CHARGED:

A Quick Reference Guide for Clients in Federal Criminal Cases

Brought to you by the Law Offices of

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Table of Contents

Introduction....4

The Legal Team....7

The Defense Team....10

Flow Chart....12

Initial Appearance....13

Detention Hearing....14

Preliminary Examination....16

Indictment....17

Waiver of Preliminary Hearing
and Waiver of Indictment....18

Arraignment..19

Motions Hearing/Trial Setting (MHTS) 21

Jury Trial..22

Change of Plea Hearing...23

Probation Interview..24

Sentencing...25

Conclusion... 27

Introduction

If you're reading this you may find yourself in one of two places – perhaps in custody on a federal case, or out of custody on bond on a federal case.

And if you're like most of my clients, the criminal case process is entirely foreign to you; you've never been in this situation before, and trying to make sense of what is going on is difficult. Even if you've been through the justice system in the past, the federal criminal system is unique and formal. Having a good understanding of the process can help reduce the intimidation factor and alleviate the stress and anxiety you may feel.

Over the course of the past 19 years, I have represented nearly 1,000 clients, in cases ranging from the most minor misdemeanor offense to the most serious felonies, and I have helped my clients achieve uncommon results. While I cannot promise you a particular outcome on your case, I can assure you that your defense team will be working diligently to help you reach the best possible outcome.

With this guide I hope to offer you a quick and easy reference – something you can turn to late at night when you can't sleep – with answers to the most common questions my clients have about the case process.

Of course, this is just a quick reference guide – you may have questions this guide doesn't address – and you should feel free to call the office for some explanation.

As a bit of background, my entire career has been spent in the practice of criminal defense. I have been in private practice – I have owned my own law office – since I became an attorney, and in the early years of my career I had the very good fortune of working with the finest criminal defense attorneys in San Diego. In 2018, I joined the Criminal Justice Act (CJA) Panel, allowing me to accept appointed cases from the federal court.

I mention this because accepting appointed cases for clients who cannot afford to hire an attorney makes me feel like a public defender – and this is a great feeling!

I had a colleague who once got himself into a fair bit of hot water because he posted on his website a section about why a private defense attorney was always better than a public defender. In the post were animations that showed the private attorney as well-polished and finely dressed, while the public defender appeared tired and disheveled. The simple truth of the matter is that public defenders tend to be the very best attorneys in the courthouse.

The public defender's office is the absolute tip of the spear when it comes to criminal defense. Most criminal cases will flow through their offices, and most public defenders – by the time they have spent 3 years in the office – will have accumulated the knowledge it takes private attorneys a decade to earn. Public defenders are in court nearly every day, during which time they become very familiar with the judges, the prosecution team, and the court staff. In this way, they earn their trust and respect.

More than that, public defender offices have dedicated appellate teams so that they can stay on top of the latest legal decisions impacting clients, have access to exceptional training programs (in some cases, weeks-long trial training), and utilize in-house technical support and a team of investigators to assist the work-up of a case.

But I am a private criminal defense attorney (and a member of the local Criminal Justice Act Panel), so why do I spend so much time highlighting the benefits and strengths of the public defender? Well, because you might be represented by one.

The Legal Team

If you have the benefit of being represented by the public defender you can rest easy knowing that you are represented by a qualified and highly skilled lawyer. You can trust that they have the resources needed to effectively represent you at every stage in your case; behind that lawyer is a team of professionals all committed to the cause – protecting your best interests.

But not everyone will be represented by the public defender. The public defender simply does not have enough attorneys to provide free or low-cost representation to every defendant. And sometimes the public defender cannot represent a particular defendant because there is a conflict of interest (for example when the public defender represents a client in a multi-defendant case).

In that circumstance, the court can appoint a different attorney to represent you. In the federal system we have the CJA (Criminal Justice Act) Panel. Here in the Southern District of California, the CJA panel is comprised of attorneys who have a minimum of 5 years criminal defense experience, and familiarity with federal criminal procedure, evidence, trials, and sentencing.

