

Proposed Amendments to Local Criminal Rules of Procedure

10.1

Whenever the U.S. Attorney wishes to have a defendant appear for arraignment or change of plea, a date should be obtained from the office of the responsible judge or magistrate judge. When a defendant has previously appeared before a judicial officer in this district, the date of an arraignment should not be more than seven (7) ~~business~~ days after the date of indictment. Thereafter, the U.S. Attorney's Office is responsible for notifying all necessary parties of the date and time for the proceeding. This includes the marshal, the person responsible for issuing a writ, if needed, the probation office, the defendant and/or defendant's attorney.

11.1(d)

Upon application of a party or sua sponte, the district judge shall conduct a de novo review of the magistrate judge's findings. In conducting such review, the district judge may reconduct all or any part of the guilty-plea hearing and may affirm, set aside, or cure any finding or proceeding before the magistrate judge. Any application for review made by a party must be in writing, must specify the portions of the findings or proceedings objected to, and must be filed and served no later than ~~10~~ *fourteen* (14) days after the plea hearing, unless the time is extended by the district judge.

17.1

All subpoenas delivered to the United States Marshal's Office for service shall allow a minimum of ~~five (5) working~~ *seven (7)* days if within the Western District of Michigan, or ~~ten (10) working~~ *fourteen (14)* days if outside the district, prior to the required appearance. A deposit in a sum deemed sufficient by the marshal to cover fees for the service to be performed shall be made in every instance in which the marshal is required to perform service. The marshal may require that any payment be in cash or certified check.

32.2(a)

Initial interview - The initial interview with the defendant, defendant's counsel, and the probation officer shall be conducted within ~~five (5) working~~ *seven (7)* days of the date of the order setting sentencing date. Counsel for the government shall make available the offense conduct information, including all relevant conduct, within ~~five (5) working~~ *seven (7)* days of the date of such order.

32.2(b)

Disclosure of presentence report - At least thirty-five (35) ~~calendar~~ days before the date scheduled for sentencing, the probation officer shall provide a copy of the presentence report (except the sentencing rationale) to (1) counsel for the government, and (2) counsel for the defendant or, where the defendant is pro se, to the defendant. Disclosure of the presentence investigation report (and any subsequent revisions and addenda thereto) to a defense counsel shall be deemed to be disclosure to the defendant and it shall be the obligation of the defense counsel to provide a copy of the report to the defendant forthwith.

32.2(d)

Objections to presentence report - Within fourteen (14) ~~calendar~~ days after disclosure of the presentence report, each counsel or pro se defendant shall file a written response to the probation office which shall acknowledge disclosure, and which shall contain all objections, and the reasons therefor, to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report, or which shall contain a statement that there is no objection to the report. The response filed on behalf of the defendant shall contain the defendant's signature in addition to that of counsel. Each written response shall contain a certificate indicating that all other recipients of the presentence report and the probation officer have been served with a copy of the response.

32.2(g)

Submission of presentence report to the Court - Not less than ~~seven (7) working~~ *nine (9)* days before the date set for sentencing, the probation officer shall submit the final presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any unresolved objections that counsel or the pro se defendant may have, together with the officer's comments thereon. The probation officer shall certify that the contents of the report, including any revisions and the addendum, have been disclosed to counsel and any pro se defendant, and that the addendum fairly states any remaining objections.

32.2(h)

Motions for departure or variance; sentencing memoranda - Not less than ~~five (5) working~~ *seven (7)* days before the date set for sentencing, any party seeking an upward or downward departure under the Sentencing Guidelines or a variance based on the application of the factors set forth in 18 U.S.C. § 3553(a), or both, must file and serve a separate and clearly captioned motion seeking such relief. All sentencing memoranda, including memoranda in support of a motion for departure or variance, shall be filed by the same date. Copies of all motions and sentencing memoranda shall be served upon the probation officer.

