Sealing Documents in Business Litigation: A Comparison of Various Rules and Methods Applied In Federal, New York State and Delaware Courts

By the Commercial and Federal Litigation Section of the New York State Bar Association[1]

New York courts frequently wrestle with the issue of whether, and how, a court should "seal" documents that arise during business litigation. The courts must not only consider the applicable legal standard, but also balance competing policy concerns: the public's right to unfettered access to the judicial decision-making process versus the potential harm to litigants or the public should the information be made available. To assist in this analysis, we have examined the various approaches taken by the New York State courts, the federal courts in New York and the Delaware Chancery Court in business disputes.

Based on this review, we recommend the following in business cases: 1) New York State justices should be given greater discretion in weighing these competing policy concerns; 2) the good cause standard that the courts apply should include an inquiry into the role that the information in question plays in the judicial proceeding; and 3) the New York courts should consider incorporating some additional electronic filing features that would help protect against inadvertent disclosure of sealed materials.

I. Determining "Good Cause": Whether to Consider the Role of the Information in the Judicial Proceeding

[1] This report was prepared by Howard Fischer, Steve Madra, Megan McHugh, and Robert Schrager of the Commercial Division Committee of the Commercial and Federal Litigation Section of the New York State Bar Association ("NYSBA"), co-chaired by Paul D. Sarkozi and Mitchell Katz. On December 8, 2009, the Executive Committee of the Section adopted the report by a unanimous vote. The report was subsequently adopted by a unanimous vote of the Executive Committee of the NYSBA on January 28, 2010.

While a "good cause" standard is used by both the federal and New York State courts, those courts have adopted different approaches to the "good cause" analysis. See, e.g., *L.K. Station Group, LLC v. Quantek Media, LLC*, 20 Misc.3d 1142(A), 2008 N.Y. Slip Op. 51827 (U), 2008 WL 4172655 at *2 (Sup. Ct. N.Y. Co., 2008) ("The manner in which "good cause" is construed, however, seems to be broader in the federal courts than in New York courts.")

Although both New York State and federal courts apply a general presumption in favor of public access to judicial records, differences in application of the "good cause" standard seems to stem from the following factors: 1) "good cause" in the federal courts is initially examined against the backdrop of a discovery rule while New York examines it against a statute specifically intended to scrutinize sealing; 2) New York treats all judicial documents equally while the federal courts recognize differing types of judicial documents; and 3) federal courts apply a calculated presumption of public access based on the type of judicial document and its role in the adjudication.

In federal court, a party must move for a protective order to seal documents. Protective orders in federal court practice are governed by Rule 26(c) of the Federal Rules of Civil Procedure, "…the court may, **for good cause**, issue an order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense…" Fed. R. Civ. P. 26(c) (emphasis added). Balanced against a party's "good cause" is the common law right of public access to judicial documents. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006). Where the document is "judicial"[2] in nature, the federal courts apply a more

[2] A judicial document is defined as an "item filed…relevant to the performance of the judicial function and useful in the judicial process." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006) (*quoting United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir.1995)). It is not immediately clear as to what documents are to be classified as "judicial" as the district courts have openly acknowledged that the definition of "judicial" documents is still evolving.

demanding standard of "good cause".[3] *Id. See also In re Terrorist Attacks on September 11, 2001*, 454 F. Supp.2d 220, 222 (S.D.N.Y. 2006). Judicial documents are given a presumption of public access, but, the strength of the presumption is based on the document's role in the adjudicatory process.[4] *See Cumberland Packing Corp. v. Monsanto*, 184 F.R.D. 504, 505 (E.D.N.Y. 1999). The approach is based on the belief that many of the documents "…generated in federal litigation actually have little or no bearing on the exercise of Article III judicial power" and, as a result, the court must identify the documents "…directly affect[ing] an adjudication to matters that come within a court's purview solely to insure their irrelevance." *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir.1995).

Evidence introduced at trial or documents submitted as the principal basis for a summary judgment motion are given an "especially strong" presumption of access due to their central role in a court's exercise of its Article III function and the "resultant value of such information to those monitoring the federal courts." *Id. See also The Diversified Group v. Daugerdas*, 217 F.R.D. 152, 158 (S.D.N.Y. 2003). If the judicial document plays only a minor role in the judicial process, the presumption of access "amounts to little more than a prediction of public access absent a countervailing reason." *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir.1995). Filed settlement documents are given a very weak or even non-existent presumption of access as "…they play a 'negligible role' in the trial judge's exercise of Article

---

[3] "..[A] party seeking a protective order sealing trial, other court hearings, or motions and accompanying exhibits filed with the court must satisfy a more demanding standard of good cause." *In re Terrorist Attacks on September 11, 2001*, 454 F.Supp.2d 220, 222 (S.D.N.Y. 2006).

