

FILED

AUG 03 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
17-SO-4

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
BY Belt DEP CLK

IN RE:)
INTERIM AMENDMENTS TO)
LOCAL CRIMINAL RULE 32.2)

STANDING ORDER

Pursuant to 28 U.S.C. § 2071(e) and Federal Rule of Civil Procedure 83, and as recommended by the Local Criminal Rules Committee, the court finds there is an immediate need for amendments to Local Criminal Rule 32.2, as set forth in Attachment A to this Standing Order.

Accordingly, it is hereby ORDERED that:

1. The attached interim amendments to Local Criminal Rule 32.2 are approved, effective August 14, 2017;
2. The Clerk of Court is directed to post this Standing Order, the interim amendments to Local Criminal Rule 32.2, and amended Local Criminal Rules on the court's website and to invite public comment for consideration by the Local Criminal Rules Committee; and
3. Local Criminal Rule 32.2, as amended, shall remain in effect until such time as the court, upon the recommendation of the Local Rules Committees and after public comment notice and comment, approves permanent amendments to the rule.

SO ORDERED. This the 3 day of August, 2017.



JAMES C. DEVER III
Chief United States District Judge

ATTACHMENT A

**INTERIM AMENDMENTS
TO
LOCAL CRIMINAL RULE 32.2**

REDLINED VERSION

Rule 32.2 Procedures Implementing Sentencing Guidelines

(a) Scheduling of Sentencing.

Sentencing proceedings shall be scheduled by the court at the time of adjudication of guilt, to be heard not earlier than 60 days following the adjudication of guilt.

(b) Time for Completion of Presentence Report.

No later than 35 days prior to sentencing, the probation officer shall complete and disclose the presentence investigation report to the defendant, counsel for the defendant, and counsel for the Government.

(c) Time for Filing Objections to Presentence Report.

Within 14 days after disclosure to ~~the defendant~~ of the presentence investigation report, the parties shall **file, in CM/ECF (access restricted to the court, the probation office, attorneys of record for the government and for the relevant defendant), communicate, in writing, to the probation officer** objections(s) to **the presentence report including any** material information, sentencing classifications, guideline ranges, and policy statements contained in or omitted from the report. **Alternatively, absent objections, the filed response shall affirmatively state there are no objections to the report. A copy shall be served on the opposing party.** ~~The court may conduct a show cause hearing and/or disallow objections in any case where such objections are not timely filed.~~

(d) Procedure for Resolving Objections to Presentence Report.

After receiving objections from counsel, the probation officer shall conduct such further investigation as may be necessary. Counsel shall confer with the probation officer to discuss and attempt to resolve contested issues. Thereafter, the probation officer shall make such revisions to the presentence investigation report as the probation officer deems appropriate. Unresolved contested issues, including a summary of the grounds for the objections, and the probation officer's comments on them, shall be contained in an addendum to the presentence investigation report. ~~If an objection by any party affects the guideline computation, the probation officer must attach a copy of that party's objection to the final presentence report, if that party so requests.~~ The defendant and the government may each file a memorandum with the court explaining their respective positions on the unresolved objections. Any such memorandum must be served on opposing counsel and the probation office.

(e) Time for Filing Revised Presentence Report.

The revised presentence investigation report and addendum shall be ~~delivered~~ **disclosed** to the judge, the defendant, and counsel not later than 7 days prior to the sentencing hearing. The probation officer's sentencing recommendation shall be disclosed only to the judge. In the case of a juvenile, a disposition hearing must be held no later than 21 court days after the juvenile delinquency hearing subject to enumerated exceptions (18 U.S.C. § 5037(a)); therefore, the Local Criminal Rules with respect to time periods for disclosure of the presentence report do not apply.

(f) Expedited Procedures where Defendant Detained.

If it appears that a defendant may be detained pending trial and sentencing for a period of time exceeding the sentence likely to be imposed under the guidelines, the court, upon motion by the defendant at the time of adjudication of guilt, may direct the probation office to expedite the sentencing timetable.

(g) Court Acceptance of Presentence Report.

The revised presentence investigation report may be accepted by the court as accurate except as to matters set forth in the addendum which shall be resolved as provided in Section 6A1.3 of the *United States Sentencing Commission Guidelines Manual*.

(h) Service of Presentence Report.

The presentence investigation report shall be deemed to have been disclosed ~~when a copy is physically delivered or electronically delivered or three days after a copy is mailed. Such dates shall be certified on the report by the probation officer.~~ upon filing the report in CM/ECF, or service, personally or via United States mail, on an unrepresented defendant. Disclosure of the presentence investigation report (and any subsequent revisions and addenda thereto) to counsel for the defendant is deemed to be disclosed to the defendant. Defense counsel must review the report with the defendant forthwith.

(i) Procedure at Sentencing.

Before final judgment is entered in a case, the court shall disclose to the defendant, defense counsel, and the attorney for the Government, the court's tentative findings of fact and interpretation of applicable guidelines and shall afford the parties an opportunity to object to said tentative findings of fact and interpretation of the guidelines.

(j) Receipt of Presentence Report Under Seal.

The final presentence investigation report, addendum, and probation officer's recommendation shall be ~~received by the clerk~~ filed in CM/ECF under seal ~~for inclusion in the record~~ and shall be otherwise disclosed only upon order. Defendants and counsel may retain their copies of the presentence investigation report and addendum. In the event of post-sentencing proceedings, including appeal, *habeas corpus* application, or motion for modification or revocation of probation or supervised release, counsel of record may, upon request, be provided a copy of the presentence report by the probation office.

(k) Role of Defense Counsel in Presentence Investigation.

Upon adjudication of guilt, the probation officer will initiate the presentence investigative process. Counsel for the defendant shall advise the probation officer attending court whether or not the defendant will submit to an interview with the officer and whether or not counsel desires to be present at the interview. Counsel, if attending, and the defendant shall make themselves available for the interview within 14 calendar days of adjudication.

(l) Disclosure of Presentence Report to Expert Witnesses and Agents.

The parties may provide a copy of the presentence report to expert witnesses and agents. The parties are responsible for recovering the report at or prior to sentencing. In the case of a juvenile no information, including the presentence report, may be released except pursuant to a court order.

CLEAN VERSION

Rule 32.2 Procedures Implementing Sentencing Guidelines

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Within 14 days after disclosure of the presentence investigation report, the parties shall file, in CM/ECF (access restricted to the court, the probation office, attorneys of record for the government and for the relevant defendant), objection(s) to the presentence report including material information, sentencing classifications, guideline ranges, and policy statements contained in or omitted from the report. Alternatively, absent objections, the filed response shall affirmatively state there are no objections to the report. The court may conduct a show cause hearing and/or disallow objections in any case where such objections are not timely filed.

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the unresolved objections. Any such memorandum must be served on opposing counsel and the probation office.

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