To become a member of the CJA panel an attorney must submit an application. That application is then reviewed by a group of highly experienced federal criminal defense attorneys who work along with several federal judges to nominate the very best applicants for consideration.

That group of attorneys who are nominated for consideration then get evaluated by all of the local federal judges. Here in San Diego, there are about 110 attorneys who have been carefully vetted by the federal court for inclusion on the CJA Panel. Some of these attorneys have as little as three years of experience (but started their careers in the public defender's office), and some have more than 40 years of experience. Every two years, CJA panel attorneys must reapply to the panel, be re-evaluated, and be granted readmission to the panel.

Like their public defender colleagues, the attorneys on the CJA panel are committed to criminal defense and to helping their clients during their most difficult times.

I am a member of the CJA panel – this is a tremendous source of pride for me – and if I have been appointed to represent you on your case, you can be assured that your case will get the same care and attention that my retained cases receive.

Now just because you have been appointed an attorney, it doesn't mean you need to stay with that attorney. The attorney and the client need to have a good working relationship, and the most

important part of the attorney-client relationship is trust.

You need to trust that your attorney is the right fit for you (you need to "click"), you need to trust that your attorney is working in your best interest, and you need to trust that your attorney has the skills needed to properly handle your case.

If at any point in your case you feel the need to change attorneys, you should move very quickly to do so. Meet and consult with some attorneys, and then retain the attorney you feel most confident with. Remember that getting your attorney on board early in the case is the best move, and gives your chosen attorney the time to have the greatest impact and shape the course of the case.

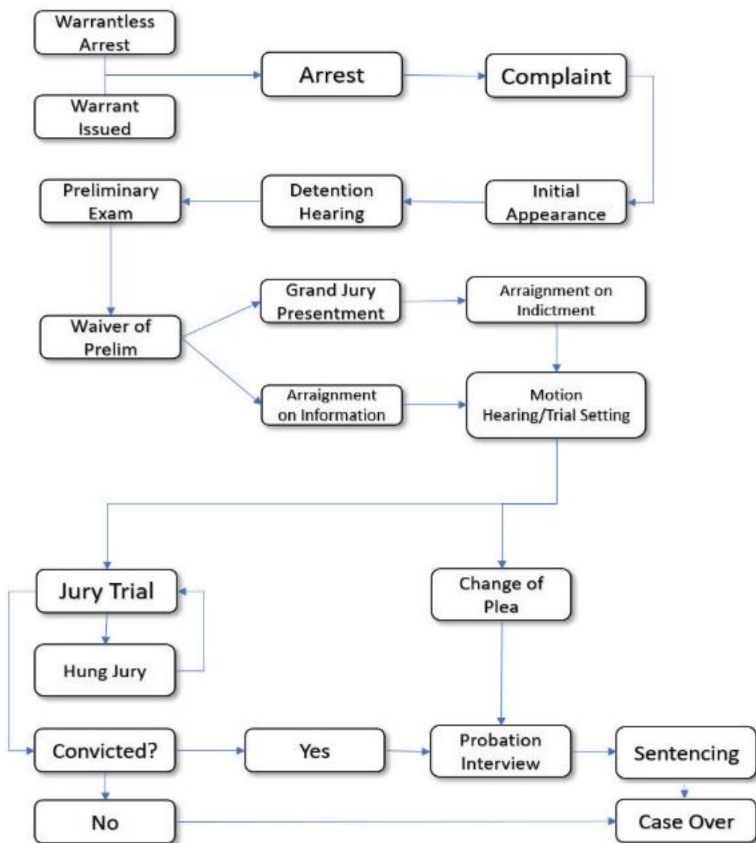
The Defense Team

Whether I have been appointed to represent you or whether you have retained my services, you now have a team of legal professionals dedicated to your case. My office staff includes myself, my paralegal, my law clerk(s), and my intern(s). In addition, we have a team of private investigators (many of them with law enforcement backgrounds) to help us develop the case. When needed, we have access to certified interpreters to assist with communication with our client and the client's family. When necessary, we also utilize forensic psychologists (or other experts) to evaluate our clients (or the case) and prepare reports that may help mitigate the case.

