

IN THE GEORGIA STATE-WIDE BUSINESS COURT

INSTRUCTIONS FOR MOVING TO FILE DOCUMENTS UNDER SEAL (Rules of the Georgia State-wide Business Court, BCR 15-7)

1. **Policy.** It is the general policy of the Business Court not to allow the filing of documents under seal without a Court order, even if all parties consent to the filing under seal. Agreements between or among the parties to protect documents from public disclosure, whether through designation under a confidentiality agreement or protective order or otherwise, will not, by themselves, prevent their disclosure in the event the Court denies sealed filing for the documents. Documents filed in court are presumptively public, and parties are expected to exercise appropriate discretion in requesting that any filing be sealed. Parties generally should not request sealing of an entire filing but only those portions of the filing for which there is a legal basis to seal, including but not limited to scientific formulas, confidential pricing calculations, trade secrets, and sensitive security data. A party may request that a brief or other document in support of a motion be filed under seal consistent with this policy. Except in rare circumstances, settlement agreements may not be filed under seal. Except as set forth in subsection 2(e) below, the party moving to file a document under seal shall bear the burden of establishing good cause for sealing.

2. **Rules and Procedures.** The following rules and procedures govern the filing of documents under seal. In summary, the party seeking to file a document under seal must electronically file a motion to file the document under seal, a supporting brief, a redacted public version of the document, and a proposed order granting the motion, and must file the unredacted document for which sealing is sought as “Provisionally Sealed”:

a. The document(s) for which sealing is sought must be electronically filed as a Provisionally Sealed filing using the applicable “Provisionally Sealed” event type in the Business Court’s e-filing system. A document containing any material for which sealing is sought must be provisionally filed under seal in an unredacted form. In addition, the party must file as a typical public filing all documents and/or portions of documents that the party does not seek to seal.

b. Provisionally Sealed filings will be served through the Court’s e-filing system consistent with other electronic filings but will be viewable only by Court staff and self-represented parties or attorneys registered with the e-filing system who have appeared in the matter, unless otherwise specified by the Court. If the filing

party believes that a party or an attorney who has appeared in the matter should not be permitted to view the Provisionally Sealed filing (such as an attorney for a non-party or a party that is not subject to a protective order), the filer must make advance arrangements with the Court to restrict such individual's ability to view the Provisionally Sealed filing.

c. A Provisionally Sealed electronic filing that complies with these procedures constitutes a completed filing for purposes of meeting deadlines but will not be considered by the Court for any substantive purpose unless and until the assigned Judge grants the motion and gives the filing "Sealed" status.

d. The party desiring to file under seal also must electronically file a motion for leave to file under seal, together with a supporting brief and a proposed order granting the motion. Except as set forth in subsection 2(e) below, the moving party shall bear the burden of establishing good cause for the filing under seal, and the brief must contain:

- (i) A non-confidential description of the document or the part thereof the movant requests to file under seal;
- (ii) The circumstances the movant contends warrant the filing under seal and for how long; and
- (iii) Each reason why there exists no reasonable alternative to filing the material under seal.

e. If a document is included in the Provisionally Sealed filing because a non-movant has requested protection of the document from public disclosure, including but not limited to documents designated pursuant to a protective order, then for each such document, the non-movant shall bear the burden of establishing good cause for sealing and must provide the information required by subsections 2(d)(i) through 2(d)(iii) above in its response to the motion for leave to file under seal. As to each such document, the motion for leave to file under seal and supporting brief need only: (i) identify, with specificity, the documents or portions thereof for which sealing is requested by the non-movant; (ii) briefly explain the nature of the request or designation made by the non-movant; and (iii) certify that the movant unsuccessfully sought the consent of the non-movant to file the material on the public record. The movant must serve the motion and brief on all persons and entities (including nonparties) who have requested protection from public disclosure for one or more of the documents in the provisionally sealed filing.

f. If the Business Court enters an order granting a party's motion to seal as to all matters included in a Provisionally Sealed filing, the Clerk's Office shall be directed to modify the original, "Provisionally Sealed" docket entry to reflect its "Sealed" status, and no further action will be required from the parties for sealing.

g. If the Business Court enters an order granting a party's motion to seal as to some but not all of the matters included in a Provisionally Sealed filing, the Clerk's Office will be directed to remove the original Provisionally Sealed filing from the docket. The moving party must refile the document(s) approved for sealing using the applicable "Sealed" event in the e-filing system (not provisionally) within three days of the date of the order on the motion to seal and the document(s) shall be sealed without further action of the parties or the Clerk's Office.

h. With respect to any document(s) from a Provisionally Sealed filing that the Business Court did not approve to be sealed, the Clerk's Office will be directed to remove the Provisionally Sealed filing from the docket. Those documents will not be considered by the Court except for any document(s) the party re-files as a typical public filing within three days of the date of the order on the motion to seal. A party, in its discretion, may publicly file any document as to which the Court denied sealing without violating any protective order or confidentiality agreement that otherwise would have required the document to be filed under seal, provided that the parties to the protective order or confidentiality agreement had notice and an opportunity to be heard on the motion to file under seal.

i. The Clerk's Office or the Judge may deviate from these procedures in specific cases, without prior notice, if deemed appropriate in the exercise of discretion, considering the need for the just, speedy, and inexpensive disposition of matters before the Business Court.

j. Unless previously specified by the Judge, the moving party must contact chambers to determine whether to provide a paper courtesy copy of the provisionally sealed filing, motion to file under seal, supporting brief, and proposed order.