



Procedures Regarding Cooperator Information & Sealing

AMENDED LOCAL RULE 13.05

- ▶ **Effective FEBRUARY 1, 2017**
- ▶ Enacted by the District Court
- ▶ Deals with sealing of certain pleadings
- ▶ Aimed at preventing the public from being able to tell from the docket sheet or the public proceedings whether a defendant has cooperated with the Government
 - ▶ **Nothing in the Court's public record will allow anyone to be able to determine whether a defendant did or did not cooperate with the government.**

Overview of Procedural Changes

▶ **GUILTY PLEAS**

- ▶ When drafting the stipulation/guilty plea agreement – cooperation is **NOT** addressed at all
- ▶ **IN EVERY CASE**, in addition to the guilty plea agreement, you will prepare and bring with you a form dealing with cooperation
 - ▶ **“Sealed Plea Supplement – Statement Regarding Cooperation”**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
) No. Click here to enter text.
v.)
) **FILED UNDER SEAL**
Click here to enter text.,)
)
Defendant.)

SEALED PLEA SUPPLEMENT – STATEMENT REGARDING COOPERATION

COMES NOW the United States of America, by and through Richard G. Callahan, United States Attorney for the Eastern District of Missouri, and Click or tap here to enter text., Assistant United States Attorney for said District, and pursuant to Eastern District of Missouri Local Rule 83-13.05(B)(2), states as follows:

Defendant has not offered substantial assistance to the Government and the Government will not be filing a motion for downward departure on defendant's behalf absent additional cooperation.

Defendant has offered to assist the Government, but has not yet provided substantial assistance. Prior to sentencing, the Government will determine whether the defendant's assistance has been truthful and substantial enough to warrant the filing of a motion for downward departure under Section 5K1.1 of the Sentencing Guidelines and/or Title 18, United States Code, Section 3553(e).

If a separate written agreement regarding cooperation exists, it is attached hereto.

NOTE: The Government alone will determine what constitutes substantial assistance, and the Government alone will determine whether to file a motion for downward departure. There will be no downward departure for substantial assistance without a motion by the Government. A downward departure motion is warranted only for substantial assistance; mere truthful and complete assistance alone is not enough. Defendant understands that if the Government determines the assistance to be substantial and makes a downward departure motion, the Court's role is to determine whether to grant such a motion and, if the Court grants the motion, to determine what departure is appropriate.

Defendant has entered into an agreement with the Government, defendant has substantially assisted the Government, and the Government will file a motion for downward departure under:

- Section 5K1.1 of the Sentencing Guidelines
- Title 18, United States Code, Section 3553(e)

If a separate written agreement regarding cooperation exists, it is attached hereto.

NOTE: The Court will determine whether to grant such a motion and, if the motion is granted, how much to depart.

Respectfully submitted,

RICHARD G. CALLAHAN
United States Attorney

/s Click or tap here to enter text.

Click or tap here to enter text.

Assistant United States Attorney
111 South 10th Street, Room 20.333
St. Louis, Missouri 63102
(314) 539-2200

AT THE PLEA HEARING

- ▶ Every change of plea hearing will have a **sidebar** to discuss cooperation (or lack thereof)
- ▶ Judges may handle this differently
 - ▶ “Under Local Rule 13.05, it is the procedure of this Court to hold a bench conference in every plea and every sentencing hearing. We will now conduct the bench conference, and this portion of the transcript of this hearing will be filed under seal.”
- ▶ Present the Sealed Plea Supplement & Statement Regarding Cooperation at this time
 - ▶ Judge will review the contents with the defendant

Following the Plea Hearing

- ▶ The **Clerk's Office** will file:
 - ▶ **Guilty Plea Agreement** (NOT under seal, unless there is another reason to do so)
 - ▶ **Sealed Plea Supplement** (under seal)
- ▶ **Plea Transcript**
 - ▶ Court reporters will prepare and file their plea transcripts as two documents and the docket clerk will docket it as two entries
 - ▶ The start and stop times will not be reflected
 - ▶ Docket: "Pursuant to Local Rule 13.05. it is the policy of this Court that every guilty plea and sentencing transcript contain a reference to a confidential bench conference at which the lack of cooperation or cooperation is discussed, thereby making it impossible to determine from the unsealed portion of the transcript whether there was not, or was cooperation with the government."

