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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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NOTICE OF PROPOSED AMENDMENT TO LOCAL RULE 11.0

The United States Court of Appeals for the First Circuit hereby provides notice that it proposes the attached amendment to Local Rule 11.0. Additions are noted in *italic* print; deletions are noted in ~~strikeout~~ print. An explanation for the proposed amendment follows.

Local Rule 11.0 is being amended to delete a cross reference to the court's September 14, 2009 Administrative Order Regarding Case Management/Electronic Case Files System ("CM/ECF") and to substitute it with a reference to Local Rule 25.0

The Court of Appeals invites public comment on the proposed amendment. Comments should be received by **August 10, 2017** and addressed to:

Office of the Clerk
U.S. Court of Appeals for the First Circuit
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210

July 11, 2017

/s/ Margaret Carter, Clerk

Local Rule 11.0. Transmission of the Record, Sealed Documents

- (a) **Duty of Appellant.** In addition to an appellant's duties under Fed. R. App. P. 11(a), it is an appellant's responsibility to see that the record, as certified, is complete.
- (b) **Transmission of the Record.** The district court will not transmit the full record except upon request of the circuit clerk. Rather, the district court will transmit to the circuit clerk electronically a copy of the notice of appeal, the order(s) being appealed, and a certified copy of the district court docket report in lieu of transmitting the entire record. Sealed documents will not be included in this abbreviated electronic record. Rather, any sealed documents or sealed docket reports/entries will be transmitted to the circuit clerk in hard copy whether or not electronically available. In addition, any papers and exhibits which are not electronically available will also be transmitted to the circuit clerk. The entire electronic district court record is available to the court of appeals whether or not individual documents are transmitted as part of the abbreviated electronic record or later supplemented.
- (c) **Sealed Materials.**
- (1) **Materials Sealed by District Court or Agency Order.** The court of appeals expects that ordinarily motions to seal all or part of a district court or agency record will be presented to, and resolved by, the lower court or agency. Motions, briefs, transcripts, and other materials which were filed with the district court or agency under seal and which constitute part of the record transmitted to the court of appeals shall be clearly labeled as sealed when transmitted to the court of appeals and will remain under seal until further order of court.
- (2) **Motions to Seal in the Court of Appeals.** In order to seal in the court of appeals materials not already sealed in the district court or agency (e.g., a brief or unsealed portion of the record), a motion to seal must be filed in paper form in the court of appeals; parties cannot seal otherwise public documents merely by agreement or by labeling them "sealed." A motion to seal, which should not itself be filed under seal, must explain the basis for sealing and specify the desired duration of the sealing order. If discussion of confidential material is necessary to support the motion to seal, that discussion shall be confined to an affidavit or declaration, which may be filed provisionally under seal. A motion to seal may be filed before the sealed material is submitted or, alternatively the item to be sealed (e.g., the brief) may be tendered with the motion and, upon request, will be accepted provisionally under seal, subject to the court's subsequent ruling on the motion. Material submitted by a party under seal, provisionally or otherwise must be stamped or labeled by the party on the cover "FILED UNDER SEAL." If the court of appeals denies the movant's motion to seal, any materials tendered under provisional seal will be returned to the movant. Motions to seal or sealed documents should never be filed electronically. See *Administrative Order Regarding Case Management/Electronic Case Files System Loc. R. 25.0*.
- (3) **Limiting Sealed Filings.** Rather than automatically requesting the sealing of an entire brief, motion, or other filing, litigants should consider whether argument relating to sealed materials may be contained in separate supplemental brief, motion, or filing, which may then be sealed in accordance with the procedures in subsection (2).

(d) References to Sealed Materials.

- (1) Records or materials sealed by district court, court of appeals, or agency order shall not be included in the regular appendix, but may be submitted in a separate, sealed supplemental volume of appendix. The sealed supplemental volume must be clearly and prominently labeled by the party on the cover “FILED UNDER SEAL.”
- (2) In addressing material under seal in an unsealed brief or motion or oral argument counsel are expected not to disclose the substance of the sealed material and to apprise the court that the material in question is sealed. If the record contains sealed materials of a sensitive character, counsel would be well advised to alert the court to the existence of such materials and their location by a footnote appended to the “Statement of Facts” caption in the opening or answering brief.