

Rule 32 – Sentencing and Judgment

OKLAHOMA NORTHERN DISTRICT COURT

V. POST-CONVICTION PROCEEDINGS

LCrR32. Sentencing and Judgment.

32.1 Scheduling of Sentencing.

Sentencing proceedings shall be scheduled no earlier than ninety ~~(90)~~ days following entry of a guilty plea or jury verdict, unless otherwise ordered by the Court upon consent of the parties.

~~32.2~~ Notice and Opportunity for Defendant's Attorney to Attend Presentence Interview.

~~Defendant's attorney shall be given at least seven (7) days' notice of the date for the presentence investigation interview of the defendant by the probation office.~~

~~The probation officer must give the defendant's attorney notice and a reasonable opportunity to attend the interview. After repeated attempts to schedule the interview fail or should defense counsel choose not to participate, the probation officer may interview defendant without counsel present."~~

32.3 Confidential Nature of Presentence Report.

The presentence report is confidential and may only be disclosed to the Court and parties for use in this case and to the U.S. Sentencing Commission and the U.S. Bureau of Prisons for discharge of their official duties. The probation office is responsible for maintaining confidentiality of the report.

32.4 Disclosure of Presentence Report to Counsel.

~~Not less than thirty five (35) days prior to the date set for sentencing, the probation officer shall disclose the report to the defendant, counsel for the defendant, and the government. The report is disclosed when:~~

- ~~(a) the report is faxed or e-mailed to counsel;~~
- ~~(b) the report is physically delivered to counsel;~~
- ~~(c) one (1) business day after counsel is told orally that the report is available for inspection; or~~
- ~~(d) three (3) days after either a copy of the report or notice of its availability for inspection is mailed to counsel.~~

The probation officer shall disclose the presentence report to the defendant, counsel for the defendant, and the government by email or physical delivery, at least thirty-five days before the date set for sentencing.

32.5 Objection to Presentence Report.

Within fourteen ~~(14)~~ days ~~of after~~ receiving the report, the parties must communicate initially with the probation officer via email, telephone, or letter of any material correction request or objection to the report; Should the probation officer not be in agreement with the proposed revisions, the probation officer shall inform parties of his/her stance as soon as possible. The party must then file any objection of record. The filing shall include the basis for the correction said request or objection, and if applicable, cite authority in support of legal positions advanced. Such communication may in the first instance be oral or written, but if oral, shall be confirmed immediately in writing, unless the probation officer forthwith accedes to the oral request or objection by a written supplement or revision of the report. Otherwise, a At least seven ~~(7)~~ days before sentencing, the probation officer will respond to any written request or objection by submission of a revised report and/or an Addendum to the parties and the Court.

32.6 Sentencing Pleadings.

All m Motions for an upward or downward departure or variance shall must be in writing, filed at least fourteen ~~(14)~~ days prior to before sentencing, shall and must state the requested degree of relief requested and all bases the reason for the requested relief. If both a party requests both a departure and variance, are requested, they it shall be filed as separate motions for each. Written responses shall must be filed at least seven ~~(7)~~ days prior before to sentencing and state all bases for any objections to the requested relief.

If a party elects to file a A separate written sentencing memorandum, that memorandum must may be filed at least fourteen ~~(14)~~ days prior before to sentencing. If a party elects to respond to such a memorandum, A written that response mustay be filed at least seven ~~(7)~~ days prior to sentencing. Motions for variance or departure must be filed separately; requests for variance or departure contained within sentencing memoranda will not be considered by the Court.

32.7 Party's Duty to Disclose Sentencing-Related Materials.

A party who submits any sentencing-related material to the probation office shall contemporaneously provide a copy of the material to opposing counsel.

32.8 Disclosure of Sentencing Recommendation.

The probation office shall ~~not~~ disclose the sentencing recommendations to the Court no later than seven days prior to sentencing. The ~~any~~ recommendation shall not be disclosed concerning sentencing to the parties.

32.9 Requesting Presentence Report before Guilty Plea.

A motion for a presentence investigation report before a defendant has entered a plea of guilty or nolo contendere will be granted only for exceptional circumstances and shall state all bases for the motion, the position of the government, include a copy of any proposed plea agreement, and contain a waiver of the defendant's right to a speedy trial.

32.10 Correspondence.

~~Attorneys shall have All written correspondence to the Court for consideration in sentencing ~~on behalf of defendants, victims or other interested persons sent~~ shall be directed to the probation office. ~~The probation office shall~~ which will provide copies ~~of all correspondence to the Court, and to~~ counsel unless the Court orders otherwise.~~

Any written correspondence sent directly to the Court pertaining to a defendant pending sentencing will be forwarded to the probation office and provided to counsel before sentencing, unless the Court orders otherwise.

Correspondence pertaining to a defendant sentencing shall be treated in the same manner as the presentence report, and shall not be released to third parties unless the Court orders otherwise.

32.11 DISCLOSURE OF PRESENTENCE REPORTS

Presentence reports contain confidential and personal information. For security purposes, presentence reports may not be disseminated to incarcerated defendants.

The probation office may release presentence reports to the (1) counsel for the respective parties, (2) United States Sentencing Commission, (3) Federal Bureau of Prisons, (4) Courts of Appeals, and (5) other federal or state probation offices preparing a presentence report for the same person. Any other disclosure is prohibited unless authorized by the Court.