

KRIS A. MCLEAN  
Assistant U.S. Attorney  
U.S. Attorney's Office  
P.O. Box 8329  
Missoula, MT 59807  
105 E. Pine, 2nd Floor  
Missoula, MT 59802  
Phone: (406) 542-8851  
FAX: (406) 542-1476

ATTORNEY FOR PLAINTIFF  
UNITED STATES OF AMERICA

FILED  
MISSOULA, MT

2003 JAN 8 PM 2 10

PATRICK E. DUFFY  
BY Caroll A. Sahley  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

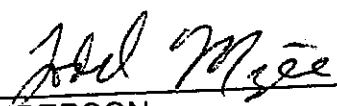
UNITED STATES OF AMERICA,	CR 03-01 -M- DWM
Plaintiff,	<u>INDICTMENT</u>
vs.	EMBEZZLEMENT OF UNION FUNDS Title 29 U.S.C. §501(c) (Penalty: Five years imprisonment, \$250,000 fine, and three years supervised release)
FRANK DARVIS,	
Defendant.	

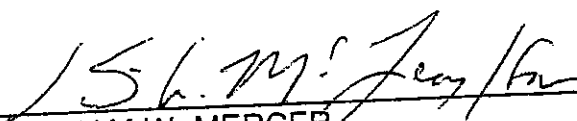
THE GRAND JURY CHARGES:


That from on or about January 27, 1997 and continuing until on or about December 16, 1998 at Whitefish, within the State and District of Montana, the defendant, FRANK DARVIS, an officer or employee of in his capacity as treasurer for the United Transportation Union, Local Union 891, did knowingly embezzle, steal, and

did unlawfully and willfully abstract or convert to his own use or the use of another, monies, funds, or other assets of said labor organization, in that, the defendant, FRANK DARVIS, altered or forged the signature of the union president on approximately 60 union checks, totaling approximately \$29,865, which the defendant had made payable to himself, and then negotiated the altered checks to his own use or benefit, in violation of Title 29 U.S.C. §501(c).

A TRUE BILL.

  
\_\_\_\_\_  
FOREPERSON

  
\_\_\_\_\_  
WILLIAM W. MERCER  
United States Attorney

  
\_\_\_\_\_  
CARL E. ROSTAD  
Criminal Chief Assistant U.S. Attorney

WARRANT \_\_\_\_\_

BAIL \_\_\_\_\_

CRM/SUM Returnable  
1-28-03 @ 1:30 p.m., before  
Hon. L.B.E. in MsA., M.

# United States District Court

District of Montana, Missoula Division

UNITED STATES OF AMERICA

**SUMMONS IN A CRIMINAL CASE**

VS.

**FRANK DARVIS**

Case Number: CR-03-01-M-DWM

121 MILL AVE., APT. B  
WHITEFISH, MT 59937

YOU ARE HEREBY SUMMONED to appear before the United States District Court at the place, date and time set forth below.

<b>PLACE:</b>	U.S. DISTRICT COURT 201 E. BROADWAY MAGISTRATE COURTROOM MISSOULA, MT 59801	<b>DATE:</b> 01/28/03
<b>BEFORE:</b>	HONORABLE LEIF B. ERICKSON UNITED STATES MAGISTRATE JUDGE	<b>TIME:</b> 1:30 P.M.

To answer the INDICTMENT charging you with a violation of Title 29 United States Code, Section[s] 501(c).

Brief description of offense: Embezzlement of Union Funds.

CERTIFIED COPY OF CHARGING DOCUMENT ATTACHED.

Assigned to: Kris A. McLean

*Carol A. Dahley*  
Signature of Issuing Officer

Date: January 8, 2003

**CAROL A. DAHLEY, DEPUTY CLERK**  
Name and Title of Issuing Officer

<b>RETURN</b>	
THIS SUMMONS WAS SERVED ON THE ABOVE-NAMED DEFENDANT AT:	
<b>DATE OF SERVICE:</b>	<b>DWIGHT MACKAY UNITED STATES MARSHAL</b>
<b>RETURNED ON:</b>	
<b>BY:</b> DEPUTY U.S. MARSHAL	

FILED  
MISSOULA, MT

2003 FEB 14 AM 9 36

PATRICK E. DUFFY

BY \_\_\_\_\_  
DEPUTY CLERK

*Transmit*

**RECEIVED**

FEB 14 2003  
U.S. ATTORNEY  
MISSOULA, MT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

