

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

**PROPOSAL TO AMEND THE LOCAL RULES**

The full Court met in executive session on Thursday, 23 June 1994, approved a proposal to amend local Criminal Rule 2.06 as follows (additions shown **thus**, deletions shown ~~thus~~):

**RULE 2.06 PRESENTENCE INVESTIGATIONS (POST-GUIDELINES)**

**A. Application of Rule**

This rule shall apply in those instances where the offense for which the defendant is to be sentenced was committed on and after 1 November 1987.

**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 F.R.Cr.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 F.R.Cr.P. 45(a);
- (3) "determination of guilt" shall mean the entry of a judgment of conviction whether by plea or after trial;
- (4) "Guidelines" shall mean the *Sentencing Guidelines and Policy Statements* promulgated pursuant to 28 U.S.C. § 944; and
- (5) "probation officer" shall mean the probation officer assigned to prepare the presentence investigation report.

**C. Presentence Investigation Required**

No defendant shall be sentenced or granted probation unless a presentence investigation has been conducted by the Probation Department of this Court and

the report of the investigation filed with the Court, except as otherwise directed by the court for reasons stated on the record.

**D. Scheduling of Sentencing Hearing**

Upon the determination of guilt, the court shall set a date for the sentencing hearing. The hearing shall be set between ~~ninety-one and one hundred and twenty-six days~~ eighty-four and one hundred and ten days after the determination.

**E. Notification to Probation**

Following determination of guilt, counsel for the defendant and the defendant, unless in custody, shall report immediately to the probation department to begin the presentence investigation.

**If the defendant is incarcerated, the counsel for the defendant shall report to the probation department and provide the necessary information needed to begin the presentence investigation.**

**Within two business days following determination of guilt, the court's minute clerk shall forward a presentence referral form to the probation department.**

**E.F. Submission of Versions of Offense Conduct: Notice to Co-Defendant**

The court shall set a specific date not more than fourteen days after the determination of guilt, by which time the attorney for the defendant and the attorney for the government shall each submit to the probation officer their respective versions of the offense conduct. 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 five business days after the

receipt of those versions, each attorney for such co-defendants shall submit to the probation officer and serve upon all counsel their versions of the offense conduct as it relates to the defendants' respective roles in the offense.

#### **F-G. Preliminary Presentence Investigation Report**

~~Not later than forty-nine days after the determination of guilt, thirty-five days prior to sentencing, the probation officer shall complete a preliminary presentence investigation report, minus the recommendation. Upon completion of the preliminary presentence investigation report, the probation officer shall notify the attorney for the defendant and the attorney for the government that the report will be available for inspection by the defendant and the attorneys for a period of five business days. The probation officer shall advise the attorneys of the dates included in the period. The report shall be examined in the office of the Probation Department, provided that where the defendant is in custody, the probation officer shall be responsible for making provisions for defendant to examine it.~~ **The probation department shall mail the preliminary presentence investigation report no less than thirty-seven days prior to sentencing to the defendant, the defendant's counsel, and the attorney for the government.**

The preliminary report shall contain suggested scoring calculations and show the sentencing ranges established by the Guidelines. The report should identify those scoring calculations which, under the Guidelines, should more properly be made by the court itself, either because of the court's unique familiarity with the relevant underlying facts, or because of the inherently discretionary nature of the particular scoring, or both. Where scoring calculations are identified as being more properly made by the court itself, the sentencing range established by the Guidelines shall be set forth in an appropriate alternative format.

#### **G.H. Position Paper: Objections and Corrections**

Not later than fourteen days after the end of the period fixed in section (f) ~~for disclosure of the preliminary presentence investigation report;~~ receiving the preliminary presentence report, the attorney for the defendant and the attorney for the government shall each file with the probation officer a pleading, entitled “[Defendant's or Government's] Position Paper as to Sentencing Factors.” The paper 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 preliminary presentence investigation 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.I. Presentence Conference**

Not later than ~~fourteen~~ **seven** days after the end of the period fixed in section H, the attorney for the defendant, the attorney for the government, and the probation officer shall hold a presentence conference in order to identify and to attempt to resolve any disputed sentencing factors. The probation officer shall set the date of the presentence conference.

#### **I.J. Final Presentence Investigation Report**

Not later than ~~fourteen days before the date of~~ **seven days** prior to the sentencing hearing, the probation officer shall submit the final presentence investigation report to the sentencing judge. The final presentence investigation report shall include an addendum setting forth any objections or corrections counsel may have made or proposed that have not been resolved, together with the probations officer's comments thereon.

