

## LCrR32 – Sentencing and Judgment

### LCrR32-1 Scheduling of Sentencing.

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

### LCrR32-2 Notice and Opportunity for Defendant’s Attorney to Attend Presentence Interview.

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

### ~~LCrR32-3 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 U.S. Probation Office is responsible for maintaining confidentiality of the report.~~

### LCrR32-~~3~~4 Disclosure of Presentence Report 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.

### LCrR32-~~4~~5 Objection to Presentence Report.

Within fourteen days of ~~receipt~~ receiving the report, the parties must communicate ~~initially~~ with the probation officer, via ~~by~~ email, telephone, or letter, ~~of~~ regarding any material correction or objection to the report. ~~Should~~ if the probation officer ~~rejects~~ not be in agreement with the proposed revisions, the probation officer shall inform both parties of ~~his/her~~ the officer’s stance as soon as possible. The party must then file any objection of record at least fourteen days before the date set for sentencing. The filing shall include the basis for the ~~correction proposed change(s)~~ and, if applicable, authority in support of legal positions advanced. At least seven days before the date set for sentencing, the probation officer will ~~respond to any written request or objection by submission of~~ submit a revised report and/or an a Addendum to the parties and the Court, responding to all filed objections.

### LCrR32-~~5~~6 Sentencing-Related ~~Pleadings~~ Filings.

Motions for departure or variance must be filed at least fourteen days before sentencing, and must state the requested degree of relief and the reason for the requested relief. If a party requests both a departure and variance, it shall file a separate motion for each. Written responses must be filed at least seven days before the date set for sentencing and state all bases for any objections to the requested relief.

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

### **LCrR32-~~67~~ Party's Duty to Disclose Sentencing-Related Materials.**

A party who submits any sentencing-related material to the U.S. United States Probation Office shall contemporaneously provide a copy of the material to opposing counsel.

### **LCrR32-~~78~~ Disclosure of Sentencing Recommendation.**

The U.S. United States Probation Office shall disclose the sentencing recommendations to the Court ~~no later than~~at least seven days ~~prior to~~before the date set for sentencing. The recommendation shall not be disclosed to the parties.

### **LCrR32-~~89~~ 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, state 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.

### **LCrR32-~~910~~ Correspondence.**

All written correspondence to the Court for consideration in sentencing shall be directed to the U.S. United States Probation Office, which will provide copies 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 U.S. United States Probation Office and provided to counsel before sentencing, unless the Court orders otherwise.

Correspondence pertaining to a defendant's 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.

### **LCrR32-~~11-10~~ Confidentiality and Disclosure of Presentence Reports.**

~~Presentence reports~~The presentence report contains confidential and personal information. The United States Probation Office is responsible for maintaining confidentiality of the report. For security purposes, presentence reports may not be disseminated to incarcerated defendants. The U.S. United States Probation Office may only disclose the ~~release~~ presentence reports to: the

- \_\_\_\_\_ (1) the Court and counsel for the respective parties for use in the case and any appeal;
- \_\_\_\_\_ (2) the United States Sentencing Commission;
- \_\_\_\_\_ (3) the Federal Bureau of Prisons;

\_\_\_\_\_ (4) the United States 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.

### **SUMMARY OF CHANGES**

Rule 32-2 is amended to require documented consent to interview defendant without counsel present. This was a change recommended by the Advisory Rules Committee and agreed to by the Probation Office. Rules 32-3 and 32-11 are combined to avoid duplicative provisions. Some changes for style, clarity, and consistency with other rules. Changes also recommended to require that objections to presentence report be filed, primarily to create/preserve appellate record, and to establish the time for filing objections.