Guidelines for Filing Confidential Information in Civil Cases

Introduction

Parties to litigation occasionally have a need to file documents containing confidential information because that information is material to a pleading. Confidential information generally deserves protected status, but often exists alongside non-confidential information the public has a right to see. Although counsel may designate a document as confidential in the context of discovery, pursuant to a confidentiality order, it does not follow that counsel may liberally seek to seal the entire document when filing, if only part of the document is confidential. The Court must carefully balance the presumptive public right of access against the confidentiality interest that is at stake in a particular case. Overuse of the "sealed" CM/ECF filing events is in direct conflict with the Court's obligation to maintain a public docket and to ensure that only confidential information is hidden from public view.

These guidelines are meant to better ensure (1) that the procedure for docketing confidential information balances the private right to confidentiality with the public's right of access; (2) that the Court has an adequate record from which to assess the merits of requests to seal; and (3) that the process of making and determining such requests maintains a docket that is orderly and accessible to the public, the litigants, and the Court.

The first step in this process is for counsel to confer on the confidentiality issue prior to filing and to redact by agreement confidential information that is <u>not material to the litigation</u>. If counsel must file confidential information that is material to the litigation or if counsel cannot agree about the materiality of confidential information, or whether the information is properly designated confidential, then additional measures will be necessary. Typically, the confidential document can be cited in a pleading without incorporating the confidential information into the pleading. Sometimes, however, it is necessary to incorporate the contents of a confidential document into the pleading. If the exhibit cannot be redacted by agreement to remove confidential information, the party claiming that the document should be under seal, shall file a motion in accordance with these guidelines.

Notice of Electronic Filing and Access to Information

In civil cases, the ECF system will generate and send a Notice of Electronic Filing (NEF) to counsel of record notifying them of the filing, but counsel will be unable to view the document. If service is required, all counsel must be served in a manner other than through ECF.

Note: in civil sealed filings, the docket entry is public, but the main document and any attachments are not publicly available.

The following guidelines are offered to assist litigants with the process of preserving confidential information in the course of filing documents on the CM/ECF system.

Personal Data Identifiers- Non-Material

Any main document or attachment(s) that contain non-material personal data identifiers must be filed in redacted format, as per Federal Rule 5.2. This document will be publicly available.

Step	Action
1	Redact the personal data identifier(s).
2	File the document in its redacted form.
3	Do not file an unredacted version.

Personal Data Identifiers- Material

Any main document and attachment(s) that contain material personal data identifiers must be filed in redacted and unredacted formats. An unredacted version is required so the court has access to the material-but-confidential personal data identifiers. The unredacted version will not be publicly available. The redacted version will be publicly available. A Motion to Seal is not required.

Step	Action
1	Redact the personal data identifier(s).
2	File the main document and/or attachment(s) in redacted form.
3	Using the event “Unredacted Document” separately file an unredacted version of each redacted document.

Confidential Information- Material

Any main document or attachment(s) that do not need to be sealed in their entirety, but contain some material confidential information must be filed in redacted and unredacted formats. An unredacted version is required so the court has access to the material-but-confidential information. The unredacted documents shall be attached to the Motion to Seal. The unredacted version will not be publicly available. The redacted version will be publicly available. A Motion to Seal is required.

Step	Action
1	Redact the confidential information.
2	File the main document and/or attachment(s) in redacted form.
3	File a Motion to Seal, and attach all of the confidential unredacted documents. The motion "shall propose specific findings as to the need for sealing and the duration the document(s) should be sealed." It also "shall include a statement whether there is agreement of the parties to the sealing." D. Me. Loc. R. 7A(a). See also, D. Me. Loc. R. 7A(e); Appendix II – Form Confidentiality Order, Section 7. Note: each document should be a separate attachment to the motion to seal.

Non-confidential Main Document with Confidential Attachment(s)

When an attachment cannot be redacted, and the litigant seeks to seal an entire attachment; a Motion to Seal and a public placeholder are required.

Step	Action
1	For any confidential attachment(s), prepare a placeholder attachment. Note: It is not necessary to file a placeholder for each confidential attachment. One placeholder listing all of the confidential attachments is acceptable. See example on the last page of this document.
2	File the main document and attach to it all non-confidential attachments and the placeholder.

Step	Action
3	File a Motion to Seal, and attach all of the confidential attachments. The motion "shall propose specific findings as to the need for sealing and the duration the document(s) should be sealed." It also "shall include a statement whether there is agreement of the parties to the sealing." D. Me. Loc. R. 7A(a). See also, D. Me. Loc. R. 7A(e); Appendix II – Form Confidentiality Order, Section 7. Note: each document or exhibit should be a separate attachment to the motion to seal.

Main Document- Confidential

When a litigant seeks to seal a main document in its entirety, a Motion to Seal is required.

Step	Action
1	File a Motion to Seal. The motion "shall propose specific findings as to the need for sealing and the duration the document(s) should be sealed." It also "shall include a statement whether there is agreement of the parties to the sealing." D. Me. Loc. R. 7A(a). See also, D. Me. Loc. R. 7A(e); Appendix II – Form Confidentiality Order, Section 7.
2	File the confidential main document using one of the below listed sealed events. • Sealed Motion 1 or Sealed Motion 2 • Sealed Response • Sealed Reply • Sealed Document

Please Note: Local Rule 7A(b) states that any objection and reply to a "Motion to Seal" shall be filed electronically under seal. No Motion to Seal is required when filing an objection or reply to a Motion to Seal. Any sealed response or sealed reply to the Motion to Seal must be filed using the event Sealed Response or Sealed Reply, otherwise the filing will not be sealed.

However, a Motion to Seal is <u>required</u> when a filing party wishes to file a sealed response or sealed reply to a Sealed Motion (not a Motion to Seal).

Example Placeholder

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

PLAINTIFF'S NAME	)	
Plaintiff,	)	
	)	
v.	)	CIVIL NO. 1:18-cv-012345-ABC
	)	
DEFENDANT'S NAME	)	
Defendant	)	

SEALED EXHIBITS TO DEFENDANT'S STATEMENT OF MATERIAL FACTS

The below exhibits to Defendant's Statement of Material Facts are filed under seal:

1. Exhibit 2 - Declaration of Jim Jones
2. Exhibit A to Declaration of Jim Jones- Medical Records
3. Videotape Deposition of Jane Doe