I mention who is part of our defense team because each member plays a necessary and critical role. Each team member facilitates the development of the case, and their individual contributions are instrumental in the work I do.

For this reason, it is important that you know that you can speak openly with your defense team. I say this because many clients will call my office and simply ask to speak with the attorney. When asked if there is a message they can convey to the attorney, many clients simply say "no, I just want to speak with the attorney."

But contrary to what many believe, an attorney's work is not done at his desk. The vast majority of a trial attorney's work is done outside of the office and at the courthouse. I am often in court, and away from my desk. When you call my office and reach my paralegal, you can feel free to share your questions or concerns with her. Similarly, if my investigators call or visit with you, you should feel free to ask them to relay your questions to me. This will make our phone calls or visits more productive.


Case Process Flow Chart
Warrantless Arrest
Warrant Issued
Arrest
Complaint
Initial Appearance
Detention Hearing
Preliminary Exam
Waiver of Prelim
Grand Jury Presentment
Arraignment on Indictment
Arraignment on Information
Motion Hearing/Trial Setting
Jury Trial
Hung Jury
Change of Plea
Convicted?
Yes
Probation Interview
Sentencing
No
Case Over

Initial Appearance

The initial appearance is the very first court hearing you will have in federal court. Typically, it will include an arraignment on the criminal complaint, and an opportunity to discuss bond. At the hearing the judge will explain your constitutional rights, and will inform you of the nature of the charges against you. The court will then enter a Not Guilty plea on your behalf and will set several future court hearings for you.

If the court does not set a bond at the initial appearance, the court will schedule a Detention Hearing within three to five days. However, your attorney may need more time to prepare for the detention hearing, and may request a date a week or two beyond the initial appearance.

In addition to a detention hearing, the court will also schedule a Preliminary Examination within 14 days, and an Arraignment within 30 days.

Detention Hearing

The detention hearing – also known as a bond hearing – is an opportunity for your attorney to discuss bond for your criminal case.

In the federal court system, all defendants are presumed to be eligible for pretrial release on bond. In some cases (very often drug cases or cases where the potential penalty is more than 10 years), the prosecutor will make a motion to detain a defendant without bond based on risk of flight. The defense attorney will have an opportunity to convince the judge that there are ways to ensure the client appears for court. This discussion will include the defendant's personal history, education, employment, health, family ties, ties to the community, criminal history, and history of making court appearances.

In the end, the defense attorney will recommend a bond be set. If the court agrees, the judge will set a bond amount and additional conditions of pretrial release.

It is important to know that in federal court we don't typically use bail agents. Instead, the court will require the bond be secured by one or two financially responsible adults ("sureties"). The sureties will need to prove that they have a net worth of at least the bond amount.

For example, if the judge sets bond at $25,000.00, secured by the signature of two financially responsible and related adults, and with a 10% cash deposit, here's what will be needed:

Two adults related to the defendant, each must show a net worth of at least $25,000.00, and one must provide a $2,500.00 deposit to the court (this deposit will be refunded at the end of the case).

In order to show a surety's net worth, we typically use paystubs, bank statements, mortgage statements, retirement accounts, or proof of ownership of certain types of personal property (cars, motorcycles, etc.).

Once we have sureties in place, there is some paperwork that needs to be completed and sent to the prosecutor for review. The prosecutor has 2 days to review the bond packet and either approve or reject the proposed sureties. Once the bond is approved, the court will order the defendant be released from custody.

Preliminary Examination

At the initial appearance, the magistrate judge will set at least 2 new court hearings for you. The first court hearing will be the preliminary examination. Generally speaking, the preliminary examination is an opportunity for the prosecutor to present some evidence to a judge to show that there is a basis to move the case forward to trial.

