

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
GENERAL ORDER 18-0008**

The full Court met in executive session on Thursday, March 22, 2018 and approved an amendment to Local Criminal Rule 32.1, Presentence Investigations. The proposed amendment was published with comments due on January 31, 2018. Two comments were received.

At its meeting on February 7, 2018, the Rules Advisory Committee reviewed the proposed amendment and the comments received. The Rules Advisory Committee suggested further modification to section d and recommended that the Rules Committee approve the rule as published with slight modification.

The Court's Rules Committee considered the rule at its meeting on February 15, 2018. It approved the suggestion of the Rules Advisory Committee and recommended that the full Court adopt the proposed amendment to Local Criminal Rule 32.1, Presentence Investigations, with slight modification.

The full Court considered the recommendation of the Rules Committee at its meeting on March 22, 2018 and agreed to modify Local Criminal Rule 32.1. Therefore,

By direction of the full Court, which met in executive session on Thursday, March 22, 2018,

IT IS HEREBY ORDERED that Local Criminal Rule 32.1, Presentence Investigations, be amended as follows (additions shown thus, deletions shown ~~thus~~).

## **LCrR32\_1. Presentence Investigations**

### Local Criminal Rules

**(a) Application of Rule.** This rule shall be effective in all cases in which a determination of guilt is made on or after the date of its adoption.

**(b) Definitions.** The following definitions shall apply to this rule:

**(1)** "business day" shall include any day other than a Saturday, a Sunday, or a legal holiday as defined by [Fed.R.Crim.P. 45\(a\)](#);

**(2)** "day" (except where used in the term "business day") shall refer to all days, including Saturdays, Sundays, and legal holidays as defined by [Fed.R.Crim.P. 45\(a\)](#);

**(3)** "determination of guilt" shall mean the entry of a judgment of conviction whether by plea or after trial;

(4) "~~Guidelines~~guidelines" shall mean the United States Sentencing Guidelines and Policy Statements promulgated pursuant to 28 U.S.C. §994;

(5) "probation officer" shall mean the probation officer assigned to prepare the presentence investigation report; and

(6) "report" shall mean the presentence investigation report.

(c) **Scheduling of Hearing.** Upon the determination of guilt, the court shall set a date for the sentencing hearing. The hearing shall be set not less than 84 days after the determination of guilt. Any motion to modify the time limits in this Rule must be made at the time the sentencing hearing date is set.

(d) **Notifying Probation ~~Department~~Office.** Following the determination of guilt, the attorney for the defendant and the defendant, unless in custody, shall report ~~immediately~~ to the probation ~~department~~office to begin the presentence investigation immediately or by no later than 2:00 p.m. the following business day, unless the probation office agrees to a different schedule.

If the defendant is incarcerated, the attorney for the defendant shall report to the probation ~~department~~office and provide the information needed to begin the presentence investigation.

Within one business day following the determination of guilt, the court's courtroom deputy shall forward a presentence referral form to the probation ~~department~~office. The ~~d~~Defendant shall participate in an interview, if any, with the probation ~~department~~office, within 14 days after the determination of guilt. Failure to schedule the interview within this period does not affect any of the other dates set forth herein.

(e) **Submission of Versions.** Not more than 14 days after the determination of guilt, the attorney for the government shall submit to the probation officer its version of the offense conduct. Not more than 7 days after submission of the government's version of the offense conduct, the attorney for each defendant shall submit a version of the offense conduct to the probation officer. The attorneys shall serve copies of their versions upon opposing counsel and upon the attorney for any co-defendant as to whom a determination of guilt has been made. Within 7 days after the receipt of the co-defendants' versions, each co-defendant's attorney shall submit to the probation officer and serve upon all counsel that defendant's version of the offense conduct as it relates to the defendants' respective roles in the offense. Failure to submit a version of the offense conduct within 7 days after the government's submission of its version of the offense conduct may constitute waiver of the right to have such material considered within the PSR, and the probation officer will have the right to make determinations without regard to a defendant's version of the offense conduct submitted after that date.

(f) **Presentence Investigation Report.** Not later than 35 days prior to sentencing, the probation officer shall complete and issue the presentence investigation report to the court, the defendant and defense counsel, and counsel for the government. The recommendation of the presentence report shall be submitted initially only to the Court, but the Court may, in its discretion, and with notice to the Probation Office, direct disclosure of the recommendation to the defendant and defense counsel, and counsel

for the government, as well. The recommendation section shall not include any factual information not already contained in the other sections of the report.

**(g) Position Paper.** Not later than 14 days prior to sentencing, counsel for the defendant shall file with the Court and the probation officer objections, if any, to the Presentence Investigation Report, and a sentencing memorandum. The Government will have leave to respond 7 days thereafter. The parties' submissions shall specify—

- (1) any factor important to the sentencing determination that is reasonably in dispute,
- (2) any additional material information affecting the sentencing ranges established by the Guidelines, and
- (3) any other objections or corrections to the report.

Any objection or correction not filed at that time shall be deemed waived, unless for good cause shown the court permits it to be raised at the sentencing hearing. The attorneys shall serve copies of the position papers upon opposing counsel and upon the attorney for any co-defendant as to whom a determination of guilt has been made.

**(h) Responsibility of Attorneys to Review Presentence Investigation**

**Report.** Counsel for the defendant shall meet with the defendant to read and discuss the report at a reasonable time prior to the date set for submission of objections and sentencing memorandum. Counsel for the government shall examine the final report at a reasonable time prior to the date set for the government's submission.

**(i) Report and Letters.** Letters to the court regarding the case or defendant shall be disclosed promptly to the probation ~~department office~~ and all counsel.

**(j) Availability of Report.** The report shall not be disclosed to any person or agency without the written permission of the sentencing judge. Upon notice of appeal, the probation ~~department office~~ shall, with notification to the sentencing judge, forward under seal and apart from the appellate public file, a copy of the report to the clerk of the appellate court where it shall be available upon request for review by attorneys for the defendant and the government. Upon completion of all appellate matters, the report and the recommendation shall be returned to the probation ~~department office~~. Unauthorized copying, dissemination, or disclosure of the contents of the report in violation of these rules may be treated as contempt of court and punished accordingly.

**Committee Comment to 2013 amendment:** The Rule is amended in response to language in *United States v. Peterson*, 711 F.3d 770 (7th Cir. 2013) suggesting that parties should be permitted to "evaluate any analysis that might form the basis of a judicial determination."

**Committee Comment to 2012 amendment:** The Rule is amended to render it consistent with *Federal Rule of Criminal Procedure 32(f)* and to set reasonable deadlines for the parties' submissions to the court.

**Committee Comment to 2002 amendment:** Prior to its most recent amendment, the rule had required the probation officer to "mail a preliminary report, without the recommendation to the defendant, the defendant's attorney and the attorney for the government." The above-quoted language did not expressly require that the

recommendation be kept confidential. It merely prevented its early disclosure. We believe that the phrase "without the recommendation" was included in the prior rule because it reflected the long-standing practice of confidentiality. This commonly accepted practice had existed for decades. All district courts in this Circuit treat the recommendations as confidential. Nevertheless, elimination of the phrase has led to uncertainty over the continuing confidentiality of the recommendations.

ENTER:  
FOR THE COURT



Chief Judge

Dated at Chicago, Illinois this 28<sup>th</sup> day of March, 2018.