PRIOR TO SENTENCING

- ▶ In **EVERY** case, prior to sentencing, the Government must file a **SEALED SENTENCING DOCUMENT**
- ▶ If a **§ 5K1.1 and/or § 3553(e)** motion will be filed for the defendant, it will be entitled “Sealed Sentencing Document,” but will contain the same content as a usual motion
 - ▶ There will no longer be a docketing event for “Rule 35 Motion” or “§ 5K1.1 Motion”
- ▶ If you are NOT filing a § 5K1.1 or § 3553(e) motion, you file a **“Sealed Sentencing Document”** that reflects NO COOPERATION

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EASTERN DISTRICT OF MISSOURI
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UNITED STATES OF AMERICA,)
)
Plaintiff,)
) No. Click here to enter text.
v.)
) **FILED UNDER SEAL**
Click here to enter text.,)
)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2016, the foregoing was filed electronically under seal with the Clerk of the Court and a copy was sent via electronic mail to Click here to enter text., the attorney for the defendant.

/s/ Click or tap here to enter text.
Click or tap here to enter text.
Assistant United States Attorney

**GOVERNMENT'S SEALED SENTENCING DOCUMENT—STATEMENT
REGARDING COOPERATION**

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United States Attorney

/s/ Click or tap here to enter text.
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Assistant United States Attorney
111 South 10th Street, Room 20.333
St. Louis, Missouri 63102
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Sentencing Memoranda

- ▶ **GOVERNMENT:** If you want to file a sentencing memorandum that does not address cooperation in any way
 - ▶ **Docketing event: Sentencing Memorandum**
 - ▶ Public, unsealed event used in addition to the sealed sentencing document in which the government can provide information and arguments regarding sentencing that do not involve cooperation
- ▶ **DEFENSE:** If the defense wishes to file its sentencing memorandum under seal (because it contains personal, medical or mental health information)
 - ▶ Separate motion to seal is required
 - ▶ Filed as “Sealed Sentencing Document”

Other Defense Sentencing Materials – Letters Written on Behalf of Defendants Will Be Publicly Available

- ▶ Except as otherwise provided in this paragraph, **any written communication regarding any defendant** by persons other than court-related personnel working on the case, the defendant, or counsel, submitted at any point before the defendant has been sentenced, **will be made available for viewing at the public terminal in the clerk's office.**
- ▶ Any written communication received in paper form will be scanned and filed electronically in the appropriate case. **Any party may file a motion, either at or after the time any written communication is submitted, stating the particular reasons as to why it should not be made available at the public terminal.** A judge, either on the judge's own motion or on the motion of any party, may order all or any portion of any written communication to be removed from the public terminal at any time. **Any written communication that has been redacted will be filed under seal in a non-redacted form.** The clerk's office will publish a notice to the bar and include a permanent notice on its website restating this paragraph. This notice will also state the types of personally identifying information that must not be included on any written communication submitted to this Court, consistent with Fed. R. Crim. P 49.1 and any order of this Court regarding prohibited information on any such written communication.

Written Communication Regarding Defendants in Criminal Cases

- ▶ Individuals who intend to submit letters/written communications
 - ▶ Cautioned that their communication will be available publicly
 - ▶ Directed to comply with directives related to
 - ▶ SSN/TIN
 - ▶ Names of minor children
 - ▶ DOBs
 - ▶ Financial account numbers
 - ▶ Home Addresses
 - ▶ Sensitive personal data (medical history, employment, financial information)
 - ▶ Cooperation with the Government
- ▶ Fed. R. Crim P. 49.1 & <http://www.privacy.uscourts.gov>

