

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

ADMINISTRATIVE ORDER RE:)	
PROPOSED AMENDMENTS TO LOCAL)	
CRIMINAL RULES 32.2 ADJUSTING)	Administrative Order
TIMELINES FOR DISCLOSURE OF)	No. <u>22-RL-018</u>
PRESENTENCE REPORTS AND FILING)	
OF SENTENCING MEMOS BY COUNSEL)	
_____)	

Pursuant to 28 U.S.C. § 2071 and Rule 57 of the Federal Rules of Criminal Procedure, the Court hereby gives notice of its consideration of amendments to Local Criminal Rules 32.2, regarding the timeline for (1) disclosure of initial presentence reports, (2) filing of final presentence reports, (3) submission of sentencing memos by the government and defense counsel, and (4) establishment of a deadline for filing reply memos by the parties. The proposed amendments to this rule would provide earlier receipt of the initial sentencing memos and establishes a deadline of 7-days prior to sentencing for replies.

The proposed amendments have been reviewed and approved for publication by the Judges of this Court at a regular meeting conducted on March 11, 2022. The Court has made no final decision and looks forward to considering all public comments. The text of the proposed rule amendments are attached to this order and are also available on the Court’s website or in paper form at the Clerk’s Office.

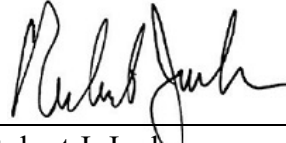
NOTICE IS HEREBY GIVEN to all members of the public of their opportunity to review and comment upon the attached proposed rule amendments. A copy of this order will be available in each divisional office and on the Court’s website. In addition, the Clerk shall send electronic notice to all attorneys registered to use the CM/ECF system. The Clerk shall provide a copy of the proposed amendment to the Federal Bar Association, West Michigan Chapter, the State Bar of Michigan Committee on United States Courts, and the *Michigan Lawyer’s Weekly*.

All comments should be in writing and must be received by the Court no later than **April 17, 2022**. The Court considers all comments a matter of public record available for review by interested members of the public. Comments should be addressed to:

Clerk of Court
United States District Court
399 Ford Federal Building
110 Michigan, N.W.
Grand Rapids, MI 49503

or submitted electronically to ecfhelp@miwd.uscourts.gov. The Court will consider all comments before promulgating a final version of the proposed rules.

FOR THE COURT:



Dated: March 17, 2022

Robert J. Jonker
Chief United States District Judge

LCrR 32.2 Presentence report

32.2 Presentence report - Unless waived pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, a presentence report must be prepared in every felony case and may be prepared in misdemeanor cases in the court's discretion.

1. **Initial interview** - The initial interview with the defendant, defendant's counsel, and the probation officer must be scheduled within seven (7) days of the date of the order setting sentencing date. Counsel for the government must make available the offense conduct information, including all relevant conduct, within seven (7) days of the date of such order.
2. **Disclosure of presentence report** - At least ~~thirty five (35)~~ forty-seven (47) days before the date scheduled for sentencing, the probation officer must 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. The sentencing judge may additionally direct the probation officer not to disclose the officer's recommendation on the sentence. Disclosure of the presentence investigation report (and any subsequent revisions and addenda thereto) to a defense attorney is deemed to be disclosure to the defendant. Defense counsel must provide a copy of the report to the defendant forthwith.
3. **Time of disclosure**
 1. **To represented parties:** The presentence report is deemed disclosed to counsel for a represented defendant and to counsel for the government when it is filed electronically by the probation officer on the CM/ECF system (access restricted to the court, the probation office, attorneys of record for the government and for the relevant defendant).
 2. **To an unrepresented party:** The presentence report is deemed disclosed to a *pro se* defendant when a copy of the report is physically delivered or three (3) days after a copy of the report has been mailed. The presentence report must contain the date of mailing.
4. **Objections to presentence report** - Within fourteen (14) days after disclosure of the presentence report, each counsel or *pro se* defendant must file a written response to the presentence report acknowledging disclosure and containing all objections, and supporting reasons, to any material information, sentencing classifications, sentencing guideline ranges, and policy statements

contained in or omitted from the report. Alternatively, the response may affirmatively state that there is no objection to the report. Counsel for the government and for defendant must submit objections electronically by the CM/ECF system (access restricted to the court, the probation office, attorneys of record for the government and for the relevant defendant); the government must also serve objections pertaining to an unrepresented defendant on that defendant alone on paper, with proof of service. Unrepresented defendants must file their objections in writing with the Clerk of the Court, with a proof of service on government counsel. The clerk shall file the objections electronically by the CM/ECF system (access restricted to the court, the probation office, and attorneys of record for the government).

5. Non-judicial resolution of objections - After receiving a timely objection, the probation officer must promptly conduct any further investigation and make any revisions to the presentence report that may be necessary. The probation officer may require each counsel and *pro se* defendant to meet with the officer to discuss unresolved factual and legal issues, and may request that such persons meet with each other for the same purpose.
6. Submission of presentence report - Not less than ~~nine~~ twenty-one (21) days before the date set for sentencing, the probation officer must submit the final presentence report electronically by the CM/ECF system (access restricted to the court, the probation office, attorneys of record for the government and for the relevant defendant). The report will be accompanied by an addendum setting forth any unresolved objections that counsel or the *pro se* defendant may have, together with the ~~officer's~~ officer's comments thereon. The probation officer must 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.
7. Motions for departure or variance; sentencing memoranda - Not less than ~~seven (7)~~ 14 (14) 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 submit a separate and clearly captioned motion seeking such relief. All sentencing memoranda, including memoranda in support of a motion for departure or variance, must be filed by the same date. Not less than seven (7) days before the date set for sentencing, any party may file a response to any previously filed motion or sentencing memoranda. Counsel must submit such motions and memoranda by the CM/ECF system and may move for leave to restrict access to the court, the probation office, attorneys of record for the government and for the relevant defendant, if sensitive or confidential information is contained therein. *Pro se* parties must

file and serve such documents in paper, with proof of service on the opposing party.

8. Judicial resolution of objections - Upon receipt of the final report and attachments, the sentencing judge will determine the extent of any further proceedings necessary in light of the nature of any unresolved objections. The judge may hold all objections for resolution at the time of sentencing. In the alternative, the judge may resolve any objections prior to sentencing and may afford the parties a reasonable opportunity for the submission of further written objections before the imposition of sentence. Any objections must be made in the same manner as provided for in this rule. Where the court determines that a hearing is necessary to resolve the disputed sentencing matters, a hearing may be held for that purpose, either on the date of sentencing or at an earlier time.
9. Late objections - Upon a showing of good cause, the court may allow a new objection to be raised at any time prior to the imposition of sentence.
10. Expedited procedures - 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. The parties may agree in writing or on the record to an expedited sentencing procedure that shortens the times set forth in this rule or abbreviates the information otherwise required in the presentence report.
11. Limitations on disclosure - Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under the Federal Rules of Criminal Procedure.
12. Relationship to Fed. R. Crim. P. 32 - This rule shall not be construed to limit any sentencing procedure modifications permitted by Rule 32 of the Federal Rules of Criminal Procedure.
13. Release of presentence report to other officers - The Chief Probation Officer may, in his or her discretion, disclose a presentence report to a federal or state probation or parole officer in connection with that officer's conduct of official duties regarding a person previously sentenced by this court.

~~Date Last Modified:~~

January 1, 2019
