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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

IN RE: IMPLEMENTATION OF
SENTENCING PROCEDURES

ADMINISTRATIVE ORDER

ORDER ESTABLISHING SENTENCING PROCEDURES

Amendments to Rule 32 of the Federal Rules of Criminal Procedure became effective December 1, 1994. The revision of Rule 32 necessitates modification of the Court's existing procedures concerning imposition of sentence in criminal cases. Pending adoption of a new local rule for the district pursuant to Rule 83, Federal Rules of Civil Procedure, the following procedures shall apply in all cases to which the amendments to Rule 32 apply:

(a) The district judge will schedule the sentencing 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 but exclusive of any sentencing recommendation, shall be 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 (3) days after a copy is mailed.

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 within fourteen (14) days to the probation office and to seek administrative resolution of such factors or facts through opposing counsel and 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 the extent practicable--through informal procedures, including telephone conferences.

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 the 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.

At least seven (7) days prior to the scheduled sentencing proceeding, the probation officer shall transmit to the 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 will notify the parties if the court intends to consider a sentence outside the applicable guideline range on a ground not identified as a ground for departure either in the pre-sentence report or a pre-hearing submission. In this event, the sentencing judge will reset the sentencing hearing, if necessary, to ensure reasonable notice.

At the sentencing hearing, the sentencing judge shall hear 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.

IT IS SO ORDERED.

Julia Smith Gibbons

JULIA SMITH GIBB

January 18, 1995

DATE

Odell Horton

ODELL HORTON, JUDGE

January 19, 1995

DATE

James D. Todd

JAMES B. TODD, JUDGE

January 19, 1995

DATE

Jerome Turner

JEROME TURNER, JUDGE

January 19, 1995

DATE

Jon P. McCalla

JON PHIPPS McCALLA, JUDGE

January 19, 1995

DATE