

NEWS FROM U.S. DISTRICT COURT
December 12, 2016

ACCESS TO CRIMINAL DOCUMENTS AND TRANSCRIPTS: In order to protect the safety of inmates regardless of their cooperation with the government, as well as the integrity of ongoing criminal investigations or related prosecutions, the Court is implementing changes effective January 1, 2017, that will limit access to criminal documents and transcripts. Standing Order 16-04. (The new standing order is posted on the Court's web site.)

When these changes are implemented, attorneys will be required to electronically file ALL sentencing memoranda and motions for departure/variance in CM/ECF and these documents will ALL be sealed. A sentencing memorandum should be e-filed using the Sealed Sentencing Memorandum event. Motions for departure/variance should be e-filed using the appropriate Sealed Motion for Departure or Sealed Motion for Variance event. Documents filed using these events will be different from other sealed sentencing-related documents filed in CM/ECF in that these documents will NOT be visible on the public docket sheet. More importantly, none of the attorneys (including the filing attorney) will receive electronic notice when these documents are filed. The filing attorney must manually serve copies of these documents on the appropriate parties.

Every transcript of a change of plea and/or sentencing hearing will contain a confidential section or reference thereto so that cooperation or the lack thereof may be discussed. If a transcript of a hearing is prepared, the court reporter will prepare two versions: a restricted transcript that includes the confidential section and a public transcript that does not include the confidential section. Only the government and counsel for the defendant will have access to the restricted transcript.

Retained counsel, appointed CJA panel attorneys, and any other person in an attorney-client relationship with a detained or incarcerated person may review any sealed or restricted portions of the file with their client, but may not provide copies to the defendant.

SIGNATURES: Our judges have expressed concern about two issues they have observed regarding signatures. The first involves documents filed using local counsel's login and password that omit local counsel's signature. Under our rules, local counsel must sign and file all documents in CM/ECF. D.S.D. Civ. LR 83.2 (E) and D.S.D. Crim. LR 44.1(E). This error is typically experienced when a pro hac vice attorney signs a document that is filed using local counsel's login and password. When this error occurs, we will contact local counsel with instructions to enter a Notice of Filing Error and refile the document with your signature.

The second error occurs when attorneys file affidavits or declarations signed by others containing electronic signatures. Only attorneys admitted to our court may use electronic signatures. D.S.D. Civ. LR 5.1 (B) (4) and D.S.D. Crim. LR 49.1 (B) (4). Affidavits and declarations must contain an actual ink signature (not a /s/ and a typed name). In addition, notarized documents must contain an actual ink signature of the notary public. If these documents do not contain proper signatures, we will contact local counsel with instructions to enter a Notice of Filing Error and refile them with proper signatures.