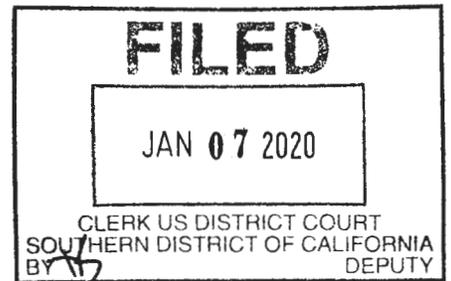


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA



In the Matter of:

DISTRICT COURT POLICY OF)
MANAGEMENT OF CONFIDENTIAL)
INFORMANTS)

AMENDED GENERAL ORDER 438-B

The court hereby amends the "District Court Policy for Management of Confidential Informants on Probation or Supervised Release." Part 1(c), clarifying the protocol for making a request to utilize an informant, was added.

DATED: 1/7/2020

LARRY ALAN BURNS,
Chief Judge
United States District Court

SEE ATTACHED

DANA M. SABRAW, Judge
United States District Court

WILLIAM Q. HAYES, Judge
United States District Court

JANIS L. SAMMARTINO, Judge
United States District Court

ANTHONY J. BATTAGLIA, Judge
United States District Court

CATHY ANN BENCIVENGO, Judge
United States District Court

SEE ATTACHED

GONZALO P. CURIEL, Judge
United States District Court

CYNTHIA BASHANT, Judge
United States District Court

William B. Enright by JPM
WILLIAM B. ENRIGHT, Judge
United States District Court

Marilyn L. Huff
MARILYN L. HUFF, Judge
United States District Court

Barry Ted Moskowitz
BARRY TED MOSKOWITZ, Judge
United States District Court

Jeffrey T. Miller
JEFFREY T. MILLER, Judge
United States District Court

Thomas J. Whelan
THOMAS J. WHELAN, Judge
United States District Court

SEE ATTACHED
M. James Lorenz
M. JAMES LORENZ, Judge
United States District Court

John A. Houston
JOHN A. HOUSTON, Judge
United States District Court

Roger T. Benitez
ROGER T. BENITEZ, Judge
United States District Court

Michael M. Anello
MICHAEL M. ANELLO, Judge
United States District Court

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SOUTHERN DISTRICT OF CALIFORNIA

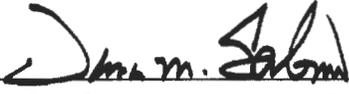
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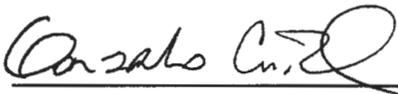
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THOMAS J. WHELAN, Judge
United States District Court


M. JAMES LORENZ, Judge
United States District Court

JOHN A. HOUSTON, Judge
United States District Court

ROGER T. BENITEZ, Judge
United States District Court

MICHAEL M. ANELLO, Judge
United States District Court

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**POLICY FOR MANAGEMENT OF CONFIDENTIAL
INFORMANTS ON PROBATION OR SUPERVISED RELEASE**

It is the position of the U.S. Probation Office in the Southern District of California that persons under supervision not be used as confidential informants. However, it is recognized that the use of confidential informants is an important law enforcement tool, and the courts may occasionally find it necessary to approve the use of offenders who are, or will be, under supervision.

The use of individuals under supervision by the U.S. Probation Office authorized to act as confidential informants often results in the following changes:

- Conflicts with conditions/goals of supervision
- Risks to probation officers
- Confusion and misunderstandings between law enforcement agencies and probation officers

To overcome these challenges, the attached suggested procedures for the management of offenders permitted to function as confidential informants are being submitted to the Court in the Southern District of California for judicial review and adaptation.

Goals of the Procedures

- To ensure the integrity of the supervision orders of the court
- To provide for the consistent and safe management of persons under supervision and to ensure probation officer safety
- To promote interagency communication, cooperation, and understanding