UNITED STATES OF AMERICA,	)	CR 03-01-M-DWM
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
FRANK DARVIS,	)	
	)	
Defendant.	)	
	)	

Following the pretrial conference in the above-captioned matter for defendant held on Friday, February 14, 2003, IT IS HEREBY ORDERED:

1. The following schedule will govern all pretrial procedures in this case:

- Trial Date: April 7, 2003; 8:45 a.m. ✓  
Russell Smith Courthouse  
Missoula, Montana
- Discovery Deadline: February 19, 2003
- Motions deadline  
(including motions in limine): March 7, 2003
- Response deadline: See ¶5
- Plea agreement deadline: March 27, 2003
- Jury instructions and  
trial briefs deadline: March 31, 2003

OLMS-DENVER	
FEB 25 2003	

This schedule must be strictly adhered to by the parties.

To efficiently prepare for trial within the times set above,

IT IS FURTHER ORDERED:

2. On or before the discovery deadline set above, the government shall, upon request of the attorneys for the defendants, provide to the defendant all discoverable materials specified in Federal Rule of Criminal Procedure 16(a). The government shall make specific disclosure of its intent to use any statements or confessions made by the defendants. If defendants question the admissibility of such statement or confession, the hearing required by Jackson v. Denno, 378 U.S. 368 (1964), shall be held at least ten (10) days prior to trial.

3. Upon compliance by the government with the defendants' discovery request, defendants shall supply reciprocal discovery pursuant to Federal Rule of Criminal Procedure 16(b).

4. The parties are under a continuing duty of disclosure and discovery of materials set forth herein, pursuant to Federal Rule of Criminal Procedure 16(c). If expert witnesses are engaged, the parties shall fully comply with the requirements of Rule 16(a)(1)(E) and Rule 16(b)(1)(C), respectively. Unless otherwise ordered by the Court, compliance with Rule 16 requires that the expert summary shall contain a complete statement signed by the expert of all opinions to be expressed and the bases and reasons for the opinions; any data or information considered by the expert in forming the opinions; the qualifications of the expert, including a list of all publications by the expert within the past ten years, and a list of all cases for which the expert has testified as an expert in trial or by deposition in the past four years.

5. **Motions:** All pretrial motions, other than motions to enter a guilty plea, must be filed, along with a brief in support, on or before the motions deadline indicated above. Motions and briefs must be faxed to the U.S. Attorney by the motions deadline. A response brief is due ten (10) calendar days after the filing date of the motion. The U.S. Attorney must fax a copy of the response brief to defense counsel by the response deadline. An optional reply brief may be filed within five (5) calendar days of the filing date of the response brief. See L.R. CR12.1.

**Suppression Motions:** To facilitate hearings on suppression motions, the parties are required to submit supporting factual documentation with motions to suppress - e.g. affidavits, tapes,

Miranda waiver forms, etc. Response briefs (and reply briefs, if submitted) should state with particularity the factual issues remaining in dispute for resolution at a suppression hearing.

6. **Hearings & Oral Arguments:** Parties shall provide an alphabetized index of cases expected to be referenced, with citations, to the Court Reporter immediately prior to any oral argument or trial.

7. All requests for service of subpoenas by the United States Marshal must be on file in the Clerk of Court's office no later than ten (10) working days before trial. Except for good cause shown, service of subpoenas after said date is the responsibility of counsel. The provision of Federal Rule of Criminal Procedure 17 must be complied with before any subpoena is issued.

8. **Calling witnesses at trial:** When a witness is called to testify at trial, counsel shall provide to the clerk of court four (4) copies of a single page document providing the following information about the witness: 1) the full name and current address of the witness; 2) whether the witness has given a statement (taped), a written statement, an interview with government agents (other than an AUSA), or grand jury testimony; 3) a brief description of the nature and substance of the witness's testimony; 4) a listing of each exhibit to which the witness may refer during direct examination.

9. Any petition for a writ of habeas corpus for testimony or prosecution, along with a proposed order, must be filed no later than thirty (30) days prior to the trial date for federal inmates, and no later than ten (10) days prior to the trial date for state prison or county jail inmates.

10. The United States shall submit a trial brief when it submits jury instructions. Defendants may submit a trial brief. All trial briefs shall include legal authority for the party's position on all legal and evidentiary issues. All trial briefs must be filed with the Clerk of Court and served on the other parties.

