



**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
OFFICE OF THE CLERK**

**Nick J. Lorio
Clerk of Court**

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November 2, 2009

Notice of Proposed Amendment

Pursuant to Rule 83 of the Federal Rules of Civil Procedure, public notice is hereby given of proposed amendments to the Uniform Local Rules of the United States District Court for the Eastern, Middle, and Western Districts of Louisiana.

Local Rules 5.1 M, 7.5M, 7.9 E & M, 16.3.1 M, 41.3 M., 74.1 M, LAR 64.1 E & M, LCrR32.1 M and LCrR32.2 M are proposed to be amended with the part changed stricken and the revisions highlighted.

All amendments are to be effective on December 1, 2009. Comments on these proposed amendments may be made in writing addressed to the Clerk of Court, Nick J. Lorio, 777 Florida Street, Suite 139, Baton Rouge, Louisiana before November 20, 2009. You may access this notice and copy of the rules via the court's website at www.lamd.uscourts.gov.

Baton Rouge, Louisiana, this 2nd day of November.

Nick J. Lorio
Clerk of Court

LR5.1.1E & M Filing of Extraordinary Pleadings

All pleadings of an extraordinary nature (*e.g.*, temporary restraining orders, vessel seizures, writs of attachment, and other pleadings requiring immediate judicial action) shall be filed **personally** by an attorney signing the pleadings. **The attorney filing said pleadings shall immediately contact the clerk's office for further instructions.**

LR7.5M Response and Memorandum

Each respondent opposing a motion shall file a response, including opposing affidavits, memorandum, and such supporting documents as are then available, within ~~20~~ **21** days after service of the motion. Memoranda shall contain a concise statement of reasons in opposition to the motion, and a citation of authorities upon which the respondent relies. For good cause appearing therefor, a respondent may be required to file a response and supporting documents, including memoranda, within such shorter or longer period of time as the court may order, upon written *ex parte* motion served on all parties.

LR7.9E& M Extension of Time to Plead

Upon certification by a moving party that there has been no previous extension of time to plead and that the opposing party has not filed in the record an objection to an extension of time, then on an *ex parte* motion and order, the court will allow one extension for a period of ~~20~~ **21** days from the time the pleading would otherwise be due. Further extensions will not be granted by stipulation, but only by application to the court and for good cause shown.

LR ~~16.3.1. M~~ Alternate Dispute Resolution

LR 16.3.1.E & M Alternate Dispute Resolution

Rule 16.3.1 M is vacated. LR 16.3.1 E is adopted.

LR41.3M Dismissal for Failure to Prosecute

A civil action may be dismissed by the court for lack of prosecution as follows:

- A. Where no service of process has been made within 120 days after filing of the complaint;
- B. Where no responsive pleadings have been filed or no default has been entered within 60 days after service of process, except when FRCvP 12(a)(3) applies or a dispositive motion is pending; or
- C. Where a cause has been pending six months without proceedings being taken within such period. This provision shall not apply if the cause is awaiting action by the court. Prior to issuance of a dismissal, notice shall be sent to the plaintiff, and plaintiff shall be allowed ~~10~~ **14** calendar days from mailing of the notice within which to file evidence of good cause for plaintiff's failure to act. If no response is received within the allotted time, the court may dismiss the civil action. If a timely response is filed, a district judge or a magistrate judge may order additional time within

which to take action, dismiss the civil action without prejudice, or issue any other appropriate order.

Dismissal under this Rule shall be without prejudice. The Order of Dismissal shall allow for reinstatement of the action within 30 days for good cause shown.