[4] The Western District of New York has a Local Rule restating this principle: "there is a presumption that Court documents are accessible to the public and that a substantial showing is necessary to restrict access." *Livecchi v. Rochester Police Department*, 2004 WL 1737379 (W.D.N.Y. 2004), *quoting* Local Rule Civ. P. 5.4.

III judicial power until they are merged into a tentative final agreement for court action, thereby becoming public."[5] *See The Diversified Group v. Daugerdas*, 217 F.R.D. 152, 15 (S.D.N.Y. 2003) (quoting *United States v. Amodeo* at 1050). Materials that are exchanged during discovery are not given a presumption of public access as they play no role in the performance of Article III functions and the "movant need only make a baseline showing of good cause in order to justify the imposition of a protective order." *Ello v. Singh*, 531 F.Supp.2d 552, 583 (S.D.N.Y. 2007). *See also Cumberland* at 505. Once the court has determined the type of presumption to be afforded the document, it balances that against any competing interest.[6] *See United States v. Tangorra,* 542 F.Supp.2d 233, 236 (E.D.N.Y. 2008).

In sum, the federal court applies the following steps in determining good cause when sealing judicial documents: 1) a motion for a protective order is brought before the court sealing particular documents based on Rule 26 (or a stipulation submitted for the court's approval), 2) the court reviews how the judicial document impacts its Article III function (does it help it come to a decision or is it merely a document that has a negligible impact at that stage of litigation), 3) a measured presumption of public access based on the document's role in adjudication and 4) a balancing of the public versus private interests.

---

[5] Additionally, there is a strong public policy encouraging the settlement of cases through a negotiated compromise and if, sealing helps to create that outcome, it would outweigh a public access interest. *United States v. Glens Falls Newspapers, Inc.*, 160 F.3d 853, 856-858 (2d Cir.1998).

[6] Some competing interests mitigating against disclosure have been defined, as where business information might harm a litigant's competitive standing, or where there exists a law enforcement interest or based on the privacy interests of individuals. *See Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 598, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978); *see also Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *Fischer v. Smithkline Beecham Corp*., 2008 WL 4501860 (W.D.N.Y. 2008) (denying request to seal records as movant failed to meet its burden in establishing records as trade secrets).

New York follows a similar approach under N.Y.C.R.R. § 216.1.[7] Court records can only be sealed upon a written finding of good cause, while, documents obtained through disclosure and not filed with the clerk remain subject to the protective order standard under CPLR § 3103. *See* Uniform Rules for Trial Courts, 22 N.Y.C.R.R. § 216.1. Noticeably, good cause is not initially evaluated against a discovery rule (like Rule 26), but, rather in the light of a statute whose purpose is to limit sealing. *See* George F. Carpinello, *Public Access to Court Records in Civil Proceedings: The New York Approach*, 54 Albany Law Review 93, 108-110 (2003).[8] *See also In re Twentieth Century Fox Film Corp.*, 190 A.D.2d 483, 601 N.Y.S.2d 267 (1st Dept. 1993). "[216.1] was enacted largely in response to a concern that …courts were not sufficiently taking into account the public interest…in particular, …the practice of sealing records of settlements in product liability and other tort actions where the information might alert other consumers to potential defects." *In re Twentieth Century Fox Film Corp.* at 485-

---

[7] The text of the statute is as follows:

> **§ 216.1. Sealing of Court Records**
>
> **(a)** Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard.
>
> **(b)** For purposes of this rule, "court records" shall include all documents and records of any nature filed with the clerk in connection with the action. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders as set forth in CPLR § 3103.

[8] This law review note was written by the Chair of the New York State Advisory Committee on Civil Practice, which originally drafted the New York Rule on Sealing of Court Records. While this note is an excellent reference tool, its findings may need to be updated as six years has passed since the article was published. Another law review article, *Public Availability or Practical Obscurity: The Debate Over Public Access to Court Records on the Internet*, by Arminda Bradford Bapko, is worth mentioning, as it discusses the merits of a time lag in electronic filing. New York Law School Law Review, 49 N.Y.L. Sch. L. Rev. 967 (2004-2005).