The preliminary examination is not a trial, but it often feels a bit like a mini trial. The prosecutor may present just one or two witnesses, and at the end of their presentation the judge will decide if it is more likely than not that the defendant was involved in the offense.

If the judge does believe that it is more likely than not that the defendant was involved, then he will "bind over" the defendant for trial. The court will then set a date for an arraignment on a criminal information.

The Indictment

In federal court, defendants have the right to have a felony charge presented to the grand jury. In the Southern District of California, the grand jury is made up of 23 members of community. The grand jury meets in private with the prosecutor who presents some evidence or witnesses to the grand jury, and then the prosecutor asks the grand jury to issue a criminal indictment.

To be clear, the presentation of the case to the grand jury is not a trial. You do not have the right to be present or to have your attorney cross examine witnesses who might testify at the grand jury proceedings.

If the grand jury believes an offense has been committed, it will issue a true bill and authorize an indictment.

Waiver of Preliminary Hearing and Waiver of Indictment

The preliminary hearing and grand jury presentments require work and preparation on the part of the prosecution. In an effort to save the prosecutor some work, a defense attorney may ask his client to waive the preliminary hearing and waive indictment. Waiving these two rights keeps the prosecution willing to negotiate the case and willing to agree to certain reductions affecting sentencing.

I often ask my clients to agree to waive preliminary hearing and indictment because I know that ensures the best opportunity for the shortest sentence.

Please remember that even if you agree to waive your right to a preliminary hearing or to a grand jury presentment, you still retain your right to a jury trial.

Arraignment

The court will schedule a second arraignment 30 days after your initial appearance. The purpose of this arraignment is to enter a Not Guilty plea to the charges as laid out in a Criminal Information or a Grand Jury Indictment.

Though you may be wondering why the court is asking you to enter a Not Guilty plea to the same charges, keep in mind that there are three types of criminal charging documents: the ***Criminal Complaint***, the ***Criminal Information***, and the ***Grand Jury Indictment***.

The Criminal Complaint is the least formal document, but it does lay out the general facts supporting the alleged criminal behavior.

After a preliminary examination (and if the judge decides there is cause to bind over the defendant for trial) the criminal complaint will be deemed a ***Criminal Information***. The charges and the facts may be exactly the same as on the criminal complaint, and only the title of the document will change.

Finally, the most formal type of charging document is the ***Grand Jury Indictment*.** Evidence supporting the criminal allegation has been presented to a grand jury and the grand jury has decided charges should be filed.

Upon entering a Not Guilty plea to the charges, the court will then assign a district judge to the case and will also schedule a Motions Hearing and Trial Setting date.

Motions Hearing / Trial Setting (MHTS)

At the second arraignment on your case, the magistrate judge will assign the case to a district court judge, and will set a date for Motions Hearing and Trial Setting. The purpose of the Motions Hearing is to allow the district judge to decide on any disputes between the attorneys. For example, your defense attorney may file a motion demanding the prosecutor provide certain types of evidence; the district judge would hear argument about why the evidence should be provided and then make a decision on that issue.

You have a right to have a speedy trial within 70 days of the date of your arraignment. However, your defense team may need more time to receive and review discovery, conduct any necessary investigation, convey any potential plea offers, negotiate or counter-negotiate a plea offer, and prepare your case for a trial.

In order to preserve as much time as possible to get ready for a potential trial, a defense attorney will often file motions. While motions are pending (filed with the court, but not yet decided on), the speedy trial clock is stopped. After a motion has been decided by the court, the speedy trial clock begins to run again. Your attorney may ask to continue (postpone) your MHTS hearing, often by 30 to 60

days at time. This is normal, and it is often to your benefit for the attorney to take good time to develop your case.