The failure of an attorney or pro se litigant to keep the court apprised of an address change may be considered cause for dismissal for failure to prosecute when a notice is returned to a party or the court for the reason of an incorrect address and no correction is made to the address for a period of 30 days

LR74.1M Review and Appeal

A. Appeal of Non-dispositive Matters. A party may appeal from a magistrate judge's order by filing with the clerk of court, within ~~10~~ 14 days of receipt of a copy of the order, a written statement of appeal specifically designating the order or part thereof appealed from, the basis for the objection, and a written memorandum in support thereof. A copy of the appeal shall be served on the magistrate judge and all parties. The time period allowed for appeal may be modified by the magistrate judge or district judge. The district judge shall consider the appeal and set aside any portion of the order found to be clearly erroneous or contrary to law. The district judge may also reconsider sua sponte any matter determined by a magistrate judge under this rule.

B. Reports and Recommendations. A party may object to a magistrate judge's proposed findings, recommendations or report by filing with the clerk within ~~10~~ 14 days of receipt of a copy thereof, a written objection which specifically identifies the portion or portions of the proposed findings, recommendations or report to which objection is made, the basis for such objection and a written memorandum in support thereof. The magistrate judge or district judge may modify the time period allowed for the filing of such objections. Any party may respond to another party's objections within ~~10~~ 14 days after being served with a copy thereof.

A district judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject or modify in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

LAR64.1E & M Publication and Time to Claim and Answer Where Publication Necessary and Under Supplemental Rule C(4)

In all cases where publication is necessary under [Admiralty Rule C\(4\)](#), the time for filing a claim is hereby extended for a period of ~~15~~ 21 days from the date of the publication.

The published notice shall contain the title and the number of the suit, the date of the arrest and identity of the property arrested, the name of the marshal, and the name and address of the attorney for the plaintiff. It shall also state that claimants must file their claims pursuant to [Rule C\(6\)](#) with the clerk and serve them on the attorney for plaintiff within ~~15~~ 21 days after the date of first publication, or within such further time as may be allowed by the court, and must serve their

answers within 20 days after the filing of their claim; that, if they do not, default may be entered and condemnation ordered; and that application for intervention under *FRCvP 24*, by persons claiming maritime liens or other interests may be untimely if not filed within the time allowed for claims to possession.

LCrR32.1E & M Sentencing

A. In accordance with the provisions of ~~Federal Rule of Criminal Procedure 32~~, **Rule 32, Federal Rules of Criminal Procedure**, when a presentence investigation is ordered, defendant's counsel, upon request, is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation.

B. Not less than 35 days prior to the date set for sentencing, unless the defendant waives this minimum period, the probation officer shall disclose the presentence investigation report to the defendant, counsel for the defendant and the Government. **The presentence report is considered a confidential document and will be filed in the record under seal by the probation office at the time of the report's disclosure.** Within 14 days thereafter, counsel shall communicate in writing to the probation officer and each other any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report.

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

D. Not later than seven days prior to the date of the sentencing hearing, the probation officer shall ~~submit the presentence report to the sentencing judge~~ **file the presentence report in the court record, if the report is revised. The probation officer shall then file any addendum to the presentence report.** ~~The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon. At the same time, the probation officer must furnish the revisions of the presentence report and the addendum to the defendant, the defendant's counsel, and the attorney for the Government in the court record.~~

E. Except with regard to any objection made under Fed.R.Cr.P. 32(f) ~~subdivision B~~ that has not been resolved, the report of the presentence investigation 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, except that the 14 day period set forth in Fed.R.Cr.P. 32(e) ~~subdivision B~~ may be diminished only with the consent of the defendant.

G. Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure. As permitted by Rule 32, the probation officer's recommendation on the sentence shall not be disclosed **to anyone, other than the Court.**

H. The presentence report shall be deemed to have been disclosed ~~1. one day after when a copy of the report is physically delivered~~ **filed electronically.**

~~2. one day after the report's availability for inspection is orally communicated, or~~

~~3. three days after a copy of the report or notice of its availability is mailed. [Amended June 28, 2002]~~
3. **three days after a copy of the report or notice of its availability is mailed.** [Amended June 28, 2002]

