

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

**GENERAL ORDER AMENDING LOCAL RULE CR-49 REGARDING PUBLIC
ACCESS TO CRIMINAL CASE DOCUMENTS**

In light of public commentary received regarding General Order 15-5, it is hereby ORDERED that the following amendments to Local Rule CR-49, having been approved by the district judges of this court, are adopted for immediate implementation:

LOCAL RULE CR-49 Service and Filing¹

(a) **Generally.** All pleadings and papers submitted in criminal cases must conform to the filing, service, and format requirements contained in Local Rules CV-5, CV-10, and CV-11.

(1) **Defendant Number.** In multi-defendant cases, each defendant receives a "defendant number." The numbers are assigned in the order in which defendants are listed on the complaint or indictment. When filing documents with the court, parties shall identify by name and number each defendant to whom the document being filed applies.

(2) **Sealed Indictments.** In multi-defendant cases involving one or more sealed indictments, the government should, at the time the sealed indictment is filed, provide the clerk with appropriately redacted copies of the indictment for each defendant. The goal of this procedure is to protect the confidential aspect of the sealed indictment with regard to any defendants not yet arrested.

(b) **Public Access to Criminal Case Documents Generally.** In order to serve the legal presumption of openness in criminal case proceedings, pleadings in this court are generally to be filed unsealed. Except for the documents listed in section (c) of this rule, decisions as to whether to seal a particular

¹ New language appears in underlined redline text; deletions appear in ~~strikeout~~ text.

pleading must be made on a case-by-case basis by the court, with findings specific enough that a reviewing court can determine whether the sealing or closure was properly entered.

(1) Absent specific findings of the court to the contrary, all documents other than those specifically listed in paragraph (c) below and those submitted with a motion to seal in accordance with Local Rules CV-5(a)(7)(1) and CR-49(a) are to remain unsealed.

(c) Authorization to Routinely Seal Particular Types of Criminal Case Documents. Despite the general rule cited in section (b) above, the court finds there is an overriding interest in routinely sealing certain types of criminal case documents, because public dissemination of the documents would substantially risk endangering the lives or safety of law enforcement officers, United States Marshals, agents, defendants, witnesses, cooperating informants, judges, court employees, defense counsel, or prosecutors, or their respective family members, and could jeopardize continuing criminal investigations. The documents that trigger this overriding interest are:

1. unexecuted summonses or warrants (e.g., search warrants, arrest warrants);
2. pen register or a trap and trace device applications pursuant to either 18 U.S.C. § 3121 et seq. or 18 U.S.C. § 2516 et seq.;
3. pretrial bail or presentence investigation reports;
4. the statements of reasons in the judgment of conviction;
5. plea agreements² ~~and accompanying factual basis and stipulation~~, which shall be governed by paragraph (d) below;
6. ~~addendums~~ addenda to plea agreements described in paragraph (e) below;
7. motions for downward departure for substantial assistance, ~~and~~ responsive pleadings and orders granting or denying the same;
8. motions pursuant to Section 5K1.1 of the U.S. Sentencing Guidelines, ~~memorandums~~ memoranda in support thereof, and responsive pleadings and orders granting or denying the same;

² The plea agreement does not include the factual basis of the offense and stipulation and the elements of the offense, which are separate documents filed at the same time as the plea agreement.

9. motions for reduction of sentence under Fed. R. Crim. P. 35(b), ~~memorandum memoranda~~ in support thereof, ~~and~~ responsive pleadings and orders granting or denying the same.
10. amended judgments pursuant to a grant of a Fed. R. Crim. P. 35(b) motion, and;
11. orders restoring federal benefits filed in conjunction with item 10 above.

Documents listed above shall be filed under seal without need of a motion to seal or a certification by counsel. Other than plea agreements ~~and accompanying factual basis and stipulation~~, the documents shall remain sealed unless otherwise ordered by the court.

(d) Sealing and Unsealing of Plea Agreements ~~and Accompanying Factual Basis and Stipulation~~ (Item 9 5 Above).

(1) Until it is accepted by the court, a plea agreement is in the nature of an unaccepted offer of terms between parties. ~~While it is rare, until sentence is imposed a defendant's motion to withdraw a plea may be granted.~~ In addition to the findings of subparagraph (c) above, the court finds that making a plea agreement ~~and the accompanying Factual Basis and stipulation~~ public before ~~sentence has been imposed~~ it has been accepted may lead to publicity that would tend to prejudice a defendant who decides to exercise his right to trial, by making it more difficult to select jurors who have not formed an opinion about the case. Such publicity may also provide details of the case pertinent to co-defendants who have not pled, thus prejudicing them. Therefore plea agreements ~~and the accompanying Factual Basis and stipulations~~ shall be filed under seal.

(2) The plea agreement ~~and accompanying Factual Basis and stipulation~~ must, however, shall be unsealed when ~~sentence is pronounced~~ the plea agreement is accepted absent a further order of the court finding that there is an overriding policy interest in keeping that particular plea agreement ~~and/or factual basis and stipulation~~ sealed and providing findings specific enough that a reviewing court can determine whether the sealing or closure was properly entered. The routine unsealing of sealed plea agreements ~~with accompanying factual basis and stipulation at sentencing~~ is intended to serve the right of

public access to criminal case documents.

(e) Sealed Addendums to Plea Agreements.

Every plea agreement in this court shall have an addendum that is sealed (see section (c)4 above). The addendum will either state “no provisions are included in this addendum,” or it will contain specific provisions dealing with possible reductions in sentence in return for the defendant’s substantial assistance to the government. This will allow each plea agreement to be unsealed upon sentencing without prejudicing or endangering a cooperating defendant or the defendant’s family or other informants and defendants.

(f) In those instances where the court orders an entire criminal case sealed, the case documents shall be e-mailed to the following addresses for filing by the relevant divisional clerk’s office:

Beaumont	bmtcrimdocs@txed.uscourts.gov
Lufkin	lufcrimdocs@txed.uscourts.gov
Marshall	marcrimdocs@txed.uscourts.gov
Sherman	shrcrimdocs@txed.uscourts.gov
Texarkana	texcrimdocs@txed.uscourts.gov
Tyler	tylcrimdocs@txed.uscourts.gov

(g) All sealed criminal case documents from defendants proceeding *pro se* shall be submitted in paper format.

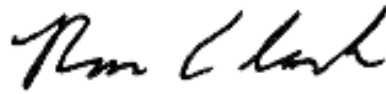
(h) Counsel filing a document under seal must send a paper copy of that document to the presiding judge’s chambers. The paper copy should be sent directly to the judge’s chambers and not to the clerk’s office. Judges may opt out of this rule by entering an order.

Comment: The factual basis of the event charged and the elements of the event charged are documents that are typically filed with the plea agreement. By routinely keeping these documents unsealed, the court is providing timely information regarding the alleged offense that may be of interest to the press and public. The U.S. Attorney and the Federal Public Defender both agree that the immediate public disclosure of the factual basis and the elements of the

offense rarely triggers the overriding interest specified in section (c) of this rule.

FOR THE COURT:

Signed this 8th day of April, 2015.

A handwritten signature in black ink, appearing to read "Ron Clark". The signature is written in a cursive style with a large initial "R".

RON CLARK
Chief Judge