

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

Miscellaneous Order 2019.01.25

IN RE: FIRST STEP ACT OF 2018 (Dec. 21, 2018),
APPLICATION OF FAIR SENTENCING ACT of 2010

Pursuant to the provisions of the Criminal Justice Act, Title 18, U.S.C. § 3006A(a)(1) and (c), the Office of the Federal Public Defender for the Northern District of California (“FPD”) is hereby appointed to represent any defendant previously determined to have been entitled to appointment of counsel, or who was previously represented by retained counsel and is presently indigent, to determine whether that defendant may qualify to seek reduction of sentence and to present any motions or applications for reduction of sentence in accordance with Section 404 or Section 603 of the First Step Act of 2018, Senate Bill 756 (115th), signed into law December 21, 2018.

The United States Probation Office for the Northern District of California (“Probation”) and the United States District Court Clerk’s Office for the Northern District of California (the “Clerk’s Office”) are authorized to disclose Presentence Reports, Judgments in a Criminal Case, and Statements of Reasons to the FPD for the purpose of determining eligibility for relief, and for determining whether a conflict of interest precludes the FPD from representing a client. The FPD shall not further distribute such documents unless so ordered by the Court.

Should the FPD determine that there is a conflict preventing it from assuming appointment for an individual defendant, a member of the Criminal Justice Act Panel of this District (“CJA counsel”) shall be appointed according to the regular procedures of our District for the appointment of counsel.

1 In accordance with Criminal Local Rule 44-2(a), counsel may inform the Court of
2 his or her appearance on behalf of the defendant by electronically filing a notice of
3 appearance. No separate court appearance for identification of counsel is required.

4 Probation shall provide the FPD a complete list, generated by Probation's data
5 quality analyst from the PACTS database, of all known defendants sentenced for any drug
6 offense on or before June 21, 2012 (the date of *Dorsey v. United States*, 567 U.S. 260
7 (2012)), whether still incarcerated or on supervised release.

8 The Clerk's Office shall promptly notify the FPD of all pending *pro se* motions
9 seeking relief under Section 404 of the First Step Act. The Clerk's Office also shall
10 promptly notify the FPD when any new motion under the First Step Act for retroactive
11 application of the Fair Sentencing Act is filed by an inmate *pro se*. The FPD will then
12 have 21 days to decide whether to assume representation of the defendant. The
13 assigned Judge should not take any action on the defendant's *pro se* filing until either the
14 21 days expire or the parties file a status report, motion, or stipulation, whichever is
15 earlier.

16 For purposes of determining whether to file, or litigating, a motion seeking relief
17 under Section 404 of the First Step Act for reduction of sentence, Probation and the
18 Clerk's Office are authorized without further order to provide to the FPD, CJA counsel,
19 and the United States Attorney's Office any and all records from the court file, including:
20 plea agreement, Presentence Report, Statement of Reasons, criminal history records,
21 and sealed documents. Counsel shall not further distribute such documents unless so
22 ordered by the Court.

23 Upon the filing of a motion or a proposed stipulation seeking relief under Section
24 404 of the First Step Act, the Clerk's Office shall docket the matter under the case number
25 of the underlying case and assign it to the Judge who presided over the underlying case
26 for disposition pursuant to Criminal Local Rule 47-1 (Motion in a Criminal Case) or 47-4
27 (Stipulation), respectively. In the event that the Judge in the original proceeding is no
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

longer a member of the Bench of this District, the case shall be reassigned pursuant to
General Order 44.D.

IT IS SO ORDERED.

Date: January 25, 2019



Phyllis J. Hamilton
Chief Judge