UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 13 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN RE:	)	
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USE OF OFFENDERS/DEFENDANTS AS CONFIDENTIAL INFORMANTS	)	**G.O. 99-13**
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ORDER

Now on this 13th day of July, 1999, it is hereby ordered that all Federal, State, and Local Law Enforcement Agencies comply with the procedures attached hereto in Attachment A, "Procedure for the Management by Federal Probation Officers of Offenders who are Confidential Informants," and Attachment B, "Proceedure for the Management by Federal Probation and Pretrial Services Officers of Defendants who are Confidential Informants." These provisions shall apply to all criminal defendants and offenders under the jurisdiction of the United States District Court for the Northern District of Oklahoma.

It is further ordered that the Chief U.S. Probation Officer or his designee provide each major local, state and federal law enforcement agency within the Northern District of Oklahoma with a copy of this "ORDER" along with Attachments A and B.

Further, each agency so notified is to attest to the receipt of the ORDER and attachments and ensure the contents are disseminated throughout their agency.

Terry C. Kern
Chief United States District Judge

Sven Erik Holmes
United States District Judge

Michael Burrage
United States District Judge

PROCEDURE FOR THE MANAGEMENT BY FEDERAL PROBATION OFFICERS OF OFFENDERS WHO ARE CONFIDENTIAL INFORMANTS

Introduction: Persons convicted of federal criminal offenses often are, or become, confidential informants for law enforcement agencies. When released into the community under court order of conditional release, persons on probation or supervised release (hereinafter referred to as "offenders") are under the supervision of the probation office.

Utilization as an informant:

(1) The Court may authorize an offender who is under the supervision of the probation office to work as a confidential informant at the request of a law enforcement agency (herein referred to as "sponsoring agency").

(2) As part of the request to utilize the services of the offender, the sponsoring agency will furnish to the Court, through the probation office, an overview of the proposed utilization. Such overview will contain the sponsoring agency's operating instructions to the offender, the sponsoring agency's proposed administrative controls, and an evaluation of the risk to the offender and to the community, with plans to address such risk. Such overview will also state why the potential benefit to the government outweighs the risk of the offender's reinvolvement with criminal associates. The request for consideration for the use of an offender's services will specify the period of time (up to 90 days) for which the services of the offender are desired.

(3) The probation office will review requests from sponsoring agencies to utilize offenders as confidential informants and will provide to the Court its observations, opinion, and recommendation. In this connection, given the sensitive nature of confidential informants, it is suggested that the Court limit involvement with these cases to designated representatives of the probation office. Such representatives ideally would be the chief probation officer or a supervisor or specialist with expertise in this area. In particular cases with sensitive and overriding circumstances, the sponsoring agency may request that only the Court review the request. In such cases, the sponsoring agency should provide the Court compelling and specific reasons why review by the probation office is not appropriate.

(4) As part of the utilization process, a representative of the sponsoring agency is to conduct an in depth briefing with the offender concerning his/her relationship with the sponsoring agency, the intended target(s), and the operating instructions and the conditions imposed by the Court. The representative of the probation office will attend this briefing. At the conclusion of this meeting, a letter of agreement will be signed by the offender, the sponsoring agency representative, and the probation office

representative. The Court shall be advised that this has occurred. A copy of the letter of agreement will be provided to the Court upon its request, where it shall remain under seal.

Conditions and Operating Procedures:

(1) The offender shall be advised by the sponsoring agency that he/she is not to participate in any otherwise criminal activity without the prior approval, consent, and guidance of the sponsoring agency. "Otherwise criminal activity" is defined as activity that would constitute a crime under state or Federal laws if engaged in by a private person acting without the authority and approval of a law enforcement agency.

(2) The sponsoring agency shall take all necessary, reasonable and possible precautions to ensure the safety of the offender and the community.

(3) During the period of the offender's services as an informant, the sponsoring agency shall be responsible for bringing to the attention of the Court, either directly or through the probation office, any violations of the conditions of release or any changes in the conditions of the original agreement with the offender, including any unauthorized criminal activity. The sponsoring agency will also be responsible for informing the probation office whenever the sponsoring agency believes that the probation staff is in danger due to the activity of the offender.

