

District of New Jersey Amends Local Civil Rules Relating to Sealing and Confidentiality Orders

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The District of New Jersey recently amended its local civil rules relating to sealing procedures and confidentiality orders, which are more commonly referred to as protective orders in other jurisdictions. Specifically, Chief Judge Freda L. Wolfson entered an Order, effective March 24, 2021, amending Local Civil Rule 5.3, Local Patent Rule 2.2, and Appendix S to the Local Civil Rules, which sets forth the District's form Confidentiality Order.

First, the Court's March 24, 2021 Order amended Local Civil Rule 5.3, which governs the procedures for sealing confidential documents that are filed with the Court or for restricting public access to judicial proceedings. The Order includes the following key changes to Local Civil Rule 5.3:

- In a motion to seal that relies on materials designated as confidential material, only the specific relevant portions cited in the motion, as may be necessary to preserve the context, are to be part of the filing. Uncited confidential materials should not be included as part of the filing. L. Civ. R. 5.3(c)(1).

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The 14-day time period to file a motion under Local Civil Rule 5.3 remains intact, but the rule has been amended to specify that, in addition to following the completion of the briefing on the underlying motion of materials sought to be sealed, the 14-day time period is also triggered from the filing of sealed letters to the Court or pleadings, or from the ECF notice of availability of the transcript of a court proceeding sought to be sealed. L. Civ. R. 5.3(c)(2).

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The one business day that parties previously had to file a redacted, publicly-available version of each sealed filing has now been extended to 14 days following completion of the briefing on the underlying motion of materials sought to be sealed, the filing of the pleading or letter to the court sought to be sealed, or ECF notice of availability of the transcript of a court proceeding sought to be sealed, or as may be ordered by the Court. L. Civ. R. 5.3(c)(4). In what are often voluminous filings that require coordination among multiple parties and clients, this amendment will provide additional time to coordinate and prepare redacted papers and likely lessen the number of applications for extensions of time to file redacted versions of sealed materials.

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Subparagraph (b)(6) has been added to the Explanatory Note to remind parties that “there must be in place either a confidentiality order with an express leave to file under seal or other order of the Court before any documents can be filed under seal. Only in extraordinary circumstances, which are rare, such as commencement of an action with an order to show cause, should a motion to seal in the absence of a confidentiality order be filed. In any event, even where there are extraordinary circumstances, a separate motion to seal must be filed in accordance with this Rule.” *See* L. Civ. R. 5.3(b)(6) (stating requirement of confidentiality order prior to filing documents under seal).

Second, the Court’s March 24 Order amended paragraph 9 of Appendix S, which is the District’s form Discovery Confidentiality Order (“DCO”). Language regarding the confidentiality designation of the subject document under the DCO was added to that paragraph so that it now reads, “Any document designated ‘Confidential’ or ‘Attorneys’ Eyes Only’ by a party or nonparty and which document is filed with the Court shall be filed under seal, in accordance with Local Civil Rule 5.3.”

Third, Local Patent Rule 2.2, which falls under the umbrella of Local Civil Rule 9.3 (which contains the District of New Jersey’s Local Patent Rules), was amended to delete the reference to a certification supporting the confidentiality order. This amendment reconciles the discrepancy between Local Patent Rule 2.2 and Local Civil Rule 5.3(b) concerning the requirement of a supporting certification because such reference was removed from Local Civil Rule 5.3(b) when that rule was amended in September 2016.

The Court’s March 24, 2021 Order and a redline showing the amended Rule text may be found at the following links: