

**LOCAL PROCEDURAL GUIDELINES TO GOVERN SENTENCING
PROCEDURES UNDER THE SENTENCING REFORM ACT OF 1984**

FILED IN THE WESTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
W. D. N. Y.

NOV 28 1994

EFFECTIVE DECEMBER 1, 1994

AT _____
BY RCE
TITLE Clerk

The following Guidelines are hereby established in the Western District of New York to govern sentencing proceedings under the Sentencing Reform Act of 1984 (Pub.L. 98-473, Title II, c. II, §§ 211-239; see 18 U.S.C. § 3551 et seq.), effective November 1, 1987, and Federal Rule of Criminal Procedure 32, as amended December 1, 1994.

The Guidelines are intended to provide adequate time for the United States Probation Office to prepare the presentence report (PSR), to disclose the contents of the PSR to the parties, to file any presentence submissions by the parties and to allow sufficient time for other procedures contemplated by the Sentencing Reform Act, and the Sentencing Guidelines.

1. Sentencing proceedings shall be scheduled by each Court no earlier than seventy-five (75) days following entry of a guilty plea or verdict of guilty unless all the parties and the Court agree that, in the interest of justice, an earlier date should be set.

2. Defense counsel is entitled to be present during any interview of the defendant by a probation officer in the course of the presentence investigation.

3. In accordance with Federal Rule of Criminal Procedure 32(b)(6), the presentence investigation report, including guideline computations, shall be completed and disclosed to the parties at least thirty-five (35) days prior to the scheduled sentencing proceedings, unless the minimum period is waived by the defendant. The officer's recommendation on the sentence shall not be disclosed unless otherwise ordered by the sentencing judge. Copies of the presentence report will be mailed to the assigned Assistant U.S. Attorney, defense counsel and the defendant by the U.S. Probation Department.

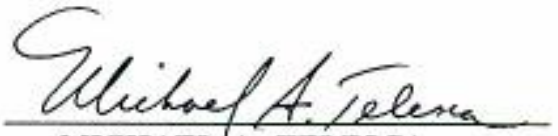
4. If a party reasonably disputes sentencing factors or facts material to sentencing, or seeks the inclusion of additional factors or facts material to sentencing in the PSR, it is the obligation of the complaining party to seek administrative resolution of such factors or facts through opposing counsel and the United States Probation Office prior to filing the pleading

through opposing counsel and the United States Probation Office prior to filing the pleading referenced in paragraph 5. This presentence conference is mandatory except when sentencing factors or facts are not in dispute. No party may file a written objection to the PSR, as provided in paragraph 5, unless he or she has conferred with the United States Probation Office and his or her opponent in a good faith effort to resolve the disputed matter.

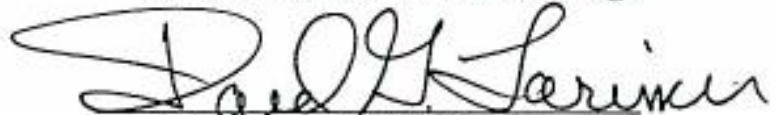
5. No later than twenty-one (21) days prior to the sentencing hearing, counsel for the defendant and the Government shall file a pleading entitled, "Statement of Parties With Respect to Sentencing Factors", in accordance with Section 6A1.2 of the Sentencing Guidelines or in accordance with subsequent rules and policies published by the United States Sentencing Commission. This statement shall either (1) adopt the findings of the PSR or (2) indicate specifically what sentencing factors or findings are in dispute. If a party challenges the findings or factors in the PSR, he or she must state with particularity the basis for the objection to the PSR and must certify that the party has conferred with opposing counsel and with the United States Probation Office in a good faith effort to resolve the disputed matter. The Statement of Parties With Respect to Sentencing Factors shall be filed with the Clerk of the Court and contemporaneously served upon the United States Probation Office and opposing counsel.

6. The United States Probation Office shall transmit to the sentencing Court the PSR, including guideline computations, and an addendum indicating any unresolved factual disputes or objections by the parties with respect to the application of the guidelines no later than seven (7) days prior to the date set for sentencing.

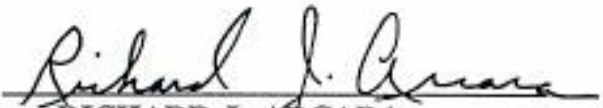
7. Prior to the imposition of sentence, the Court shall provide a reasonable opportunity to the parties to present relevant information concerning disputed facts or factors relating to the sentencing. The procedure for presenting this evidence shall be determined by the Court. Each sentencing judge shall, before imposing sentence, notify the parties of the Court's tentative findings concerning disputed factors or facts. The Court shall rule on all unresolved objections to the PSR by either making a finding on the allegation or a determination that no finding is necessary because the controverted issue will not be taken in account, or will not affect sentencing. The parties shall have an opportunity to state their objections to the Court's determinations and to its sentence.



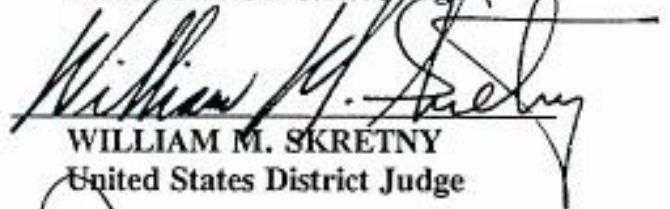
MICHAEL A. TELESKA
Chief United States District Judge



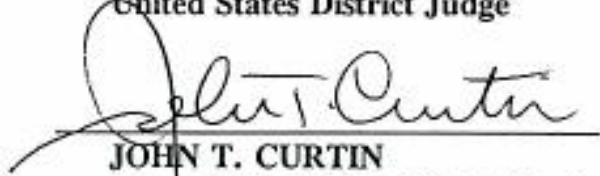
DAVID G. LARIMER
United States District Judge



RICHARD J. ARCARA
United States District Judge



WILLIAM M. SKRETNY
United States District Judge



JOHN T. CURTIN
Senior United States District Judge



JOHN T. ELFVIN
Senior United States District Judge

DATE: November 28, 1994