



United States District Court
DISTRICT OF MINNESOTA

LR 83.10 CRIMINAL SENTENCING

(a) Plea Agreements and Sentencing Stipulations. Before a defendant enters a guilty plea pursuant to a plea agreement, the defendant and the government must make every effort to resolve material disputes and thus minimize the need for an evidentiary hearing with respect to sentencing. The parties' resolution of such disputes remains subject to court review and acceptance. When the government and the defendant agree to a plea pursuant to a plea agreement, they must jointly submit a written plea agreement. The plea agreement must include:

- (1) the maximum potential penalties for the offense (or offenses) to which the defendant agrees to plead guilty;
- (2) the terms of the plea agreement; and
- (3) to the extent possible, stipulations with respect to:
 - (A) the essential elements of the offense (or offenses); and
 - (B) the applicable sentencing guidelines.

(b) Preparing the Preliminary Presentence Report. The probation officer must exercise due diligence in conducting the presentence investigation and preparing a preliminary presentence report. Within the reasonable constraints of ongoing investigations and proceedings, the government must exercise due diligence in providing materials to the probation officer for that officer's use in preparing the preliminary presentence report. The probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

(c) Objections to the Preliminary Presentence Report.

(1) *Time to Object.* By the deadline set by the probation officer in compliance with Fed. R. Crim. P. 32(f)(1), the parties must state in writing any objections to the preliminary presentence report, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report. A party's written objections must include material information and legal authority supporting the objections, as well as any proposed minor amendments or corrections that do not affect the guideline calculations.

(2) *Serving Objections.* An objecting party must provide a copy of its objections to the opposing party and to the probation officer.

(3) *Untimely Objections.* If a party's objections are untimely, the probation officer must not accept the objections unless the party has received the court's permission to make untimely objections.

(d) Final Presentence Report, Addendum, and Recommendation.

(1) After the deadline for objections has passed, the probation officer must — in accordance with Fed. R. Crim. P. 32(f)(3) and (g) — revise the presentence report as appropriate, prepare an addendum, and submit the final presentence report and addendum to the parties and the court.

(2) The probation officer must submit a confidential sentencing recommendation to the court. Unless the court directs otherwise, the probation officer must not further disclose this recommendation.

(e) Position Regarding Sentencing. Within 14 days of the date of the final presentence report, each party must file and serve a document entitled "Position Regarding Sentencing." Two courtesy copies must be provided to the judge and one courtesy copy must be provided to the probation officer. This document must:

(1) set forth the party's position with respect to both the sentencing guidelines and the sentencing factors set forth in 18 U.S.C. § 3553(a);

(2) specifically identify any issues in dispute;

(3) state, with respect to each issue in dispute, the extent to which the court can rely on the final presentence report to resolve the dispute; and

(4) specifically identify any issues as to which the party requests an evidentiary hearing.

(f) Evidentiary Hearing.

(1) With respect to contested issues relevant to sentencing, if a party believes that a hearing on an issue is necessary, that party must file and serve a separate motion requesting an evidentiary hearing on the issue. The motion must:

(A) be filed at the same time as the Position Regarding Sentencing;

(B) set forth the contested issue; and

(C) provide an estimate of the time required for the hearing.

(2) At least 7 days before an evidentiary hearing, each party must provide the judge, the opposing party, and the probation officer with a witness list and an exhibit list.

(g) Response to Position Regarding Sentencing; Motion for Downward Departure.

(1) At least 7 days before sentencing, each party may file and serve a response to the opposing party's Position Regarding Sentencing. Two courtesy copies must be provided to the judge and one courtesy copy must be provided to the probation officer.

(2) If the government intends to move for a downward departure under § 5K1.1 of the Sentencing Guidelines or under 18 U.S.C. § 3553(e), it must do so at least 7 days before sentencing. The government's motion must be filed under seal and served on the defendant. The government must provide two courtesy copies to the judge and one courtesy copy to the probation officer.

(h) Alternative Procedures in Complex Cases. A party may request permission from the judge to deviate from the procedures and deadlines set forth in this rule. A party making such a request must explain why the complexity or particular nature of the case justifies the request.

(i) Court's Authority. Nothing in this rule restricts the court's authority to accept or to reject a plea agreement or to accept or to reject a stipulation of fact.

(j) Non-Disclosure. Nothing in this rule requires the disclosure of any portions of the presentence report that are not discoverable under Fed. R. Crim. P. 32.

[Adopted effective February 1, 1991; amended November 1, 1996; amended May 17, 2004; amended September 24, 2009; amended May 14, 2013]

2013 Advisory Committee's Note to LR 83.10

The language of LR 83.10 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Revised LR 83.10 does, however, include a handful of substantive changes. Specifically, revised subsection (a) clarifies that parties include in plea agreements "stipulations" of any kind, rather than just "stipulations of fact." The subsection (a)(2) requirement that the agreement include its terms is not intended to preclude the submission of information concerning the plea agreement under seal. Revised subsection (f) provides that either party may request an evidentiary hearing about a contested sentencing-related issue, regardless of whether the requesting party bears the burden of proof on the issue.

Further, the provisions relating to deadlines for objections to presentence reports and deadlines for sentencing position papers have been modified slightly to conform better to current practice and to Fed. R. Crim. P. 32.

With respect to objections, under revised LR 83.10(c), the probation officer will establish a specific deadline for serving objections in every case. That deadline will be communicated along with the preliminary presentence report. The deadline will always be at least 14 days from the date of the report, in accordance with Fed. R. Crim. P. 32(f)(1). An additional 3 days will typically be added to the deadline if the report is delivered by mail; if that adjusted deadline falls on a weekend or holiday, the deadline will be moved to the next business day.

The deadline for sentencing position papers under the revised rule is 14 days from the date of the final presentence report, regardless of how that report is delivered.

The following table illustrates the timelines in revised LR 83.10:

Day	Event
Day X	Probation officer issues preliminary presentence report, including deadline for objections.
Deadline set by probation officer (at least Day X + 14 days, and sometimes Day X + 17 or more days)	Parties serve objections.
Day Y	Probation officer issues final presentence report with addendum.
Day Y + 14 days	Parties file Positions Regarding Sentencing. Parties file motions for an evidentiary hearing (if one is sought).
Day Z	Date of sentencing hearing.
At least 7 days before Day Z	Optionally, parties file responses to Positions Regarding Sentencing. Optionally, government moves for downward departure.

2009 Advisory Committee's Note to LR 83.10

[To avoid confusion, the 2013 advisory committee has deleted the table of timelines that previously appeared in the 2009 committee note.]

1991 Advisory Committee's Note to LR 83.10

LR 83.10 supersedes the Court's Revised Order Re Sentencing Procedures Under the Sentencing Reform Act of 1984, dated October 30, 1989.

The purpose of LR 83.10 is to provide adequate time for preparation of the presentence report by the United States Probation Office, for disclosure of the presentence report to the parties, for the filing of presentence submissions by the parties, and to otherwise facilitate administration of the sentencing guidelines.

[A table provided in the 1991 Advisory Committee Notes was removed to avoid confusion with later changes. Please refer to the 2013 committee note for a table illustrating the timelines in LR 83.10.]