LCrR32.2M Presentencing Memoranda

A party may submit a sentencing memorandum addressing any factor taken into account for sentencing purposes. The memorandum may contain, but is not limited to, sentencing factors **enumerated in 18 USC §3553(a); factors** and for upward or downward departure including those considered pursuant to USSG §5K1.1; argument on unresolved objections to the presentence report; and any information concerning the background, character, and conduct of the defendant, in accordance with 18 U.S.C. §3661. All such sentencing memoranda shall be submitted directly to the ~~sentencing judge~~ **probation office** at least seven ~~calendar~~ days prior to the date of sentencing. **The sentencing memorandum will be filed in the record under seal by the probation office upon its receipt.** ~~with simultaneous, confidential copies to all parties, including the probation office. Where an appeal is taken, the probation office shall forward the sentencing memoranda, presentence report, and addendum to the clerk of court for confidential submission to the court of appeals. The submission of a sentencing memorandum does not relieve the parties from the obligation of providing the probation officer with written objections to the presentence report within 14 days from the day of disclosure in accordance with Rule 32 Fed.R.Cr.P. 32(b)(6)(A).~~

LOCAL CRIMINAL RULE 32 - SENTENCE AND JUDGMENT

LCrR32.1E & M Sentencing

A. In accordance with the provisions of ~~Federal Rule of Criminal Procedure 32,~~ **Rule 32, Federal Rules of Criminal Procedure,** when a presentence investigation is ordered, defendant's counsel, upon request, is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation.

B. Not less than 35 days prior to the date set for sentencing, unless the defendant waives this minimum period, the probation officer shall disclose the presentence investigation report to the defendant, counsel for the defendant and the Government. **The presentence report is considered a confidential document and will be filed in the record under seal by the probation office at the time of the report's disclosure.** Within 14 days thereafter, counsel shall communicate in writing to the

probation officer and each other any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report.

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

D. Not later than seven days prior to the date of the sentencing hearing, the probation officer shall ~~submit the presentence report to the sentencing judge~~ **file the presentence report in the court record, if the report is revised. The probation officer shall then file any addendum to the presentence report.** ~~The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon. At the same time, the probation officer must furnish the revisions of the presentence report and the addendum to the defendant, the defendant's counsel, and the attorney for the Government in the court record.~~

E. Except with regard to any objection made under Fed.R.Cr.P. 32(f) ~~subdivision B~~ that has not been resolved, the report of the presentence investigation 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, except that the 14 day period set forth in [Fed.R.Cr.P. 32\(e\)](#) ~~subdivision B~~ may be diminished only with the consent of the defendant.

G. Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure. As permitted by [Rule 32](#), the probation officer's recommendation on the sentence shall not be disclosed **to anyone, other than the Court.**

H. The presentence report shall be deemed to have been disclosed ~~1. one day after when a copy of the report is physically delivered~~ **1. one day after when a copy of the report is filed electronically.**

~~2. one day after the report's availability for inspection is orally communicated, or~~

~~3. three days after a copy of the report or notice of its availability is mailed.~~

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A party may submit a sentencing memorandum addressing any factor taken into account for sentencing purposes. The memorandum may contain, but is not limited to, sentencing factors **enumerated in 18 USC §3553(a); factors** and for upward or downward departure including those considered pursuant to USSG §5K1.1; argument on unresolved objections to the presentence

report; and any information concerning the background, character, and conduct of the defendant, in accordance with 18 U.S.C. §3661. All such sentencing memoranda shall be submitted directly to the sentencing judge **probation office** at least seven calendar days prior to the date of sentencing. **The sentencing memorandum will be filed in the record under seal by the probation office upon its receipt.** with simultaneous, confidential copies to all parties, including the probation office. Where an appeal is taken, the probation office shall forward the sentencing memoranda, presentence report, and addendum to the clerk of court for confidential submission to the court of appeals. The submission of a sentencing memorandum does not relieve the parties from the obligation of providing the probation officer with written objections to the presentence report within 14 days from the day of disclosure in accordance with Rule 32 Fed.R.Cr.P. 32(b)(6)(A).