486. Confidentiality is to be treated as an "exception, not the rule" and "[w]hatever makes its way into the [court] file is presumptively open for public review." *See In re Will of Hoffman*, 284 A.D.2d 92, 727 N.Y.S.2d 84, 85 (1st Dept. 2001). Compared to the federal court, New York's approach is more streamlined: 1) a party must move pursuant to § 216.1 (or submit a stipulation for the court's approval), 2) any document filed with the court is treated with a single presumption of public access rather than a spectrum of possible presumptions, 3) the court balances the public versus private interests.

The chair of the committee that helped draft N.Y.C.R.R. § 216.1 argues that New York courts should consider a judicial document's role as part of the court's exercise of its judicial discretion in determining good cause. *See* Carpinello, *supra* at 1095-1100. He states, "The movant's burden should be significantly less where the document was not part of the judicial decision-making process and where the document does not inherently raise legitimate issues of public interest." *Id.* The belief is that this analysis would occur organically as part of the court's "…balancing process [in] weighing the potential for harm and embarrassment to the litigants and public alike." *See* Carpinello, *supra*, *quoting*, *Coopersmith v. Gold*, 156 Misc.2d 594, 606, 594 N.Y.S.2d 521, 530 (Sup Ct, Rockland County, 1992).

In practice, however, New York courts do not generally evaluate the role of the judicial document in its decision making process. For instance, a recent decision denied petitioners the right to seal property valuation reports in an estate accounting proceeding, despite two prior orders (issued in 1992 and 1994) granting sealing. *See In re Goldman*, 21 Misc.3d 1138(A), 875 N.Y.S.2d 820, 2008 WL 5076469 at *2 (Sur Court, New York County, 2008). Without delving into its merits, the decision is silent as to what role the evaluations serve in the court's judicial function (the accounting). Arguably, these evaluations

are not central to or significantly impact upon the court's role in the accounting proceeding. Additionally, the court made no mention of any public interest served in allowing access to the documents. Rather, the court focused on the idea that once a record is filed it is presumptively open to public access: "There must be a showing of compelling circumstances to justify departure from the strong preference for allowing public access to court records". *Id.* at *1.

Similarly, the First Department denied defendant's motion to seal a complaint, which alleged unethical and criminal conduct, as there was a clear public interest in such allegations. *See Liapakis v. Sullivan*, 290 A.D.2d 393, 736 N.Y.S.2d 675 (1st Dept. 2002). While this result may seem appropriate, the court offered no discussion as to what role the summons and complaint occupied at that stage of the court's function. In contrast, as discussed earlier, the federal courts explicitly conduct this analysis in considering whether a summons and complaint should be sealed. *See Ello v. Singh*, 531 F.Supp.2d 552 (S.D.N.Y. 2007), *See also Standard Investment Chartered Inc. v. NASD*, 2007 WL 2790387 at *6.

In another example, the Second Department granted the sealing of certain documents submitted in conjunction with a summary judgment motion (which one would expect to have a greater presumption of public access than an estate valuation in an accounting procedure) as the documents contained proprietary financial information that could harm a party's competitive standing. *See Mancheski v. Gabelli Group Capital Partners*, 39 A.D.3d 499, 835 N.Y.S.2d 595 (2nd Dept. 2007). Again, there was no explicit discussion of what role these documents have in the exercise of the court's judicial decision making process. These decisions point to an evolving line of New York case law that implicitly hold that merely filing a court document imposes a strong presumption of public access, regardless of the document's role in the judicial function.

In fairness, had the role of the judicial documents been examined and a variable weight of presumption been applied in the cases mentioned above, the courts could have rendered the same decision. Explicitly asking the question, however, forces the New York courts to consider the import and role of the judicial document as part of the court's judicial function in balancing against the private interests in sealing that document.

Such a context-based approach has at least tacit approval in New York case law that was developed shortly after the enactment of Part 216 of the Uniform Rules in 1991. For example, in 1993, the First Department recognized that the context in which the judicial documents have been filed is a consideration: "…the type of proceeding, in and of itself, is an important factor which the court should take into account in determining whether the parties have established sufficient good cause to seal the records to overcome any public interest in their disclosure." *In the Matter of Twentieth Century Fox Film Corp.*, 190 A.D.2d 483, 486-487, 601 N.Y.S.2d 267, 269 (1st Dept. 1993). Failing to consider context, the court opined, would unreasonably tip toward the public's interest predominating and "…make disclosure virtually automatic in any proceeding." *Id.* at 269.