1. **Request to Utilize an Informant**

- (a) The court may authorize an offender who is under the supervision (probation or supervised release) of the Probation Office to work as confidential informant at the request of a law enforcement agency (herein referred to as "sponsoring agency"). Under no circumstances, except those identified under emergency circumstances, may an offender under supervision by the Probation Office be utilized to work as a confidential informant without the court's authorization.
- (b) To initiate a request to utilize the offender, the sponsoring agency, through the U.S. Attorney's Office, and after consulting with the Probation Office, shall furnish to the court a written utilization request detailing the following:
 - (1) why the potential benefit to the government outweighs the risk of the offender's reinvolverment with criminal associates;
 - (2) an evaluation of the risk to the offender and to the community with plans to address such risk;
 - (3) the sponsoring agency's proposed administrative controls;
 - (4) the sponsoring agency's operating instructions to the offender; and
 - (5) the specific period of time (not to exceed 120 day increments) for which the use of the offender is desired.
- (c) The request should be made to the sentencing judge. The sentencing judge may designate another district judge to hear the application. If the sentencing judge is no longer a member of the court, the request should be made to Chief Judge of the court.
- (d) The court shall acknowledge in writing its approval or disapproval of the sponsoring agency's request(s) for use of confidential informants, and the date(s) of such approval or disapproval.
- (e) If approved by the court, a copy of the order, as well as a copy of the sponsoring agency's utilization request, will be forwarded by the U.S. Attorney's Office to the designated probation officer assigned to receive these documents.
- (f) Following approval by the court, a representative of the sponsoring agency is to conduct an initial briefing with the offender concerning the nature of the anticipated cooperation, the agency's operating instructions, and the conditions imposed by the court. The

designated probation officer is to attend this meeting. If it is anticipated that the probation officer might be exposed to any of the intended targets of the cooperation during supervision of the offender, the sponsoring agency will brief the probation officer regarding any possible danger and the identity of the target. At the conclusion of this briefing, an agreed upon list of the terms and conditions of cooperation will be signed by the offender, the sponsoring agency representative, and the probation officer, with each party receiving a copy. Once that document has been executed, the sponsoring agency may commence utilization of the offender as a confidential informant.

2. Approval

- (a) If approved, the offender's utilization will not exceed a period of 120 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 utilization would be in the best interest of all concerned, the sponsoring agency, through the U.S. Attorney's Office, will provide to the court written requests for such extensions, not to exceed 120 day increments. Copies of these requests will be provided to the Probation Office. Such requests shall include appropriate justification for any extension and shall be forwarded to the court at least 10 days prior to the end of a previously authorized 120 day term, unless emergency circumstances dictate otherwise.
- (b) If an emergency exists, and the utilization of the informant is the only means available to protect life, prevent imminent loss of property or evidence, or apprehend or identify a fleeing offender, before approval of the court can be obtained, the court and probation officer shall be notified, either directly by the sponsoring agency or the U.S. Attorney's Office, within 72 hours after commencement of the utilization of the offender.

3. Conditions and Operating Procedures

- (a) During the period the offender is authorized by the court to act as a confidential informant, supervision of the offender by the Probation Office may be restricted to office contacts as necessitated by safety concerns and as determined on a case by case evaluation. 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 authority and approval of a law enforcement agency.

- (b) The sponsoring agency will provide to the Probation Office a written report every 30 days outlining the status of the offender's participation. This shall include any change from the original terms discussed in the initial debriefing as to: 1) the status or nature of the offender's use as a confidential informant; 2) the safety to the community, monitoring probation officer, or the offender created by the offender's cooperation; 3) the agency's operating instructions to the offender; 4) whether and in what amount the offender was paid for information/services and/or to relocate; 5) whether the offender was reimbursed for operating expenses for housing, utilities, or other items; 6) whether the offender was provided assistance with his immigration status.
- (c) During the period of the utilization of the offender as an informant, the sponsoring agency shall be responsible for immediately bringing to the attention of the Probation Office any unauthorized criminal conduct by the offender and/or any violations of the conditions of supervision of which they may be aware. Timely notification shall also be made in writing.

4. Termination

At the conclusion of the period of authorization, the sponsoring agency shall advise the offender and the Probation Office that such authorization has been terminated and that the offender is no longer authorized to act as an informant for the agency. Any previously unreported financial remuneration or other consideration/reward which has been provided to the offender will also be reported. In addition, the supervising agency shall report whether or not additional compensation is expected to be paid to the offender within the next 90 days.

5. Confidentiality of Records

All documents relating to use of an offender as a confidential informant, or requests for such use, shall be sealed by the court and kept in a fashion so as not to disclose the offender's cooperation. Transmission of any of these documents between the court, the U.S. Attorney's Office, and the Probation Office, shall be done in a secure manner.

The Probation Office shall maintain all records relating to use of an offender as a confidential informant, or requests for such use, in a locked safe. Probation officers and staff having access to such material will be designated by the Chief Probation Officer, and notice of the persons selected to handle such information will be provided to the U.S. Attorney's 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 being utilized as a confidential informant. All material in the probation file relating to confidential informant activity will be maintained in an envelope marked "Confidential."