**J.K. Examination of Final Presentence Investigation Report**

Following submission of the final presentence investigation report to the sentencing judge, the probation officer shall provide a copy of that report, modified in accordance with the provisions of F.R.Cr.P. 32(c)(3)(A), to the defendant, the attorney for the defendant, and the attorney for the government. The Probation Department shall deliver such copies either (i) by mailing them not later than ~~twelve~~ ~~nine~~ ~~business~~ days prior to the date of the sentencing hearing or (ii) by delivering them in such a manner that they are received not later than ~~ten~~ ~~seven~~ ~~business~~ days prior to the date of the sentencing hearing.

**K.L. Responsibility of Attorneys to Review Final Presentence Investigation Report**

The attorney for the defendant shall meet with the defendant to read and discuss the final presentence investigation report not less than two business days prior to the date set for sentencing. The attorney for the government shall examine the final report not less than two business days prior to the date set for sentencing.

**L.M. Presentence Investigation Report and Letters**

Letters regarding the defendant shall be filed with the Probation Department. The sentencing judge will forward any such letters sent directly to chambers to the Probation Department. The probation officer will provide the attorney for the government and the attorney for the defendant with copies of the letters. The letters will not be made a part of the preliminary or final presentence investigation reports. However, the letters will be made available to the court at the time of the submission of the final presentence investigation report. Except as otherwise ordered by the court, the Chief Probation Officer may authorize the destruction of any such letters after the conclusion of any appeal of the case or 180 days after the time to file an appeal has run and no appeal has been filed.

#### **M.N. Conduct of Sentencing Hearing**

At the sentencing hearing, the final presentence investigation report shall be presumed accurate. Any previously unresolved objections which would influence the sentencing determination shall be ruled on by the court, for which purposes it may hear oral argument, or permit the introduction of evidence, or both.

#### **N.O. Re-Setting of Time Limits**

The court may upon its own initiative or upon a showing of good cause, expand or shorten any of the time limits established by this rule.

#### **Ø.P. Sentencing in Multi-Defendant Cases**

Where there are two or more defendants in a proceeding who are not fugitives, for each of the defendants the timing of the presentence procedures set forth in this rule will be coordinated so that a single sentencing hearing will be held for all of the defendants determined to be guilty, provided that the Court may, for good cause shown, order separate sentencing hearings.

#### **P:Q. General Limitations on the Availability of Report**

The report, or the contents of the ~~reports~~ report shall not be disclosed to any person or agency without the written permission of the sentencing judge. Upon notice of appeal, the probation 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 held in that Clerk's vault and available upon request for review by attorneys for the appellant and the government. The recommendations shall be sealed and forwarded in a separate envelope to the Clerk of the Appellate Court where it will be available only to the judges of that Court. Upon completion of all appellate matters, the report and the recommendation shall be returned to the probation

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.

**Comment:** The Chief Justice transmitted proposed amendments to the Federal Rules of Criminal Procedure to the Congress on 29 April 1994. If Congress takes no actions with respect to the proposals, they will take effect on 1 December 1994.

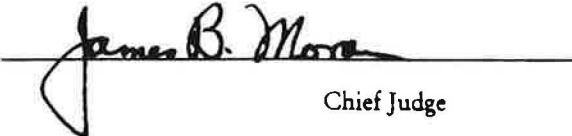
Among the proposals were amendments to F.R.Cr.P. 32. These proposals to amend local Criminal Rule 2.06 are required to bring the local rule into conformity with the provisions of the proposed amendments to F.R.Cr.P. 32.

\* \* \* \* \*

By direction of the full Court and pursuant to 28 U.S.C. § 2071(b) regarding appropriate public notice and opportunity for comment, the Clerk is directed (a) to cause the proposal to amend local Criminal Rule 2.06 to be posted in the Courthouses at Chicago and Rockford, (b) to cause notice of the proposal and requests for comment to be published in the *Chicago Daily Law Bulletin*, (c) to indicate in such notice a final date for receipt of comments, which date shall be sixty days from the first date of publication in the *Law Bulletin*, (d) to collect and distribute among the members of the Advisory Committee for Local Rules all comments received, and (e) following receipt of a copy of the report and recommendations of the advisory committee, to distribute copies of the comments together with copies of the report and recommendation among the members of the Court for consideration at a regular meeting of the full Court.

ENTER:

FOR THE COURT

  
Chief Judge

Dated at Chicago, Illinois, this 23<sup>rd</sup> day of June, 1994.