

Local Criminal Rule 32-2 - Sentencing Procedure

(a) The sentencing hearing in each criminal case will be scheduled by the court following the filing of a petition to enter a plea of guilty, plea agreement, the entry of a guilty plea, or a verdict of guilty.

(b) If the defendant is a cooperator and is petitioning to plead guilty, counsel for the defendant must file, under seal in the *individual defendant's* case, a Motion to Exclude Cooperator Information, which specifically references the Presentence Investigation Report ("PSR"). If the defendant is potentially eligible for relief from a mandatory minimum sentence, by way of the "Safety Valve" provision of 18 U.S.C. § 3553(f) (United States Sentencing Guidelines ("U.S.S.G.)) § 5C1.2(a)(1)-(5)), counsel may also request, in the same motion, that narrative concerning the Defendant's qualification for the Safety Valve reduction be excluded from the PSR, and request that only a reference to U.S.S.G. § 2D1.1(b)(17) be made (in order to accurately calculate the sentencing guideline range). Defense counsel should file such motion contemporaneously with the actions in subsection (a) above. In the event of a guilty verdict, defense counsel will have 14 days within which to file the Motion to Exclude Cooperator Information, and Safety Valve narrative, from the presentence report.

(c) Within 14 days after the commencement of one of the actions in subsection (a) above, counsel for the government and counsel for the defendant must submit in writing their respective versions of the facts pertaining to the instant offense to the probation officer of the court for inclusion in the Presentence Investigation Report. In lieu of such submission, a party may notify the probation officer that its version of the facts is adequately captured in another specific document(s) already available to the probation officer. Before or at the time of providing such submission or notification to the probation officer, a party must provide the submission or notification to the other party.

(d) The Presentence Investigation Report, including guideline computations, will be completed and disclosed to the parties as early as feasible. If a Motion to Exclude Cooperator Information is granted, information regarding cooperation will be kept confidential and excluded from the presentence report. The presentence report will be deemed to have been disclosed when the document is electronically served upon counsel through the court's CM/ECF system. The probation office will also mail a disclosure letter to the defendant advising that the presentence report has been made available to both parties. The sentence recommendation provided to the court by the probation office will not be disclosed except to the court.

(e) Within 14 days following disclosure of the presentence report, unless the court determines otherwise, all counsel must file in writing with the probation officer and serve on each other all objections or corrections they may have as to any material information, sentencing classifications, sentencing guideline calculations, and policy statements contained in or omitted from the Report.

(f) After receiving counsels' objections or corrections, if any, the probation officer will conduct any further investigation and make any necessary revisions to the Presentence Investigation Report. The officer may require counsel for both parties to meet with the officer in person or by telephone to discuss unresolved factual and legal issues. It is the obligation of an objecting party to seek administrative resolution of disputed factors or facts through consultation with opposing counsel and the probation officer prior to the sentencing hearing.

(g) The probation officer will submit the Presentence Investigation Report to the sentencing judge immediately after the receipt and processing of objections but no later than 7 days before the sentencing date. The probation officer will notify the court immediately if additional time is necessary to investigate and resolve disputed issues raised by the attorneys and the defendant during the review period. The Report will be accompanied by an addendum setting forth any objections or corrections any counsel may have asserted that have not been resolved, together with the officer's comments thereon. The probation officer will certify that the contents of the Report, including any revisions thereof, have been disclosed to the defendant and to counsel for the defendant and counsel for the government, and that the addendum fairly summarizes any remaining objections or corrections.

(h) Any party objecting to the Presentence Investigation Report, the guidelines, computations, or commentary will have a reasonable opportunity, usually at the sentencing hearing, but in any event in advance of imposition of the sentence, to present evidence or argument to the court regarding disputed factors or facts. The court may consider any reliable information presented by the probation officer, the defendant, or the government. The manner and form of such presentations are committed to the discretion of each sentencing judge on a case by case basis.

(i) The presentence report will be disclosed to the defendant's counsel and the government's counsel by the probation officer. Defense counsel will be responsible for making the necessary arrangements for review of the report by defendants within the schedules set out by the sentencing court. The unauthorized disclosure of the information contained in the presentence report, statements, and other attachments may be considered a contempt and punished accordingly. The presentence report will be filed under seal with the clerk of court and retained as part of the case file for whatever further judicial purposes may occur or be necessary.

Notes: July 1, 2017, amendment inserting (b) and technical amendment of (d) to clarify the means to request that cooperator information be excluded from a presentence investigation report. The amendment comes, in part, based on the actions of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, which is examining means to control the use of court documents to identify, threaten, and harm cooperators.