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## Some Things You Should Know



*An Introduction to the Federal Public Defender's Office  
and the Federal Court System*

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## **OFFICE OF THE FEDERAL PUBLIC DEFENDER**

The Office of the Federal Public Defender exists solely to represent people who are facing criminal charges in federal court and who are unable to afford a lawyer to represent them. The expenses of this office and your attorney's salary are paid by the federal government. Your attorney's loyalty, however, is to you and you alone.

The attorney who is assigned to your case is experienced in defending people charged with federal crimes. Your attorney will defend you to the fullest extent of the law. You will probably have many questions before and after reading this brochure. Your attorney will be able to provide you with answers to those questions and to tell you how the law applies to your case.

You have certain rights regarding the Federal Public Defender's Office representing you. These rights are set forth on the next page.

We look forward to working with you on your case.

### Terms used in this brochure:

In federal court, "government" means the federal prosecutor(s), also called the Assistant United States Attorney or the U.S. Attorney's Office. "The government" may also refer to law enforcement officers.

The term "the court" means the judge.

## YOUR RIGHTS

*You have the following rights while represented by this office:*

- You have the right to reasonable contact with your attorney.
- You have the right to an explanation of the charges against you, the possible penalties, and of any possible defenses.
- You have the right to be updated on the progress of your case, and of its investigation.
- You have the right to review all correspondence, discovery, pleadings and orders filed or received on your behalf.
- You have the right to decide whether or not to go to trial or plead guilty.
- If you go to trial, you have the right to decide whether or not to testify.

If you have any questions or concerns about your rights or your representation in general, you should first contact the attorney assigned to your case to resolve your questions. If you are still not satisfied, you should direct your questions to the Federal Public Defender.

## **APPOINTMENT OF COUNSEL**

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In most circumstances, the law provides that a person facing criminal charges in federal court is entitled to the assistance of an attorney. If you cannot afford to hire an attorney, then the court can appoint one for you.

A federal judge decides whether to appoint a lawyer for someone who is facing criminal charges in federal court. Lawyers in the Office of the Federal Public Defender cannot give legal advice to anyone unless the court has approved the appointment of an attorney. Legal advice and representation by the Office of the Federal Public Defender are limited to those matters related to the criminal charge for which an attorney was appointed.

In some instances, the court may decide you have money or assets to pay some or all of the cost of legal representation. If the court orders you to pay those costs, payments will be made to the Clerk of the District Court, not to the attorney or to the Office of the Federal Public Defender.

## **WRITING YOUR ATTORNEY**

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Your mail to your attorney is confidential. However, it is wise to write on the envelope:

### **“CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGE”**

Always include your return address, and, if you are incarcerated, include your inmate number. *Address the letter as follows:*

Name of Attorney  
Office of the Federal Public Defender  
3400 U.S. Courthouse  
300 Virginia St., East  
Charleston, WV 25301

Be careful what you write to other people. If the government obtains copies of letters written by you to friends, other inmates, etc., it can be used against you.

## **CALLING YOUR ATTORNEY**

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The Federal Public Defender's Office accepts collect calls at (304) 347-3350. Calls to your attorney will not be monitored and will be kept confidential.

The Federal Public Defender's Office handles thousands of calls each year. Your attorney will make every effort to take your calls. Please remember that your attorney also has other clients, must attend court appearances, witness interviews, and other matters away from the office; your collect call will not be accepted if your attorney is unavailable.

## **CONFIDENTIALITY**

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**Do not talk to anyone about your case without first discussing the matter with your attorney.** You may discuss anything concerning your case with your attorney because these matters are confidential. Remember: this confidential privilege extends only to discussions between you and your attorney. Anything you tell your family, friends, or others, such as cellmates, is **not** confidential, and a judge can require those people to testify about what you have said, whether they want to testify or not.

The attorney-client privilege exists between you, your attorney, and your attorney's staff only. For this reason, your family or friends cannot be present during most discussions between you and your lawyer. Your attorney cannot discuss any part of your case with your family or friends, unless you give your permission.

## **CALLS FROM JAILS TO FRIENDS & FAMILY**

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You should assume that law enforcement is monitoring these calls. Do not discuss your case on the phone with anyone except your attorney.

