

## CrLR32. SENTENCING PROCEDURES

CrLR32.1. **Waiver of the Presentence Investigation.** A presentence investigation will be prepared and submitted to the Court unless the Court finds that information in the record enables it to exercise its sentencing authority under 18 U.S.C. § 3553 and explains this finding on the record.

- A. On motion filed before arraignment, the Court will consider waiving the preparation of the presentence investigation. The motion shall contain:
- (1) a factual summary of the defendant's relevant conduct in committing the offense;
  - (2) a listing of the defendant's criminal history, including dates of conviction, dispositions, and representation by counsel;
  - (3) guideline calculations leading to the establishment of the total offense level and criminal history category;
  - (4) a statement reflecting the resulting imprisonment, fine and supervised release ranges, as well as any factors that may warrant a departure from these ranges;
  - (5) a statement as to the identity and address of any victim(s) and the amount of restitution due to any victim. In the case of any identified victim where no restitution or only partial restitution is being recommended, the motion shall include a statement justifying the recommendation.

CrLR32.2. **Order of Presentence Investigation and Initial Disclosure Date.** At the time of determination of guilt, the Court will fix the date by which the initial presentence report shall be disclosed to counsel. The normal schedule for investigation, preparation, and completion of the initial report will be 35 days. In addition, unless waived by the defendant, the presentence report shall be disclosed not less than 35 days before the sentencing date.

CrLR32.3. **Presence of Counsel.** On request, defense counsel is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation.

- A. A request to be present at interviews conducted by the probation officer must be made to the probation office immediately after the determination of guilt, followed by written notice to the probation office within 7 days. (Amended by General Order 2009-17, effective 12/1/09)
- B. The term "interview" applies to communications initiated by the

probation officer for purposes of developing information which will be used in preparation of the presentence investigation. Spontaneous or unplanned encounters between the defendant and probation officer would not normally fall within the purview of this rule.

- C. Having received notice, defense counsel, or his/her designee, is responsible for being present at the interview(s) to enable timely completion of the presentence report.

**CrLR32.4. Delivery.** ~~Counsel must obtain the report at the probation office in the city of the sentencing court, either personally or through an agent. Persons obtaining the report must verify receipt on a probation office form. Alternative delivery via express mail, messenger, or certified mail is authorized, provided counsel make arrangements for the delivery, at their own expense, and confirm those arrangements in writing with the probation office. Presentence reports and related documents are filed under seal by the probation office electronically in the Court's Electronic Filing System (CM/ECF). The Notice of Electronic Filing (NEF) automatically generated by the Court's Electronic Filing System notifies counsel their copy of the report can be retrieved utilizing their Filing User log-in and password issued upon admittance to the bar of this Court. (See Administrative Procedures for Electronic Filing in Civil and Criminal Cases). In extenuating circumstances, paper copies may be requested from the probation office by counsel. Counsel will then be responsible for obtaining the paper copy of the report at the probation office in the city of the sentencing court, or making arrangements with the probation office for alternative delivery, at counsel's expense. These arrangements should be confirmed in writing with the probation office.~~ Delivery via facsimile is not authorized. Alternative delivery extends no time limits.

**CrLR32.5. Counsel's Duty.** Defense counsel shall disclose every report to the client.

**CrLR32.6. Objections.**

- A. Within 14 days after disclosure of the initial report, counsel shall deliver objections to the report in writing to the probation office. Objections to the report shall include proposed changes to the facts of the offense as reported and to the interpretation and application of the sentencing guidelines.
- B. A party not objecting must deliver a statement of non-opposition to the probation office.
- C. All papers must contain a certificate of service on all counsel. A copy of the instrument and certificate shall be filed with the district clerk.

**CrLR32.7. Final Report.**

- A. After the time for objections, the probation office shall promptly investigate and revise the initial report, as required. The probation office may require counsel to meet the officer to discuss disputed factual and legal issues.
- B. Within 14 days after the time for objections but in no event later than 7 days before sentencing, the probation office shall submit to the sentencing judge the final report, with an addendum of unresolved objections and the officer's comments on them. The final report shall contain a certificate that it has been disclosed to all counsel and that a copy has been filed under seal with the district clerk.

**CrLR32.8. Availability.** The initial report may be obtained on the disclosure date established by the Court. The final report (if different from the initial report) and addendum may be obtained as soon as counsel are notified that the report is available. ~~The probation office will telephone all counsel.~~ Notification will be accomplished via a Notice of Electronic Filing issued by the Court's Electronic Filing System (CM/ECF).

**CrLR32.9. Effect.** Except for objections in the addendum, the Court may accept the final report as accurate. Absent a clear demonstration of good cause, no party shall be allowed at the time of sentencing to present other objections.

**CrLR32.10. Sentencing Date.** Unless waived by the defendant, the sentencing date shall be at least 7 days after the final report is delivered to the Court.

**CrLR32.11. Limitation.** This rule does not require disclosure of portions of the report not disclosable under Federal Rule of Criminal Procedure 32. The probation officer's recommendation on the sentence shall not be disclosed unless so ordered by the sentencing judge.