

New Hampshire Judicial Branch
Superior Court
E-Filing

How to Seal Documents Submitted to the Court using File & Serve:

The [Supplemental Rules of the Superior Court of New Hampshire for Electronic Filing](#) address the requirements for submitting confidential documents to the Superior Court. These requirements can be found under Rule 11 (scroll to the bottom to review the rule).

When filing a confidential document in the Superior Court, the filer must take two steps to ensure the privacy of their submission. They first must indicate that the document is categorized as a Non Public Document. Secondly, the filer must also submit a Motion to Seal in the same envelope.

This is contrary to the Circuit Court rules which do not require a Motion to Seal. However, the Superior Court does not require the Confidential Information Sheet that is mandated in Circuit Court.

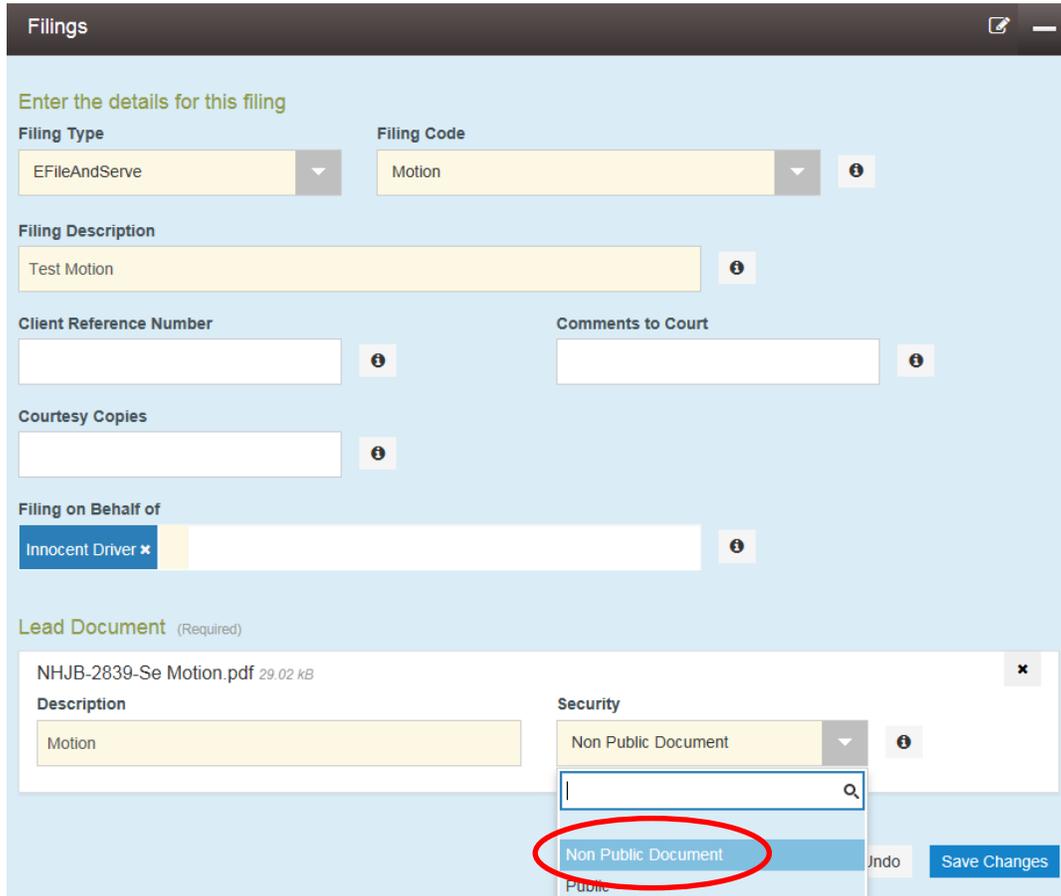
Pursuant to [Administrative Order 2014-007](#), a description must be added to the Motion to Seal. The description should provide sufficient information to identify the general subject matter of the pleading without disclosing specific information the party is seeking to maintain as confidential.

Below, you will find instructions on filing confidential documents through File and Serve.

