

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**GENERAL ORDER 18-02
March 6, 2018**

**STANDING PROCEDURAL ORDER RE:
APPOINTMENT OF COUNSEL AND MOTIONS FOR RELIEF FROM A
CONVICTION OR SENTENCE UNDER 28 U.S.C. § 2255, OR OTHER AUTHORITY,
BASED ON LAB MISCONDUCT.**

Pursuant to the provisions of the Criminal Justice Act, Title 18, U.S.C. § 3006A(a)(1) and (c), and the discretion of the Court, the Office of the Federal Public Defender for the District of Massachusetts, New Hampshire, and Rhode Island (FDO) is hereby appointed to screen the case of any defendant who was previously determined to have been entitled to appointment of counsel, or who is now indigent, to determine whether that defendant may qualify for relief under 28 U.S.C. § 2255, or other authority, in light of *Bridgeman v. District Attorney for the Suffolk District*, 67 N.E.3d 673, 476 Mass. 298 (2017) and *Committee for Public Counsel Services v. Attorney General of Massachusetts*, SJC No. 2017-0347.

If the FDO determines a defendant has a colorable claim for relief, it shall take the following steps:

1. In the case of a defendant who previously was represented by the FDO, the FDO is authorized to file a petition.
2. In the case of a defendant who previously was represented by CJA counsel, the FDO will file a request to be appointed as counsel *unless* the CJA lawyer (1) is a member of the current CJA panel, and (2) expresses a willingness to represent the defendant, in which case the CJA lawyer will file a request to be appointed as

counsel. The CJA lawyer may file a petition and make the request for appointment *nunc pro tunc* in the event awaiting action on the request will interfere with the timely filing of the petition.

3. In the case of a defendant who was not previously found to be indigent, the FDO shall obtain a financial affidavit (CJA Form 23) from the defendant, and submit the completed form, along with a request to be appointed as counsel, to the Court. The FDO may file a petition and make the request for appointment *nunc pro tunc* in the event awaiting action on the request will interfere with the timely filing of the petition.
4. If the FPD has a conflict of interest that makes it unable to represent a defendant, it shall file a request that the clerk appoint a lawyer from the CJA Panel, following the usual appointment procedures.
5. If a CJA lawyer appointed in accordance with this General Order determines that the defendant whom s/he has been appointed to represent has previously filed a petition under 28 U.S.C. § 2255 and that, therefore, a new petition would be deemed a second or successive petition, the lawyer shall apply to the Court of Appeals for leave to file a second or successive petition. Any litigation in the Court of Appeals necessary to obtain the authorization required by 28 U.S.C. § 2255(h) shall be deemed to be ancillary to the district court representation. Therefore, any work expended in seeking that authorization may be included on the district court voucher.

So ordered.

/s/ Patti B. Saris
Patti B. Saris
Chief United States District Judge

/s/ Mark Mastroianni
Mark Mastroianni
United States District Judge

/s/ William G. Young
William G. Young
United States District Judge

/s/ Leo T. Sorokin
Leo T. Sorokin
United States District Judge

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

/s/ Allison D. Burroughs
Allison D. Burroughs
United States District Judge

/s/ Richard G. Stearns
Richard G. Stearns
United States District Judge

/s/ Rya W. Zobel
Rya W. Zobel
Senior United States District Judge

/s/ F. Dennis Saylor
F. Dennis Saylor
United States District Judge

/s/ Douglas P. Woodlock
Douglas P. Woodlock
Senior United States District Judge

/s/ Denise J. Casper
Denise J. Casper
United States District Judge

/s/ Edward F. Harrington
Edward F. Harrington
Senior United States District Judge

/s/ Timothy J. Hillman
Timothy J. Hillman
United States District Judge

/s/ Michael A. Ponsor
Michael A. Ponsor
Senior United States District Judge

/s/ Indira Talwani
Patti B. Saris
Chief United States District Judge

/s/ George A. O'Toole
George A. O'Toole
Senior United States District Judge

/s/ Mark Mastroianni
Patti B. Saris
Chief United States District Judge