If the Probation Office receives any request or subpoena for any information relating to an offender's status as an informant, the Probation Office shall not respond without first acquiring the permission of the court and providing the supervising agent, the U.S. Attorney's Office, or pertinent prosecutor's office an opportunity to litigate the propriety of disclosure of the information.

TERMS AND CONDITIONS OF COOPERATION

The following conditions shall be adhered to by the offender who wishes to act as a confidential informant (hereinafter "CI"), the law enforcement agency monitoring cooperation, and the U.S. Probation Office:

1) The offender's use as a confidential informant shall last for a period of no more than 120 days and shall commence on the date the court approves the cooperation.

2) A written report will be provided by the sponsoring agency to the undersigned probation officer every 30 days. The report shall include, but is not limited to, advising the Probation Office of any change in the following: a) the status or nature of the offender's use as a confidential informant; b) the safety to the community, monitoring probation officer, or the offender created by the offender's cooperation; c) the agency's operating instructions to the offender; d) whether and in what amount the offender was paid for information/services and/or to relocate; and whether the offender was reimbursed for operating expenses for housing or utilities or other items; and e) whether the offender was provided assistance with his immigration status. If the thirty-day report is not submitted in a timely fashion, the offender and the monitoring agent understand that authorization for cooperation may be terminated by the court. The sponsoring agency will also notify the probation officer in the thirty-day report, or in some other written form, of any violations of the conditions of supervision, including unauthorized criminal conduct, of which the agency is aware. The final thirty-day report, prepared at the end of the authorization period, will include any remuneration which has been provided, or that will be provided, by the monitoring agency during the next 90 days.

3) Unless the court orders otherwise, prior approval for all travel (in relation to cooperation as well as all other travel) outside the Southern District of California to any place within the United States can be granted by the probation officer. Requests for out of country travel must be brought to the attention of the probation officer and approved by the court.

4) The offender is not to participate in any criminal activity, unless such participation is with the prior approval, consent, and guidance of the sponsoring agency. If the offender sustains any arrest for unauthorized criminal activity of which the sponsoring agency becomes aware, the sponsoring agency will immediately notify the probation officer.

5) By signing below, the offender acknowledges that he/she understands these terms and conditions for providing cooperation to the sponsoring agency. The offender also acknowledges by signature that he/she is willing to abide by these conditions and is not signing this form based on any threat or coercion.

Offender

Date

U.S. Probation Officer, Witness

Date

Sponsoring Agency Representative, Witness

Date

THIRTY-DAY REPORT

TO: U.S. Probation Officer _____

FROM: Special Agent _____

RE: Status of _____

Date: _____

This report is prepared to update you regarding the activities of
_____ for the thirty-day period of
_____ to _____

1. I ___ have ___ have not (check one) been in contact with the above-referenced person during the thirty-day period.

2. During the thirty-day period, the status or nature of the offender's use as a confidential informant (check one):

a. ___ has not changed;

b. ___ has changed in the following manner:

3. To the best of my knowledge, the status of the safety to the community, monitoring probation officer, or the offender (check one):

a. ___ has not changed;

b. ___ has changed in the following manner:

4. Since our last report or the initial briefing, the operating instructions to the offender:

a. have not changed;

b. have changed in the following manner:

5. During the thirty-day period, the following remuneration was supplied to the offender by me or a representative of _____
(law enforcement agency) (check applicable boxes):

a. no remuneration was given;

b. the offender was paid _____ for information/services;

c. the offender was paid _____ to relocate;

d. the offender was reimbursed for operating expenses for:

(1) housing or utilities;

(2) other

6. During the thirty-day period, I or a representative of _____
(law enforcement agency) have have not (check one) assisted the offender with regard to his/her immigration status.

7. To the best of my knowledge (check one):

a. the offender is following the terms and conditions of his release;

b. the offender has been arrested (as described in the "Comments" section below);

c. the offender has committed a crime for which he has not been arrested (as described in the "Comments" section below);

d. the offender has violated the terms and conditions of probation/supervised release (as described in the "Comments" section below)

8. Comments:

9. This is the final report (check if applicable). The offender is no longer being used as a confidential informant.

If you need to reach me regarding the above-referenced offender, I may be contacted at:

_____ (office)
_____ (pager)

Reviewed by:

Supervisor Signature and Title