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Attorneys (File and Serve)

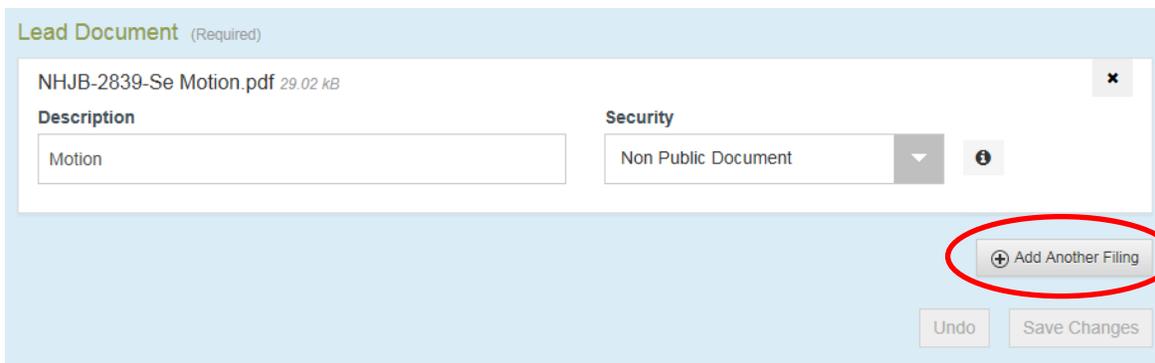
When filing a confidential document to a case, the party must indicate that the document is a Non Public Document.



The screenshot shows the 'Filings' form with the following fields and values:

- Filing Type:** EFileAndServe
- Filing Code:** Motion
- Filing Description:** Test Motion
- Client Reference Number:** (empty)
- Comments to Court:** (empty)
- Courtesy Copies:** (empty)
- Filing on Behalf of:** Innocent Driver
- Lead Document (Required):** NHJB-2839-Se Motion.pdf 29.02 KB
- Description:** Motion
- Security:** Non Public Document (dropdown menu is open, showing 'Non Public Document' selected and circled in red)

A Motion to Seal will also need to be submitted in the same envelope. Upload one by clicking on the “Add Another Filing” button. It is important that the Motion to Seal is also set as a Non Public Document.



The screenshot shows the 'Lead Document' form with the following fields and values:

- Lead Document (Required):** NHJB-2839-Se Motion.pdf 29.02 KB
- Description:** Motion
- Security:** Non Public Document
- Buttons:** Undo, Save Changes, and Add Another Filing (circled in red)

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Rule 11: Filing Confidential Documents or Documents Containing Confidential Information.

(a) *Access to Documents*

(1) *General Rule.* Except as otherwise provided by statute or court rule, all pleadings, attachments to pleadings, exhibits submitted at hearings or trials, and other docket entries (hereinafter referred to collectively as “documents”) shall be available for public inspection. This rule shall not apply to confidential or privileged documents submitted to the court for *in camera* review as required by court rule, statute or case law.

(2) *Burden of Proof.* The burden of proving that a document or portion of a document should be confidential rests with the party or person seeking confidentiality.

(3) The following provisions govern a party’s obligations when electronically filing a “confidential document” or documents containing “confidential information” as defined in this rule.

(b) *Filing a Document Which Is Confidential In Its Entirety*

(1) The following provisions govern a party’s obligations when filing a “confidential document” as defined in this rule. A “confidential document” means a document that is confidential in its entirety because it contains confidential information and there is no practicable means of filing a redacted version of the document.

(2) A confidential document shall not be included in a pleading if it is neither required for filing nor material to the proceeding. If the confidential document is required or is material to the proceeding, the party must file the confidential document in the manner prescribed by this rule.

(3) A party filing a confidential document must also file a separate motion to seal pursuant to section (d) of this rule.

(4) A party filing a confidential document shall identify the document in the caption of the pleading so as not to jeopardize the confidentiality of the document but in sufficient detail to allow a party seeking access to the confidential document to file a motion to unseal pursuant to section (e) of this rule.

(c) *Documents Containing Confidential Information.*

(1) The following provisions govern a party’s obligations when filing a document containing “confidential information” as defined in this rule. If a document is confidential in its entirety, as defined in section (b) of this rule, the party must follow the procedures for filing a confidential document set forth in section (b).

(2) “Confidential Information” means:

(A) information that is not public pursuant to state or federal statute, administrative or court rule, a prior court order placing the information under seal, or case law; or

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(B) information which, if publicly disclosed, would substantially impair:

- (i) the privacy interests of an individual; or
- (ii) the business, financial or commercial interests of an individual or entity; or
- (iii) the right to a fair adjudication of the case; or

(C) information for which a party can establish a specific and substantial interest in maintaining confidentiality that outweighs the strong presumption in favor of public access to court records.

(3) The following is a non-exhaustive list of the type of information that should ordinarily be treated as “confidential information” under this rule:

(A) information that would compromise the confidentiality of juvenile delinquency, children in need of services, or abuse/neglect, termination of parental rights proceedings, adoption, mental health, grand jury or other court or administrative proceedings that are not open to the public; or

(B) financial information that provides identifying account numbers on specific assets, liabilities, accounts, credit card numbers or Personal Identification Numbers (PINs) of individuals including parties and non-parties; or

(C) personal identifying information of any person, including but not limited to social security number, date of birth (except a defendant’s date of birth in a criminal case), mother’s maiden name, a driver’s license number, a fingerprint number, the number of other government-issued identification documents or a health insurance identification number.

