



# LITIGATION ALERT

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## Sealing Confidential Materials in the District of New Jersey

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Until recently, when a federal practitioner in New Jersey wanted to file confidential documents or information under seal, she could properly rely on the procedures agreed upon and included in the case protective order. With the District's adoption of L.Civ.R. 5.3, however, the court clerk will no longer restrict public access to confidential materials unless a motion to seal is filed, and the court enters an order specifically finding "good cause" for granting that relief.

Before any part of the public record is sealed, L.Civ.R. 5.3 requires that the party requesting the relief file a formal motion, specifically identifying the information to be sealed and demonstrating good cause for entry of a sealing order. This motion procedure is intended to strike a balance between the well recognized right of public access to judicial proceedings and a private party's legitimate interest in maintaining the confidentiality of certain of its confidential information. The Rule is designed to give both the party holding the confidential information and the public the opportunity to be heard, before an otherwise public record is sealed.

The procedures attendant in applying for a sealing order and the grounds upon which a sealing order will be entered have recently been clarified by amendment to L.Civ.R. 5.3 and court decisions.<sup>1</sup> The keys to a successful sealing motion are to file the motion in the proper form under L.Civ.R. 7.1 (which will require early identification of the confidential information in question), and most importantly, to provide the court with a detailed factual basis to find "good cause" for entry of the order. To establish "good cause," not only must the materials be described with some detail, but the party seeking the order also must identify the public and private interests at stake, explain what injury will occur if the information is made public and also explain why there is no less restrictive alternative to sealing the particular record. The request must be specific as to each of these factors, and the court may deny the relief if support for any of the elements is lacking.<sup>2</sup> Courts have emphasized that a moving party must provide "specific examples or articulated reasoning" in support of its sealing application.<sup>3</sup>

As a matter of practice, in cases where a protective order is already in place, and documents have been designated as confidential under that order, a party may electronically file the designated materials under seal by checking the appropriate box on the filing screen. The materials will remain under seal until the party's motion to seal is decided. In cases in which a protective order has not yet been entered, the procedures of L.Civ.R. 5.3(c)(6) allow for the entry of a temporary sealing order until the formal motion to seal is decided. In either case, however, parties should be cautioned that if a court denies a motion to seal, the materials that had been temporarily sealed on the docket will become available for public viewing without further notice. Therefore, if an adverse party is relying upon your client's confidential information, it is imperative to review the sealing motion and supplement it as necessary to establish good cause in order to protect your client's interests.

If you would like more information, or have any other questions about this Litigation Alert, please contact Karen A. Confoy at 609.989.5012, or [kconfoy@sternslaw.com](mailto:kconfoy@sternslaw.com), or Erica S. Helms at 609.989.5062, or [ehelms@sternslaw.com](mailto:ehelms@sternslaw.com).

<sup>1</sup> Bracco Diagnostics, Inc. v. Amersham Health, Inc. (TJB), 2007 WL \*3 2085350 (D.N.J. July 18, 2007) ("Parties are often unaware of procedure they must follow when filing a motion to seal.")

<sup>2</sup> Zavala v. Wal-Mart Corp. (MCA), 2007 WL 2688934 \*11 (D.N.J. September 12, 2007) (granting in part and denying in part defendant's motion to seal).

<sup>3</sup> Faulman v. Security Mutual Fin. Life Ins. Co. (AET), 2006 WL \*1 1541059 (D.N.J. June 2, 2006) (quoting Fed.R.Civ.P. 26(c)(7)).