

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In the Matter of:

ADOPTION OF LOCAL RULES

MISC. NO. 03-115(RAM)

Amendment of Local Criminal Rules 132,
132.1 and 144

ORDER

In accordance with 28 U.S.C. §2071(b), the United States District Court for the District of Puerto Rico is publishing amendments to Local Criminal Rules 132, 132.1, and 144 for public comment. Pursuant to 28 U.S.C. 2071(e), the Court has determined that there is an immediate need for the amendments to take effect while affording prompt notice and opportunity for comment. Therefore, comments may be submitted to the Clerk of Court by mail, or personal delivery, to:

**Clerk of Court
Attn Public Comments
Federico Degetau Federal Bldg.
150 Carlos Chardón Avenue, Room 150
San Juan, PR 00918-1767**

The public comment period will end at close of business on Friday, June 14, 2024.

The Clerk is instructed to publish this Order and Local Criminal Rules 132, 132.1, and 144 as amended, by web publication in www.prd.uscourts.gov, by notice to all members of the bar via mass email, and by having a copy of this Order and the amended local rules available for inspection at the Clerk's Office Intake Section.

IT IS SO ORDERED.

San Juan, Puerto Rico, May 14, 2024.

FOR THE COURT

s/ Francisco A. Besosa
Francisco A. Besosa
United States District Judge
Chair, Local Rules Committee

RULE 132

SENTENCING AND JUDGMENT

(amended on 05/14/2023)

(a) **Generally.**

Unless otherwise ordered by the court, sentencing shall be held without unnecessary delay.

(b) **Presentence Report.**

The probation officer shall prepare a presentence investigation report (PSR) in every case unless the court finds, pursuant to Fed. R. Crim. P. 32(c)(1)(A), that sufficient information exists in the record to enable the meaningful exercise of its sentencing authority. During the presentence investigation, the probation office shall provide notice and reasonable opportunity to defendant's counsel to attend any interview of the defendant. Counsel for the defendant shall contact the probation officer within fourteen (14) days from notice of the court's order for the preparation of the PSR within two (2) days from notice of the court's order. The presentence interview will be conducted no later than fourteen (14) days after the change of plea hearing. The probation officer may interview the defendant *ex parte* when the attorney has failed to communicate with the probation office, or if reasonable attempts to schedule an interview in order to complete the presentence investigation interview have been futile. Should the defendant refuse to be interviewed, the probation office shall proceed to prepare the PSR. The PSR shall indicate if the defendant declined to be interviewed.

(1) **Written Version of Facts.** No later than twenty-one (21) days following a plea or verdict of guilty, the government shall provide the probation office with a detailed written version of the facts, a detailed description of the evidence in their support, and information regarding restitution. The prosecutor assigned to the case and the primary case agent shall make themselves reasonably available to the probation office to answer any inquiries.

(2) **Disclosure.** At least thirty-five (35) days prior to the scheduled sentencing date, the probation officer must provide the presentence report to counsel for the defendant and the attorney for the government. Defense counsel shall review the PSR with the defendant. The defendant may waive the thirty-five (35) day prior notice requirement.

(3) **Objections to PSR.**

(A) **Informal Resolution.** Parties have an obligation to seek informal resolution of any disputed matter in the PSR by consultation with each other and the probation officer prior to filing written objections.

Within fourteen (14) days from disclosure of the PSR, counsel for the government and counsel for the defense shall file and deliver to the probation officer, and to each other, written objections to the facts or guideline application in the PSR. If counsel have no objections, each shall so notify the probation office, and each other, in writing. A party waives any objection to the PSR by failing to comply with this rule unless the court determines that the basis for the objection was not reasonably available prior to the deadline.

- (4) **Departure and Adjustments.** Any party requesting a sentence departure, variance or adjustment must submit a written motion, specifying the grounds and legal authority in support of the request for departure, variance, or adjustment. The motion shall be filed at least fourteen (14) days prior to the scheduled sentencing hearing, with copies served upon opposing counsel and the probation office. A request for departure, variance or adjustment may be included in a sentencing memorandum.
- (5) **Disclosure of Revised Presentence Report and Addendum.** If either party objects to the PSR in writing, the probation officer shall conduct such further inquiries, investigation or consultation with counsel as may be necessary to attempt to resolve the objections raised. The probation officer shall also prepare an addendum to the PSR that shall address the objections raised by counsel and identify those issues that remain unresolved. The revised PSR and addendum shall be submitted to the parties at least seven (7) days prior to sentencing.
- (6) **Presentence Conference.** Upon receipt of the PSR, the court may schedule a presentence conference with all counsel and the probation officer present, and with the defendant if proceeding *pro se*.

(c) ~~Modification of Time Limits.~~ **Sentencing Recommendations**

Pursuant to Fed. R. Crim. P. 32(e)(3), probation officers shall not disclose their final sentencing recommendations to anyone other than the court, unless authorized in a specific case by the presiding judge. A sentencing recommendation shall not contain any fact not otherwise disclosed in the PSR. If any additional fact is contained in the sentencing recommendation, it will be disclosed prior to sentencing if the court intends to rely on that fact.

