

32-5. Final Presentence Report.

(a) Final Presentence Report and Attachments. At least 14 days before the date set for sentencing, the Probation Officer shall disclose a copy of the final presentence report and recommendations to defense counsel (or a *pro se* defendant), attorney for the government and lodge a copy with the sentencing Judge. The final presentence report shall be accompanied by a separate enclosure containing any of the following documents:

- (1) Plea agreement;
- (2) Character reference letters;
- (3) Victim-witness letters;

(4) Certification by the Probation Officer that the proposed and final presentence reports were disclosed to defense counsel (or *pro se* defendant) and the dates of those disclosures; and

(5) Any other matter for consideration by the Court which pertains to sentencing.

Commentary

The final presentence report shall include or contain an addendum setting forth objections that remain unresolved following the process set out in Crim. L.R. 32-4.

While this rule requires attachments to the final presentence report be in a separate enclosure, the Probation Officer may attach the materials to the copy of the final report which is furnished to the attorney for the government and attorney for the defendant, rather than in a separate enclosure. The Probation Officer does not need to supply a party with material which originated with that party.

(b) Sentencing Memorandum. The parties may submit a sentencing memorandum addressing sentencing issues as set forth below and must submit a sentencing memorandum if a departure or evidentiary hearing is requested. Any sentencing memorandum shall be filed ~~no later than 4 days after the final presentence report is disclosed~~ no later than 7 days prior to the date set for sentencing and served upon the opposing party and the Probation Officer in such a manner that it is received on the day it is filed. If the sentencing memorandum requests a departure, the title of the memorandum shall state “Motion for Departure;” and if the sentencing memorandum requests an evidentiary hearing, the title of the memorandum shall state “Request for Evidentiary Hearing.” The sentencing memorandum shall contain the following:

(1) Unresolved Objections Identified in the Final Presentence Report.

The sentencing memorandum need not reassert objections any party has made that are identified in the final presentence report as unresolved objections; however, a party’s sentencing memorandum may elaborate on objections identified in the final presentence report and shall indicate whether or not the party requests an evidentiary hearing to resolve any objection.

(2) Departures. Any party requesting a departure that has not been identified in the final presentence report must file a sentencing memorandum that states the sentence requested, the grounds for the departure, and the legal authority for the departure.

(3) Other Matters. The sentencing memorandum may include any other matter that a party believes should be considered in connection with sentencing.

Commentary

With the prior approval of the Court, the sentencing memorandum may be filed under seal.

(c) Response to Sentencing Memorandum. A response, if any, to the opposing party's memorandum may be filed no later than 3 days prior to the date set for sentencing ~~4 days after the sentencing memorandum is filed~~ and served upon the opposing party and the Probation Officer in such a manner that it is received on the day it is filed. If a party requests an evidentiary hearing to resolve any issue raised in the reply or the opposing party's sentencing memorandum, the title of the reply shall state "Request for Evidentiary Hearing."

Commentary

If the sentencing memorandum is filed under seal, the response to the sentencing memorandum must be filed under seal.

(d) Evidentiary Hearing. If the sentencing memorandum or reply requests an evidentiary hearing, in addition to so stating in the title of the document, the pleading shall set forth:

(1) The factual issues to be resolved at the evidentiary hearing; and

(2) The names of the witnesses to be called and a description of their proposed testimony.

(e) Judicial Notice of Evidentiary Hearing or Unsolicited Departure. If the sentencing Judge is considering departing for a reason not identified in the final presentence report or requested by a party or if the sentencing Judge decides to conduct an evidentiary hearing, the Judge shall notify the parties and the Probation Officer and may schedule a conference with the parties and the Probation Officer to decide any issues relating to the departure or evidentiary hearing. If the Court issues no notice of an evidentiary hearing, no evidentiary hearing will be held on the date set for sentencing.

Commentary

This local rule outlines the procedure for formal litigation relating to sentencing that follows the informal proceedings set out in Crim. L.R. 32-1 through 32-4. This rule anticipates that litigants will have undertaken in good faith to resolve objections informally with opposing counsel and the Probation Officer and thereby identified and narrowed the issues requiring judicial resolution. It seeks to avoid duplication of efforts by relieving litigants from reasserting in memoranda those objections of which the Court will be apprised by the final presentence report, but it requires objections to be raised in the informal process of Crim. L.R. 32-4 by imposing a requirement that good cause be shown before such an objection not previously made can be

considered.