



GuideLines

News from the U.S. Sentencing Commission

February 2004

Commission Publishes Proposed Amendments for 2004 Amendment Cycle

The United States Sentencing Commission published its proposed amendments and issues for comment in the *Federal Register* on December 30, 2003 (see 68 F.R. 75339) and January 14, 2004 (see 69 F.R.2169). The proposed amendments include the following:

- Proposed guideline increases for offenses involving child pornography and sexual abuse of minors in response to the PROTECT Act and other concerns. In general, the proposed changes relate to (1) child pornography offenses, (2) offenses involving travel or transportation to engage in prohibited sexual conduct with a minor, (3) offenses regarding the dispersion of obscenity through misleading Internet domain names, (4) the conditions of probation and supervised release for sexual offenders, and (5) criminal sexual abuse.
- A proposed amendment to Chapter Eight providing greater guidance to organizations and courts regarding the criteria for an effective program to prevent and detect violations of the law ("compliance programs");
- Proposed increases for public corruption offenses, including increased base offense levels and new specific offense characteristics;

Amendments *Continued on page 2*

Chair Murphy Steps Down After More Than Four Years Guiding the Commission

On December 19, 2003, Diana E. Murphy, Judge on the United States Court of Appeals for the Eighth Circuit, submitted to the President her resignation as Chair and Member of the United States Sentencing Commission effective January 31, 2004. Her letter to the President, which explains that recent changes on her court led to her need to step down, is reproduced on page 3 of this newsletter.

Chair Murphy has presided over the Commission since a complete slate of new commissioners was appointed in November 1999, after the Commission had been operating with no commissioners for over a year. Under her leadership, the Commission worked diligently to clear the backlog of congressional directives and new criminal legislation, while also taking on major initiatives addressing economic crimes, terrorism, and drug offenses. The Commission's well regarded report on federal cocaine sentencing policy reflected the Murphy Commission's consistent use of intensive information gathering and public hearings to analyze a controversial topic and to provide thoughtful recommendations. Her tenure also was marked by the strategic use of ad hoc advisory groups to provide expertise on complex subjects, such as improving the guidelines for sentencing organizations and examining the impact of the guidelines on Native American offenders prosecuted and sentenced in federal court under the Major Crimes Act.



Judge Diana E. Murphy ended her term as chair January 31, 2004.

Many have recognized Chair Murphy's successful efforts to ensure that the Commission acts by consensus and builds strong relationships with all three branches of government and its many constituents in the field. One well wisher noted that during her chairship, "The Sentencing Commission faced unparalleled challenges in terms of amendments, resolving circuit conflicts, responding to Congress, dealing with terrorism, and ensuring that the sentencing process works fairly and justly" and that it "has done an admirable job under trying times." He added that "the 'Murphy Commission' stands for the highest ideals of sentencing: fair punishment and fair process." With four complete amendment cycles behind it and the difficult issues presented by the PROTECT Act having already been addressed early in Chair Murphy's fifth amendment cycle, the Commission is well positioned to move forward after her departure. She will be greatly missed, but the positive impact of her leadership will continue as the Commission faces new challenges in the future. ■

Message from the Chair

Diana E. Murphy

This newsletter message is my last as Chair and Member of the United States Sentencing Commission. The reasons for my resignation are set out in my letter to the President, which is reproduced elsewhere in this newsletter. The past year has been an eventful one, and the coming year is sure to bring many new challenges for the Commission. The Chief Justice's 2003 Year End Report on the Federal Judiciary focuses on the PROTECT Act and its significance in respect to the relationship between the Judicial Branch and the Legislative Branch, and there will no doubt be continuing discussions of related sentencing issues.

In actuality, every year brings to the Commission major issues and challenges, and the agenda remains full, ranging from new congressional directives to sentencing questions dealing with immigration offenses and the transportation of hazardous materials. We recently published for public comment a number of proposed amendments, which are discussed more fully in an article in this newsletter.

I wish the Commission and its wonderful staff the best as it continues its work in the years to come. I will miss my colleagues at the Commission, and I will miss having regular communication with the many individuals and groups who follow the Commission's work. One of the things I have especially enjoyed while serving as Chair is the wide variety of correspondence I received, ranging from statements of appreciation to pointed criticism to proposals for change. I have appreciated the input readers of this newsletter have provided during my tenure as Chair and know that you will continue to help ensure that federal sentencing policy is fair and just. ■

Guidelines

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Amendments *Continued from page 1*

- Proposed increases for drug offenses involving GHB and GBL in response to the PROTECT Act;
- Proposed guideline increases for homicide offenses to address longstanding proportionality issues and proposed increases for offenses involving assaults committed against federal judges in response to the 21st Century Department of Justice Appropriations Authorizations Act;
- Proposed guideline increases for man-portable air defense system (MANPADS) or any similar destructive device; and
- Proposed specific offense characteristics and other changes to the guidelines pertaining to alien smuggling and immigration documents.

