



NOTICE OF PROPOSED LOCAL RULE AMENDMENT AND OPPORTUNITY FOR PUBLIC COMMENT

In Re: Local Criminal Rule 32(c)

In accordance with 28 U.S.C. § 2071(b), the United States District Court for the District of Vermont proposes an amendment to Local Criminal Rule 32(c) governing the distribution of criminal presentence reports to defendants.

The proposed rule would serve to avoid the risk of harm to persons who provide information about criminal activity (“cooperation”) to law enforcement agents or to the United States Attorney when such information appears in presentence reports and may be disseminated to other persons within and outside of detention facilities.

The proposed rule amendment is as follows:

Counsel is prohibited from providing (by any means) a draft, copy or final Presentence Report ("PSR") to the defendant unless the following categories of information have been redacted from the PSR: (1) statements regarding the defendant's cooperation, including references to USSG 5K1.1. motions and USSG 5C1.2 proffers; (2) statements regarding any other person's cooperation including but not limited to post-arrest statements, proffers, grand jury testimony, and trial testimony. Counsel is not prohibited from reviewing the un-redacted PSR with the defendant.

The rule recognizes that defense counsel must necessarily review the presentence report with the defendant/client and that counsel has an obligation to inform the defendant of *all* information contained in the presentence report. Thus, the rule allows defense counsel to review the un-redacted information with the defendant in phone conferences, meetings, etc., but requires redaction of all cooperation related information before providing a copy of the presentence report to a defendant/client.

Additionally, the rule recognizes the defendant’s rights under the Sixth Amendment to the United States Constitution, “to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him,” while protecting the identity of persons who have provided information to the government.

The open comment period is from November 18 to December 20, 2013. Comments on the proposed amendment to the Local Rule may be submitted to one of the addresses listed below:

In letter form to:

Jeffrey S. Eaton, Clerk of Court
Attn: Local Rules
U.S. District Court
P.O. Box 945
Burlington, VT 05402-0945

Via e-mail to:

Jeff_Eaton@vtd.uscourts.gov

Any changes to this Local Rule adopted by the court will have an expected effective date of January 15, 2014.

PROPOSED LOCAL CRIMINAL RULE 32(c)

Rule 32. Sentencing Procedure.

(c) Presentence Investigation Report. Defense counsel is responsible for ensuring that the defendant has reviewed and understands the presentence report.

(1) Counsel is prohibited from providing (by any means) a draft, copy or final Presentence Report ("PSR") to the defendant unless the following categories of information have been redacted from the PSR:

(A) statements regarding the defendant's cooperation, including references to USSG 5K1.1. motions and USSG 5C1.2 proffers;

(B) statements regarding any other person's cooperation including but not limited to post-arrest statements, proffers, grand jury testimony, and trial testimony.

Counsel is not prohibited from reviewing the un-redacted PSR with the defendant.

(2) Counsel receiving the report may not disclose the contents to others.