Yet, more recent decisions appear to give lesser consideration to the contextual role of a judicial document. As a result, eminent New York jurists have recognized that without the discretion to maintain a proper balance between competing policy interests, not only may the Commercial Division be adversely affected, but the administration of justice could be compromised:

> *While the public has an interest in having court files open and available, there are other interests which must be balanced. The State has an interest in having its courts, and especially the Commercial Division, be "user friendly." Litigants have an interest in having documents containing confidential information, i.e. information which might put the litigant at a competitive*

> *disadvantage if made available to competitors by means of a public filing, kept confidential. It could be argued that trial courts should be given more discretion in arriving at a proper balance.*

L.K. Station Group, LLC v. Quantek Media, LLC, 20 Misc.3d 1142(A), 2008 N.Y. Slip Op. 51827 (U), 2008 WL 4172655 at *2 (Sup. Ct. New York County, 2008).

II. <u>The Mechanics of Sealing: Manually Sealing versus Electronic Sealing</u>

Generally, there are five means of protection for confidential documents which are to be filed with the court. (1) Sealing of the Entire File; (2) Partial Sealing of Individual Documents; (3) Sealing via Electronic Filing; (4) Redacting Confidential Documents; and (5) Impounding of Documents.

As discussed earlier, if a party wants to seal the entire file, he/she will have to make an application pursuant to Section 216.1 of the Uniform Rules. The court will then hold a hearing to determine whether there is good cause to seal the entire file. If the application is granted, then an order will be entered. The order should contain certain exceptions as to who may review the file. Generally, the order should allow the file to always remain accessible to the court, court employees, attorneys of record, or their designees who would be determined in writing and would present the proper identification to the Clerk of Court when retrieving the file.

A common dilemma is when one has a new case which he/she believes should be filed under seal. If the party purchases an index number and files the papers, they will become immediately open to inspection. Prior to purchasing an index number, the party should go to the County Clerk's office. There, the party will be instructed to file an order to show cause

seeking to seal the file. The confidential documents (*i.e*. summons and complaint) will be attached, yet segregated in an envelope. The order to show cause will contain a temporary restraining order (TRO) provision requesting a temporary sealing of the file until the assigned justice schedules the "good cause" hearing required pursuant to Rule 216.1. If the TRO is granted, the movant will go back to the County Clerk's office and the papers will be put in a temporary sealing file. If the TRO is denied, then the papers will go into a file open to the public. The court will thereafter hold the required hearing to determine whether the file will be sealed.

At times, it is not necessary to seal an entire file, but rather individual documents which are filed with the court. If the court allows for partial sealing of the file, then, in New York County, a separate folder is created by the clerk's office which contains the subject documents. This file is placed along side the unsealed portion of the file on the shelf in the County Clerk's office. While a file may be partially sealed, clerks in New York County find this to be problematic. The clerks become responsible for ensuring that only particular documents are turned over when the file is requested. It can be difficult for a clerk to guarantee that no sealed document will be turned over because at times they may be part of an extremely large file. Furthermore, in theory, it can become a burden on the court if the parties have to come in for a "good cause" hearing each time they want a particular document to be sealed. Over all, it is not that partial sealing cannot be done, but parties should be advised that it may cause difficulties.

In Nassau County, a sticker indicating that portions of the file are under seal is placed on the front of the file and a separate redweld, with the sealing order attached to the front, is created to hold all the sealed documents. The redweld is kept with the rest of the court file.

The problems associated with partial sealing are alleviated to a certain extent if the parties choose to e-file their case. When a case is e-filed, either party may file a particular document and mark it secure so that access is not allowed to the public over the internet. Rather, only the parties who hold an e-file identification number and members of the court system may access the document.

E-filing, however, cannot be used as a way around making the appropriate Section 216.1 application. In New York County, even when a matter is e-filed, the parties are responsible for filing hard copies of all electronically filed documents. This would include any documents which a party has marked "secure". Despite designating the document as "secure", the party is still responsible for filing a hard copy of the document which will be available to members of the public who come to the County Clerk office and request the file. Therefore, a word of caution to a party that "secure" does not mean "sealed" in New York County.

