

From: [REDACTED]
Sent: Friday, May 12, 2017 3:37 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Rule 32(e)(2)

Sara and Nancy,

Recently an issue came up that might impact either a rule amendment in light of the CACM cooperator issue, or an issue to consider at our next meeting. [REDACTED]

[REDACTED] A defendant in Billings has raised an objection under Rule 32(e)(2) that he was not personally given a copy of the PSR. You can surmise why he wants the report, either because the rule requires that or because someone wants him to produce his "papers". Without consideration of harmless error this is what the rule says:

"The probation officer **must** give the presentence report **to the defendant**, the defendant's attorney, and an attorney for the government at least 35 days before sentencing unless the defendant waives this **minimum period**."

It doesn't seem like there is much wiggle room in the language of the rule. In our district, up to this point, the rule has been honored in the breach. The rule if followed will obviously impact the presentence issue of the availability of "papers" in jails and perhaps create a problem with the solution suggested to have the PSR available only in the Warden's office or defined location. Waiver seems to address the 35 day rule as opposed to what three people get the PSR.

Don