

## REMINDER

Rule 5.2 of the Federal Rules of Civil Procedure and Rule 49.1 of the Federal Rules of Criminal Procedure were adopted in compliance with section 205(c)(3) of the E-Government Act of 2002 to protect privacy and security concerns relating to electronic filing of documents and the public availability of documents filed electronically. It pertains to certain enumerated personal identifiers such as social security numbers and financial-account numbers. It is the filing party's responsibility when filing documents containing these sorts of personal identifiers to refrain from including, or partially redacting where inclusion is necessary, the protected information **prior** to filing the documents. The existence of personal identifiers in a document is not a reason to file a motion to seal the entire document at the time of the document's filing. These personal identifiers are seldom necessary to the court's resolution of the issues before it and should, in most instances, be redacted by counsel **prior** to filing the document. If counsel believe the personal identifiers are necessary to a decision AND it is not the typical case specifically excepted in the Rules, then a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal, or, may file a reference list under seal.

### *What happens if the filing party makes a mistake and files an unredacted document containing the proscribed personal identifiers ?*

The filing party should file a motion to seal explaining which **specific** exhibits/attachments contain the personal identifiers or what portion of a deposition should be sealed because it contains the personal identifier. If the specific documents are properly identified the court can order them sealed, however, if the sealing order results in large portions of an otherwise public deposition or exhibit being sealed, the court may well order the filing party to also file a redacted version of the exhibit/deposition as should have been filed in the first instance. The redacted version should be filed electronically selecting Additional Attachments from the Other Documents drop-down list in ECF.

### *What happens if the filing party believes other information besides personal identifiers should be sealed from public access on the electronic document ?*

#### *A. Information already subject to an approved consent confidentiality order*

In those cases where the court has already entered an order regarding the use of documents designated "confidential", the Order itself provides for the filing of redacted and unredacted versions of the documents and pleadings. The parties should **not** file an additional motion to seal. They need only file the two separate versions of the pertinent documents. This is accomplished in ECF by

electronically filing the redacted version of the document as it would otherwise be filed (i.e. motion for summary judgment (redacted)) and the unredacted version of the document by selecting Unredacted Document from the Other Documents drop-down list.

***B. Information not subject to a prior confidentiality order which the party believes should be sealed for some specific reason***

In these instances the filing party must file a motion to seal. The motion should set forth the reasons for sealing the documents as specifically as possible, keeping in mind that ultimately the court may order the motion to seal itself be unsealed even if the actual documents remain under seal. Members of the public viewing the docket should be able to ascertain from the motion to seal and the court's order on the motion the nature of the documents that have been sealed from public view even if their actual contents remain undisclosed.

**REMEMBER TWO THINGS:**

1. Sealing of documents is generally disfavored and there must be a good reason such as a statutory prohibition on public dissemination, a trade secret, or other good cause before a document can be sealed.
2. If in doubt, contact the ECF HELP desk *prior* to filing the document that may contain materials that needs to be redacted or sealed.