

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**GENERAL ORDER 12-03
November 6, 2012**

**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 ALLEGED MISCONDUCT
AT THE WILLIAM A. HINTON STATE LABORATORY**

This Standing Procedural Order governs requests for appointment of counsel under the Criminal Justice Act (“CJA”), 18 U.S.C. § 3006A, and motions for relief under 28 U.S.C. § 2255, or other authority, by defendants convicted of a criminal offense in this Court who are affected by the alleged misconduct at the William A. Hinton State Laboratory in Jamaica Plain, Massachusetts from 2003 through 2012 (“the Alleged Lab Misconduct”).

1. A defendant who believes he or she may be affected by, and may have a basis for relief as a result of, the Alleged Lab Misconduct, or the defendant’s counsel, may request the Court to appoint counsel for the defendant under the CJA by filing a motion for appointment of counsel in the affected criminal docket. A *pro se* motion for relief based on the Alleged Lab Misconduct shall be treated as a request for appointment of counsel. If the defendant previously was represented by appointed counsel, the Clerk shall promptly appoint the defendant’s prior counsel, if available, under the CJA, including former CJA Panel members who are no longer members of the CJA Panel; or, if prior counsel is unavailable shall appoint new counsel from the Federal Public Defender’s Office or the CJA Panel. Any other defendant who believes he or she may be affected by, and may have a basis for relief as a result of, the Alleged Lab Misconduct, or

the defendant's counsel, may request the Court to appoint counsel for the defendant under the CJA by filing a motion for appointment of counsel in the affected criminal docket together with a Financial Affidavit (CJA-23). The Financial Affidavit shall be filed under seal. Such motions shall be allowed provided the defendant meets the financial qualifications for appointed counsel.

2. The Probation Department shall provide counsel with the Presentence Report within seven (7) days of a request by counsel of record.

3. If the case is one in which the Alleged Lab Misconduct affects evidence that would have been presented or was presented in the federal criminal case, the following procedures will apply:

a. The defense counsel appointed or who has filed a notice of appearance to represent a defendant who believes he or she may be affected by, and may have a basis for relief as a result of, the Alleged Lab Misconduct shall notify the Office of the United States Attorney within seven (7) days of appointment or filing a notice of appearance.

b. Within twenty-one (21) days of the filing in federal court of a motion for relief based on the Alleged Lab Misconduct, the appointment of counsel, the filing of an appearance for retained counsel, or a letter request by counsel of record for a defendant who may be affected by, and may have a basis for relief as a result of, the Alleged Lab Misconduct, defense counsel and the Office of the United States Attorney shall confer with each other and shall exchange, if available, any laboratory certifications and plea agreements in the case in the possession of counsel. The Office of the United States Attorney shall also provide defense counsel with the information in its direct possession regarding the Alleged Lab Misconduct, unless protected from disclosure for law enforcement purposes. If the Office of the United States

Attorney withholds information in its direct possession regarding the Alleged Lab Misconduct for law enforcement purposes, it shall notify the Court in writing ex parte without the need to file a motion under Local Rule 116.6(b).

c. Within thirty (30) days of the filing of a motion for relief based on the Alleged Lab Misconduct, the appointment of counsel, or the filing of an appearance for a defendant who may be affected by, and may have a basis for relief as a result of, the Alleged Lab Misconduct, defense counsel and the Office of the United States Attorney shall confer with each other and file a joint status report outlining the parties' positions, including but not limited to:

- (i) Whether a motion for relief has been filed in federal court based on the Alleged Lab Misconduct and, if so, the government's position on it. If not, the schedule the parties anticipate for filing, or considering filing, such a motion.
- (ii) Whether the parties envision requesting further discovery.
- (iii) Whether the defendant is in custody and, if so, the defendant's place of custody and projected release date.
- (iv) The parties' view of the appropriate next steps in the case.

4. If the case is one in which the Alleged Lab Misconduct solely affects the evidence underlying a predicate conviction that either was the basis for the federal conviction (e.g. 18 U.S.C. § 922(g)), enhanced the defendant's sentence, and/or was counted in the defendant's criminal history (a "Relevant Prior Conviction"), and the defendant, exercising due diligence, has obtained a ruling vacating a Relevant Prior Conviction, the following procedures will apply:

a. Within seven (7) days of the filing in federal court of a motion for relief, defense counsel shall provide the Office of the United States Attorney with a copy of any relevant state court ruling vacating a Relevant Prior Conviction, if in writing, and copies of the

drug certificates obtained in connection with that case.

b. Within thirty (30) days of the filing in federal court of a motion for relief, the parties shall confer and file a status report outlining the parties' positions, including but not limited to:

- (i) Whether the government plans to oppose the motion for relief and, if so, setting a date for the filing of such opposition.
- (ii) Whether the defendant is in custody and, if so, the defendant's place of custody and projected release date.
- (iii) The parties' view of the appropriate next steps in the case.

5. Nothing contained herein shall create any new right to relief from any judgment for a defendant alleged to have been affected by the Alleged Lab Misconduct. Nothing contained herein shall prevent any party from filing other motions as they deem appropriate relative to the Alleged Lab Misconduct.

6. This order shall expire twelve months from the date it is entered unless otherwise extended by this Court.

So Ordered.

Mark L. Wolf

Mark L. Wolf
Chief Judge

Rya W. Zobel

Rya W. Zobel
United States District Judge

Douglas P. Woodlock

Douglas P. Woodlock
United States District Judge

Richard G. Stearns

Richard G. Stearns
United States District Judge

George A. O'Toole

George A. O'Toole
United States District Judge

Denise J. Casper

Denise J. Casper
United States District Judge

Edward F. Harrington

Edward F. Harrington
Senior United States District Judge

Joseph L. Tauro

Joseph L. Tauro
United States District Judge

William G. Young

William G. Young
United States District Judge

Nathaniel M. Gorton

Nathaniel M. Gorton
United States District Judge

Patti B. Saris

Patti B. Saris
United States District Judge

F. Dennis Saylor, IV

F. Dennis Saylor, IV
United States District Judge

Timothy S. Hillman

Timothy S. Hillman
United States District Judge

Michael A. Ponsor

Michael A. Ponsor
Senior United States District Judge