11. In the absence of a signed plea agreement by the date specified in paragraph #1, the Clerk of Court will order a jury. Except for good cause shown, no plea agreement will be considered by the Court thereafter. Late filing may result in assessment of costs or the loss of the offense level reduction available pursuant to U.S.S.G. §3E1.1. Plea agreements shall state clearly whether they are made pursuant to Federal Rule of Criminal Procedure 11(e)(1)(B) or 11(e)(1)(C).

12. Originals of proposed voir dire questions shall be filed with the Clerk of Court at the same time as proposed jury instructions in the Division in which the case is venued by the date specified above; one working copy shall be faxed directly to the Chambers of Judge Donald W. Molloy at 406-542-7284.

13. JURY INSTRUCTIONS:

(a) The parties shall jointly prepare a set of jury instructions upon which they agree. These proposed jury instructions shall include all necessary stock criminal instructions. If necessary, each party may also prepare a set of proposed supplemental instructions if different from the agreed joint instructions. No two instructions shall be submitted with the same number.

(b) By the date given in Paragraph 1 above, one working copy of the joint and any supplemental instructions shall be filed with the Clerk of Court in the Division in which the case is venued. These are the originals and they will be docketed by the Clerk of Court. For this purpose, Facsimile (FAX) submissions are not acceptable and will be disregarded by the court.

(c) By the date given in Paragraph 1 above, one working copy of the joint and supplemental instructions shall be submitted to the Clerk of Court in the Division in which the case is venued, marked for the attention of Judge Molloy. Both parties shall also submit working and clean copies of the joint and supplemental instructions on a 3.5" disc in Wordperfect format. The disc shall also be submitted to the Clerk of Court in the Division in which the case is venued, marked for the attention of Judge Molloy.

In sum, parties must file an original of the working instructions to be docketed in the case file and one copy of the working instructions for the judge. Clean instructions should only be submitted on disc.

14. FORMAT OF JURY INSTRUCTIONS

(a) The clean copy shall contain  
1) a heading reading "Instruction No. \_\_\_\_", and  
2) the text of the instruction.

(b) The working copy shall contain  
(1) a heading reading "Instruction No. \_\_\_\_",  
(2) the text of the instruction,

- (3) the number of the proposed joint or supplemental instruction,
- (4) the legal authority for the instruction, and
- (5) the title of the instruction; i.e., the issue of law addressed by the proposed instruction.

(c) Jury instructions shall be prepared in 12 point Courier typeface.

15. The parties are advised that final instructions for submission to the jury will be settled in chambers, on the record, prior to closing argument, at which time counsel may present argument and make objections.

16. All instructions shall be short, concise, and understandable and neutral statements of the law. Argumentative instructions are improper, will not be given, and should not be submitted. The parties are strongly encouraged to submit proposed instructions taken from the Manual of Model Criminal Jury Instructions for the Ninth Circuit, 2000 edition.

17. The parties should also note that any modifications of instructions from statutory authority, Ninth Circuit pattern instructions, or DeVitt and Blackmar (or any other form instructions), must specifically state modification made to the original form instruction and the authority supporting the modification.

18. Verdict Form: The parties shall submit a joint proposed verdict form with the proposed jury instructions by the date indicated in Paragraph 1 in hardcopy as well as on a 3.5" disc in Wordperfect format. If parties are unable to agree on a verdict form, each party shall submit an individual proposed verdict form.

19. Exhibits: The United States shall use exhibit numbers 1-499 and defendants shall use 500 and up. In no event shall two or more parties use identical exhibit numbers. Exhibits are to be properly bound in a loose leaf binder and tabbed and submitted to the Court immediately prior to trial.

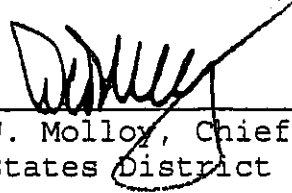
20. Trial Notebook: If the case proceeds to trial, the United States shall prepare and submit a trial notebook at least three days prior to the trial date set in ¶ 1, supra. The trial notebook shall include an index; the charging document; relevant statutes; parties' trial briefs, proposed voir dire, witness lists, exhibit lists, proposed jury instructions and verdict forms; and relevant orders entered in the case.

21. Failure to comply with any of the above requirements



may subject the non-complying party and/or its attorneys to sanctions.