A party may also consider filing redacted documents when bringing a motion or an order to show cause. Under this method, a party would file redacted copies of any alleged confidential documents and separately hand to the assigned justice unredacted copies which he/she will review. Of concern, however, is if a redacted copy is filed and the originals are returned to the parties after the judge renders a decision, issues may arise with respect to the record on appeal. Somehow the court has to connect the unredacted version of the documents to the court file because it is only what is in that file which constitutes the "record" for appeal purposes. The court must be specific in its decision as to what unredacted documents it has relied upon - - meaning it must affirmatively state it for the record. The parties can then later subpoena the document(s) for appeal purposes. Before choosing this manner of protecting

confidential documents, a party should be aware of the assigned justice's preferences and whether this would be an acceptable means of protecting the confidential documents.

Lastly, a more extreme method of protecting confidential documents would be to seek an order from the court impounding them. This is very different from sealing. Generally, if one impounds something, it is one particular item. For example, a piece of jewelry, bearer bond, or other unique item. It is generally understood that the item will be returned to someone at the end of the case. If something is impounded, it is placed in a locked safe. Only two individuals hold the combination allowing access to the safe. This appears to be a less likely means for protecting a document and is one really intended to protect an item as unique and irreplaceable, rather than confidential.

In the course of our review of sealing mechanics, we looked to how another business court, the Delaware Chancery Court, helps ensure that sealed materials are not inadvertently disclosed. All documents filed with Delaware Chancery Court are filed electronically through LEXIS, and can be viewed publicly through that mechanism. But Delaware has programmed the system as follows:

- Documents are deemed confidential, either through Order or through the filing of a normal confidentiality stipulation that has been "so ordered."
- When counsel electronically file a document there is apparently a mechanism to select the type of security one would like applied to that document.
- If it is a sealed document, only counsel to the action subject to the confidentiality order and the court can view the document.
- Clerks can review the document, but, have no mechanism to print it if it is sealed.
- No hard copies are stored in the court any more.

- While normally, the public has access to all documents filed electronically on the Lexis system, if the document is sealed, nothing happens when one tries to click on the link to that document.[9]

Such an approach appears to offer some advantages that the New York Courts might want to consider. First, hard copies are not subsequently filed in e-filed matters. Therefore, members of the public will not have access to secure documents by going to the clerk's office and requesting the file. Second, in Delaware Chancery Court, despite being able to view secure documents, clerks cannot print any document bearing that designation. In New York County, clerks may both view secure documents and generate hard copies by printing them. While this latter approach may provide certain administrative benefits to the courts, it significantly increases the risk that sealed materials might be inadvertently disclosed to parties not entitled to them and imposes an additional administrative burden on the clerks to ensure that no such inadvertent disclosure occurs.

III. Conclusion:

Judges should have greater discretion in deciding whether to seal a document. It is clear that the courts take seriously their obligation to make sure that the public has access to judicial decision-making process so that the public will have confidence that the judicial system is operating openly, honestly and fairly. At the same time, private litigants need to be protected against third parties who might seek to misuse their access to court record to expose trade secrets, valuation information, and proprietary information, when that information is not germane in determining the merits of the suit and when the information does not affect public health and safety.

[9] Delaware Chancery Rule 5(g) is the operative statute controlling sealing. The full text of that statute is attached.

New York's current sealing scheme can cause seeming incongruities where an estate accounting can at one point be sealed, then unsealed, all during the same litigation, while documents submitted in support of a summary judgment motion are sealed, even where they are dispositive to the issue at hand. New York courts should be allowed the discretion of applying a measured presumption of public access that best fits the role that a filed document plays in the proceeding, before analyzing the competing public versus private interests. In fact, it appears to be a step that was envisioned as part of the court's analysis under 216.1, but, has been recently ignored by newer case law. See Carpinello, *supra; see also In the Matter of Twentieth Century Fox* at 269. Allowing New York courts this small measure of discretion should allow for a more equitable result in the balance between public and private interests.

In terms of the physical mechanics of sealing, we would recommend that the New York Courts consider adopting some of the protections currently used by the Delaware Chancery Court. The New York Courts have already taken substantial steps to enhance document security by implementing electronic filing, and by limiting hard copy duplication of "sealed" documents, the courts could further help reduce inadvertent disclosure and the administrative headache posed by sealing, and thus help effect the decisions made by the justices who have determined that such "sealed" materials should not be disclosed.