(4) Every ninety days, and at the conclusion of the authorized period, the agency will provide a report to the Court, either directly or through the probation office, to include the extent of the offender's cooperation and effectiveness in the investigation, the status of the investigation, and whether financial remuneration or other consideration/reward has been provided to the offender. Upon the termination of the use of the offender, the sponsoring agency shall advise the Court, either directly or through the probation office, of the precise amount of such remuneration. All such reports shall remain under seal until such time as it may be appropriate to make known the offender's cooperation.

Approval:

(1) Pursuant to these guidelines, the Court shall acknowledge in writing its approval or disapproval of such requests, and the date of such approval or disapproval.

(2) The offender's services in this capacity are to be approved for a period not to exceed ninety days, commencing as of the date of the Court's approval. In the event circumstances develop that would indicate that an extension of the specific period of services would be in the best interest of all concerned, the sponsoring agency will provide to the Court, either directly or through the

probation office, a written request for such an extension, to include appropriate justification for the extension. Such request and justification shall be forwarded at least ten days prior to the end of the specified term, unless emergency circumstances dictate otherwise.

(3) In the case of an emergency wherein the approval of the Court cannot be obtained prior to the use of the offender as an informant, the sponsoring agency shall contact, in person or telephonically, the Chief U. S. Probation Officer or his designee, for tentative approval. The Chief U. S. Probation Officer or designee shall immediately notify the Court of the oral authorization and the rationale supporting the authorization. As soon as possible thereafter, the oral request shall be reduced to writing according to the previously described format.

Termination: At the conclusion of the period of authorization, the sponsoring agency shall advise the offender in writing that such authorization has been terminated and that he/she is no longer authorized to act as an informant for the agency. The offender shall acknowledge in writing receipt of this notification. The sponsoring agency shall also notify the Court, either directly or through the probation office, that the use of the offender has been terminated.

Confidentiality of Records: Access to any and all documents, records, or other information identifying an offender as a confidential informant shall be limited to the designated representative(s) of the probation office. Such records, documents, or other identifying data shall be maintained under strict security, under lock and key or preferable in a combination locked container. Access to the above shall be strictly limited to and controlled by the designated representative(s) of the probation office. In no instance shall any records, documents, or data pertaining to an offender who is a confidential informant be flagged, marked, or otherwise identified in any way which would indicate to any person normally not having access to these records or documents that the offender is serving as a confidential informant.

PROCEDURE FOR THE MANAGEMENT BY FEDERAL PROBATION AND PRETRIAL SERVICES OFFICERS OF DEFENDANTS WHO ARE CONFIDENTIAL INFORMANTS

Introduction: Persons charged with criminal offenses and awaiting adjudication of those charges frequently become confidential informants for law enforcement agencies. These persons, hereinafter referred to as "defendants", often are under the supervision of probation and/or pretrial services officers.

The following principles are recognized:

The use of defendants as confidential informants is a legitimate and longstanding practice;

Probation and pretrial services officers are charged with assessing the risk of nonappearance and the danger defendants may pose, and with supervising defendants released by the court under conditions of release;

Defendants under supervision who are confidential informants may present a risk to the safety of the probation and pretrial services officers who supervise them.

Conditions and Operating Procedures: Procedures for the management of defendants who are utilized as confidential informants are as follows:

(1) The law enforcement agency utilizing the defendant as a confidential informant will notify the probation or pretrial services officer assigned the case of the status of a defendant as a confidential informant.

(2) The probation or pretrial services officer will provide the law enforcement agency a copy of the conditions of release and the officer's intended supervision activities.

(3) The law enforcement agency will advise the probation or pretrial services officer of any changes in the investigation which will either impact on the supervision activities or require a change in the conditions of release.

(4) The law enforcement agency will advise the probation or pretrial services officer of any violations of the conditions of release of the defendant.