

**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**

It is hereby ORDERED that the following amendments to the local rules, having been approved by the judges of this court, are adopted for immediate implementation subject to a reasonable period for public notice and comment to be determined by the clerk, 28 U.S.C. § 2071(b) and the review and approval of the Fifth Circuit Judicial Council, 28 U.S.C. § 2071(c)(1):<sup>1</sup>

**LOCAL RULE CR-49 Service and Filing**

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~~(b) **Filing of Sealed Documents in Criminal Cases.** Documents in criminal cases that are filed under seal pursuant to general order or rule of this court shall be filed under seal without need for a motion to seal or a certification by counsel. Other types of documents in criminal cases may not be filed under seal unless counsel certifies that: (1) a motion for leave to seal the document in question has been filed; or (2) the court has already granted authorization to seal. Sealed criminal case documents shall be filed electronically, unless otherwise specified by these rules. When the entire case is sealed, criminal case documents shall be e-mailed to the following addresses for filing by the relevant divisional clerk's office:~~

Beaumont	<del>_____</del> <a href="mailto:bmterimdoes@txed.uscourts.gov">bmterimdoes@txed.uscourts.gov</a>
Lufkin	<del>_____</del> <a href="mailto:luferimdoes@txed.uscourts.gov">luferimdoes@txed.uscourts.gov</a>
Marshall	<del>_____</del> <a href="mailto:marerimdoes@txed.uscourts.gov">marerimdoes@txed.uscourts.gov</a>
Sherman	<del>_____</del> <a href="mailto:shrerimdoes@txed.uscourts.gov">shrerimdoes@txed.uscourts.gov</a>
Texarkana	<del>_____</del> <a href="mailto:texerimdoes@txed.uscourts.gov">texerimdoes@txed.uscourts.gov</a>
Tyler	<del>_____</del> <a href="mailto:tylerimdoes@txed.uscourts.gov">tylerimdoes@txed.uscourts.gov</a>

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

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<sup>1</sup> New language appears in underlined text; deleted language appears in ~~strikeout~~ text.

~~(1) 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.~~

**(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 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.

~~(c) **Filing of Unsealed Plea Agreements.** Each unsealed plea agreement must be presented to the court in paper, not electronic, format. The clerk's office thereupon will scan the paper plea agreement and electronically file it as a "private entry document," which limits electronic access to the document to the attorneys in the case, the presiding judge and the court staff. However, the clerk of court shall provide public access to all unsealed plea agreements at the clerk's offices upon request.~~

**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, 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. pretrial bail or presentence investigation reports;
3. the statements of reasons in the judgment of conviction;
4. addendums to plea agreements;
5. motions for downward departure for substantial assistance, and responsive pleadings;
6. motions for reduction of sentence under Fed.R.Crim.P. 35(b), memorandum in support thereof, and responsive pleadings;
7. motions pursuant to Section 5K1.1 of the U.S. Sentencing Guidelines, memorandums in support thereof, and responsive pleadings; and
8. 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.

9. plea agreements and accompanying factual basis and stipulation.

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 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 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, be unsealed when sentence is pronounced 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.

(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:

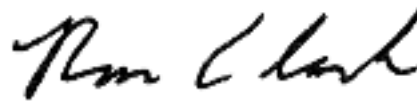
Beaumont     [bmtcrimdocs@txed.uscourts.gov](mailto:bmtcrimdocs@txed.uscourts.gov)  
Lufkin        [lufcrimdocs@txed.uscourts.gov](mailto:lufcrimdocs@txed.uscourts.gov)  
Marshall     [marcrimdocs@txed.uscourts.gov](mailto:marcrimdocs@txed.uscourts.gov)  
Sherman      [shrcrimdocs@txed.uscourts.gov](mailto:shrcrimdocs@txed.uscourts.gov)  
Texarkana   [texcrimdocs@txed.uscourts.gov](mailto:texcrimdocs@txed.uscourts.gov)  
Tyler         [tylcrimdocs@txed.uscourts.gov](mailto: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.

Signed this 5<sup>th</sup> day of February, 2015.

FOR THE COURT:



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RON CLARK  
Chief Judge