Any movement toward this approach would provide greater confidence to both counsel and litigants that information will be kept confidential and in turn, continue to make the New York State courts, and specifically, the Commercial Division, a welcomed forum for the resolution of commercial disputes.

Delaware Chancery Rule 5(g)

(g) Sealing of Court Records.

(1) Except as otherwise provided in this Rule 5(g), all pleadings and other papers, including deposition transcripts and exhibits, answers to interrogatories and requests for admissions, and affidavits or certificates and exhibits thereto ("documents") filed with the Register in Chancery shall become a part of the public record of the proceedings before this Court.

(2) Documents shall not be filed under seal unless and except to the extent that the person seeking such filing under seal shall have first obtained, for good cause shown, an order of this Court specifying those documents or categories of documents which should be filed under seal; provided, however, the Court may, in its discretion, receive and review any document in camera without public disclosure thereof and in connection with any such review, may determine whether good cause exists for the filing of such document under seal.

(3) The provisions of paragraph (2) of this Rule 5(g) notwithstanding, the Court may, in its discretion, by appropriate order, authorize the parties or other persons to designate documents to be filed under seal pending a judicial determination of the specific documents or categories of documents to which such restriction on public access shall continue to apply. In all such cases the Court shall require submission of the matter within ten days of such initial order and shall make such a determination as soon as practicable.

(4) Whenever any brief or letter subject to Rule 171 [which is the chancery rule regarding the filing of briefs/legal memoranda] is filed under seal with the Court because it would disclose information from a document which is otherwise required to be filed under seal pursuant

to this Rule 5(g), the following procedures shall be followed:

(A) if the restricted documents had been designated by the party filing the brief or letter, the party shall also file a copy of the brief or letter for public inspection omitting only such restricted information which the party believes should continue to be sealed for good cause; or

(B) if the restricted document had been designated by another person, the party filing the brief or letter under seal shall give written notice to such person that a copy of the entire brief or letter will be filed for public inspection unless such person files, within 3 days of the filing of the brief or letter under seal, a copy of the brief or letter for public inspection omitting only such restricted information which such person believes should continue to be sealed for good cause; or

(C) if the brief or letter discloses information from a restricted document which had been designated by the party filing the brief or letter and also discloses information from a restricted document which had been designated by another person, the party filing the brief or letter under seal and such other person shall jointly prepare and file, within 3 days of the filing of the brief or letter under seal, a copy of the brief or letter for public inspection omitting only such restricted information as each of them believes should continue to be sealed for good cause.

(5) Any person who seeks the continued sealing of any portion of a brief or letter pursuant to paragraph 4 of this Rule 5(g) shall also file a certification signed by such person's attorney of record (or, in the event such person is not represented by an attorney, signed by such person) that said attorney has personally reviewed the brief or letter filed under seal and that said attorney believes to the best of the attorney's knowledge, information and belief that the restricted information should continue to be sealed for good cause. Said certificate shall briefly set

forth the reasons why said attorney believes that good cause exists for continued filing of the brief or letter under seal.

(6) Any party who objects to the continued restriction on public access to any document filed under seal pursuant to paragraphs (2) or (3) of this Rule 5(g) or to any portion of a brief or letter filed under seal pursuant to paragraph (4) of this Rule 5(g) shall give written notice of such party's objection to the person who designated the document for filing under seal. To the extent that such person seeks to continue the restriction on public access to such document, said person shall serve and file an application within 7 days after receipt of such written notice setting forth the grounds for such continued restriction and requesting a judicial determination whether good cause exists therefor. In such circumstances, the Court shall promptly make such a determination.

(7) The Register in Chancery shall promptly unseal any document or brief or letter in the absence of timely compliance with the provisions of this Rule 5(g). In addition, 30 days after final judgment has been entered without any appeal having been taken therefrom, the Register in Chancery shall send a notice to any person who designated a document to be filed under seal that such document shall be released from confidential treatment, unless that person makes application to the Court within 30 days for further confidential treatment for good cause shown.

(8) Notwithstanding any provision of this Rule 5(g), any order permitting or requiring a document, brief or letter to be filed or remain filed under seal (the "Sealing Order") shall expire three years after the final disposition of the action in which the Sealing Order was entered, and any document, brief, or letter filed under seal pursuant to the Sealing Order shall become a part of the public record. Notwithstanding anything to the contrary in this Rule 5(g)(8), the time within which the Sealing Order shall expire may be extended by the Court for good cause shown.