## **CONTACT WITH LAW ENFORCEMENT**

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**Always check with your attorney before talking to anyone about your case, particularly to those in law enforcement.** Law enforcement agents may say that they want to help you, but talking to law enforcement agents could really hurt your case.

# OUTLINE OF A CRIMINAL CASE

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**Phase I. Preliminary Proceedings**

**Phase II. Filing of Your Case**

**Phase III. Preparing Your Case**

**Phase IV. Trial**

**Phase V. Sentencing**

**Phase VI. Appeal**

## **I. PRELIMINARY PROCEEDINGS**

There are three instances in which you may have a lawyer appointed to represent you regarding criminal charges:

- (1) if you receive a *grand jury* target letter from an Assistant United States Attorney;
- (2) if you are charged in a criminal complaint;
- (3) or if you are indicted by a *grand jury*.

A warrant for your arrest can be issued upon a criminal complaint or an indictment.

### **1. Initial Appearance**

After arrest, the officer making the arrest is required to take you before the nearest available magistrate judge without unnecessary delay. This hearing is called your *initial appearance*. The magistrate will inform you of the charges against you and of your right to request the appointment of an attorney if you qualify. **You will not be required to plead guilty or not guilty at this point, nor will you be required to answer questions about the charges against you.**

At your initial appearance, the magistrate judge will either release you on bond or the government will move to have you detained. Before your initial appearance, a person from the United States Probation Office (Pretrial Services) will interview you about your background, including your prior criminal record. ***Anything you say during the pretrial services interview can be used against you at either trial or sentencing.*** Therefore, you have the right to speak with an attorney before being interviewed by Probation.

**Never discuss the charges pending against you, or any other illegal activity, with the pretrial services officers, because your statements will be used against you.** The pretrial services officer may also interview members of your family. After the pretrial services officer completes his investigation, he prepares a report for the court, the government, and you, that contains either proposed conditions for your release or, if the government has moved for detention, a recommendation as to whether you should be detained.

If you are released on bond, a pretrial services officer will supervise you to insure that the bond conditions are met.

## **2. Bail Hearing/Detention Hearing**

If the government makes a motion to detain you, your *detention hearing* will usually be held within 5 days of your initial appearance. You will be held in a regional jail until your detention hearing. At your detention hearing, the magistrate judge will determine whether you will be released on bond or whether you will be detained in a regional jail. If you are detained, you will be held in a regional jail. Your attorney has no control over which regional jail you are held in.

### **3. Bonds**

If you are not detained (in jail), your release may involve:

- (a) secured bond – you would have to deposit money with the clerk (very rarely used)
- (b) unsecured bond (the most frequently used), or
- (c) home confinement – with electronic monitoring (this requires a landline telephone, so that the probation office can check on you).

### **4. Preliminary Hearing**

If you have not yet been indicted by a grand jury, you are entitled to a *preliminary hearing* within 10 days of your initial appearance if you are in custody.

The prosecutor must present evidence to convince a judge that there is enough evidence (“probable cause”) to allow the government to continue holding you on the charges. The preliminary hearing may be the first opportunity that you and your attorney will have to learn about the evidence in your case.

## **II. FILING OF YOUR CASE**

### **1. Indictment**

Either before your arrest or within a few weeks of arrest, an Assistant United States Attorney will present your case to a grand jury. A grand jury consists of 16-23 people who hear the government’s presentation. If the grand jury decides that there is enough evidence against you to believe that you committed a crime, the grand jury will issue an indictment against you.

## **2. Arraignment**

You can generally expect to be arraigned before a magistrate judge within one to two weeks after being indicted. At the *arraignment*, your charge(s) will be read to you. You will then be required to enter a plea of not guilty to the charge(s) against you. The magistrate judge will inform you of your trial date, dates of hearings or pre-trial motions, and of the judge assigned to your case.

## **III. PREPARING YOUR CASE**

### **1. Getting Ready**

After you are charged, your attorney will be gathering the facts necessary to advise you of the strength of the government's case, any defenses you may have, and the possible sentence you may face if you are convicted. Your attorney will also help you decide whether it is best to go to trial or to plead guilty to one or more of the charges. A complete investigation may take several weeks or months.

