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2007 NOV 1 AM 11:03
U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BUFFALO

**LOCAL PROCEDURAL GUIDELINES
TO GOVERN SENTENCING PROCEDURES
UNDER THE SENTENCING REFORM ACT OF 1984
IN THE WESTERN DISTRICT OF NEW YORK
BEFORE
UNITED STATES DISTRICT COURT JUDGES
RICHARD J. ARCARA AND WILLIAM M. SKRETNY**

EFFECTIVE NOVEMBER 1, 2007

I. INTRODUCTION

The following Guidelines govern sentencing proceedings in the Western District of New York before United States District Court Judges Richard J. Arcara and William M. Skretny. They are intended to supplement Rule 32 of the Federal Rules of Criminal Procedure and to ensure that criminal defendants receive full and fair consideration by the sentencing judge. These Guidelines replace and supersede the Procedure to Assist Practitioners before United States District Court Judges Richard J. Arcara and William M. Skretny adopted on August 1, 1996.

II. SENTENCING DATE

Sentencing proceedings will be scheduled no earlier than **ninety-five days** following entry of a plea of guilty or guilty verdict, unless counsel demonstrates or the Court determines *sua sponte*, that the interests of justice warrant an earlier sentencing date.

III. PRESENTENCE INVESTIGATION REPORT ("PSR")

- A. The Probation Officer shall conduct the presentence investigation and complete the PSR in compliance with Rules 32(c) and (d). The Probation Officer must give the defendant's attorney notice of, and an opportunity to attend any interview of the defendant by the Probation Officer as part of the presentence investigation. Counsel for the defendant is encouraged to attend any interview of the defendant.
- B. The Probation Officer shall give the PSR to the defendant, defense counsel, and the Assistant United States Attorney at least **forty-five days** before the sentencing

date. The Probation Officer's sentencing recommendation must not be disclosed to the parties unless ordered by the Court. See Fed. R. Crim. P. 32(e)(3).

- C. The Probation Officer shall submit the PSR to the Court at least **seven days** before the sentencing date. If applicable, the Probation Officer shall also submit an addendum identifying any unresolved objections or motions, the grounds for those objections or motions, and the Probation Officer's comments on them. See Fed. R. Crim. P. 32 (g). The Probation Officer shall contemporaneously serve copies of the PSR and any addendum to the defendant, defense counsel and the Assistant United States Attorney.

IV. SENTENCING SUBMISSIONS

A. **Sentencing Factors Statements**

1. Statement. Counsel for the parties shall each file a written "Statement of Party with Respect to Sentencing Factors" ("Statement") at least **twenty-one days** before the sentencing date. Therein, counsel shall either adopt the findings in the PSR or state with particularity any objection(s) thereto in accordance with the procedures set forth herein. The Statement must be filed with the Clerk of the Court and contemporaneously served upon opposing counsel and the Probation Officer. See Fed. R. Crim. P. 32(f)(2).
2. Objections. A party objecting to the PSR shall include the following information in its Statement: (1) a clear and concise statement of its particular objection(s); (2) a citation to the paragraph(s) in the PSR to which there is an objection(s); (3) legal authority supporting the objection(s); and (4) any other available material relevant to resolution of the objection(s). Failure to file timely written objections may result in the Court refusing to consider them. See Fed. R. Crim. P. 32(f)(1) (requiring written objections); Fed. R. Crim. P. 32(i)(1)(D) (requiring that good cause be shown for the Court to permit new objections at the time of sentencing). The parties are encouraged to meet with the probation officer to resolve any objections before filing their statements.
3. Responses to Objections. The opposing party shall file a response to the objection(s) at least **fourteen days** before the sentencing date. The response must be filed with the Clerk of the Court and contemporaneously served upon opposing counsel and the Probation Officer. The response must include legal authority and any other material relevant to the

objection(s). Failure to timely respond to the opposing party's objection(s) may result in the objection(s) being granted as unopposed.

