

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**In Re: Petitions for Retroactive
Application of United States
Sentencing Guidelines for
Certain Crack Cocaine
Convictions**

No. 148

ADMINISTRATIVE ORDER

HERNDON, CHIEF JUDGE:

This Order supersedes Administrative Order 137, which is hereby vacated.

As a result of the Fair Sentencing Act of 2010, this Court continues to receive motions asking it to examine, pursuant to 18 U.S.C. §3582(c)(2), past sentences for the possibility of reductions. Often these requests include motions requesting that the Court appoint counsel to help the defendant navigate through the process.

The Seventh Circuit has now spoken to this issue and held in the case of *United States v. Foster*, ___ F.3d ___, 2013 WL 466201, *1 (7th Cir. (Ill.) Feb. 8, 2013), that a district court is not authorized by law to appoint counsel for a defendant in such an instance. As a consequence, of course, this Court will not appoint CJA Panel attorneys nor other outside attorneys to represent defendants in cases where the defendant is seeking a reduction in a sentence for conviction pursuant to 18 U.S.C. §3582(c)(2). An exemption to this policy, of course, will be if an attorney volunteers to represent such a defendant *pro bono*.

However, as a service to the effected defendants, the Federal Public Defenders office is willing to enter its appearance on behalf of defendants who file such motions. The Clerk's office is directed to notify that office of any such filings. This appearance is voluntary on the part of that office initially but once the office appears the attorney client relationship naturally attaches. Should the public defenders office feel compelled to withdraw either because of a conflict or because it determines the petition is frivolous, the rule in *Foster* will effectively prevent the Court from appointing counsel for the defendant who has not convinced a lawyer to represent him *pro bono*.

With or without counsel, the Court, in consultation with the Probation office, will carefully review each motion to reduce sentence to determine if a reduction is in order under the law.

IT IS SO ORDERED.

Entered this 13th day of February, 2013.

David R. Herndon  Digitally signed by
David R. Herndon
Date: 2013.02.13
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**Chief Judge
United States District Court**