

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

POLICY FOR GUIDELINE SENTENCING

Misc. No. _____

STANDING ORDER #94-6

Pursuant to the Sentencing Reform Act of 1984 and in accordance with amended Rule 32 (effective December 1, 1994) of the Rules of Criminal Procedure, the following is adopted as the policy in this district for guideline sentencing.

It is anticipated that the Presentence Report will be disclosed about forty (40) days after the verdict of guilty, or the entry of a plea of guilty or nolo contendere, and that sentence will be imposed within eighty-five (85) to one hundred (100) days after the verdict of guilty, or the entry of a plea of guilty or nolo contendere. It is the desire of this Court to have prompt sentencing following the verdict of guilty, or the entry of a plea of guilty or nolo contendere, and these time periods are set to allow compliance with the Act.

After a verdict of guilty, or the entry of a plea of guilty or nolo contendere, the sentencing procedure will be as follows:

(a) Within seven working days, the Attorney for the Government shall provide to the Probation Office a Statement of Relevant Facts, and any other pertinent documents.

(b) After consultation with the Probation Officer, the Court, after a verdict of guilty or acceptance of a plea of guilty or nolo contendere, may set a date by which the Probation Officer shall disclose the Presentence Report to the defendant, the defendant's counsel, and the Attorney for the Government.

(c) If requested by Defense Counsel, the Probation Officer shall provide Defense Counsel with notice and a reasonable opportunity to attend any interview of the defendant by a Probation Officer in the course of a presentence investigation.

(d) Not less than thirty-five (35) days before the Sentencing Hearing, unless the defendant waives the minimum period, the Probation Officer shall furnish the Presentence Report to the defendant, the defendant's counsel, and the Attorney for the Government. The Probation Officer shall not disclose any recommendation as to the sentence unless so ordered by the Court. The Presentence Report shall be deemed to have 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) three days after a copy of the Report or notice of its availability is mailed.

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PROBATION

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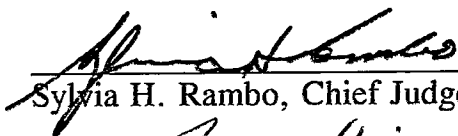
PS

(e) Within fourteen (14) days after receiving the Presentence Report, the parties shall communicate in writing to the Probation Officer, and to each other, any objections to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the Presentence Report. After receiving objections, the Probation Officer may meet with the defendant, the defendant's counsel, and the Attorney for the Government to discuss those objections. The Probation Officer may also conduct any further investigation and revise the Presentence Report as appropriate.

(f) Not later than seven days before the Sentencing Hearing, the Probation Officer shall submit the Presentence Report to the Court, together with an Addendum setting forth any unresolved objections, the grounds for those objections and the Probation Officer's comments on the objections. At the same time, the Probation Officer shall furnish the revisions of the Presentence Report and the Addendum to the defendant, the defendant's counsel, and the Attorney for the Government.

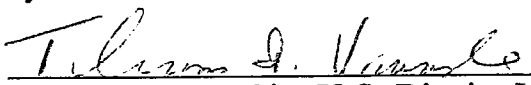
(g) Except for any unresolved objection under Rule 32 Subdivision (b)(6)(B), the Court may, at the hearing, accept the Presentence Report as its findings of fact. For good cause shown, the Court may allow a new objection to be raised at any time before imposing sentence.

(h) The time limits set forth in this Rule may be modified by the Court for good cause.

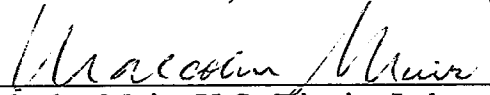

Sylvia H. Rambo, Chief Judge

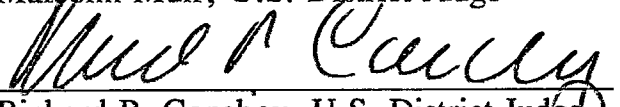

Edwin M. Kosik, U.S. District Judge

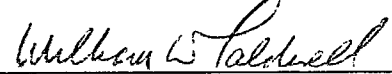

James F. McClure, Jr., U.S. District Judge


Thomas I. Vanaskie, U.S. District Judge


William J. Nealon, U.S. District Judge


Malcolm Muir, U.S. District Judge


Richard P. Conaboy, U.S. District Judge


William W. Caldwell, U.S. District Judge

Effective Date: December 15, 1994

MEMORANDUM







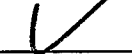
DATE: November 22, 1994

TO: Judge Kosik
Judge McClure
Judge Vanaskie
Judge Nealon
Judge Muir
Judge Conaboy
Judge Caldwell

