to the court for an order allowing the proposed amendment.
- (2) In determining whether to grant leave to amend the identification, the court shall consider whether the party seeking amendment was diligent and whether the party opposing amendment would be unduly prejudiced by the amendment considering, among other factors, whether the proposed amendment is based on discovery of newly learned facts, the stage of the litigation, whether the amendment will expand discovery and/or delay the trial date, and whether the amendment adds, removes, or materially modifies asserted trade secrets or merely clarifies an existing identification.
- (C) Verification. The identification of each asserted trade secret shall be verified under oath or affirmation by the individual or one or more employees or officers of the party asserting trade secret misappropriation.
- (D) Applications for Preliminary Relief. Where a party has evidence that an opposing party improperly downloaded or otherwise took documents, things or information from the party, and the party files a lawsuit that includes a trade secret misappropriation cause of action, and then, by motion, seeks an early court order requiring only that the defendant (1) preserve evidence; and/or (2) return the specific documents, things or information allegedly taken, the moving party is not required to prepare or serve a Trade Secret Identification Statement that complies with paragraph A above prior to seeking such preliminary relief. In all other situations in which a party asserting trade secret misappropriation seeks preliminary relief, the moving party must comply with paragraph A as to the trade secrets for which it seeks early injunctive relief to the extent it has not already done so. This paragraph is subject to FRCP 65(d) or state law equivalents and other applicable statutory requirements.

Comments may be made in writing via email to Clerk@laed.uscourts.gov or addressed to Clerk of Court, U.S. District Court, EDLA, 500 Poydras St., Room C-151, New Orleans, LA 70130 before May 1, 2023. Comments received will be made public and posted on the court's website with the author's name.

March 27, 2023

CAROL L. MICHEL, CLERK