

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMENDED GENERAL ORDER 15-1
As Amended, April 13, 2016

**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
JOHNSON V. UNITED STATES, 135 S.Ct. 2551 (2015)**

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 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 federal habeas relief under either 28 U.S.C. § 2255 or 28 U.S.C. § 2241 in light of *Johnson v. United States*, ___ U.S. ___, 2015 WL 2473450 (June 26, 2015).

The U.S. Probation Office for the District of Massachusetts is ordered to disclose, upon request, Presentence Reports to the Federal Public Defender's Office for the purpose of determining eligibility for relief under *Johnson*.

If the FPD determines that a defendant has a colorable claim for relief under *Johnson*, it shall take the following steps.

- 1) In the case of a defendant who previously was found to be indigent and was represented by the FPD, the FPD is authorized to file a petition if it determines that a colorable claim exists.

- 2) In the case of a defendant who previously was found to be indigent and was represented by CJA counsel who is a member of the current CJA panel, the FPD will contact the CJA lawyer and determine whether that lawyer wishes to provide further representation. Such further representation may include examination of court documents of the underlying predicate convictions.
 - a. If the CJA lawyer expresses a willingness to represent the defendant and then determines that the defendant has a colorable claim for relief, that lawyer shall file a request to be appointed for the purpose of preparing and filing a habeas petition.
 - b. If the CJA lawyer is either unavailable or unwilling to undertake the representation, the FPD will file a request to be appointed as counsel.
- 3) If the FPD identifies a defendant with a colorable claim for relief who was *not* previously found to be indigent, the FPD 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.

All requests to be appointed as counsel, as described above, shall include a brief explanation of the basis of the conclusion that the defendant has a colorable claim for relief.

- 4) If a lawyer appointed in accordance with General Order 15-1 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 raising a *Johnson* claim 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.

Upon receipt of a request to be appointed in cases described in paragraphs 1 through 2, the Clerk shall promptly appoint the FPD or the CJA counsel making the request. If the FPD has a conflict of interest that makes it unable to accept the appointment, it shall so state in the request and the clerk shall appoint a lawyer from the Criminal Justice Act Panel, following the usual appointment procedures.

A request made by the FPD upon behalf of a defendant who was not previously found to be indigent shall be submitted to a judicial officer for review of the financial affidavit. If the defendant is found to be indigent, the FPD shall be appointed, unless a conflict of interest bars that appointment. If the FPD has a conflict of interest, a lawyer from the CJA panel shall be appointed, following usual procedures.

Nothing contained herein shall prevent any party from filing other motions as it deems appropriate relative to *Johnson*.

So ordered.