(4) Filing Documents Containing Confidential Information

(A) When a party files a document the party shall omit or redact confidential information from the filing when the information is not required to be included for filing and is not material to the proceeding. If none of the confidential information is required or material to the proceeding, the party should file only the version of the document from which the omissions or redactions have been made. At the time the document is electronically filed, the party must clearly indicate on the document that the document has been redacted or information has been omitted pursuant to Rule 11(c)(3)(A).

(B) It is the responsibility of the filing party to ensure that confidential information is omitted or redacted from a document before the document is filed. It is not the responsibility of the clerk or court staff to review documents filed by a party to determine whether appropriate omissions or redactions have been made.

(C) If confidential information is required for filing and/or is material to the proceeding and therefore must be included in the document, the filer shall file:

- (i) a motion to seal as provided in section (d) of this rule;

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(ii) for inclusion in the public file, the document with the confidential information redacted by blocking out the text or using some other method to clearly delineate the redactions; and

(iii) an unredacted version of the document clearly marked as confidential.

(d) *Motions to Seal*

(1) No confidential document or document containing confidential information shall be filed under seal unless accompanied by a separate motion to seal consistent with this rule. In other words, labeling a document as “confidential” or “under seal” or requesting the court to seal a pleading in the prayers for relief without a separate motion to seal filed pursuant to this rule will result in the document being filed as part of the public record in the case.

(2) A motion to seal a confidential document or a document containing confidential information shall state the authority for the confidentiality, *i.e.*, the statute, case law, administrative order or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. An agreement of the parties that a document is confidential or contains confidential information is not a sufficient basis alone to seal the record.

(3) The motion to seal shall specifically set forth the duration the party requests that the document remain under seal.

(4) Upon filing of the motion to seal with a confidential document or the unredacted version of a document, the confidential document or unredacted document shall be kept confidential pending a ruling on the motion.

(5) The motion to seal shall itself automatically be placed under seal without separate motion in order to facilitate specific arguments about why the party is seeking to maintain the confidentiality of the document or confidential information.

(6) The court shall review the motion to seal and any objection to the motion to seal that may have been filed and determine whether the unredacted version of the document shall be confidential. An order will be issued setting forth the court’s ruling on the motion to seal. The order shall include the duration that the confidential document or document containing confidential information shall remain under seal.

(7) A party or person with standing may move to seal or redact confidential documents or confidential information that is contained or disclosed in the party’s own filing or the filing of any other party and may request an immediate order to seal the document pending the court’s ruling on the motion.

(8) If the court determines that the document is not confidential, any party or person with standing shall have 10 days from the date of the clerk’s notice of decision to file a motion to reconsider or a motion for interlocutory appeal to the supreme court. The document shall remain under seal pending ruling on a timely motion. The court may issue additional orders as necessary to preserve the confidentiality of a document pending a final ruling or appeal of an order to unseal.

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(e) Procedure for Seeking Access to Documents or Information Contained in a Document that has been Determined to be Confidential.

(1) Any person who seeks access to a document or portion of a document that has been determined to be confidential shall file a motion with the court requesting access to the document in question. There shall be no filing fee for such a motion.

(2) The person filing a motion to unseal shall have the burden to establish that notice of the motion to unseal was provided to all parties and other persons with standing in the case. If the person filing the motion to unseal cannot provide actual notice of the motion to all interested parties and persons, then the moving person shall demonstrate that he or she exhausted reasonable efforts to provide such notice. Failure to effect actual notice shall not alone be grounds to deny a motion to unseal where the moving party has exhausted reasonable efforts to provide notice.

(3) The court shall examine the document in question together with the motion to unseal any objections thereto to determine whether there is a basis for nondisclosure and, if necessary, hold a hearing thereon.

(4) An order shall be issued setting forth the court's ruling on the motion, which shall be made public. In the event that the court determines that the documents are confidential, the order shall include findings of fact and rulings of law that support the decision of nondisclosure.

(5) If the court determines that the document or information contained in the document is not confidential, the court shall not make the record public for 10 days from the date of the clerk's notice of the decision in order to give any party or person with standing aggrieved by the decision time to file a motion to reconsider or appeal to the supreme court.

(f) Sanctions for Disclosure of Confidential Information.

If a party knowingly publicly files documents that contain or disclose confidential information in violation of these rules, the court may, upon its own motion or that of any other party or affected person, impose sanctions against the filing party.

Comment

These provisions are intended to ensure that confidential documents and information contained within documents are accessible, upon filing, only to the court and its staff, to the parties and their attorneys or the parties' authorized representatives, and to others authorized to perform service of process. Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. *See, e.g., Associated Press v. State of N.H.*, 153 N.H. 120 (2005); *Petition of Keene Sentinel*, 136 N.H. 121 (1992).