FROM: Chief Judge Rambo

SUBJECT: Policy for Guideline Sentencing

Attached is a copy of a memorandum from Chief Probation Officer Donohue highlighting the changes affecting our Court's Policy for Guideline Sentencing. Also attached is a document for each judge's signature adopting a new Policy for Guideline Sentencing. The adoption of this policy will bring us into compliance with Rule 32 of the Federal Rules of Criminal Procedure, effective December 1, 1994. Please sign the policy and forward to the next judge listed.


 _____	Judge Caldwell
 _____	Judge McClure
 _____	Judge Muir
 _____	Judge Kosik
 _____	Judge Vanaskie
 _____	Judge Nealon
 _____	Judge Conaboy

Judge Conaboy, please forward the policy to Lance S. Wilson.

Scranton

November 10, 1994

MEMORANDUM TO: Chief Judge Sylvia H. Rambo

FROM: Joseph P. Donohue 
Chief Probation Officer

SUBJECT: Amended Rule 32 -- District Policy for Guideline Sentencing

As you are probably aware, the Supreme Court has approved amendments to Rule 32 of the Federal Rules of Criminal Procedure and, barring action by Congress, the amendments will be effective December 1, 1994.

Some of the amendments to the Rule will affect our Court's Policy For Guideline Sentencing. They are summarized as follows:

- Subdivision (b)(2) is a new provision which provides that, upon request, defense counsel is entitled to notice and a reasonable opportunity to be present at any interview conducted by the Probation Officer.
- Subdivision (b)(6)(A) provides that the Probation Officer must present the Presentence Report to the parties not later than thirty-five (35) days before the Sentencing Hearing.
- Under the amended Rule, the Court has discretion (in an individual case or in accordance with a local rule) to direct the Probation Officer to withhold recommendation concerning the sentencing. Otherwise, the recommendation is subject to disclosure.

- New Subdivisions (b)(6)(B), (C), and (D) provide explicit deadlines and guidance on resolving disputes about the contents of the Presentence Report. The amended Rule requires the parties to provide the Probation Officer with a written list of objections within fourteen (14) days of receiving the report. Our current policy requires counsel to communicate objections within fifteen (15) days. Such communication may be oral or written, but the Probation Officer may require that any oral objection be promptly confirmed in writing.
- The amended Rule permits the Probation Officer to meet with the defendant, the defendant's counsel, and the Attorney for the Government to discuss objections to the report. Our current policy stipulates that the Probation Officer may require counsel for both parties to meet with the Probation Officer to discuss unresolved factual and legal issues.
- The amended Rule requires the Probation Officer to submit the report to the Court and the parties not later than seven (7) days before the Sentencing Hearing, noting any unresolved objections.
- The amended Rule permits the Court to treat the report as its findings of fact except for the parties' unresolved objections. For good cause, the Court may allow a new objection to be raised at any time before imposing sentence.

It is proposed that the District Policy For Guideline Sentencing be amended to conform with new Rule 32. I have enclosed for your consideration a revised policy along with amended Rule 32 and our Court's current policy.

Practices relating to disclosure and the scheduling of the Sentencing Hearing vary among our Judicial Officers. The proposed policy will not require our Judicial Officers to significantly deviate from current practices.

If the revised policy is approved by the Court, you may wish to have it signed by each Judge or you may prefer to sign it on behalf of the full Court. I have, therefore, enclosed policies with alternate signature lines.

I have not communicated with other Judges concerning this matter. I will await direction as to how you wish to proceed. I am available to meet at your convenience.

