

CRIMINAL RULE 32.1

DISCLOSURE OF INVESTIGATIVE REPORTS BY UNITED STATES PROBATION OFFICE

a) **Presentence Report, Sentencing Recommendation and Confidentiality.**

1) Presentence reports are not available for public inspection. They shall not be reproduced or copies distributed to other agencies or other individuals unless the Court or the Chief United States Probation Officer grants permission.

2) In addition to the presentence report, the probation officer will submit a separate document entitled "Sentencing Recommendation" to the Court. The Sentencing Recommendation is for the benefit of the Court and will not be disclosed to the government, the defendant, or defendant's counsel or to any other person or party, unless authorized by the sentencing judge, as provided in subsection (3).

3) The Sentencing Recommendation may be disclosed to the government and defense counsel if authorized by the sentencing judge. Such authorization shall be communicated to the Chief United States Probation Officer in writing or electronically and shall specify whether the authorization applies to all of the individual sentencing judge's cases or to selected cases only. The sentencing judge may revoke the authorization at any time by so notifying the Chief United States Probation Officer in writing or electronically.

4) If a sentencing is scheduled before a visiting judge, the probation officer shall contact the staff of the visiting judge to determine whether the visiting judge would like the Sentencing Recommendation disclosed to the government and defense counsel.

5) Probation reports, violation of supervised release reports, and sentencing recommendations prepared for these reports are governed by these same provisions.

b) **Presentence Report.**

1) Sentencing shall occur no less than seventy (70) days following the entry of a guilty plea or nolo contendere plea or verdict of guilty. At the time the Court sets the date of sentencing, the Court will advise counsel and the probation office of the dates the presentence report will be disclosed to counsel, the date counsel is to submit any objections to the probation office, and the date on which the presentence report, and any amendments thereto, will be submitted to the Court and counsel. Should counsel or the probation office be unable to comply with the Court's specified dates, they shall notify the Court and request a continuance of the sentencing hearing.

2) The probation officer shall timely notify counsel of the date and place of the initial and subsequent interviews for the presentence report. Counsel shall be provided a reasonable opportunity to attend any interview of the defendant during the course of the presentence investigation.

3) Not less than thirty-five (35) days prior to the date of sentencing, the probation officer shall disclose the presentence investigation report to the defendant and to counsel for the defendant and the government. Within fourteen (14) days, counsel shall file with the Clerk of Court any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report.

4) After receiving counsel's objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The probation officer may request counsel for both parties to meet with the probation officer to discuss unresolved factual and legal issues.

5) Seven (7) days prior to the date of the sentencing hearing, the probation officer shall submit the presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon, as well as sentencing letters received by the probation officer and the Sentencing Recommendation. The final presentence report and any addendum will also be disclosed at this time to counsel for the defendant and the government. If the sentencing judge has authorized its disclosure, the Sentencing Recommendation shall be disclosed to counsel for the defendant and the government.

Counsel shall provide or direct others to provide sentencing letters to the probation officer for inclusion with the addendum to the final presentence report. Only those letters received before the final presentence report will be included in the addendum. Counsel must file in ECF any letters received after the final presentence report.

5)6) Except with regard to any objection made under subdivision (a) that has not been resolved, the presentence report may be accepted by the Court as accurate. 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.

6)7) The times set forth in this rule may be modified by the Court for good cause shown, except that the thirty-five (35) day period set forth in subsection (b)(3) may only be shortened if the defendant expressly consents.

7)8) Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under Federal Rule of Criminal Procedure 32.

8)9) The presentence report shall be deemed to have been disclosed when a copy of the report is delivered by electronic filing, hand, fax, or e-mail.

c) **Confidentiality of Probation Records.**

1) Investigative reports and supervision records of this Court maintained by the probation office are confidential and not available for public inspection. However, the Chief Probation Officer may disclose these records to federal, state, or local Courts; correctional and law enforcement agencies, contacted treatment providers; or paroling authorities who have a legal, investigative, or custodial interest in that individual.

2) Any party, other than those defined in subsection (c)(1), seeking access to the confidential records maintained by the probation office, must file a written request to the Chief Probation Officer that conforms to the requirements of *The Guide to Judiciary Policy, Volume 20, Chapter 8* (which is available at www.idp.uscourts.gov/disclosure.html).

d) **Rule Not to Supersede or Void Provisions of Federal Rule of Criminal Procedure 32(c).** Nothing in this rule shall be construed to supersede or void the provisions of Fed. R. Crim. P. 32(c)(1).

RELATED AUTHORITY

Fed. R. Crim. P. 32

The Guide to Judiciary Policy, Volume 20, Chapter 8