Jury Trial

As a criminal defendant in a felony case, you have an absolute right to a jury trial. The jury is made up of 12 members of the community (selected from a panel of 36 potential jurors through a process called *voir dire*). If all 12 members of the jury believe – beyond a reasonable doubt – that you have committed a crime, they will return a verdict of Guilty. If all 12 members of the jury do not believe the prosecution has proven their case beyond a reasonable doubt, the jury will return a verdict of ***Not Guilty****.* If the jury is not able to reach a unanimous decision, it is considered a ***Hung Jury***, and the court will declare a mistrial.

If the jury finds you Not Guilty, the prosecution cannot retry you for the same offense. But if the court declares a mistrial, the prosecution can seek to retry you for that crime.

Change of Plea Hearing

While a case is ongoing your attorney and the prosecutor will be in frequent contact to try and resolve the case. These negotiations may result in a proposed plea agreement from the prosecution. If, after consultation with your defense team, you decide to accept the plea agreement, the court will set a hearing for a change of plea. At that hearing, you can plead guilty to the charges laid out in the plea agreement.

You have a right to have the district court judge take your guilty plea, but you can waive this right by signing a ***Rule 11 Waiver***.

The ***Rule 11 Waiver*** allows the magistrate judge to take your guilty plea and recommend to the district judge that he accept your guilty plea. Even if you allow the magistrate judge to take your guilty plea (which is often done simply to save the district judge some time and effort), it is the district judge who imposes your sentence.

Probation Interview

If you are convicted after a jury trial, or after a change of plea, one of the most important events will be the probation interview. The Probation Department is a division of the court, and the probation officer is tasked with interviewing all defendants convicted of felony offenses.

The purpose of the interview is to gain an understanding of the defendant as a person. The probation officer will spend good time asking about your life history, education, work history, family ties, health issues, any motivation for being involved in the criminal offense, any remorse for the offense, and plans for the future.

The probation officer will then prepare a detailed report containing a recommended sentence. This report is then sent to the judge for his review. The probation report is one of three recommendations the court will consider when imposing sentence; the other two recommendations will come from the prosecutor and your defense team.

Because the probation interview is such a critical component of a criminal case, your defense team will spend significant time preparing you for that meeting.

Sentencing

Sentencing in federal criminal cases is shaped by The Federal Sentencing Guidelines. The Guidelines offer suggested sentences for every federal criminal offense. To do this, the Guidelines start by assigning a score to every crime, and then adjusting (upward or downward) that score based on specific circumstances related to the facts of the case or how the case was resolved. The total score will then relate to a number of months.

The sentence is also shaped by the criminal history of the defendant. Each prior conviction will result in a score, and based on the total score the defendant will fall into one of six Criminal History Categories.

The Federal Sentencing Table is a matrix that combines the Offense Level and the Criminal History Category. By finding where the Offense Level and the Criminal History Category meet, you find the Guideline Sentencing Range. Again, this is only a *suggested* sentence, and the judge is free to exercise his discretion and give a sentence well below (or above) the suggested sentence.

It is important to remember that the Sentencing Guidelines are just that – *guidelines*. With limited exception – Minimum Mandatory (MIN-MAN) sentences where the MIN-MAN has not been broken – the defense attorney is free to argue for any sentence he thinks is appropriate, and the judges are

free to impose any sentence they think is fair.

Finally, each defendant's unique personal background will also affect sentencing. For this reason, your defense team will be contact with your family and friends to collect useful information about you that might be used to seek a lower sentence. This information includes school records, medical records, character letters, awards and certificates, professional examinations and evaluations, and family photos, etc.

I often tell my clients that it does not matter to me where in the Sentencing Guidelines you start; what matters to me is where we end up, and that I am free to argue for any sentence I want.

Conclusion

I hope that this booklet has given you a better understanding of the federal criminal case system, a familiarity with the case process, and an idea of what to expect in the months ahead.

If you have questions, or would like to set up a consultation, you should feel free to call my office. My team is here for you, and we'll be there with you.