

**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,)	
)	3:07-cr-056 JWS
Plaintiff,)	
)	
vs.)	ORDER APPOINTING COUNSEL
)	
PETER KOTT ,)	
)	
Defendant.)	
_____)	

This case is before the court pursuant to a limited remand from the United States Court of Appeals for the Ninth Circuit. At a bail review hearing on June 17, 2009, defendant Kott requested appointment of counsel based on the proposition that his current financial situation renders appointment of counsel appropriate. Mr. Kott specifically requested that the court appoint Sheryl Gordon McCloud, an attorney practicing in Seattle, Washington, who is a member of the Criminal Justice Act (“CJA”) panel in the Western District of Washington and a member of the Washington Bar. Ms. McCloud has been representing Mr. Kott as retained counsel on his appeal from his conviction in this court on three felony charges.

Ms. McCloud attended the bail review hearing by telephone, and when the court granted Mr. Wendt’s motion to withdraw, Ms. McCloud was substituted as counsel for Mr. Kott. Ms. McCloud is presently serving as retained counsel, but she stated that she would accept appointment to represent Mr. Kott at public expense. Mr. Kott was directed to provide the court with a financial affidavit so that his request could be

evaluated. His affidavit and explanatory notes were delivered to the court and have been filed under seal pursuant to the court's CJA plan.

Pursuant to 18 U.S.C. § 3006A, the court must appoint counsel for any person charged with a felony who is "financially unable to obtain adequate representation." A review of Mr. Kott's affidavit and explanatory notes presents a fairly close question with respect to his financial ability. However, the expansion of this case arising from the United States' admitted, and remarkable, failure to timely provide all of the discovery required by Fed. R. Crim. P. 16 stretches Mr. Kott's modest means too far. This court finds that appointment of counsel to represent Mr. Kott in this court at public expense is appropriate. This order does not include a finding that Mr. Kott would qualify for representation at public expense in the Court of Appeals. Indeed, it appears that he probably could pay for what may remain to be done in the Court of Appeals. If Mr. Kott disagrees, any application for representation at public expense in the Court of Appeals must be made to the Court of Appeals.

Ms. McCloud's location in Seattle, while convenient for the appellate work, weighs against appointing her to represent the defendant in this court. On the other hand, the knowledge she has gained as Mr. Kott's appellate counsel would greatly increase defense counsel's efficiency in this court. On balance, the court concludes that it would be in the interest of justice and economically preferable to appoint Ms. McCloud rather than a new lawyer.

The court has made inquiry of the Federal Defender for the District of Alaska who confirms that Ms. McCloud is a member in good standing of the CJA panel in the Western District of Washington. He also advises that she is considered a competent

lawyer whose appointment to represent Mr. Kott would be consistent with the standards for public representation in the District of Alaska.

Based on the preceding considerations, **IT IS ORDERED**,

(1) Ms. McCloud is deemed to be a member of the CJA panel for the District of Alaska for purposes of the limited remand in this case.

(2) Effective with respect to services rendered on and after July 1, 2009, Ms. McCloud is appointed special *pro hac vice* counsel without association of local counsel and without payment of a *pro hac vice* fee to represent Mr. Kott in the proceedings in this case arising from the limited remand. Any legal services she has or may render in connection with the limited remand prior to July 1, 2009, are rendered in her current role as retained counsel. Mr. Kott has the financial ability to pay for such legal services.

(3) Any application for payment of fees and costs by Ms. McCloud shall be subject to and presented in accordance with this Court's CJA Plan and CJA Compensation Policy Manual. This order does not authorize any interim payment. It is expected that Ms. McCloud will make a single application for compensation upon completion of her representation of Mr. Kott on the limited remand.

DATED at Anchorage, Alaska, this 22nd day of June 2009.

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE