

Special Notes-Criminal

Preamble

Sentencing is the culmination of a criminal charge. It is also the decision that will both impact and protect the community as well as determine the future of the convicted citizen. The Guidelines take into consideration the community. The probation officers, in addition to considering the Guidelines, also consider the human characteristics of each defendant to properly analyze that person's possible future. To do that, the officer must have the relevant experiences, goals, and expectations from Government and the citizen. Given there is no single answer to the question of what is "a sentence sufficient, but not greater than necessary" (*Kimbaugh v. U.S.*, 128 S.Ct. 558, 570 (2207)), the more relevant the information, the greater the chances the sentence will protect the public and reduce recidivism.

PRACTICE GUIDELINES

- I. Goal: The goal is to work from the start with the Probation Department to provide relevant information to the Court to fashion an appropriate sentence recommendation. The ultimate goal is appropriate sentence.
- II. Post-conviction duties of defense counsel: Discussion with presentence report writer at interview:
 - A. Defense attorney required to attend interview with Presentence Report (PSR) writer.
 - B. Defendant is required to bring appropriate documentation supporting mitigating factors.
 - C. Discuss with the PSR writer any 3553 factors they believe to be relevant. Help facilitate family contact if necessary.
 - D. Defense attorney will help attain the appropriate documents.
 - E. Suggestion of appropriate prison or camp location and why.
 - F. Appropriate programs, classifications while in prison.
 - G. Suggestion of appropriate programs for supervised release.
 - H. Discuss any factors, including post-offense conduct.
 - I. Both prosecutor and defendant should present the status of any active pending cases, including state circuit court cases. Defense attorney should speak to any other defense attorney representing defendant, and the prosecutor should speak to the prosecutor on any other cases involving defendant.
- III. Presentence duties of prosecutor and defense counsel: Memorandums of Law required by each.
 - A. Defendant should include:
 1. Agree or disagree with Guidelines as computed by Presentence Report.
 2. Discussion of Congressional factors. See, 18 U.S.C. § 3553(a)
 3. Statement of status of outstanding warrants, if any. Resolve old ones.
 4. Suggestion of appropriate prison or camp location and why.
 5. Appropriate programs, classifications while in prison, including re-entry.
 6. Suggestion of appropriate programs for supervision.
 7. Discuss any factors, including post-offense conduct.
 - B. Prosecutor should include:
 1. Suggestion of appropriate sentence and why. Focus on Congressional Factors. See 18 U.S.C. § 3553(a).
 2. Classification in terms of dangerousness and the like.
- IV. Sentencing Memorandum is due at least two weeks before the sentencing. A Motion by the Government under 5K1 is also due at least two weeks prior to the sentencing date.

V. Sealed Memos: Hard copy needs to be delivered to the U.S. Probation Officer.