

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
505 THEODORE LEVIN UNITED STATES COURTHOUSE
231 W. LAFAYETTE BOULEVARD
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**NOTICE OF PROPOSED NEW LOCAL RULE AND
AMENDMENTS TO LOCAL RULES**

At their regular meeting on March 6, 2017, the Judges of the United States District Court for the Eastern District of Michigan approved for publication and comment proposed new LR 4.1, Service of Process for *In Forma Pauperis* Parties.

Also on March 6, 2017, the Court approved for publication and comment proposed amendments to the following Local Rules:

- LCrR 17.4, Issuance of Subpoenas on Application of Appointed Counsel
- LCrR 32.1, Guideline Sentencing

In order to be assured consideration, comments in writing, which may include recommended changes to the proposed new rule and amendments, should be received by the Court not later than April 21, 2017. Comments may be sent to Local_Rules@mied.uscourts.gov or to Local Rules, 505 Theodore Levin United States Courthouse, 231 W. Lafayette Boulevard, Detroit, Michigan 48226.

[Additions are indicated by underline, and deletions by strikethrough.]

LR 4.1 Service of Process for *In Forma Pauperis* Parties

(a) The Clerk shall arrange for service of the summons and complaint by the United States marshal for a plaintiff authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916, and who is not represented by an attorney. A request for such assistance is not necessary.

(b) If a plaintiff authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916 is represented by an attorney, that attorney is deemed specially appointed by the Court and must arrange for service of the summons and complaint.

Comment: This rule implements Federal Rule of Civil

Procedure 4(c)(3). When a plaintiff who qualifies for pauper status is represented by an attorney, as occurs occasionally in cases filed under the Social Security Act, the attorney must arrange for service of process.

LCrR 17.1 Issuance of Subpoenas on Application of Appointed Counsel

(a) Defense counsel appointed under the Criminal Justice Act and federal defenders may obtain witness subpoenas from the clerk's office. The clerk must issue those subpoenas signed, sealed, and designated *in forma pauperis*, but otherwise in blank. By completing such a subpoena, defense counsel certifies that in counsel's opinion the witness's presence is necessary to an adequate defense. Witness subpoenas issued under this subrule ~~may not be served more than 100 miles from the place of holding court~~ must be served in the manner prescribed by Fed. R. Crim. P. 17(d) & (e).

* * *

(c) The United States Marshal is authorized to serve witness subpoenas under pursuant to Fed. R. Crim. P. 17(d).

(d) A defendant seeking a subpoena for books, papers, documents, data, or other objects under Fed. R. Crim. P. 17(c) in advance of trial must seek prior approval from the court. An application for approval may be made *ex parte*. The subpoena must state that the requested items must be returned to the chambers of the assigned judge.

Comment: LCrR 17.1 should be read with Fed. R. Crim. P. 17 (which is substantially similar to Fed R. Civ. P. 45). Paragraph (d) provides guidance for the issuance and return of subpoenas under Fed. R. Crim. P. 17(c). That rule was "not intended to provide a means of discovery for criminal cases," but it was designed "to expedite the trial by providing a time and place before trial for the inspection of subpoenaed materials." *United States v. Nixon*, 418 U.S. 683, 698-99 (1974). To facilitate court supervision of subpoenas directed to third parties, subpoenas issued under that rule must specify that the items sought be returned to

the court, and not elsewhere, such as a lawyer's office.

LCrR 32.1 Guideline Sentencing

(a) Not less than 35 days before the sentencing date, the probation officer must disclose the presentence investigation report, excluding the probation officer's recommendation, to the *pro se* defendant or to defense counsel and government counsel. The presentence report is disclosed under 18 U.S.C. §3552(d):

- (1) when it is physically or electronically delivered, or
- (2) three days after it is mailed.

(b) Within 14 days after disclosure, the *pro se* defendant or counsel for the defendant and counsel for the Government shall communicate to the probation officer and to each other any objections to any material information, sentencing classifications, sentencing guideline ranges, and policy statements which are contained in, or omitted from, the report. Such communication shall be in writing and shall be signed by the defendant or counsel for the defendant or counsel for the Government, or in another manner as the Court directs. Any response to an objection shall be in writing and submitted directly to the probation officer, with copies furnished to all parties.

* * *

~~(i) Nothing within this LCrR requires the disclosure of any portion of the presentence report that is not permitted under Fed. R. Crim. P. 32. The presentence report, any objections thereto, and any correspondence between counsel and a probation officer concerning any such objections shall be maintained in confidence and shall not be disclosed to any person other than counsel of record, the probation officer, the Court, and the United States Sentencing Commission without a prior order of the Court authorizing such disclosure. Counsel must destroy or return to the Court all copies of the presentence report when representation has concluded, and file a certificate that he or she has done so.~~

March 7, 2017