

GENERAL ORDER NO. 94-38

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

APR 27 1994

DAVID J. MALAND, CLERK

BY DEPUTY Mynna Davis

GENERAL ORDER REGARDING PRESENTENCE INVESTIGATION REPORTS

The following rules and procedures shall be in effect for all cases sentenced pursuant to the Sentencing Act of 1987.

(a) Not less than 35 days prior to the date set for sentencing, the probation officer shall disclose the presentence investigation report to the defendant, counsel for the defendant, and counsel for the government. Within 14 days thereafter, either counsel shall file with the Clerk's Office any objection(s) they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report. Such communication shall be in affidavit form and shall state specific objection(s) and evidence relied upon to assert the stated objection(s). Copies of all objection(s) shall be served contemporaneously on the probation officer and opposing party by the filing party. The original objections shall be placed under seal by the clerk and made a part of the record. Any response to filed objections by either counsel shall likewise be filed with the Clerk's Office and placed under seal, and the filing party shall contemporaneously serve the probation officer and opposing counsel.

(b) The probation officer shall disclose the entire presentence investigation report including the recommendation. Excluded from this disclosure is the probation officer's justification for the recommendation and other information covered under Fed.R.Crim.P. 32(b)(5)^(le)(A), (B) and (C). In that the recommendation is not material to the calculation of the sentencing guidelines, it is not subject to objection by either counsel.

(c) After receiving counsels' objection(s), the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The officer may require counsel for both parties to meet with the probation officer to discuss unresolved factual and legal issues.

(d) Seven (7) days prior to the date of the sentencing hearing, the probation officer shall submit the presentence report to the sentencing Judge. The report shall be accompanied by an addendum setting forth any objection(s) counsel may have made that have not been resolved, together with the officer's comments thereon. The probation officer shall certify that the contents of the report, including any revisions thereof, have been disclosed to the defendant, counsel for the defendant, and counsel for the government, and that the contents of the addendum have been communicated to counsel and that the addendum fairly states any remaining objection(s).

(e) Except with regard to any objection made under subdivision (a) that has not been resolved, the report of the presentence investigator may be accepted by the Court as accurate. The Court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the probation officer, the defendant, or the government.

(f) The times set forth in this rule may be modified by the Court for good cause shown.

(g) The presentence report shall be deemed to have been disclosed to the defendant, the defendant's counsel, and the government (1) when a copy of the report is

physically delivered; (2) one (1) day after the report's availability for inspection is orally communicated; (3) three (3) days after a copy of the report or notice of its availability is mailed.

(h) The original presentence report presented to the Court shall be filed under seal with the Clerk of Court. The defendant, counsel for the defendant, and counsel for the government shall be allowed to retain copies of the presentence report unless otherwise directed by the Court.

This general order supersedes previous General Order 94-18.

Signed this 21st day of December 1994.

FOR THE COURT:



RICHARD A. SCHELL
CHIEF JUDGE