

1 \*\*COUNSEL HEADER\*\*

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3 Previous Attorney for Defendant  
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UNITED STATES DISTRICT COURT

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DISTRICT OF \*\*\*\*\*

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\*\*\*\*\*DIVISION

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UNITED STATES OF AMERICA,

NO. CR \*\*

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Plaintiff,

Ex Parte Application for Appointment  
of Counsel; Exhibits

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v.

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\*\*,

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Defendant.

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Defendant \*\*, by his previously appointed attorney, \*\*, hereby respectfully requests that this Court re-appoint his counsel under the Criminal Justice Act to assist him in preparing and filing a motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c).

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This application is made pursuant to 18 U.S.C. § 3006A, and is based on the attached memorandum of points and authorities, declaration of counsel, and exhibits; the files and records of this case; and any such further information as shall be made available to the Court.

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Respectfully submitted,

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DATED: February \_\_, 2008

By \_\_\_\_\_  
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Previous Attorney for \*\*

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**Memorandum of Points and Authorities**

\*\* respectfully applies to this Court to appoint counsel for his proceeding under 18 U.S.C. § 3582(c). As set forth in the attached declaration, undersigned counsel was appointed to represent \*\* in his criminal proceedings. He was convicted of \*\* and sentenced by this Court to a term of \*\* months' imprisonment. His case involved cocaine base. Based on a review of records and files in this case, as well as the law, counsel believes that \*\* is likely eligible to file a motion for reduction of sentence, pursuant to 18 U.S.C. § 3582(c).

This Court should appoint counsel. The amendments to USSG § 1B1.10, effective March 3, 2008, now invite the presentation of new facts and arguments in the context of § 3582(c) proceedings. See Amendment 712 to Guidelines. Moreover, in United States v. Hicks, 472 F.3d 1167 (9th Cir. 2007), the Ninth Circuit held that, when resentencing defendants pursuant to § 3582(c)(2), district courts must treat the Guidelines as advisory, as required by United States v. Booker, 543 U.S. 220 (2005). In view of these changes to § 3582(c) proceedings, \*\* will be greatly assisted by the appointment of counsel. In addition, appointment of counsel will allow for negotiation with the Government, facilitate factual and legal presentation to the Court, and promote the efficient use of judicial resources.

\*\* is still indigent. See Exhibit A. Undersigned counsel continues to be a member of the federal indigent defense panel and is available to accept this reappointment. As the Court is aware, the Administrative Office of the United States Courts has established a new representation type for appointment of counsel in these cases. See Exhibit B.

For the foregoing reasons, \*\* respectfully submits that appointment of counsel, as set forth in the proposed order, is appropriate.

Respectfully submitted,

DATED: February \_\_, 2008

By \_\_\_\_\_  
\*\*\*

DECLARATION OF \*\*

I, \*\*, hereby state and declare as follows:

1. I am an attorney admitted to practice in the \*\*\* District of \*\*\* and a member of this district federal indigent defense panel. In this capacity, I was appointed to represent \*\*\* in his criminal case.

2. \*\*\* was convicted of \*\*\* and sentenced to \*\*\* months imprisonment. His case involved cocaine base. Based on my review of records and files in this case, as well as the law, I believe that \*\*\* may be entitled to the benefit of the retroactive amendment to the crack cocaine guideline.

3. Given the forthcoming amendments to USSG § 1B1.10 and the Ninth Circuit’s decision in United States v. Hicks, 472 F.3d 1167 (9th Cir. 2007), I believe that \*\* and the Court would be assisted by the appointment of counsel in this case.

4. \*\* has requested my assistance in these proceedings. Exhibit A is a signed financial affidavit showing his indigence. Exhibit B is a memorandum from the Administrative Office of the United States Court regarding appointment of counsel for these proceedings. I am available to accept this appointment.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this day at \*\*\*, \*\*\*\*.