Enclosures

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① JF
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Amended 7/89

RECEIVED

DONALD R. BERRY
PER *Donald R. Berry*
DEPUTY CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JUL 19 1989

AMENDED POLICY FOR GUIDELINE SENTENCING

MALCOLM MUIR
U. S. DISTRICT JUDGE

As a result of the required use of guideline sentencing effective November 1, 1987, pursuant to the Sentencing Reform Act of 1984, the following is adopted as the policy to be followed in this District for guideline sentencing.

After a verdict of guilty, or the entry of a plea of guilty or nolo contendere, the sentencing procedure will be as follows:

(a) Within seven working days, the Attorney for the Government shall provide to the Probation Office a Statement of Relevant Facts, and any other pertinent documents pursuant to the Federal Rules of Criminal Procedure Rule 32(c)(2).

(b) After consultation with the Probation Officer, the Court, promptly after a verdict of guilty or acceptance of a plea of guilty or nolo contendere, shall set a date by which the Probation Officer shall disclose the Presentence Investigation Report to the defendant, to counsel for the defendant and the government. Within fifteen (15) days after such disclosure, counsel shall communicate to the Probation Officer any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the Report. Such communication may be oral or written, but the Probation Officer may require that any oral objection be promptly confirmed in writing.

(c) After receiving counsel's objections, the Probation Officer shall conduct any further investigation and make any revisions to the Presentence Report that may be necessary. The Officer may require counsel for both parties to meet with the Officer to discuss unresolved factual and legal issues.

(d) Prior to the date of the sentencing hearing, the Probation Officer shall submit the Presentence Report to the sentencing Judge. The Report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the Officer's comments thereon. The Probation Officer shall certify that the contents of the Report, including any revisions thereof, have been disclosed to the defendant and to counsel for 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.

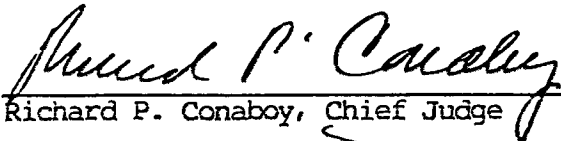
(e) Except with regard to any objection made under subdivision (b) that has not been resolved, the report of the presentence investigation may be accepted by the Court as accurate. The Court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the Probation Officer, the defendant, or the Government.

(f) The times set forth in this rule may be modified by the Court for good cause shown, except that the fifteen day period set forth in subsection (b) may be diminished only with the consent of the defendant (see Footnote 1).

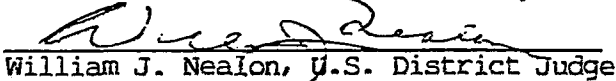
(g) Nothing in this Rule requires the disclosure of any portions of the Presentence Report that are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure.

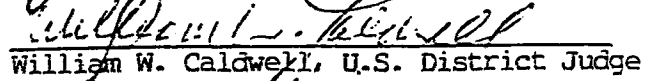
(h) The Presentence Report shall be deemed to have been disclosed: (1) when a copy of the Report is physically delivered; (2) one day after the Report's availability for inspection is orally communicated; or (3) three days after a copy of the Report or notice of its availability is mailed.

¹It is anticipated that the Presentence Report will be disclosed about forty (40) days after the verdict of guilty, or the entry of a plea of guilty or nolo contendere, and that sentence will be imposed within eighty-five (85) to one hundred (100) days after the verdict of guilty, or the entry of a plea of guilty or nolo contendere, depending upon whether objections are filed by counsel. It is the desire of this Court to have prompt sentencing following the verdict of guilty, or the entry of a plea of guilty or nolo contendere, and these time periods are set to allow compliance with the Act.


Richard P. Conaboy, Chief Judge


Sylvia H. Rambo, U.S. District Judge


William J. Nealon, U.S. District Judge


William W. Caldwell, U.S. District Judge


R. Dixon Herman, U.S. District Judge


Edwin M. Kosik, U.S. District Judge


Malcolm Muir, U.S. District Judge

Effective date: July 1, 1989