

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

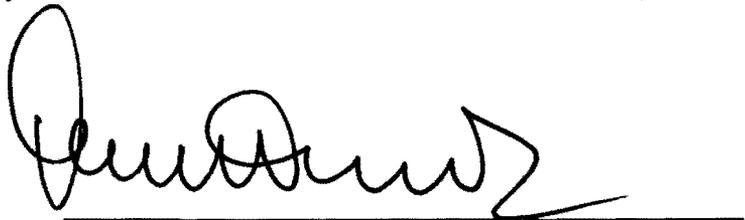
Re: Implementation of the First Step Act,
P.L. 115-391

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) Misc. No. 19-103
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**ADMINISTRATIVE ORDER #2 RELATIVE TO
IMPLEMENTATION OF THE FIRST STEP ACT, P.L. 115-391.**

In furtherance of the sound administration of justice, and after consultation with the United States Attorney and Federal Public Defender for this District, it is hereby ORDERED that the protocol annexed hereto, marked as Exhibit A, will be implemented by the Clerk of this Court and all judicial officers of this District in proceedings under the First Step Act, P.L. 115-391 in cases in which the defendant or petitioner is not represented by retained counsel.

This Order shall remain in full force and effect until modified or vacated by further Order of the undersigned or of his successor in office. The Clerk of this Court shall transmit a copy of this Order to the United States Attorney and Federal Public Defender for this District, and to each judicial officer in this Court.



Mark R. Hornak
Chief United States District Judge

Dated: April 10, 2019

EXHIBIT A

First Step Act of 2018 Protocol for Review and Litigation of Post-Conviction Cases Under the Act U.S. District Court, Western District of PA

I. Standing Order – Appointment of Federal Public Defender to determine eligibility and present counseled motions, and notification of Federal Public Defender regarding the filing of *pro se* motions

- Per Judge Hornak’s Jan 18, 2019 Administrative Order, entered at Misc. No. 19-103:
 - The Federal Public Defender has been appointed to represent any defendant in this district who was previously determined to have been entitled to the appointment of counsel, or who is now so eligible, to determine whether that defendant may be eligible for relief under the First Step Act, and to present any motions or applications related thereto to the Court for disposition.
 - In addition, the Order provides that the Court shall promptly notify the Federal Public Defender of any pending *pro se* motions seeking relief under the Act, so that the Federal Public Defender can determine whether the assumption of representation is appropriate under the Act. The Court will also promptly notify the Federal Public Defender when any new petition for relief under the Act is filed *pro se*.

II. Federal Public Defender Review

- The Federal Public Defender’s office is currently reviewing the cases of over 150 potentially eligible inmates.
- Priority for review and filing is being given to persons potentially eligible for immediate release following application of the First Step Act, including but not limited to those persons identified as immediately releasable by the Sentencing Commission.
- The Federal Public Defender will undertake the representation and filing for inmates deemed eligible for relief pursuant to the First Step Act, and refer appropriate cases for the appointment of CJA counsel.

III. Pro Se Filers

- Upon receipt of a *pro se* motion or letter under the First Step Act, the Clerk’s Office sends the *pro se* filers a letter informing the filer that their motions or correspondence has been forwarded to the Federal Public Defender for

review.

- Once notified of a *pro se* filing, the Federal Public Defender will undertake a review of the case and notify the filer of the determination regarding their eligibility for relief. The Court should withhold action on these *pro se* filings during this review period.
- After completing its review, the Federal Public Defender will notify the relevant Deputy Clerk that the case is ripe for action and if it intends to file a counseled motion on the person's behalf.
- If no counseled motion will be filed, the Court should enter an Order:
 - (1) notifying the *pro se* litigant that Section 404 of the First Step Act prohibits the consideration of a motion made under that section if a previous motion was made under that section and denied after consideration on the merits, and
 - (2) directing the *pro se* litigant to file a notice of (a) his intention to withdraw the motion, (b) his request to have his motion considered as previously filed, or (c) his request to file a supplement prior to the government's response and the court's consideration.
- Upon receipt of a response from the *pro se* litigant expressing his intention to proceed in his motion under Section 404, by his original or supplemental filing, the Court shall issue an order directing the government to respond.

IV. Counseled Motions

- Upon the filing of a contested Federal Public Defender or other counseled motion pursuant to the First Step Act, the Court should enter a briefing order indicating a time for the government to respond and a date for reply.
- If a counseled motion indicates that the case is appropriate for expedited consideration, the Court should issue an expedited briefing schedule and give the motion priority for consideration.