DATED: February \_\_, 2008

\_\_\_\_\_  
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# FINANCIAL AFFIDAVIT

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT OR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE

IN UNITED STATES  MAGISTRATE  DISTRICT  APPEALS COURT or  OTHER PANEL (Specify below)

IN THE CASE OF

\_\_\_\_\_ V.S. \_\_\_\_\_

FOR \_\_\_\_\_  
AT \_\_\_\_\_

LOCATION NUMBER  
\_\_\_\_\_

PERSON REPRESENTED (Show your full name)  
\_\_\_\_\_

- 1  Defendant—Adult
- 2  Defendant - Juvenile
- 3  Appellant
- 4  Probation Violator
- 5  Parole Violator
- 6  Habeas Petitioner
- 7  2255 Petitioner
- 8  Material Witness
- 9  Other

DOCKET NUMBERS

Magistrate

District Court

Court of Appeals

CHARGE/OFFENSE (describe if applicable & check box →)  Felony  Misdemeanor

## ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

EMPLOYMENT	Are you now employed? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Am Self-Employed
	Name and address of employer: _____
	IF YES, how much do you earn per month? \$ _____ IF NO, give month and year of last employment How much did you earn per month? \$ _____
OTHER INCOME	If married is your Spouse employed? <input type="checkbox"/> Yes <input type="checkbox"/> No
	IF YES, how much does your Spouse earn per month? \$ _____ If a minor under age 21, what is your Parents or Guardian's approximate monthly income? \$ _____
ASSETS	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input type="checkbox"/> No
	RECEIVED SOURCES IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES \$ _____
CASH	Have you any cash on hand or money in savings or checking accounts? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES, state total amount \$ _____
PROPERTY	Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input type="checkbox"/> No
	IF YES, GIVE THE VALUE AND \$ DESCRIBE IT VALUE DESCRIPTION _____ _____ _____

DEPENDENTS	MARITAL STATUS	Total No. of Dependents	List persons you actually support and your relationship to them
	<input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> WIDOWED <input type="checkbox"/> SEPARATED OR DIVORCED	_____	_____ _____ _____

OBLIGATIONS & DEBTS	APARTMENT OR HOME:	Creditors	Total Debt	Monthly Paymt.
	DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)	_____	\$ _____	\$ _____
	_____	_____	\$ _____	\$ _____
	_____	_____	\$ _____	\$ _____

I certify under penalty of perjury that the foregoing is true and correct. Executed on (date) \_\_\_\_\_

SIGNATURE OF DEFENDANT (OR PERSON REPRESENTED) \_\_\_\_\_



ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

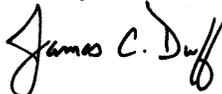
JAMES C. DUFF  
Director

WASHINGTON, D.C. 20544

January 22, 2008

MEMORANDUM

To: Judges, United States Courts of Appeals  
Judges, United States District Courts  
United States Magistrate Judges  
Circuit Executives  
Federal Public/Community Defenders  
District Court Executives  
Clerks, United States Courts of Appeals  
Clerks, United States District Courts  
Senior Staff Attorneys

From: James C. Duff 

RE: CAPTURING CRACK COCAINE RETROACTIVE AMENDMENT DATA IN THE  
CJA PANEL ATTORNEY PAYMENT SYSTEM AND FEDERAL DEFENDER  
CASE MANAGEMENT SYSTEM (**INFORMATION**)

In order to capture CJA workload associated with retroactive application of amendments to the sentencing guidelines for crack cocaine offenders, a new representation type for the CJA Panel Attorney Payment System and a new case type for the Federal Defender case management system has been created.

The CJA Panel Attorney Payment System will use the new representation type of "CK" for "crack cocaine retroactive amendment," which has already been established in the system. A new representation should be opened for these actions with a case maximum of \$1,500 for panel attorney compensation.

The Federal Defender case management system will use the case type of "CK" for "crack cocaine retroactive amendment," and a new case should be opened for these actions. A file to update the Federal Defender case management system is being released to Federal Defenders.

If you have questions or need further assistance, please contact Diane Goldberg, Office of Defender Services, on 202-502-2909 or via e-mail at [Diane.Goldberg/DCA/AO/USCOURTS](mailto:Diane.Goldberg/DCA/AO/USCOURTS).