

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

IN RE:)
PRESENTENCE PROCEDURES)

GENERAL ORDER

In order to provide for the effective, orderly and timely discharge of the court's responsibilities in sentencing matters, and to comply with Federal Rule of Criminal Procedure 32, effective December 1, 1994, the following procedures are hereby ordered and adjudged in cases governed in whole or in part by the Sentencing Guidelines promulgated by the United States Sentencing Commission:

1. Sentencing proceedings shall be scheduled by each district judge no earlier than seventy (70) days following adjudication of guilt by either plea or verdict.
2. The initial interview will take place no more than three working days after the referral to the probation department. Upon request defense counsel shall be provided notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation.
3. The presentence investigation report, including guideline computations, shall be completed, typed, and disclosed to the parties at least thirty-five (35) days before the scheduled sentencing proceeding, unless the defendant waives this minimum period. This time period contemplates that the report will be disclosed to the parties on or before the thirty fifth (35th) day

following the adjudication of guilt unless additional time was requested and granted at the time of the plea or verdict. The presentence report shall be deemed to have been disclosed upon the occurrence of any of the following events, or within the following times:

(A) when a copy of the document is physically presented to the attorneys and defendant;

(B) one (1) day after the report's availability for inspection is verbally communicated by the probation office to the parties; or

(C) three (3) days after the report or a notice of the report's availability is mailed to the attorneys for the parties.

4. Within ten (10) days after a verdict of guilty, counsel for both parties shall submit, in writing, any versions, stipulations, or statements regarding the facts pertaining to the instant offense to the probation officer of the court. The defendant's failure to submit such a statement shall not delay the acts called for in this order, except to the extent the district judge shall find that justice so requires. In addition, investigative reports and other relevant materials shall be made available to the probation officer of the court to ensure an independent review and assessment in determining calculations on (among other matters) relevant behavior, obstruction of justice, role in the offense, acceptance of responsibility, etc.

5. In the matter of pleas and the filing of a petition to enter a plea of guilty, or like proceedings, counsel for both parties shall, on the date the plea is entered, provide to the probation officer of the court such information as is noted in the preceding paragraph.

6. If the defendant is in custody, the probation office may release the defendant's copy of the presentence report to counsel for the defendant to satisfy the requirement of disclosure via review of the report in person with counsel. The U. S. Marshal and the U. S. Probation Office

will coordinate efforts with the defense counsel to bring defendant(s) to a reasonably close location to facilitate the responsibility of defense counsel to review the presentence report with counsel's defendant(s).

7. Within fourteen (14) days following disclosure, counsel for the government and the defendant shall communicate to the probation officer and opposing counsel, in writing, any objections they may have as to any material information, criminal history, sentencing classifications, sentencing guideline ranges and policy statements contained in or omitted from the report. They shall also submit, in writing, their acknowledgment of no objections.

8. The probation officer may require both counsel for the government and the defendant to meet with the probation officer to discuss unresolved factual and legal issues. Such meeting, if necessary shall be held as early as possible within the fourteen (14) days following the period of time allowed to make objections. Attendance at any such meeting shall be mandatory by all parties, and failure to attend may be deemed a waiver of any objections.

9. After receiving either or both counsel's objections, the probation officer shall conduct any further investigation and make any necessary revisions to the report.

10. In the matter of undisputed reports, the probation officer shall submit the report to the court not less than ten (10) days before sentencing.

11. If any revisions to the report are required, the probation officer shall make the needed changes and provide a final, revised version to the court, and all parties, not less than ten (10) days before sentencing.

12. In reports where disputed matters remain, the probation officer shall prepare an addendum setting forth the unresolved objections or disputes of either or both counsel. The addendum shall also state any stipulations concerning the disputed matters by counsel, but shall not be deemed binding on the court in determining the facts relevant to sentencing. See Guidelines §6B1.4(d). Finally, the probation officer may submit the results of additional investigation or make appropriate additional statements relative to final resolution of these matters and provide this information to the court not less than ten (10) days before sentencing.

13. At the direction of each sentencing judge, the recommendation may be released to the defendant, defense counsel and attorney for the government, separate from the presentence report and addendum. The recommendation shall be returned to the probation department at the end of the proceedings.

14. Except with regard to any timely filed notice of objections or disputes that remain unresolved (see Paragraphs 7 and 12, supra), the court may adopt the presentence report as accurate.

15. The court may, however, for good cause shown, allow a new objection to be raised at any time before the imposition of sentence.

16. The court, in its discretion, may choose to resolve disputed matters in any of the following ways, or in any other manner the court deems appropriate:

(A) by calling a hearing of all parties prior to the sentencing hearing to resolve disputed matters;

(B) by informing the parties in writing of its tentative findings and affording an opportunity for arguments to be heard before imposition of the sentence; or

(C) by hearing arguments on disputed matters at the sentencing hearing and making findings of fact on each disputed issue prior to sentencing.

In resolving disputed matters, the court may consider any reliable information presented by the probation officer, the defendant, or the government, including witness testimony, without regard to its admissibility under the Federal Rules of Evidence. See 18 U. S. C. §3661.

17. Because Federal Rule of Criminal Procedure 35 now allows for a modification of a sentence only under very limited circumstances, the court may state its tentative sentence and allow any objections thereto.

18. After sentencing, a copy of the presentence report shall be sealed within the court records to be available for appeal purposes. Any confidential information and/or recommendation shall be sealed separately and shall not be made available to appellate counsel in the absence of an order by this court or the court of appeals.

19. The time frames set forth within this order may be modified by the court for good cause shown, except that the fourteen (14) day period prescribed in Paragraph 7, supra, may be shortened only with the defendant's consent.

20. Nothing in this order requires the disclosure of any portion or portions of the presentence report that are not disclosed under Rule 32 of the Federal Rules of Criminal Procedure.

21. These are procedures for the court's internal operations. The court may dispense with their use in particular cases. Counsel and litigants acquire no rights under these procedures.

SO ORDERED.

ENTERED: January 8, 2001

/s/ William C. Lee
William C. Lee, Chief Judge

/s/ Allen Sharp
Allen Sharp, Judge

/s/ James T. Moody
James T. Moody, Judge

/s/ Robert L. Miller, Jr.
Robert L. Miller, Jr., Judge

/s/ Rudy Lozano
Rudy Lozano, Judge