DATED this 14th day of February, 2003.



---

Donald W. Molloy, Chief Judge  
United States District Court

**KRIS A. MCLEAN**  
Assistant U.S. Attorney  
U.S. Attorney's Office  
P.O. Box 8329  
Missoula, MT 59807  
105 E. Pine, 2nd Floor  
Missoula, MT 59802  
Phone: (406) 542-8851  
FAX: (406) 542-1476

**ATTORNEY FOR PLAINTIFF  
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

<b>UNITED STATES OF AMERICA,</b>  Plaintiff,  vs.  <b>FRANK DARVIS,</b>  Defendant.	<b>CR 03-01-M-DWM</b>  <b>PLEA AGREEMENT</b>
---	--

Pursuant to Rule 11 of F.R.Crim.P., the United States of America by and through Kris A. McLean, Assistant United States Attorney for the District of Montana, and Frank Darvis and his attorney, Melissa Harrison, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the Indictment in this case with knowingly, willfully and unlawfully embezzling monies, funds, or other assets of said labor organization by falsely altering the signature of then union president William S. Hendershott on approximately 60 union checks made payable to the defendant FRANK DARVIS, all in violation of 29 U.S.C. §501(c).

2. Defendant has read the charge against him contained in the Indictment and that charge has been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crime with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to the Indictment pending against him.

5. The parties agree that this Plea Agreement shall be filed and become part of the record in this case and will be governed by F.R.Crim.P. 11(c)(1)(B).

6. Defendant will plead guilty because he is in fact guilty of the charge set forth in the Indictment. In pleading guilty, the Defendant acknowledges that from on or about January 27, 1997 and continuing until on or about December 16, 1998 at Whitefish, within the State and District of Montana, the defendant FRANK DARVIS, in his capacity as treasurer for the United Transportation Union, Local Union 891, knowingly, willfully and unlawfully embezzled monies, funds, or other assets of said labor organization by falsely altering the signature of then union president William S. Hendershott on approximately 60 union checks made payable to the defendant FRANK DARVIS, all in violation of 29 U.S.C. §501(c).

7. Defendant understands the charge to which he will plead guilty carries the maximum penalty of five years imprisonment, \$250,000 fine, and three years supervised release.

8. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for a cause where actual bias or other disqualifications is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not he was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his

own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

9. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him and the consequences of his waiver of those rights.

10. Defendant understands that pursuant to 29 U.S.C. §504, defendant will be prohibited from serving as an officer or in any other position described by that statute in or for any labor organization, other than in his capacity as a member, for a period of thirteen (13) years after conviction or after the end of any term of imprisonment, whichever is later.

11. The United States Attorney and the Defendant, Frank Darvis, and his attorney, Melissa Harrison, agree that sentencing in this matter shall be left to the sound discretion of the Court pursuant to sentencing guidelines.

12. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this agreement, to induce defendant to plead guilty.

13. Defendant further agrees that the Sentencing Court must assess a \$100.00 mandatory assessment for each count pursuant to the Comprehensive Criminal Control Act 18 U.S.C. §3013. This assessment is due and payable at the time of sentencing.

THIS PLEA IS UNCONDITIONAL. RULE 11(c)(1)(B)

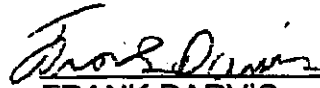
This Plea Agreement constitutes the entire agreement between the parties. Any terms or conditions which is not expressly stated as part of this plea agreement is not to be considered part of the Agreement.

DATED this 17 day of March, 2003.

WILLIAM W. MERCER  
United States Attorney



KRIS A. McLEAN  
Assistant U. S. Attorney

 MARCH 17 2003

FRANK DARVIS  
Defendant

DATE

MELISSA HARRISON  
Counsel for Defendant

DATE

FILED <sup>10</sup>  
MISSOULA, MT

2003 MAR 27 PM 3 56

PATRICK E. DUFFY  
BY Carol A. Sahley  
DEPUTY CLERK

*Transmit*  
**RECEIVED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

MAR 31 2003  
U.S. ATTORNEY  
MISSOULA, MT

UNITED STATES OF AMERICA,	)	CR 03-01-M-DWM
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
FRANK DARVIS,	)	
	)	
Defendant.	)	
	)	

Defendant having filed a Notice of Intent to Plead Guilty and Plea Agreement on March 26, 2003,

IT IS HEREBY ORDERED:

- 1) The Trial set for April 7, 2003 is vacated;
- 2) Defendant shall appear before this Court on April 9, 2003 at 8:30 a.m., at the Russell Smith Courthouse, Missoula, Montana at which time the Court will consider his motion to change his plea of not guilty to a plea of guilty.

