

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
OFFICE OF THE CLERK
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Knoxville, Tennessee 37902
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DEBRA C. POPLIN
Clerk of the Court

JOHN L. MEDEARIS
Chief Deputy Clerk

NOTICE

Pursuant to 28 U.S.C. § 2071(b), the Clerk of the Court hereby gives notice of and an opportunity for comment regarding the Court's proposal to amend Local Rule 83.9.

Major changes to the rule provide for the filing of certain sentencing documents with the Court.

In addition, current paragraph (j) has been abrogated. The provision prohibits the disclosure of information that "may remain confidential under Federal Rule of Criminal Procedure 32(c)(3)" and provides that the Probation Office is to advise the district judge if any portion of the report would, in the opinion of the United States Probation Office, pose a danger to persons housed in a local detention facility." The current Federal Rule prohibits these items¹ from being included in the Presentence Investigation Report. Accordingly, current paragraph (j) is no longer needed.

Exhibit 1 shows the proposed changes. Exhibit 2 is the rule as amended.

Comments should be directed in writing to Debra C. Poplin, Clerk of Court, by December 9, 2013, at the above address.

¹ Those items are: (A) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program; (B) any sources of information obtained upon a promise of confidentiality; and (C) any other information that, if disclosed, might result in physical or other harm to the defendant or others. *Federal Rule of Criminal Procedure 32(d)(3)*.

LR83.9 Sentencing Proceedings

(a) Scheduling. Sentencing proceedings shall be scheduled by the district judge no earlier than 65 days following entry of a guilty plea or a verdict of guilty.

(b) Disclosure of Report. Not less than 35 days prior to the date set for sentencing, the probation officer shall ~~disclose the presentence investigation report to the defendant and to counsel for the defendant and the government. Disclosure to defense counsel shall constitute disclosure to the defendant~~ file the Presentence Investigation Report ("Report") with the Court.

(c) Objections to Report. Within 14 days after ~~receiving the presentence report, counsel~~ Report is filed with the Court, the parties shall ~~communicate to file with the probation officer~~ Court any objections they may have as to any material information, sentencing classification, sentencing guideline ranges, and policy statements contained in or omitted from the ~~report. Such communication must be in writing and~~ Report, which shall be entitled "Objections of (Defendant) (Government) to the Presentence Investigation Report." The " A party ~~filing such a statement with the probation officer~~ having no objections to the Report shall ~~provide a copy to all other parties. Each objection to a factual determination shall be supported by an affidavit in support thereof.~~ file with the Court a "Notice of No Objections that are not resolved must be to the Presentence Investigation Report" within 14 days after the Report is filed with the Court ~~not later than 14 days prior to the date of the sentencing hearing.~~

(d) Revisions. After receiving counsel's objections or statement of no objections, the probation officer shall conduct any further investigation and make any revisions to the ~~presentence report~~ Report that may be necessary. The probation officer may require counsel for both parties to meet with the officer to discuss unresolved factual and legal issues.

(e) ~~Summary Submission of Objections.~~ Not later than Report. Within at least 7 days ~~prior to the date of~~ before the sentencing hearing, the probation officer shall ~~submit the presentence report to the sentencing judge. The report shall be accompanied by~~ file with the Court an addendum setting forth containing, with respect to each party, a statement of any unresolved objections counsel may have made that have not been resolved, together with the officer's, the grounds for those objections, and the probation officer's comments thereon on them, or a statement that no objections were made by that party. To the extent that the Report was revised after the filing of the Report pursuant to paragraph (b), then the probation officer shall file, along with the addendum, a revised Report. The probation officer shall certify that the contents of the ~~report~~ Report, including any revisions thereof, have been disclosed to the defendant and the government, that the content of the addendum has been communicated to counsel, and that the addendum fairly states any remaining objections.

(f) New Objections; Resolving Disputes. Except with regard to any objections made under paragraph (c) that have not been resolved, the ~~report of presentence investigation~~ Report may be accepted by the Court as accurate. In resolving disputed issues of fact, the Court may consider any reliable information presented by the ~~probation officer, the~~ defendant, or the government.

(g) Modifying Deadlines. The times set forth in this rule may be modified by the Court for good cause shown, except that the 14 day period set forth in subsection 83.9(c) may be diminished only with the consent of the defendant and the government.

(h) Limits of Disclosure. Nothing in this rule requires the disclosure of any portions of the ~~presentence report~~Report that are not disclosable under Federal Rule of Criminal Procedure 32.

