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**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
MISCELLANEOUS NO.**

**IN RE: MOTIONS BASED ON RETROACTIVE CRACK  
COCAINE GUIDELINES AMENDMENTS**

**ORDER**

The following procedure shall be followed by agencies and attorneys in this district to assist the Court resolving sentence-reduction motions based upon retroactive amendments to the crack cocaine guidelines set forth in the United States Sentencing Guidelines Manual (USSG), Supp. to Appx. C, Amend. 706 (2007) (retroactivity effective March 3, 2008). This procedure does not create any rights for defendants and does not apply to motions for relief on other grounds.

1. The United States Probation Office (USPO) will provide to the Federal Defender's Office (FDO) and the U.S. Attorney's Office (USAO) lists of defendants potentially eligible for sentence reduction compiled by the United States Sentencing Commission (USSC) and the Administrative Office of the Courts (AOC).

2. The USPO shall also provide a copy of the Pre-Sentence Report (PSR), and Judgment & Commitment Order (J&C) to the FDO and the USAO for any defendant who appears on the USSC or AOC lists, or who has filed a motion pro se. The FDO shall provide such materials to any subsequently designated or retained counsel. The USPO shall provide copies of the PSR and J&C to counsel who has not received them from FDO. Such documents shall only be used for purposes of eligibility analysis and sentence reduction motions. The PSR shall be returned to the Court should the FDO determine a defendant is not eligible for a reduction.

3. If the FDO determines that a defendant on either list does not qualify for a sentence reduction, the FDO shall keep a record of that opinion, but take no further action.

4. If the FDO determines that a defendant on either list may qualify for a sentence reduction, but has not filed a motion pro se, the FDO shall notify the defendant and inquire whether he or she wishes to file a motion.

a. If a defendant wishes to file a motion, or has filed a motion pro se, and previously qualified for appointed counsel, the FDO shall contact former counsel regarding reappointment. The FDO shall designate counsel for the motion accordingly.

b. If a defendant wishes to file a motion, or has filed a motion pro se, and previously retained counsel, the FDO shall inquire of the defendant whether he or she intends to retain counsel for the motion. The FDO shall provide a financial affidavit and directions for requesting court-appointed counsel to the defendant.

c. If a defendant does not wish to file a motion, the FDO will keep a record of that decision, but take no further action.

5. Upon the filing of a motion by appointed or retained counsel, or upon designation of counsel when a motion was filed pro se, counsel shall confer with the USAO.

a. Appointed or retained counsel may request copies of the PSR and J&C from the FDO. Counsel may also petition the Court for disclosure of the PSR pursuant to 18 U.S.C. § 3552(d).

b. If the parties agree to a sentence reduction, they shall file a joint recommendation to the Court. Such joint recommendation shall indicate whether the defendant consents to imposition of the jointly recommended sentence without a hearing.

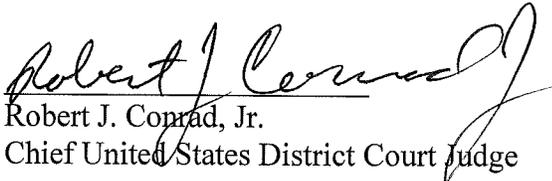
c. If the parties do not agree, the USAO shall file a response to the motion.

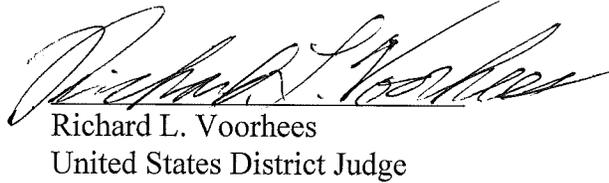
6. Upon the filing of a joint recommendation or response, the USPO shall conduct an investigation and prepare a report for the Court and parties analyzing the defendant's eligibility for a sentence reduction and detailing his or her institutional adjustment.

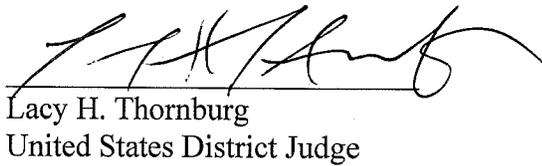
7. The Court shall resolve the motion with or without a hearing on a case-by-case basis as justice requires.

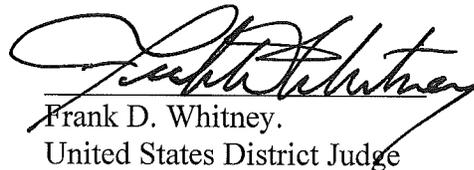
8. Priority shall be given to defendants potentially eligible for immediate release from incarceration.

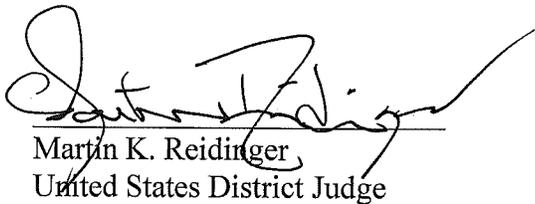
**IT IS SO ORDERED** this the 27<sup>th</sup> day of February, 2008.

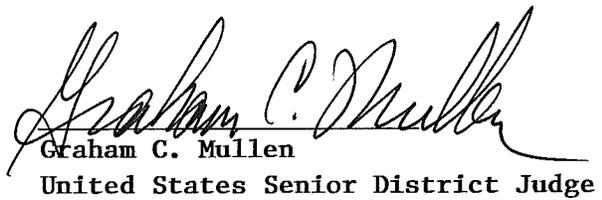
  
Robert J. Conrad, Jr.  
Chief United States District Court Judge

  
Richard L. Voorhees  
United States District Judge

  
Lacy H. Thornburg  
United States District Judge

  
Frank D. Whitney.  
United States District Judge

  
Martin K. Reidinger  
United States District Judge

  
Graham C. Mullen  
United States Senior District Judge