32.2(i)

Time period - The time periods set forth in this rule may be modified by the Court for good cause shown, or upon its own motion, except that in no event shall sentence be imposed less than ten (10) days following disclosure of the presentence report without the consent of the defendant. ~~In computing the time periods, no exception shall be made for weekends or holidays.~~

49.10(e)

Evidence of Original Signature - Filers of documents containing signatures authorized by Rule 49(e)(ii) (multiple attorney signatures) must maintain any records evidencing concurrence, and filers of documents containing signatures authorized by Rule 49(d)(iii) (electronically filed affidavits, etc.) and 49(e)(vii) (documents containing defendant's signature) must maintain the documents bearing the original manual signature for subsequent production to the Court or for inspection by a party until

one year after the final resolution of the action (including appeal, if any). A non-filing signatory or party who disputes the authenticity of a signature on an electronically filed document must file an objection to the document within ~~ten~~ *fourteen (14)* days after service of that document.

57.1(c)(ii)

Effect of prior discipline - If the applicant has been held in contempt, disciplined, or convicted of a crime, the Chief Judge shall make an independent determination as to whether the applicant is qualified to be entrusted with professional matters and to aid in the administration of justice as an attorney and officer of the Court. An applicant dissatisfied with the decision of the Chief Judge may within ~~thirty (30)~~ *twenty-eight (28)* days file a petition for a hearing before a three judge panel as described in LCivR 57.1(m)(iii).

57.1(k)(ii)(A)

Initiation of proceedings - Formal disciplinary proceedings leading up to possible suspension or disbarment shall be initiated by the issuance of an order to show cause, signed by the Chief Judge. Such order may be issued by the Court, on its own initiative or in response to allegations brought to the attention of the Court in a written complaint, if the Court determines further investigation is warranted. The Chief Judge may dismiss a complaint and refuse to issue an order to show cause if the complaint is found to be frivolous. The order to show cause issued by the Court shall include the specific facts that give rise to the proposed discipline, including the date, place and nature of the alleged misconduct, and the names of all persons involved. A copy of the order and any supporting documents shall be mailed to the attorney who is the subject of investigation. The attorney shall have ~~twenty (20)~~ *twenty-one (21)* days from the entry of the order in which to respond. The response shall contain a specific admission or denial of each of the factual allegations contained in the order and, in addition, a specific statement of facts on which the respondent relies, including all other material dates, places, persons and conduct, and all documents or other supporting evidence not previously filed with the order that are relevant to the charges of misconduct alleged. The response shall contain a specific request for a hearing, if so desired by the respondent.

57.1(k)(ii)(B)(1)

Procedures - If it is determined that a hearing is necessary, the Chief Judge shall provide the attorney with written notice of the hearing a minimum of ~~twenty (20)~~ *twenty-one (21)* days before its scheduled date. The notice shall contain the date and location of the hearing and a statement that the attorney is entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross examine adverse witnesses.

57.1(m)(ii)(A)

Within ~~30~~ *twenty-eight (28)* days after the effective date of the order of discipline in this Court, the attorney may apply to the Chief Judge for modification or vacation of the discipline.

57.1(m)(iii)(B)

The judicial officers assigned to the matter shall within ~~30~~ *twenty-eight (28)* days after assignment schedule a hearing at which the attorney shall have the burden of demonstrating by clear and convincing evidence that:

57.2(d)

Appeal from judgments in misdemeanor cases - 18 U.S.C. § 3402 - A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal within ~~ten (10)~~ *fourteen (14)* days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. If the case was previously assigned to a district judge, that judge shall hear any appeal from the decision of the magistrate judge; otherwise, the appeal shall be assigned to a district judge at random. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals.

57.3(g)

Writs of habeas corpus - All writs of habeas corpus ad prosequendum or testificandum for an individual shall, in addition to stating a specific date and time, include the following phrase: "and at such other times and dates as the Court may decree." Further, every effort shall be made to allow ~~ten (10) working~~ *fourteen (14)* days after service prior to the required appearance.