

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

USDC DNJ DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>October 8, 2020</u>
--

IN RE: GUIDELINES SENTENCING : **AMENDED STANDING ORDER 2020-01**

It is on this 8th day of OCTOBER, 2020, on the Court's own motion, and in accordance with Federal Rule of Criminal Procedure 32, and Title 18, United States Code, Sections 3552 and 3661,

ORDERED that the following Order shall constitute the rule for sentencing for all convictions, whether by plea or guilty verdict, on or after March 2, 2020:

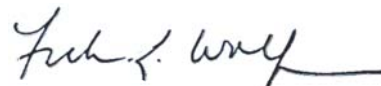
- 1) Following conviction, whether by plea or guilty verdict, the Court will set a schedule for sentencing, including for the preparation of the presentence investigation report and the parties' submissions to the Probation Office, the filing of objections thereto and finalization of the presentence report, and the submission of the parties' sentencing memoranda. That schedule can be the presumptive schedule below or an abbreviated or extended schedule agreed upon by the parties and adopted by the Court, or in the absence of an agreement, a schedule determined by the Court based upon the circumstances of the case.
- 2) Sentencing shall be set approximately 125 calendar days after the conviction, by guilty plea or guilty verdict.
- 3) The Government, Defense Counsel, and the Defendant shall cooperate with the Probation Office in the presentence investigation and preparation of the presentence report.
- 4) The Government shall provide the Probation Office with full access to all underlying non-privileged investigative materials necessary and sufficient to prepare the offense conduct section, as requested by the Probation Office. Such material may include, but is not limited to, witness interviews, agent summaries, third-party business records, consensual recordings, electronic surveillance, stored electronic communications, and known victim information to include names, addresses and restitution amounts, and a narrative of the offense conduct the Government considers relevant for sentencing. The Government shall submit this material to the Probation Office at the time of the guilty plea but no later than 7 calendar days following the guilty plea, or no later than 14 calendar days following a guilty verdict. To the extent additional victim information comes to light during the presentence investigation, the Government shall disclose that information to the Probation Office in a sufficiently timely manner as to provide adequate notice to victims, to allow Defense Counsel to evaluate the claims of additional victims and not unduly delay sentencing and any separate restitution hearing set by the Court.
- 5) Defense Counsel shall submit a completed "Worksheet for Presentence Report" (ProbForm1) to the Probation Office at the time of the guilty plea but no later than 14 calendar days after the guilty plea or guilty verdict.

- 6) Defense Counsel shall respond promptly to the Probation Office's request to schedule the presentence interview with the Defendant. The presentence interview must occur within 14 calendar days of the guilty plea or guilty verdict, if possible. If Defense Counsel does not respond to the Probation Office's request for an interview within 3 calendar days of the request, and schedule the date for the interview, this will be interpreted as a waiver of appearance and the Defendant will be interviewed without Defense Counsel present. If Defense Counsel requests the presentence interview occur on the date of the guilty plea, said request shall be made to the Probation Office at least 14 calendar days prior to the scheduled date of the guilty plea.
- 7) The Defendant shall submit the necessary financial forms, including Probation Forms 48/48A and supporting financial documentation, preferably at the time of the presentence interview and no later than 14 calendar days after the interview with the Probation Office.
- 8) If requested, the Government and Defense Counsel shall provide to opposing counsel copies of any documents or materials submitted to the Probation Office, except those which reveal personal information about victims or are subject to a protective order of the Court. If documents or materials, including letters, are submitted directly to the Court by anyone other than the parties, the Court shall provide copies to the Government, Defense Counsel, and the Probation Office, on a date in advance of sentencing.
- 9) Not less than 60 calendar days prior to the date set for sentencing, the Probation Office shall disclose a draft presentence report to the Government, Defense Counsel and the Defendant. Within 7 calendar days after receipt of the draft presentence report, the Government and Defense Counsel shall confer to determine if an agreement can be reached concerning any objections they may have as to any material information, sentencing classification, sentencing guideline ranges and policy or other statement contained in or omitted from the report, including any Sentencing Guideline issues, such as relevant conduct, adjustments, departures, and variances, as well as any other disputed issues, including restitution.
- 10) Within 14 calendar days of receiving the draft presentence report, the Government and Defense Counsel shall communicate in writing to the Probation Office and all other counsel (unless the Court provides otherwise) any objections they may have as to any material information, sentencing classification, Sentencing Guidelines range and policy or other statements contained in or omitted from the report. If there are no such objections and the parties reach an agreement concerning all Sentencing Guidelines issues, adjustments, departures and variances, the Probation Office shall be so advised, and with the Probation Office's concurrence, the parties may ask the Court to accelerate the schedule set for sentencing.
- 11) After receiving objections, the Probation Office may meet with the Government, Defense Counsel and the Defendant to discuss those objections. The Probation Office may also conduct a further investigation and revise the presentence report as appropriate.

