

MISCELLANEOUS ORDER 2014.10.14
**PROCEDURE FOR POST-JUDGMENT REVIEW OF SENTENCES PURSUANT TO
UNITED STATES SENTENCING COMMISSION'S AMENDMENT TO POLICY
STATEMENT § 1B1.10**

On July 18, 2014, the United States Sentencing Commission ("USSG") promulgated an amendment to Policy Statement 1B1.10 authorizing retroactive changes to the guidelines applicable to sentences imposed for certain drug-related convictions. Absent contrary Congressional action, the amendment will go into effect on November 1, 2014. There are a number of defendants sentenced in the Northern District of California who, due to this amendment, may be eligible under 18 U.S.C. 3582(c)(2) to seek reductions in their sentences. To expedite appointment of counsel and disclosure of information relevant to sentencing, to facilitate timely and accurate implementation of this amendment in this district, and to conserve judicial resources, this General Order sets forth the procedures that shall apply to any defendant who contends that, pursuant to the July 18, 2014 amendment to USSG 1B1.10, ("Applicable Case"), he or she is eligible for a change in sentence.

1. Upon the filing of a proposed stipulation, motion, application or request for change in sentence in an Applicable Case, the Clerk of Court shall docket the matter under the case number of the underlying case and assign it to the Judge who presided over the underlying case for disposition pursuant to Criminal Local Rule 47-1 (Motion in a Criminal Case) or 47-4 (Stipulation), respectively. If the originally assigned Judge is no longer available, the case shall be reassigned pursuant to General Order 44.D.
2. Unless the assigned Judge orders otherwise, the Federal Public Defender's Office is reappointed to represent any defendant in an Applicable Case whom it originally represented with respect to the underlying offense or whom it represented with respect to prior resentencing proceedings.
3. Unless the assigned Judge orders otherwise, the CJA panel attorney is reappointed to represent the defendant in an Applicable Case whom he or she originally represented in either the underlying case or in prior resentencing proceedings. If the original CJA panel attorney is unavailable or otherwise declines the appointment, the Federal Public Defender's Office is appointed to represent the defendant, provided there is no conflict. If the Federal Defender's Office cannot represent the defendant, a new CJA panel attorney shall be appointed according to the regular procedures of our District for the appointment of a CJA panel attorney.
4. Because the defendants in Applicable Cases are incarcerated, have no income, and are presumptively without the funds to retain counsel, no new financial affidavit will be required for inmates previously represented by the Federal Public Defender's Office or a CJA panel attorney in seeking 18 U.S.C. 3582(c)(2) relief. This procedure shall be deemed to be in compliance with

- the Criminal Justice Act Plan of the Ninth Circuit Section IV (D). If a defendant in an Applicable Case was previously represented by retained counsel and is no longer able to afford private representation, the Federal Public Defender's Office or a CJA Panel Attorney shall be appointed to represent the defendant upon submission of a financial affidavit demonstrating that the defendant qualifies for such representation.
5. If a proposed stipulation, motion, or application is filed by a defendant *pro se*, the Clerk of Court shall notify the Federal Public Defender's Office, the Probation Office, and the United States Attorney's Office of the filing, which offices then have 30 days to file a status report, motion, or stipulation, including a proposal for how the matter should proceed or be resolved. The assigned Judge should not take any action on the defendant's *pro se* filing until either the 30 days expires or the Judge receives from the parties a status report, motion, or stipulation, whichever is earlier.
 6. Any motions or applications filed before November 1, 2014 shall be stayed until November 1, 2014, when they will then be referred for appointment of counsel and/or resolution in accordance with the procedures set forth in this Order.
 7. In accordance with Criminal Local Rule 44-2(a), counsel may inform the Court of his or her appearance on behalf of the defendant by electronically filing a notice of appearance. No separate court appearance for identification of counsel is required.
 8. The Probation Office is authorized to disclose, upon request, the defendants' Presentence Investigation Reports or Modified Presentence Investigation Reports, Judgments, and Statements of Reasons to the Federal Public Defender's Office, the CJA panel attorney, or retained counsel, and to the U.S. Attorney's Office.
 9. The Office of the Clerk of Court for the Northern District of California ("Clerk's Office") is authorized to disclose to the Federal Public Defender's Office, CJA panel attorney, or retained counsel, and to the U.S. Attorney's Office, upon request, documents from the defendants' case files that are not otherwise available through the judiciary's Public Access to the Court Electronic Records ("PACER") service to determine eligibility and extent of relief, or to evaluate conflicts. Specifically, the Clerk's Office may disclose motions and orders, plea agreements, charging documents, transcripts, and any other documents that relate to a defendant's sentencing. Neither appointed nor retained counsel may further distribute such documents unless so ordered by the Court.

10. The authorization referenced in paragraph 9, however, does not extend to documents that have been filed or placed under seal.

IT IS SO ORDERED. This 14th day of October, 2014

A handwritten signature in blue ink, appearing to read "Claudia Wilken", with a long horizontal flourish extending to the right.

CLAUDIA WILKEN

Chief United States District Judge