

**Proposed Amendments to
Local Rules of Criminal Procedure
Rule 32: Sentencing and Judgment
Red-line Copy
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RULE 32 Sentencing and Judgment.

- 32.A Notice and Opportunity for Defendant's Attorney to Attend Presentence Interview.** Defendant's attorney is deemed to have requested notice and a reasonable opportunity to attend the presentence report interview. If a defendant's attorney receives a request to schedule a presentence report interview, the attorney must respond within seven (7) days. If the attorney does not respond, the presentence report disclosure time limits of Rule 32(e)(2) of the Federal Rules of Criminal Procedure are waived.
- 32.B Confidential Nature of Report.** The presentence report is a confidential record of the United States District Court. It must not be disclosed to anyone other than the Court, the defendant, the defendant's attorney, and the attorney for the government unless required by law or ordered by the Court. Copies of the report must not be made except when necessary to carry out this rule.
- 32.C Sentencing Pleadings.** An unresolved objection regarding sentencing or motion for departure must be filed with the Court before sentencing. These pleadings must be filed within twenty-one (21) days of the date of disclosure of the presentence report. A responsive pleading must be filed as soon as possible but not more than seven (7) days after service of the pleading regarding sentencing. All sentencing pleadings must be served on opposing counsel and the Probation Office. The Court may alter these time limits for good cause shown.
- 32.D Disclosure of Report to Counsel.** The presentence report is disclosed:
- (1) when a report is faxed or e-mailed to counsel;
 - (2) when an electronic copy of the report is released to counsel;
 - (3) when a copy of the report is physically delivered to counsel;
 - (4) three (3) days after counsel is told orally that the report is available for inspection;
- or
- (5) three (3) days after either a copy of the report or notice of its availability for inspection is mailed to counsel.
- 32.E Disclosure of Recommendation.** Except as ordered by the Court, the Probation Office must not disclose a final recommendation concerning sentencing.

32.F Confidential Records. ~~Confidential records of the Court maintained by the Probation Office, as custodian of the Court record, including presentence and probation supervision records, may be disclosed only upon a written petition to the Court which establishes a need for the specific information. The procedures approved by the Judicial Conference, available on the website of the United States District Court for the District of New Mexico, <http://www.nmcourt.fed.us>, must be followed when requesting disclosure of confidential records.~~

32.G Requesting Presentence Reports before Guilty Pleas. A motion for a Presentence Report before a plea agreement has been entered will be granted only for exceptional circumstances.

a. Form of Motion. If a presentence report is requested before a plea agreement has been entered, the motion must state the position of the government and must contain the following:

- (1) a waiver of the defendant's right to a speedy trial;
- (2) an explanation of the issues that would justify the preparation of a pre-plea presentence report; and
- (3) a copy of the proposed plea agreement, if any.

b. Review by the Probation Office. The Court may ask the Probation Office to review the request and make recommendations to the Court regarding the merits of a pre-plea presentence report.