AT THE SENTENCING HEARING

- ▶ Same bench conference procedure
 - ▶ Judge will read the introduction to the bench conference
- ▶ Same procedures with the transcript
 - ▶ Court reporter will file it as two transcripts (sealed and unsealed portions, not reflecting length of the bench conference)

Requests for PSRs, Sealed Transcripts & Other Sealed Documents

▶ DOCKET SHEET HEADER

Beginning February 1, 2017, under Local Rule 13.05, it is the procedure of this Court to order the U.S. Attorney's Office to file a sealed statement in all criminal cases in which a defendant enters a guilty plea that will either explain the terms of a defendant's cooperation *or* state that a defendant did not cooperate with the government. The public will not be able to determine whether a defendant did or did not cooperate with the government by reading these docket entries.

- ▶ When an inmate requests copies of any sealed case documents, the Court should direct the requestor to speak with their Case Worker or representative at the Bureau of Prisons.
- ▶ No copies of PSRs or other sealed case documents should be provided to an inmate as it may contain cooperator information.
- ▶ If a Court Reporter receives a request for a sealed transcript, it will be to the attention of the Judge. No sealed transcript will be prepared without the Order of the Judge presiding over that proceeding.

Letters Exercise

If a Sentencing Memo is filed under seal, may not be able to attach letters as they may have to be filed separately from the Memo.

- ▶ Redact?
 - ▶ How?
 - ▶ Responsibility to advise
 - ▶ File non-redacted version under seal
- ▶ Under Seal?
 - ▶ Why?

January 5, 2017

Mary S. Keaton
1034 Semple, Apt. 301
St. Louis, MO 63456

To the Honorable Judge Perry,

I am writing to express my support for my niece Karen Driscoll as she faces sentencing for her drug crime. I have known her for her whole life and she has dealt with a lot of really painful stuff that I think led her to become addicted to drugs. I thought the Court should know about this before sentencing her.

When Karen was a baby her parents (my sister and her husband) and their friends would do drugs around her all the time. A couple of times when I visited I saw her mother putting whiskey in her bottle! She said it wouldn't hurt her and that it kept her quiet. I know I should have stopped them from doing this or called the police but I was afraid of my brother in law. Then, when Karen was a toddler, her parents started selling heroin out of the house. Many of their customers stayed in the house to shoot up. By the time Karen was a teenager her sister and brother were born and she missed a lot of school because she had to take care of them when her parents went to jail, which was pretty often.

Karen always talked about wanting to become a chef but she had no one to help her figure out how to achieve this goal. I wasn't surprised when I heard she started using drugs when she was in high school. I figured she was just experimenting. However, I was shocked to hear about this case – that she was selling drugs - because she always told me that she hated that her parents didn't have a normal job with a normal paycheck. I guess she didn't know how else to earn money.

I know that Karen has to take responsibility for what she did and no one forced her to sell drugs. However, I wanted you to know that if someone can give her some guidance she will respond and do better. I don't think a long time in prison will help her. Please give her a chance.

Sincerely,

Mary Keaton

January 5, 2017

Mary S. Keaton
[REDACTED]

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Sincerely,

Mary Keaton

December 1, 2016

Dear Judge Sippel,

I want you to know that my little brother Michael Martin is a good person. He went to prison when he was 17 and he met a lot of bad guys there. I couldn't visit him. In fact no one in our family visited him or sent him money for his commissary account. I think he felt like no one cared about him and that made him upset. He got in a lot of fights because he was so young and I think some of the older inmates tried to take advantage of him. I have told him I'm sorry for not visiting him and I have tried to talk to him about what happened there. Even though he talks about a lot of things with me he will never talk about his time in prison.

When he got out of prison he would come to visit me and my kids every weekend and he never missed a weekend until he got locked up for this case. He plays with my daughter Cecilia who is 7 years old and my son Ricky who is 10. He takes them out for ice cream and sometimes he takes them to a movie. He is their favorite uncle.

