

**March 1, 1999**

**III. LOCAL CRIMINAL RULES**

**II. PROBATION AND SENTENCING RULES**

**32.1 [formerly 102] PRESENTENCE REPORTS.**

- (a) Defendant or Defendant's counsel shall advise the Probation Officer whether counsel wish to receive notice of and a reasonable opportunity to attend any interview of the Defendant.
- (b) Within thirty-five (35) days after a plea of guilty, nolo contendere, signed consent to conduct a presentence investigation prior to plea, or verdict of guilty, the Probation Officer shall disclose two (2) copies of the initial presentence investigation report to counsel for the defendant, and disclose one (1) copy to counsel for the Government. Defense counsel shall promptly provide one (1) copy to the Defendant.
- (c) Within seventeen (17) days after disclosure of the initial presentence report, either by the posting or certified mail or personal delivery, the parties shall communicate to the Probation Officer and each other such objections as they have to matters either contained in or omitted from the report. Such communication may be oral or written, but the Probation Officer may require that any oral objection be promptly confirmed in writing. All objections to the presentence report should be clearly identified in order that they may be resolved to the extent practicable through informal procedures, including telephone conferences. During the disclosure period, written objections should be filed with the Probation Officer and not with the Court.
- (d) Thereafter, the Probation Officer shall conduct such further investigation and make such revisions to the initial presentence report as may be deemed appropriate. The Probation Officer shall respond to all unresolved objections. If any party holds a good faith belief that a further conference may yet resolve or narrow any objection, it shall be the obligation of the objecting party to seek a conference with the Probation Officer and the other party. Any such conference shall be held within thirty-one (31) days following disclosure of the initial presentence report. All unresolved objections shall be memorialized in writing by the objecting party to the Probation Officer within three (3) business days after such conference.
- (e) Following any conference held pursuant to paragraph (d) of this Rule, but not later than thirty-eight (38) days following disclosure of the initial presentence report, the Probation Officer shall transmit the final presentence report investigation report to the Judge and the parties [two (2) copies to counsel for

the Defendant and one (1) copy to counsel for the Government], either by posting of certified mail or by personal delivery, pursuant to Rule 32, Fed R. Crim. P. The final report shall include an addendum identifying (1) all unresolved objections previously memorialized in writing; (2) a brief statement of the grounds for each such objection; (3) the Probation Officer's comments on each such objection after considering such conferences and discussion among the parties as has occurred; and, if known, (4) an indication whether the parties are anticipated to wish to present evidence to the Court on any such objection at the sentencing hearing. The Probation Officer shall certify that the final presentence report is true and accurate to the best of his or her knowledge and belief, and that the Probation Officer has furnished all material revisions to the initial presentence report and the entire addendum to the Defendant's counsel, and counsel for the Government. Defendant's counsel shall promptly deliver copies of all such material to the Defendant.

- (f) Pursuant to the authority granted in Rule 32(b)(6)(A), Fed. R. Crim. P., unless otherwise ordered in an individual case, the Probation Officer's recommendation, if any, on the appropriate sentence shall be disclosed in all copies of the initial and final presentence report including those furnished to counsel. However, no employee of the Probation Office of this Court may be called as a witness and examined concerning any such recommendation without the permission of the Court.
- (g) If the Probation Officer communicates to the Court any material described in Rule 32(b)(5), which is believed to be of such a nature as ought not to be made available to the Defendant and the Defendant's counsel, the Probation Officer shall upon request by the Court promptly prepare a written summary of such material in order to assist the Court in complying with its obligations under Rule 32(c)(3)(A).
- (h) Following receipt of the final report the Court may schedule additional conferences on the remaining objections, or may proceed to conduct the sentencing hearing not less than ten (10) days after receiving the final presentence report, provided that thirty-five (35) days have passed since disclosure of the initial report or Defendant waives this time requirement. Except with regard to any unresolved objections previously memorialized in writing, the final presentence report may be accepted by the Court as its findings of fact. The Court, however, for good cause shown may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the Probation Officer, the Defendant, or the Government.
- (i) The Defendant may waive the minimum periods in this Rule and in Rule 32, Fed. R. Crim. P., provided such waiver is documented in the Record. Time frames set forth in this Rule and in Rule 32, Fed. R. Crim. P., may also be modified by the Court for good cause shown.
- (j) The presentence report, statements, addenda and related documents shall be deemed to have been disclosed at the earliest of the following events: (1) on the date designated as the availability date in the Disclosure Notification letter;

(2) when a copy of the document is physically presented; (3) one (1) day after the immediate availability of the document is orally communicated; (4) three (3) days after notice of the immediate availability is mailed; or (5) three (3) days after the document is sent by certified mail by the Probation Officer.

(k) The presentence report and related documents shall be maintained in confidence and under seal. Unauthorized copying or disclosure of the information contained in any draft or final presentence report, addendum, statement, or attachment to such a report will be an act in contempt of Court, and punished accordingly.

(l) The Probation department of this Court shall administer the operation of this Rule.

**32.2 [formerly 103]**

**PRODUCTION OF PROBATION AND PRETRIAL SERVICES RECORDS; TESTIMONY OF PROBATION AND PRETRIAL SERVICES OFFICERS**

- (a) Probation and Pretrial Services Officers are officers of the Court. Their confidential records and files are the confidential records of the Court and the information they acquire in performing their duties is confidential.
- (b) When disclosure of Probation or Pretrial Services records or a request for the testimony of a Probation or Pretrial Services Officer is sought by way of subpoena or other judicial process, the Probation or Pretrial Services Officer shall file a petition seeking instructions from the Court with respect to responding to the subpoena or other judicial process. The petition shall be assigned to the District Judge or Magistrate Judge responsible for the pretrial handling of the case or the District Judge or Magistrate Judge who passed sentence. If that Judge is unavailable, the Clerk shall randomly assign the petition to another District Judge.
- (c) The party serving the subpoena or other process, or their counsel, shall notify the Civil Division of the United States Attorney's Office at the location of the Court where they have filed the subpoena and shall deliver copies of all relevant documents promptly to such office.
- (d) The Court shall authorize a Probation or Pretrial Services Officer to produce records or testify only if (1) disclosure is expressly authorized by federal law or (2) the Court finds there has been a particularized showing of a compelling need for such disclosure and that the information is necessary to meet the ends of justice.
- (e) (1) If the Court finds that a Probation or Pretrial Services Officer shall be authorized to testify or to produce records, the authorization shall be limited to only those matters directly relevant to the demonstrated need. The Court's Order shall identify the records which shall be produced and the subject matter of the testimony which is authorized.  
(2) If the Court finds that a Probation or Pretrial Services officer shall not be authorized to testify or to produce records, then the Court shall issue an Order quashing the subpoena or other judicial process under the authority of the Supremacy Clause, Article VI of the Constitution of the United States.