B. Sentencing Motions

1. Motions for Departure or Non-Guideline Sentence. Motions for a departure from the United States Sentencing Guidelines (except for those brought under U.S.S.G. § 5K1.1) and motions for a non-guideline sentence under 18 U.S.C. § 3553(a) and United States v. Booker, 543 U.S. 220 (2005), must be filed at least **twenty-one days** before the sentencing date and contemporaneously served upon opposing counsel and the Probation Officer. The motion must be accompanied by a memorandum of law identifying the legal and factual grounds for the relief requested. Any other material relevant to the motion must also be included. Failure to timely file a sentencing motion may constitute a waiver or result in the denial of the motion without consideration of the merits.

The opposing party shall file a response to any sentencing motion at least **fourteen days** before the sentencing date and contemporaneously serve it upon opposing counsel and the Probation Officer. If the motion is opposed, the opposing party shall file a memorandum of law and any other relevant material in support of its opposition. If the motion is unopposed, the opposing party shall file a statement so indicating Failure to timely respond to a sentencing motion may result in the motion being granted as unopposed.

Counsel shall be prepared to argue any sentencing motion on the sentencing date.

2. Motions under U.S.S.G. § 5K1.1.

Motions filed by the United States pursuant to U.S.S.G. § 5K1.1 must be filed at least **twenty-one days** before the sentencing date. If the United States has agreed in a plea agreement to file such a motion and fails to timely do so, defense counsel shall file a Notice at least **five days** after the motion is due advising the Court that the United States has failed to file the motion. If the United States no longer intends to file the motion, it shall file a Notice advising the Court of its intention at least **twenty-one days** before the sentencing date, or as soon as such a determination is made, whichever is earlier.

C. Character Letters or Similar Materials

Character letters or similar materials that a party wants the Court to consider in conjunction with sentencing must be filed at least **seven days** before the sentencing date and must be contemporaneously served upon opposing counsel and the Probation Officer. Failure to timely file character letters or similar materials may result in the Court not considering them.

D. Motions to Adjourn Sentencing

Absent good cause, motions to adjourn sentencing must be filed at least **ten days** before the sentencing date. In support of the motion, counsel shall file an affidavit setting forth the basis for the requested adjournment, whether there have been any prior adjournments, and whether opposing counsel objects to the relief requested. In addition, counsel shall include in the affidavit several dates and times at which *all* counsel are available for the sentencing proceeding in the event that the Court grants the adjournment request. The motion must be filed with the Clerk of the Court and contemporaneously served upon opposing counsel and the Probation Officer. The sentencing proceeding will remain as scheduled unless and until the Court grants the motion to adjourn (i.e., the filing of a motion to adjourn does not mean that the sentencing proceeding will be adjourned).

E. Motions for Extension of Time

Counsel shall strictly adhere to the deadlines prescribed herein. In rare circumstances, however, an extension of time may be necessary. Should such a circumstance arise, counsel shall file an appropriate motion accompanied by an affidavit stating why an extension is necessary, whether any prior extension requests have been granted, and whether opposing counsel objects to the relief requested. The motion must be filed with the Clerk of the Court and contemporaneously served upon opposing counsel and the Probation Officer. Such a motion may be granted upon the demonstration of good cause. The moving party is not relieved from the deadline for which an extension is sought unless and until the Court has granted the motion (i.e., the filing of a motion for extension of time does not stay the deadline at issue).


F. Formal Pleading Required


The filing requirements set forth in these Guidelines are satisfied only by a formal pleading filed on the record. No letters or telephone calls will be accepted or

acted upon. All memoranda of law required by this Order must contain citations to supporting legal authority.

V. SENTENCING PROCEEDING

The Court will afford the defendant, defense counsel, and the Assistant United States Attorney the opportunity to speak at the sentencing proceeding as required by Rule 32(i)(1)(C) and (i)(4)(A). Moreover, if applicable, the Court will allow any victim or victim's representative to speak as required by Rule 32(i)(4)(B) and 18 U.S.C. § 3771. Finally, the Court will resolve any outstanding issues, objections, or motions as required by Rule 32(i)(3)(B) before imposing sentence.


HONORABLE RICHARD J. ARCARA
Chief United States District Judge
Western District of New York


HONORABLE WILLIAM M. SKRETNY
United States District Judge
Western District of New York

Dated: November 1, 2007