Michael had a hard time finding a job when he came home and he lost a couple jobs because he had no way to get to work and no money to pay the bus fare. He kept trying though and I think the last job he had was a good one because he could walk there. They liked him a lot. His girlfriend just had a baby last year - his name is Lewis Martin - after our father. Michael is very proud of his son, loves him, and wants to support him.

I know Michael shouldn't have had that gun but it's pretty dangerous where we live. I think he was just trying to be safe. He can't run very fast and sometimes he has to go to work late at night.

I will try to visit Michael this time when he is in prison and I will be there for him when he is released.

Thank you for reading my letter.

Carla Martin

December 1, 2016

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When he got out of prison he would come to visit me and my kids every weekend and he never missed a weekend until he got locked up for this case. He plays with my daughter C [REDACTED] who is 7 years old and my son R [REDACTED] who is 10. He takes them out for ice cream and sometimes he takes them to a movie. He is their favorite uncle.

Michael had a hard time finding a job when he came home and he lost a couple jobs because he had no way to get to work and no money to pay the bus fare. He kept trying though and I think the last job he had was a good one because he could walk there. They liked him a lot. His girlfriend just had a baby last year - his name is L [REDACTED] M [REDACTED] - [REDACTED]. Michael is very proud of his son, loves him, and wants to support him.

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Thank you for reading my letter.

Carla Martin

Kramer Wood Stripping
1192 Summit Avenue
Rochester, NY 14602
(585) 345-2212

November 25, 2016

Dear Judge:

I am writing this letter on behalf of Ricky Moore. Mr. Moore started working with our company through a temporary employment agency back in 2009. He did so well that we decided to hire him as a full time employee six months later. Mr. Moore was always on time, never missed a shift, and worked extra hours to ensure that our services were provided professionally and promptly.

The working conditions at our company can be dangerous due to the chemicals we use, the machines we operate, and the heavy furniture we re-finish. Mr. Moore always employed the required safety measures without complaining. He was one of the few employees who became an expert with one of the large sanders we have and on more than one occasion he saved another worker from hurting himself by showing him how to use it properly.

We received many customer compliments on the work that Mr. Moore did and for this reason I believe he contributed to our increased business starting in 2011.

I am aware of Mr. Moore's legal troubles but wanted you to know that we will have a position on our team awaiting his return to New York. If there are any other details you may need about his employment with our company please do not hesitate to contact me directly.

Respectfully,

John R. Bissell
Manager
Kramer Wood Stripping

Kramer Wood Stripping
1192 Summit Avenue
Rochester, NY 14602
(585) 345-2212

November 25, 2016

Dear Judge:

I am writing this letter on behalf of Ricky Moore. Mr. Moore started working with our company through a temporary employment agency back in 2009. He did so well that we decided to hire him as a full time employee six months later. Mr. Moore was always on time, never missed a shift, and worked extra hours to ensure that our services were provided professionally and promptly.

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Respectfully,

John R. Bissell
Manager
Kramer Wood Stripping

Missouri Baptist
M E D I C A L C E N T E R
3015 North Ballas Road
St. Louis, MO 63131
August 1, 2016

Deshaun Smith
233 Roland Ave.
St. Louis, MO 63031

Mr. Smith:

I am writing in response to your request for a summary of your medical situation.

