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DISTRICT COURT OF GUAM
TERRITORY OF GUAM

FILED
DISTRICT COURT OF GUAM
FEB - 9 1998
MARY L. M. MORAN
CLERK OF COURT

IN Re:

General Order No. 98-0000 2

SENTENCING PROCEDURES.

IT IS HEREBY ORDERED that General Order No. 88-01, issued March 22, 1988, as amended by General Order 93-00006, is hereby amended in the following respect:

Sentencing Procedures

- (a) A presentence investigation and report to the Court shall be conducted before the imposition of sentence, except as otherwise permitted by Section 6A1.1 of the Sentencing Commission Guidelines. The defendant may not waive preparation of a presentence report. The probation officer shall report the facts disclosed by the presentence investigation in the presentence report, and the parties shall not be permitted to stipulate to the elimination of relevant facts from the report.
- (b) The parties shall review the completed presentence report and offer their respective positions. The probation officer will revise the report where appropriate and attempt to resolve disputed facts where feasible. To provide sufficient time for this process, the sentencing date, except for good cause, shall be set not less than 90 calendar days

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2 following a guilty plea, a nolo contendere plea or a verdict of guilty. The 90 days shall
3 consist of 54 days for report preparation, one day for the report to be received by the
4 parties, 14 days for the parties to review the report, 14 days for probation officer
5 revisions, and seven days for the Court's review.

6 (c) Not less than 35 calender days prior to the sentencing date, the probation officer shall
7 furnish a copy of the proposed presentence report (or first draft) to counsel. The defense
8 counsel shall be responsible for disclosing the report to the defendant.

9 (d) Within 14 calender days after receipt of the report, counsel for the defendant and the
10 government shall file their statement(s) of position, which shall include objections, if any,
11 concerning factual information, sentencing classification, sentencing guideline ranges and
12 policy statements, or other information. A copy of the parties' position statement shall be
13 submitted to the probation officer and served upon all other counsel. The position
14 statement will also include:

15 (1) All sentencing factors, facts and other matters material to sentencing that
16 remain in dispute, including a statement, and calculation if appropriate,
17 showing how the dispute affects the calculation of the applicable guidelines
18 range.

19 (2) Whether an evidentiary hearing is requested and, if so, an estimate of the
20 time required for such hearing and a summary of the evidence to be
21 produced.

22 Upon receipt of any such objections, the probation officer shall
23 conduct any further investigation and make any revisions to the
24 presentence report that are deemed necessary.

25 (e) Any motion for a departure pursuant to the Sentencing Guidelines shall be filed not less
26 than 14 calender days prior to the scheduled sentencing date. A copy of the motion for
27 departure, as well as any sentencing memorandum, shall be served on the probation
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officer.

(f) Not less than seven calendar days prior to the sentencing date, the completed presentence report shall be submitted to the court and to all parties (final disclosure). This report shall be accompanied by an Addendum setting forth any objections raised by counsel which are unresolved and any written materials provided by counsel in support of their respective positions. The addendum references only unresolved objections, and not objections resulting in changes to the report from the first disclosure. If no objections to the report have been received by the seventeenth (17th) day after mailing for first disclosure, the probation officer indicates in the Addendum that there were no objections. The report is not amended after final disclosure without a court order. However, the report may be submitted as "revised," or a letter to the Judge may suffice, depending on the significance of the change, after the final disclosure, if there are revisions to the report which become necessary to correct a material or factual error and the concurrence of the parties is given. Any earlier proposed presentence reports furnished to counsel shall be returned to the probation officer.

(g) At or prior to the sentencing hearing, the Court shall address each controverted matter pursuant to Rule 32(c)(3)(D), Federal Rules of Criminal Procedure, and make a tentative finding as to each matter or make a determination that no finding is necessary because the controverted matter will not be taken into account in sentencing. The parties shall be also prepared at the sentencing hearing to proceed with evidence and argument for the resolution of any remaining disputed matters upon which the Court intends to rely. The Court shall provide a reasonable opportunity to the parties for the submission of oral or written objections to the court's findings and determinations. For good cause, the Court may continue the sentencing hearing for a reasonable time.

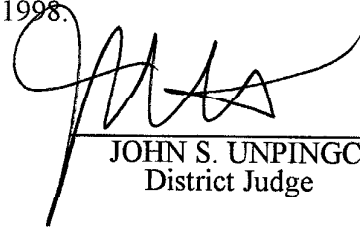
(h) A sentencing recommendation for disposition of the case by the probation officer is provided to the Judge at the time the report is submitted. The recommendation shall

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include an analysis and reasons to justify the sentence and is in line with the sentencing components of the report. The recommendation is not to be disclosed to the parties or anyone else.

- (i) Following the sentencing hearing, all copies of the presentence report that have been furnished to counsel shall be returned to the probation officer after the expiration of the time within which to appeal (10 calendar days). A copy of the report shall be filed with the Clerk of Court and kept under seal as part of the record of the case. A copy of the sentencing recommendation shall be filed and sealed separately and shall not be disclosed to anyone other than the sentencing judge.
- (j) In the case of a pro se defendant, reference to counsel shall be taken to refer to the pro se defendant.

SO ORDERED this 9th day of February, 1998.



JOHN S. UNPINGCO
District Judge