Your attorney will keep informed by letter or visit. If you do not understand any matters in your case, write or call your attorney, and these matters will be explained to you.

### **2. Investigation**

Preparation is the key to the proper resolution of your case. Your attorney will have the assistance of an investigator. The investigator may need to meet with you. Just like your attorney, our investigators are bound by the attorney-client privilege. What you tell them will be just as confidential as if you were talking with your attorney.

To avoid surprises in the courtroom your attorney and your investigator need to know the truth, even if the truth makes you

appear to be guilty. You and your family can help in the investigation of your case by giving the names and addresses of witnesses who can give an explanation of what happened. **Do not contact witnesses who will be called to testify against you. Doing so exposes you to being accused of witness tampering which is a federal crime.**

Also, the magistrate judge will generally direct you, as a condition of your release on bond, not to have contact with any potential witness except through your attorney. If you violate this condition (including favorable witnesses) your bond could be revoked and you could be put in jail.

Your family will naturally be concerned about your case. **However, it is often not in your best interest to discuss your case with anyone, even your family.** Any conversations you have with anyone other than your attorney or his staff could later be used as evidence against you!

### **3. Discovery**

Your attorney will take certain steps (called “discovery”) to learn more about the government’s case against you. It is very important to know the witnesses who are expected to be used against you and we will obtain copies of any law enforcement reports or other documents that may be available in your case. In all likelihood, your attorney will talk with the United States Attorney’s office about your case. Your attorney will not disclose any of the confidential information that you have discussed.

### **4. Motions**

Your attorney may file one or more motions before trial or during trial. Examples of motions include: motions to continue, in which your attorney asks the court to extend a deadline, and motions to suppress, in which your attorney asks the court to exclude certain

evidence from trial. You should not file any motions on your own.

## **5. Cooperation/Substantial Assistance**

In some cases, the government might seek your cooperation in the investigation and prosecution of other individuals in exchange for a better deal for you. You are never required to cooperate with the government unless you specifically agree to do so. Your attorney will discuss the pros and cons of cooperation with you. The decision whether to cooperate is yours to make. The specifics of any cooperation agreement must be worked out between your lawyer and the prosecutor. Do not speak with, or attempt to cooperate with, any government agent or law enforcement officer on your own.

If you decide to cooperate and your cooperation results in the successful investigation or prosecution of others, the government may file a **“substantial assistance” motion** on your behalf. This motion allows the court to impose a sentence which is lower than the sentence required by the Sentencing Guidelines. **Only the government can file a substantial assistance motion.** Thus, sentence reductions for substantial assistance are not guaranteed.

## **6. Trial or Guilty Plea?**

Your right to a trial by jury is guaranteed by the United States Constitution. In making any decision to plead guilty or to take your case to trial, your attorney will assist and advise you; however, the final decision is yours.

## **IV. TRIAL**

The law provides that you be tried no later than 70 days after your first appearance. However, there are many things that can extend the trial date.

Your case will be tried before a jury of twelve people unless you waive this right. Unless the court dismisses the charges against you at the end of the government's presentation, your attorney will have the opportunity to present the evidence and witnesses, if any, that he feels will best help you. The decision as to which witnesses to call will be made by your attorney, after consultation with you. You must decide yourself whether or not you will testify. Your attorney will give you advice on this, including the risks involved, but the final decision is yours alone.

After all the evidence has been presented, each side gives a closing argument. The judge will then read instructions to the jury for it to use in reaching its verdict. The jury will deliberate until it has reached a unanimous verdict. If the jury cannot agree on a unanimous verdict, then a mistrial is declared.

## **V. SENTENCING**

Your sentence will depend in part on whether you plead guilty or go to trial. Since this may be one of the most critical decisions in your case, you must discuss the application of the Sentencing Guidelines with your attorney before deciding whether or not to go to trial.

## **1. Sentencing Guidelines**

The Sentencing Guidelines, which apply to federal cases and are issued by the United States Sentencing Commission, are the starting point to determine your sentence. Each crime is assigned a “**Base Offense Level**” under the guidelines. The level offense may increase or decrease depending on the circumstances of your case.

