

NEWS FROM U.S. DISTRICT COURT

July 9, 2021

RENEWED STANDING ORDER 21-02: For the last fifteen months, our court has authorized changes of plea and sentencing hearings by video pursuant to the CARES Act. The most recent order, [Renewed Standing Order 21-02](#), lapsed on July 1, 2021. This means that these hearings are once again being held in person.

CONFIDENTIAL CASE DOCUMENTS: In January, we informed you about warnings—outlined in **red**—that were added to presentence documents advising attorneys of restrictions on the disclosure and use of presentence reports (PSRs). While the warnings in the PSRs are new, the restrictions have been in place since entry of [Amended Standing Order 16-04](#) in 2016 and extend beyond PSRs to **include any restricted or sealed criminal documents or transcripts**.

The restrictions were imposed following the completion of a survey commissioned by the Federal Judicial Center in which federal judges reported at least 571 instances of “harms or threats” to government cooperators during a three-year period. Lynn Bowers, Chief Probation Officer for the District of South Dakota, confirms that harms and threats occur in our district, with a large number coming from drug cases.

PSRs often identify cooperators and contain other sensitive information. Bowers warns there is gang activity in South Dakota and “people could get really hurt” if this information falls into the wrong hands. Bowers emphasizes that it is not unusual for defendants to have ties to a drug cartel and that cartels “don’t care about taking out a whole family.”

Paragraph six of [Amended Standing Order 16-04](#) provides:

Federal court officers or employees (including probation officers and federal public defender staff), retained counsel, appointed CJA panel attorneys, and any other person in an attorney-client relationship with a detained or incarcerated person may, consistent with this order, review any sealed or restricted portions of the file with their client, **but may not provide copies to the defendant.**

Notwithstanding this prohibition, there have been two cases within the last six months in our district wherein a law firm provided a copy of a PSR to a detained defendant. In one of those cases, the law firm also emailed a copy of the PSR to the defendant’s mother at her place of employment, where it could have been intercepted by anyone. When this breach was discovered, considerable efforts had to be undertaken to mitigate the threat of harm.

Most attorneys are in the habit of copying clients on court documents, however, restricted or sealed criminal documents or transcripts should never be provided to detained clients. **If you practice criminal law, please visit with your staff to make sure they understand the**

restrictions imposed by [Amended Standing Order 16-04](#) and the dire consequences that could result from an illegal disclosure.

TIP OF THE MONTH: As you know, our district transitioned to NextGen CM/ECF in April of this year. The CM/ECF User Manual and Administrative Procedures (CM/ECF user manual) has now been updated to account for changes related to NextGen CM/ECF and is available [here](#) and on the district court's website located at www.sdd.uscourts.gov.

One of the sections in the CM/ECF User Manual that was updated was the **Maintain Your Account** section located under **Utilities** on the CM/ECF menu bar. This section contains important information about updating and maintaining the primary email address associated with your PACER account and the secondary email address(es) associated with your CM/ECF account. Primary email addresses are stored nationally at the PACER Service Center and are updated through PACER. Secondary email addresses are stored locally in CM/ECF and are updated in CM/ECF. The configuration options for both primary and secondary email addresses are only available in CM/ECF. Although secondary email addresses aren't required, they are highly recommended.