



United States District Court

DISTRICT OF SOUTH DAKOTA

LR 57.10 ACCESS TO CRIMINAL DOCUMENTS

- A. Purpose.** In order to protect the safety of federal defendants and the integrity of ongoing investigations and related prosecutions, access to certain criminal documents and transcripts is restricted.
- B. Sealed or Restricted Documents.** The court's intent is to make it impossible to determine from examining the record whether a defendant or other witness did or did not cooperate with the government. To implement this intent, the following documents are sealed or otherwise restricted:
1. **Plea Agreement Supplements.** Every plea agreement will include a sealed supplement that either identifies any agreements the defendant has with the government regarding cooperation or states that there is no cooperation.
 2. **Sentencing Memorandums and Motions for Departure/Variance.**
 3. **Restricted Change of Plea or Sentencing Transcripts.** Every transcript of a change of plea or sentencing hearing will contain a confidential section or reference thereto so that cooperation or the lack thereof may be discussed. If a transcript is prepared, the court reporter or transcriptionist will prepare two versions: a restricted transcript and a public transcript.
 - a. The restricted transcript will include the confidential section. Only the Government and counsel for the defendant will have access to restricted transcripts.
 - b. The public transcript will include the following reference: Pursuant to D.S.D. Crim. LR 57.10, portions of all change of plea and sentencing transcripts are restricted.
 4. **Restricted Transcripts involving Cooperator Information.** If a transcript is prepared of other hearings or trials where a cooperating witness testified or was referenced by name, the court reporter or transcriptionist will prepare two versions: a restricted transcript and a public transcript.

- a. The prosecutor must notify the court, court reporter, clerk, and counsel of cooperating witnesses prior to eliciting their testimony. This notification can be made at the pretrial conference or any other point outside the hearing of the jury.
- b. The restricted transcript will include the identity of cooperating witnesses.
- c. The public transcript will exclude the identity of cooperating witnesses and will refer to them as NR 1, etc.
- d. If there is law enforcement testimony regarding cooperation or statements by counsel or others identifying a person as a cooperator, the prosecutor is to submit a redaction request, either orally at a bench conference or electronically prior to the preparation of the transcript. An order is not required.
- e. If a transcript has been publicly filed containing any information identifying a person as a cooperating witness, the U.S. Attorney's office is to submit a motion to seal and a redaction request identifying where the public transcript needs to be redacted.

C. Access to Sealed or Restricted Documents.

1. **Attorneys and others.** 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 defendant may, consistent with this rule, review any sealed or restricted portions of the file with their client, but may not provide copies.
2. **Inmates.** When an inmate requests copies of sealed or restricted documents from his/her criminal file, copies will be forwarded to the warden of the appropriate institution, along with a copy of this rule. Inmates may review their documents in an area designated by the warden. Sealed or restricted documents may not be retained by the inmate, nor reviewed in the presence of another inmate.
3. **Post Sentencing Non-Custodial Defendants.** Any defendant whose case is concluded and is not in custody must obtain a court order to receive copies of restricted documents.

D. Serving Restricted or Sealed Documents. If the Clerk of Court or a party need to serve sealed or restricted documents on an inmate, they must follow the procedure outlined in Section C.2 of this rule.