

FILED BY CRV D.C.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

93 MAY -9 PM 3:05

Administrative Order No. 95-14

ROBERT R. DI TROLIO
CLERK, U.S. DIST. CT
W.D. OF TN.

IN RE: ORDER AMENDING LOCAL RULE 21, :
DELINEATING PROCEDURAL STEPS FOR :
SENTENCING :

Pursuant to the rule-making authority granted the court by 28 U.S.C. § 2071, proposed to amend Local Rule 21, Procedural Steps for Sentencing, to be consistent with the December 1, 1994 revision to Rule 32 of the Federal Rules of Criminal Procedures. The proposed amendments relate to designated time frames and have been bolded for ease of reference.

Accordingly, the court proposes that the following procedures shall apply to all sentencings under the Sentencing Reform Act of 1984, as amended (28 U.S.C. § 991, et seq., and 18 U.S.C. § 3551, et seq.:

- (a) The district judge will schedule the hearing as soon as practicable but no earlier than **sixty-five (65)** days or later than **ninety (90)** days, following entry of a guilty plea, a plea of nolo contendere, or a verdict of guilty, unless good cause exists to schedule the sentencing at a different time.
- (b) The pre-sentence investigation report, including guideline computations, shall be completed by the probation officer and disclosed to the parties at least **thirty-five (35)** days prior to the scheduled sentencing proceeding, unless the minimum

period is waived by the defendant. The report shall be deemed to have been disclosed when a copy is physically delivered or three days after a copy is mailed.

- (c) If a party reasonably disputes sentencing factors or facts material to sentencing, or seeks the inclusions of additional factors or facts material to sentencing, in the pre-sentence investigation report, it is the obligation of the complaining party to communicate such objection or request in writing to probation officer within fourteen (14) days after receiving the presentence report and to seek administrative resolution of such factors or facts through opposing counsel the United States Probation Office. This pre-sentence conference is mandatory except when sentencing factors or facts are not in dispute. Informal resolution of disputed factors or facts material to sentencing should be resolved--to extent practicable-- through informal procedures, including telephone conferences.

- (d) Within twenty (20) days after disclosure of the pre-sentence investigation report to the parties, counsel for the defendant and the government shall file a pleading entitled "Position of Parties With Respect to Sentencing Factors." This pleading shall contain a written statement certifying that the party has conferred with opposing counsel and with the United States probation officer in a good faith effort to resolve any

disputed matters. The pleading shall also include notice of any factor important to the sentencing determination which is reasonably in dispute, in accordance with § 6A1.3 of United States Sentencing Commission Guidelines Manual (11/1/91 or subsequent versions). If the sentencing hearing is expected to last more than thirty minutes or if the party anticipates presenting evidence through more than one witness, the pleading shall notify the court of this.

- (e) At least seven (7) days prior to the scheduled sentencing proceeding, the probation officer shall transmit to sentencing judge the pre-sentence investigation report, including guideline computations, and an addendum indicating any unresolved factual disputes or objections by the parties with respect to the application of the guidelines, and the probation officer's opinion concerning any disputed issues. Upon review of these materials, the sentencing judge notify the parties if the court intends to consider a sentence outside the applicable guideline range on a ground identified as a ground for departure either in the sentence report or a pre-hearing submission. In this event the sentencing judge will reset the sentencing hearing if necessary to ensure reasonable notice
- (f) At the sentencing hearing, the sentencing judge shall arguments and, if necessary for a resolution of the disputed

issues, hear evidence. The sentencing judge shall then announce tentative findings under § 6A1.3(b) of the Guidelines Manual (11/1/91 or subsequent versions) and provide a reasonable opportunity for the submission of oral or written objections by either party prior to the imposition of sentence. For good cause shown the sentencing judge may continue the sentencing hearing for a reasonable time to allow any party an opportunity to present additional evidence or oral or written objections to the court's tentative findings. After hearing from counsel, parties, and witnesses, if necessary, in the sentencing hearing and any continuation thereof, the judge shall impose sentence

- (g) The times set forth in this rule may be modified by the court for good cause shown, except that the twenty (20) day period set forth in paragraph (d) may be diminished only with the consent of the defendant.
- (h) Any party filing an appeal or cross-appeal in any criminal case in which it is expected that an issue will be asserted pursuant to 18 U.S.C. § 3742 concerning the sentence imposed by the court shall immediately notify the probation officer who shall then file with the clerk for inclusion in the record in camera (under seal a copy of the pre-sentence investigation report

(i) The probation office will deliver to each lawyer or pro se party a copy of this rule on or before disclosure of the pre-sentence investigation report.

The Clerk of Court shall cause notice of this proposed amended rule to be published for a period of thirty days to give opportunity for public comment. The amended rule shall take effect following the notice period and the Clerk of Court shall then furnish copies of Amended Local Rule 21 to the Judicial Council of the Sixth Circuit and to the Director of the Administrative Office of the United States Courts.

DONE and ORDERED at Memphis, Tennessee, on this 9th day of May, 1995.

FOR THE COURT: Julia Smith Gibbons
Julia Smith Gibbons
Chief United States District Judge