The Guidelines also determine your “**Criminal History Category**,” which ranges from I to VI. Your criminal history category is determined by the number of prior sentences you have received. The number of points depends upon the length of sentence, and where and when it was served.

Once your offense level and your criminal history category have been determined, your attorney can refer you to the “**Sentencing Table**.” This table shows the range of incarceration periods. Your attorney will have an opportunity to present evidence to the judge in support of a sentence below the guideline range. However the government may present evidence in support of a sentence above the guideline range.

## **2. Sentencing Hearing**

If you are found guilty, or if you have chosen to plead guilty, you will be scheduled for a *sentencing hearing*. Before the sentencing hearing, a Pre-sentence Investigation Report (PSR) will be prepared by the United States Probation Office. Make sure that you speak with your attorney before providing any information to the Probation Officer.

Your attorney will get a copy of the PSR, and will review it with you before you are sentenced. If your attorney disagrees with the PSR, he or she may file objections. Because you will have reviewed the PSR, you will have a good idea prior to the sentencing hearing whether you are likely to be sentenced to imprisonment.

You have the right to speak to the judge at your sentencing hearing. You should discuss that issue with your attorney well before the sentencing hearing.

The judge will also give your attorney an opportunity to speak on your behalf. The judge will not permit other people to speak on your behalf, but he will consider letters of support. **Let your attorney know in advance the names and addresses of the people whose views you believe are important for the judge to know.**

If you are sentenced to imprisonment, you should be prepared to be taken into custody immediately. You are not likely to be given an opportunity to go home to “get your affairs in order.” You will probably be placed into the custody of the United States Marshal immediately. Therefore, you should not carry very much cash, or wear any jewelry, watches, or other items of value to the sentencing hearing, and you should make arrangements for someone to take care of your personal and financial matters.

### **3. Types of Sentences**

Most people convicted in federal court receive a prison sentence. While probation is an option, the judge awards probation in only limited cases. You could be placed in any institution in the United States. The Bureau of Prisons tries to place people as close to their home as possible; however many factors, including the offense, your prior record, and the projected length of imprisonment, will all be involved in determining where your confinement is served. **Parole has been abolished in the federal system. If sentenced to prison, you can expect to serve at least 85% of your sentence.**

In offenses involving restitution, the court must order you to pay restitution, except in certain situations. The court may, and in some cases must, impose a fine. You will be required to pay a special assessment of \$100 for each felony count of conviction. The special

assessment is similar to court costs.

#### **4. Supervised Release**

Supervised release must also be imposed in connection with a sentence of incarceration. When you are released from incarceration, you will be under supervision of the United States Probation Office for a period usually ranging from two to five years, depending on the crime for which you were convicted. If you violate the conditions of your supervised release, you can be sentenced to an additional term of confinement, followed by another period of supervised release.

## **VI. APPEAL**

If you are convicted (and in some instances, even if you plead guilty) you have the right to appeal your case. A notice of appeal must be filed within 10 days after judgment (your sentencing order) is entered, or you lose that right. An appeal is an opportunity to tell the appellate court (the 4<sup>th</sup> Circuit Court of Appeals in Richmond, Virginia) exactly how the judge did not follow the law, or what rights you were denied.

If you tell your attorney to file an appeal, he or she will do so. However, if your attorney believes that there are no issues for appeal your attorney is required to tell that to the Court of Appeals.

Typically, the appeal of your case will take six months to a year or more to be decided. While your case is on appeal, the judge may, but is not likely, to release you. You do not have an automatic right to bail while appealing.

## **OTHER REPRESENTATION**

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As indicated throughout this brochure, the Office of the Federal Public Defender (OFPD) cannot represent you in any matter without appointment by a United States magistrate judge. When all aspects of this appointment have been completed, you will receive a letter from your attorney indicating that his representation is completed and that your file will be closed. **This does not mean that particular attorney or someone else from this or another Federal Public Defender's office cannot represent you in the future. However, it does mean that you will need to apply to a United States magistrate judge before any additional legal services or representation can be provided to you.**