(d) ~~The times set forth in this rule may be modified by the court for good cause shown.~~

Role of the U.S. Probation Officer

Probation officers play an important role beyond the sentencing process. They have expertise in addressing a variety of supplemental issues throughout the prosecution of a case, such as: client assessments and care management practices; identifying resources and services; prioritizing alternative correctional programs. They also work with law enforcement agencies in cases which involve an offender's violation of his or her release which may lead the probation officer to make an arrest and later be a witness for the prosecution in revocation proceedings.

The vast array of a probation officer's responsibilities requires close communication with both defense counsel and prosecutors. Probations officers' obligation not to disclose sentencing recommendations to anyone other than the court shall not be interpreted to preclude their ability to meet regularly with defense counsel, prosecutors, or offenders in compliance with the supervisory, investigative, counseling, and other ministerial duties.

(e) **Modification of Time Limits**

The times set forth in this rule may be modified by the court for good cause shown.

RULE 132.1

DISCLOSURES IN REVOCATION PROCEEDINGS

(amended on 05/14/2023)

- (a) **Timing of disclosure.** If a preliminary hearing is scheduled, disclosure shall be made prior to the preliminary revocation hearing. If no preliminary hearing is scheduled, disclosure shall be made within fourteen days of the initial appearance.
- (b) **Materials subject to disclosure.** Evidence of the alleged violations shall be disclosed absent an order from the court. The materials subject to disclosure include, but are not limited to:
1. documents, photographs, and records, pertaining to the alleged violations;
 2. drug test reports, if drug use is an alleged violation of supervision;
 3. the Random Drug Testing Program call list for relevant time periods, if it is relevant to the alleged violations;
 4. monthly treatment reports and progress reports from outpatient or inpatient treatment, if non-compliance with a treatment condition is alleged;
 5. copies of the relevant criminal complaints, sworn statements, indictment or sentence, when applicable;
 6. copies of the most recent Pre-sentence Investigation Report(s) related to the person under supervision, upon request from counsel and when not accessible via the electronic docket.
- (c) **Form of Disclosure.** Disclosure should be available via email when possible.
- (d) **Sentencing Recommendations.**

Because sentencing recommendations are strictly for the benefit of the Court, Probation Officers shall not disclose their sentencing recommendations for revocation proceedings to anyone other than the Court, unless authorized in a specific case by the presiding judge.

- (e) **Role of the U.S. Probation Officer.**

Probation officers play an important role beyond the sentencing process. They have expertise in addressing a variety of supplemental issues throughout the prosecution of a case, such as: client assessments and care management practices; identifying resources and services; prioritizing alternative correctional programs. They also work with law enforcement agencies in cases which involve an offender's violation of his or her release which may lead the probation officer to make an arrest and later be a witness for the prosecution in revocation proceedings.

The vast array of a probation officer's responsibilities requires close communication with both defense counsel and prosecutors. Probations officers' obligation not to disclose sentencing recommendations to anyone other than the court shall not be interpreted to preclude their ability to meet regularly with defense counsel, prosecutors, or offenders in compliance with the supervisory, investigative, counseling, and other ministerial duties.

RULE 144

RIGHT TO AND APPOINTMENT OF COUNSEL

(amended on 05/14/2023)

(a) Right to Court-Appointed Counsel Generally.

Pursuant to Fed. R. Crim. P. 44(a), every indigent defendant shall be entitled to have counsel assigned to represent him or her at every stage of the proceedings, from initial appearance before a magistrate judge or the district court, through appeal, including ancillary matters appropriate to the proceedings, unless the defendant waives the appointment and the court consents after proper inquiry. Appointments shall be made pursuant to Volume 7 of the Guide to Judiciary Policies and Procedures as approved by the Judicial Conference of the United States.

(b) Filing of Vouchers for Fees and Expenses; Limits.

- (1) Counsel appointed pursuant to the Criminal Justice Act shall submit their completed voucher for fees and expenses as soon as possible upon completion of services rendered, but no later than forty-five (45) days from the final disposition of the case. Any request for extension of time to submit a voucher shall be submitted within the forty-five (45) days provided by this rule, and shall show good cause for the extension. Any voucher submitted for payment more than one year after completion of services rendered will not be paid.
- (2) Block entries are not permitted. Each service provided will be itemized by date, indicating the amount of time claimed for each service.
- (3) Time spent reviewing texts of Notices of Electronic Filing (NEF), and documents related to the NEF pertaining to counsel's client or other defendants, however, may be grouped together in accordance with the "New Criminal Justice Act Billing Policy for Review of Notices of Electronic Filings (NEF) in Mega Cases", dated March 12, 2012.
- (4) If the amounts claimed as fees and expenses exceed the statutory limit, counsel shall submit, together with the voucher, ~~a memorandum setting forth the reasons why the excess amounts are justified and~~ CJA Form 26 (Statement for a Compensation Claim in Excess of the Statutory Case Compensation Maximum).

(c) Reduction of CJA Compensation Vouchers.

When the court approves an amount for payment in a Criminal Justice Act voucher that is substantially reduced from the amount requested, the court shall allow counsel no more than ten (10) days to explain, or produce additional papers supporting, the amounts that were reduced.