

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
400 South Phillips Avenue
Sioux Falls, South Dakota 57104-6851
605-330-6640

07-CR-001

LAWRENCE L. PIERSOL
Judge

August 30, 2007

Mr. Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20544

Dear Mr. McCabe:

I am concerned about one aspect of the proposed amendment to Rule 32.2 of the Federal Rules of Criminal Procedure. According to the preliminary draft submitted for public comment: "(2) the court must enter a preliminary forfeiture order sufficiently in advance of sentencing to permit the parties to suggest modifications;".

In some instances, forfeiture situations are a mess and even the presentence report leaves unanswered questions that sometimes can only be resolved by the taking of evidence at the time of sentencing. The procedure that is suggested would seem to further increase the time between the entry of a guilty plea or a conviction by verdict and the time of sentencing. That period of time is one that is not beneficial to anyone because the Defendant is usually in a leased county jail or state prison awaiting transfer to a Federal correctional facility after sentencing. In addition to the cost, during that time there usually is no vocational training, no meeting of other than very basic medical needs, or anything else that is customarily done in a federal facility.

The Court in many instances is not in the position to make a forfeiture determination until evidence has been presented at the sentencing hearing itself. If the parties each have a position of what the Forfeiture Order should be, they could each submit their proposed Orders in advance of the sentencing hearing. That practice would be preferable to the current proposal of having the Court, often on inadequate information, making its own first estimate as to a preliminary Forfeiture Order.

Thank you for your consideration of this concern.

Sincerely yours,



LAWRENCE L. PIERSOL

United States District Judge

LLP:jh