- 12) If the parties fail to submit a response to the draft presentence report in the 14-day time frame set forth above, the Probation Office will submit the final presentence report reflecting no objections or comments were received from the parties, and/or address any anticipated objections. If objections are submitted by either counsel subsequent to the submission of the final presentence report to the Court, the Court will determine whether a formal response from the Probation Office is necessary.
- 13) Not less than 35 calendar days prior to the date of the sentencing hearing, the Probation Office shall submit the final presentence report to the Court, the Government, Defense Counsel and the Defendant. If this deadline is missed, the Probation Office shall advise the Court in writing of the circumstances causing the delay and confer with the Court concerning any revision of the sentencing schedule. The final presentence report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the Probation Office's comments therein.
- 14) Upon receipt of the final presentence report the parties may (1) proceed according to the schedule set forth above; (2) ask the Court to accelerate the schedule set for sentencing; and/or (3) propose a briefing schedule with regard to the submission of sentencing memoranda, including motions for departures and/or variances, and subject to the approval of the Court, proceed accordingly.
- 15) Except with regard to any objection that has not been resolved, the final presentence report may be accepted by the Court as its findings of fact. The Court may, in the exercise of its discretion, schedule a separate hearing to resolve any contested issues, prior to the date of sentencing. The sentencing hearing, including the resolution of any objections to the presentence report, shall be conducted in conformity with Rule 32(i) of the Federal Rules of Criminal Procedure.
- 16) Subject to modification of any schedule agreed upon by the parties and approved by the Court as detailed above, not less than 20 calendar days prior to the date for sentencing, the Government shall submit its sentencing memorandum, which shall include any motions for departure and/or variance to the Court, Defense Counsel, and the Probation Office. The motions for departure shall include motions based upon USSG § 5K1.1 and/or 18 U.S.C. § 3553(e). The sentencing memorandum shall also include any arguments concerning the application of guideline adjustments.
- 17) Not less than 10 calendar days before the date of sentencing, Defense Counsel shall submit his/her sentencing memorandum and motions for departure and/or variance to the Court, the Government, and the Probation Office. The sentencing memorandum shall also include any response to the Government's departure and/or variance motions, as well as any arguments concerning the application of guidelines, and in favor of departures and/or variances.
- 18) Not less than 5 calendar days before the date of sentencing, the Government may submit any response to Defense Counsel's argument concerning the application of the guidelines,

and any requests for departure and/or variances, to the Court, Defense Counsel, and the Probation Office.

- 19) Absent prior order of the Court, sentencing memoranda must exclude those matters excluded from the presentence report under Rule 32(d)(3) of the Federal Rules of Criminal Procedure.
- 20) The time periods and submissions by counsel set forth in this Rule may be further modified within the discretion of the sentencing Judge, except that the 60-day period set forth in paragraph 9 may be diminished only with the consent of the Defendant. The Government, Defense Counsel, or the Probation Office may also seek to modify any of the time periods outlined in this Order for good cause shown.
- 21) Nothing in this Order requires the disclosure of any portions of the presentence report that are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure, and, more particularly, pursuant to subsection (e)(3) of that Rule, unless the Court otherwise orders in an individual case, the Probation Office shall not disclose the recommendation of the sentence to be imposed.
- 22) The draft/final presentence report shall be deemed to have been disclosed on the date the Probation Office uploads the report electronically to the Court's Case Management/Electronic Case Files (CM/ECF) system, pursuant to Rule 32(e)(2) of the Federal Rules of Criminal Procedure. Defense Counsel shall provide a copy of the draft/final presentence report to the Defendant.
- 23) Any and all references to counsel aforesaid are applicable to and include pro se litigants.
- 24) This Order amends Standing Order # 20-1 of February 3, 2020 and supersedes the Court's prior Standing Orders of December 1, 1994, January 28, 1999, February 11, 1999 and July 7, 2000, and shall remain in full force and effect pending further modification as deemed necessary by the Court.



Hon. Freda L. Wolfson
U.S. Chief District Judge
District of New Jersey