The Commission also published specific issues for comment or proposed amendments regarding aberrant behavior, offenses involving hazardous materials, the implementation of the CAN-SPAM Act of 2003, and modifications to the "mitigating role cap" at section 2D1.1(a)(3). Further information regarding the proposed amendments and issues for comment may be obtained from the Commission's website at www.ussc.gov. ■

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Diana E. Murphy, Chair



December 19, 2003

President George W. Bush
 The White House
 1600 Pennsylvania Avenue NW
 Washington, DC 20500

Dear Mr. President:

I write to submit my resignation as Chair and Member of the United States Sentencing Commission effective January 31, 2004.

For over four years I have been burning the candle at both ends in order to carry out these responsibilities while also maintaining a caseload as an active judge on the United States Court of Appeals for the Eighth Circuit. While my colleagues on the court have been wonderfully supportive of my commission service, our court has recently experienced a turnover in the majority of its judgeships. At this point I feel the need to do more to help keep the court's work current, and I cannot accomplish this without leaving the Commission.

It has been a privilege to serve on the Sentencing Commission, but it has faced many challenges since being reconstituted in 1999. Although the Commission is an independent agency within the judicial branch, it is truly a junction point where interests of the three branches of government intersect and where a variety of conflicting views must be considered from all those interested in federal sentencing issues.

The individuals with whom I have served, both commissioners and staff, are dedicated public servants who work diligently to carry out the goals of the Sentencing Reform Act and to improve the functioning of the guideline system. I have greatly enjoyed their company, and I will miss seeing them on a regular basis.

Sincerely,

Diana E. Murphy

cc: Senator Orrin G. Hatch
 Senator Patrick J. Leahy
 Chief Justice William H. Rehnquist

Chief Judge Sessions Reappointed to the Commission

President Bush nominated Chief Judge William K. Sessions, III, for reappointment to the Sentencing Commission on September 30, 2003, and the nomination was approved by the full Senate on December 9, 2003. Chief Judge Sessions, following nomination by President Clinton, was first confirmed as a commissioner of the Sentencing Commission in November of 1999. The appointments as sentencing commissioner of Judge Ruben Castillo and Commissioner Michael E. O'Neill expired October 31, 2003, but both continue to serve under the governing statute until Congress adjourns *sine die*, new commissioners are appointed, or they are reappointed to the Commission. ■



Chief Judge William K. Sessions, III,
of the District of Vermont

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Commission Meeting Schedule

(Dates are tentative. All meetings will take place in Washington, DC, unless otherwise noted. For details, please visit www.ussc.gov/meeting.htm.)

February 27, 2004
Public Meeting

March 17, 2004
Public Hearing

March 18, 2004
Public Meeting

April 7, 2004
Public Meeting

Commission Welcomes New Ex-Officio Member

Ms. Deborah J. Rhodes on December 30, 2003, was designated an *ex-officio* member of the U.S. Sentencing Commission, representing the Office of the Attorney General, U.S. Department of Justice. Ms. Rhodes serves as counselor to the Assistant Attorney General for the Criminal Division of the Department of Justice where she will supervise the Division's Office of Policy and Legislation. Prior to coming to Main Justice, Ms. Rhodes worked in the U.S. Attorney's Office in San Diego, serving as the acting chief of the Appellate Section and the deputy chief of the Narcotics section. She also was a member of the Organized Crime and Racketeering Section, Philadelphia Strike Force. Ms. Rhodes graduated with high honors from Wheaton College and with honors from Rutgers Law School where she was editor-in-chief of the Rutgers Law Journal. Following law school, she clerked for Judge J. William Ditter, Jr. of the U.S. District Court for the Eastern District of Pennsylvania. The Commission sincerely thanks former *ex officio* commissioner, Mr. Eric Jaso, and former acting *ex officio* commissioner, Mr. John Richter, for their dedicated service and contributions during their tenures. ■

Plans Underway for the Thirteenth Annual National Seminar

Co-sponsored by the U.S. Sentencing Commission and the Tampa Bay Chapter of the Federal Bar Association, the Thirteenth Annual National Seminar on the Federal Sentencing Guidelines will be held May 19-21, 2004, at the Wyndham Miami Beach Resort, Miami Beach, Florida. Questions regarding seminar registration can be addressed to Ms. Lori Hoffman at the law offices of Mr. James E. Felman in Tampa, Florida, or you may call her at (813) 754-3031. You are also welcome to contact Ms. Margaret Olaghere at (202) 502-4564 at the Sentencing Commission. ■