U.S. Sentencing Commission Public Meeting Minutes
July 26, 2007

Chair Ricardo H. Hinojosa called the meeting to order at 1:15 p.m. in the Commissioners' Conference Room.

The following Commissioners were present via teleconference:

- Judge Ricardo H. Hinojosa, Chair
- Judge Ruben Castillo, Vice Chair
- Judge William K. Sessions, III, Vice Chair
- John R. Steer, Vice Chair
- Michael E. Horowitz, Commissioner
- Beryl Howell, Commissioner
- Kelli Ferry, Commissioner Ex Officio

The following Commissioners were not present:

- Dabney L. Friedrich, Commissioner
- Edward F. Reilly, Jr., Commissioner Ex Officio

The following staff participated in the meeting:

- Judith Sheon, Staff Director
- Kenneth Cohen, General Counsel

Chair Hinojosa noted that a motion pursuant to Rule 1.2(b) of the Commission's Rules of Practice and Procedure, which allows for the temporary suspension of a rule, was in order with regard to Rule 3.2 (Public Meetings). Vice Chair Castillo made a motion to temporarily suspend the notice requirement of Rule 3.2. Vice Chair Sessions seconded Vice Chair Castillo's motion. Hearing no discussion, the Chair called for a vote on the motion, and the motion was adopted.

Chair Hinojosa called on Mr. Cohen to advise the Commission on a possible vote to publish an issue for comment concerning Federal cocaine sentencing policy.

Mr. Cohen informed the Commission on a possible vote to publish an issue for comment in the Federal Register. On May 1, 2007, the Commission submitted to Congress amendments to the sentencing guidelines and official commentary, which will become effective on November 1, 2007, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the Federal Register. 72 FR 28558 (May 21, 2007). Two of the amendments, specifically Amendment 9 pertaining to offenses involving cocaine base ("crack") and Amendment 12 pertaining to certain criminal history rules, have the effect of lowering guideline ranges. The proposed issue for comment solicits comment regarding whether either amendment should be included in subsection (c) of §1B1.10 [Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)] as amendments that may be applied retroactively to previously sentenced defendants. The proposed issue for comment requests that, to the extent practicable, public comment address the following factors the Commission considers in selecting the amendments included in §1B1.10(c): 1) the purpose of

the amendment, 2) the magnitude of the change in the guideline range made by the amendment, and 3) the difficulty of applying the amendment retroactively to determine an amended guideline range under §1B1.10(b). The Commission also requests comment regarding whether, if it amends §1B1.10(c) to include either amendment, it also should amend §1B1.10 to provide guidance to the courts on the procedure to be used when applying an amendment retroactively under 18 U.S.C. § 3582(c)(2).

Mr. Cohen advised the Commissioners that a motion to publish the proposed issue for comment, with a 60 day comment period, would be in order. The Chair called for a motion as suggested by Mr. Cohen. Vice Chair Castillo made a motion to that effect with Commissioner Howell seconding. Hearing no discussion, the Chair called for a vote on the motion, and the motion was adopted.

The Chair asked if there was any further business before the Commission and hearing none, called for a motion to adjourn the meeting. Vice Chair Sessions made a motion to adjourn, with Commissioner Howell seconding the motion. The Chair called for a vote on the motion, and the motion was adopted. The meeting was adjourned at 1:25 p.m.