(i) ~~When Disclosure is Effected, Filings with the Court.~~ ~~The presentence report. Filings with the Court by the probation officer and the parties shall be deemed to have through the Court's Case Management/Electronic Case Filing (CM/ECF) system unless a party is proceeding pro se or an attorney has been disclosed (1) when a copy of the report is physically delivered, (2) one day after the report's availability for inspection is orally communicated, or (3) 3 days after a copy of the report or notice of its availability is mailed.~~

(j) ~~Copies of Reports.~~ ~~The United States Probation Office excused from electronic filing, in which case filings shall provide be made manually with the Clerk's Office. Service of filings upon defense counsel shall constitute disclosure to the defendant and the defendant's counsel with one copy of the presentence report except for any information that may remain confidential under pursuant to Federal Rule of Criminal Procedure 32(c)(3). If any portion of the report provided would, in the opinion of the United States Probation Office, pose a danger to persons housed in a local detention facility, the United States Probation Office shall so advise the district judge before releasing the presentence report.~~

(k) ~~Motions for Departure or Variance from Guidelines.~~ The government shall file all motions for a departure under 18 U.S.C. § 3553(e) or section 5K1.1 of the UNITED STATES SENTENCING GUIDELINES or for a sentence below a statutory mandatory minimum at least 7 days before the sentencing hearing. Defendants seeking a downward departure must also in writing notify the Court and the government of any request for a downward departure or variance, and the grounds therefor, at least 14 days before a sentencing hearing. ~~All other sentencing motions and~~ sentencing memoranda must be filed at least 14 days before a sentencing hearing. Failure to timely comply with this rule may result in a denial of a ~~sentence reduction~~request for a departure or variance.

EXHIBIT 2

LR83.9 Sentencing Proceedings

(a) Scheduling. Sentencing proceedings shall be scheduled by the district judge no earlier than 65 days following entry of a guilty plea or a verdict of guilty.

(b) Disclosure of Report. Not less than 35 days prior to the date set for sentencing, the probation officer shall file the Presentence Investigation Report ("Report") with the Court.

(c) Objections to Report. Within 14 days after the Report is filed with the Court, the parties shall file with the Court any objections they may have as to any material information, sentencing classification, sentencing guideline ranges, and policy statements contained in or omitted from the Report, which shall be entitled "Objections of (Defendant) (Government) to the Presentence Investigation Report." Each objection to a factual determination shall be supported by an affidavit in support thereof. A party having no objections to the Report shall file with the Court a "Notice of No Objections to the Presentence Investigation Report" within 14 days after the Report is filed with the Court.

(d) Revisions. After receiving counsel's objections or statement of no objections, the probation officer shall conduct any further investigation and make any revisions to the Report that may be necessary. The probation officer may require counsel for both parties to meet with the officer to discuss unresolved factual and legal issues.

(e) Submission of Report. Within at least 7 days before the sentencing hearing, the probation officer shall file with the Court an addendum containing, with respect to each party, a statement of any unresolved objections, the grounds for those objections, and the probation officer's comments on them, or a statement that no objections were made by that party. To the extent that the Report was revised after the filing of the Report pursuant to paragraph (b), then the probation officer shall file, along with the addendum, a revised Report. The probation officer shall certify that the contents of the Report, including any revisions thereof, have been disclosed to the defendant and the government, that the content of the addendum has been communicated to counsel, and that the addendum fairly states any remaining objections.

(f) New Objections; Resolving Disputes. Except with regard to any objections made under paragraph (c) that have not been resolved, the Report may be accepted by the Court as accurate. In resolving disputed issues of fact, the Court may consider any reliable information presented by the probation officer, the defendant, or the government.

(g) Modifying Deadlines. The times set forth in this rule may be modified by the Court for good cause shown, except that the 14 day period set forth in subsection 83.9(c) may be diminished only with the consent of the defendant and the government.

(h) Limits of Disclosure. Nothing in this rule requires the disclosure of any portions of the Report that are not disclosable under Federal Rule of Criminal Procedure 32.

(i) Filings with the Court. Filings with the Court by the probation officer and the parties shall be through the Court's Case Management/Electronic Case Filing (CM/ECF) system unless a party is proceeding pro se or an attorney has been excused from electronic filing, in which case filings shall be made manually with the Clerk's Office. Service of filings upon defense counsel shall constitute disclosure to the defendant pursuant to Federal Rule of Criminal Procedure 32.

(j) Motions for Departure or Variance from Guidelines. The government shall file all motions for a departure under 18 U.S.C. § 3553(e) or section 5K1.1 of the UNITED STATES SENTENCING GUIDELINES or for a sentence below a statutory mandatory minimum at least 7 days before the sentencing hearing. Defendants seeking a downward departure must also in writing notify the Court and the government of any request for a downward departure or variance, and the grounds therefor, at least 14 days before a sentencing hearing. All other sentencing motions and sentencing memoranda must be filed at least 14 days before a sentencing hearing. Failure to timely comply with this rule may result in a denial of a request for a departure or variance.