

Policy

Court Procedures Regarding Defendant Cooperation Agreements

1. Plea Agreements and Plea Agreement Supplements shall be filed in accordance with the Court's [Policy adopted October 1, 2007](#).
2. Parties may elect to file a Sentencing Memorandum as set forth in [D.N.D. Crim. L.R. 32.1\(B\)](#).
  - A. The Sentencing Memorandum must not contain any reference to the existence or absence of a cooperating agreement. A second document entitled "Sentencing Memorandum Supplement (Sealed)" must be filed in CM/ECF in conjunction with every Sentencing Memorandum. The Sentencing Memorandum Supplement (Sealed) must contain (a) any discussion or references to the defendant's cooperation including any motion by the United States under 18 U.S.C. § 3553(e) or USSG § 5K1.1; or (b) a statement that there has been no cooperation. The Sentencing Memorandum Supplement (Sealed) is unavailable to the public.
  - B. This policy grants leave of court for the parties to file a Sentencing Memorandum Supplement (Sealed).
  - C. The Sentencing Memorandum and the Sentencing Memorandum Supplement (Sealed) must be filed a minimum of seven (7) business days before the sentencing hearing. See, [D.N.D. Crim. L.R. 32.1\(B\)](#)<sup>1</sup>.
3. Parties filing a Motion to Reduce Sentence under Fed. R. Crim. Pro. 35 based upon a cooperating agreement should be filed using the CM/ECF event "Sealed Motion Pursuant to Rule 35". The document is unavailable to the public. The motion, memorandum in support thereof and responsive pleadings are unavailable to the public.
4. If a transcript is requested for a change of plea or sentencing hearing which contains reference to a cooperating agreement pursuant to Fed. R. Crim. Pro. 35, 18 U.S.C. § 3553(e) or USSG § 5K1.1, the court reporter must consult with the presiding Judge prior to filing the transcript in CM/ECF for a determination of whether any redactions are necessary.
5. Minutes of the change of plea and sentencing hearings will be unavailable to the public.
6. If an inmate makes a request for documents or a docket sheet from their federal criminal-

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<sup>1</sup> D.N.D. Crim. L.R. 32.1(B) is in the process of being amended to reflect the seven (7) day time limit specified by this policy.

case file, the clerk's office will forward the documents to the warden of the appropriate institution with a request that the inmate must review in an area designated by the warden and may neither retain the documents or review the documents in the presence of another inmate.

7. Court officers, court staff or persons in an attorney-client relationship with an inmate may review any sealed portion of an inmate's federal criminal-case file with the inmate, but must not leave a copy of any sealed document with the inmate.
8. The clerk's office, when requested to provide a copy of a docket sheet to anyone, will include the following statement when transmitting the docket sheet:

"It is not possible to determine from examination of docket entries whether a defendant did or did not cooperate with the government."