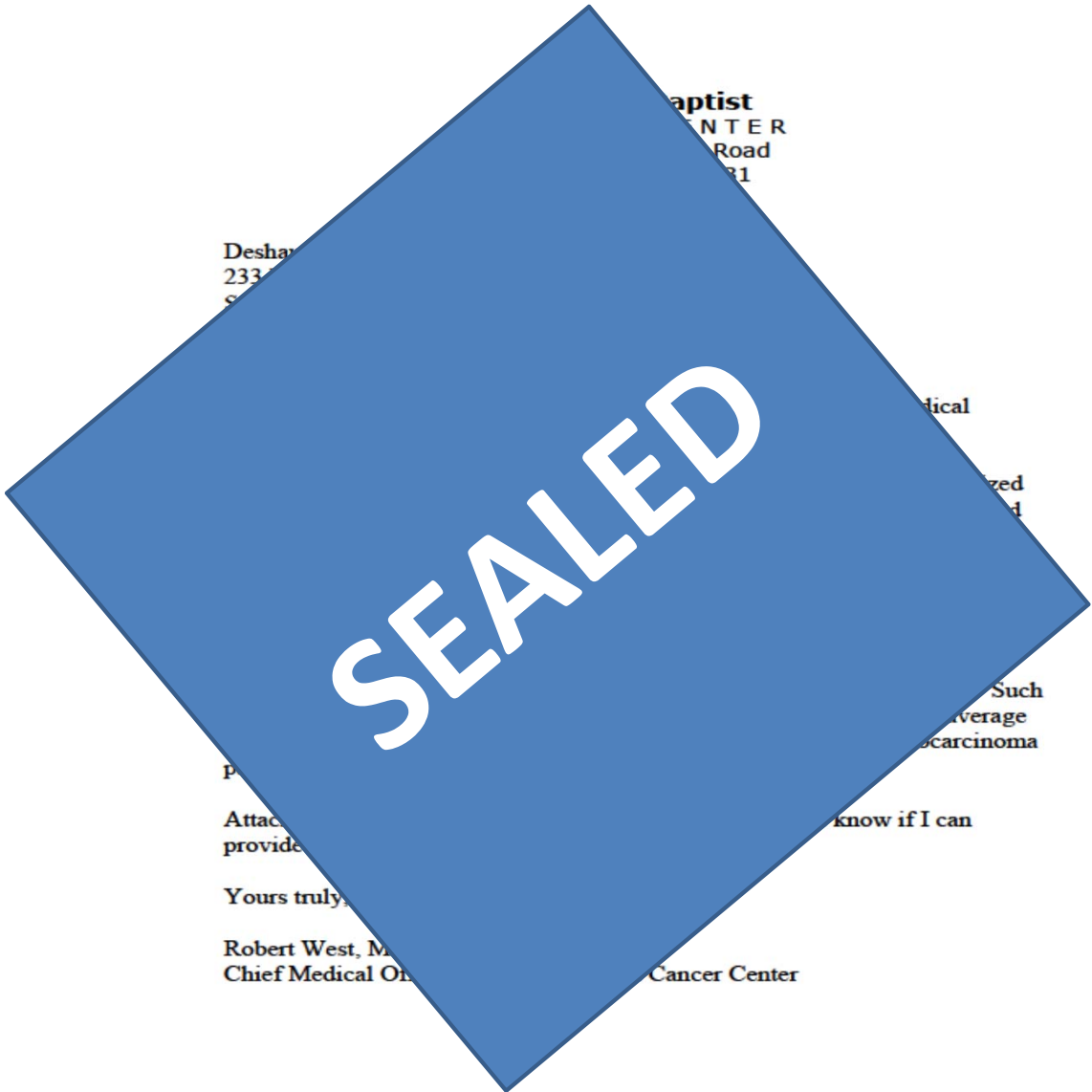
As we have previously discussed, you have a malignancy, best characterized as mass-like intrahepatic cholangiocarcinoma. Although nominally confined to the right lobe of your liver, surgical removal is fraught with danger, the more so in the setting of recently discovered hepatitis B. I believe that Dr. Howard, a highly experienced and qualified hepatobiliary surgeon, quoted you a 10% cure potential with surgery and a high rate of operative morbidity and mortality.

As a consequence of these long odds, you have opted for chemotherapy. Such treatment has no material potential to cure but can prolong life by an average of perhaps four months. Even so, the average survival of cholangiocarcinoma patients so treated remains less than a year.

Attached is your most recent progress note. Please let me know if I can provide additional useful documentation.

Yours truly,

Robert West, MD
Chief Medical Officer, Missouri Baptist Cancer Center



Baptist
CENTER
Road
31

Deshay
233
S

Medical

ized
d

Such
Average
Carcinoma

P

Attac
provide

know if I can

Yours truly,

Robert West, M.D.
Chief Medical Officer

Cancer Center