Dated: March 27, 2003.

*Donald W. Molloy*  
Donald W. Molloy, Chief Judge  
United States District Court

[docket ]

CIVIL

[ vfmadr]  
[ADDR]

3. Docket

Processing form: Checks Addressees

Docket # : 9:03-cr-01

Short Title: USA

v. Darvis

Type: cr

Judge: Molloy

Magistrate:

```

-----Event-----Action-----Relief-----Trans #-----
cro - - |ord |crsched - - | 922731
**** Form: ADDRESS LABELS ONLY
***** party Direct Addressees in Case: 9:03-cr-00001 *****
Ord Name Term
-- 1. McLean Kris
-- 2. Harrison Melissa

```

*BW*  
*USPO*  
*USM*

[A]cc, [S]lct, [E]vry, [C]lr, [I]ns, [M]ore, [U]p/[D]n, [N]x/[P]v, [Q]uit  
total: 2            selected: 0            current: 1            :



FILED  
MISSOULA, MT

2003 APR 9 AM 9 34

PATRICK E. DUFFY

BY \_\_\_\_\_  
DEPUTY CLERK

*Jmsms*  
**RECEIVED**

APR 10 2003  
U.S. ATTORNEY  
MISSOULA, MT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

UNITED STATES OF AMERICA,	)	CR 03-01-M-DWM
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
FRANK DARVIS,	)	
	)	
Defendant.	)	
_____	)	

Defendant having entered a plea of guilty to the charges in this case and the court having accepted that plea,

IT IS HEREBY ORDERED that:

1. Sentencing is set down for July 10, 2003 at 10:00 a.m. in the Russell Smith Courthouse, Missoula, Montana.

2. The United States Probation Office shall conduct a presentence investigation in accordance with Fed. R. Crim. P. 32(b) and 18 U.S.C. § 3552(a).

3. Following completion of the presentence report, the probation officer shall disclose the report (excepting any

recommendations of the probation officer) to the defendant, counsel for the defendant, and counsel for the government no later than May 26, 2003. The probation officer shall not disclose, directly or indirectly to anyone under any circumstances, the substance or contents of any recommendation made or to be made to the Court.

4. In cases where restitution is mandatory, the probation officer shall consider a payment plan with the Defendant and make recommendations to the Court concerning interest and a payment schedule.

5. In accordance with U.S.S.G. § 6A1.2, after receipt of the presentence report and no later than June 9, 2003, counsel for each party shall present to the probation officer, in writing, any objections to be relied upon at sentencing and, if there is a dispute over any material in the presentence report, counsel shall meet with the probation officer and attempt to resolve disputes informally by diligent good faith effort.

6. The presentence report, in final form, shall be delivered to the Court and the parties no later than June 25, 2003.

7. If the objections made pursuant to ¶ 5 are not resolved and counsel wishes the Court to address them, the objecting party shall submit all unresolved objections and a sentencing memorandum (one original and two copies) to the Court no later

than June 30, 2003. Sentencing memoranda must be faxed to opposing counsel on the day filed. The Court will resolve disputes in accordance with § 6A1.3 of the guidelines at the sentencing hearing.

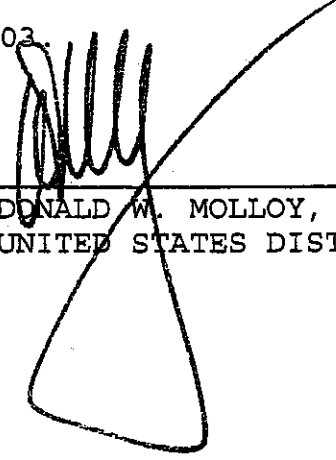
8. If either party intends to have witnesses testify at sentencing, the party must notify the Court no later than June 30, 2003 of the identity of the witness and the scope and purpose of the intended testimony.

9. Any responses to sentencing memoranda shall be filed on or before July 3, 2003. Responses must be faxed to opposing counsel on the day filed.

10. Reply briefs will not be accepted for filing in sentencing matters.

The Clerk is directed to notify counsel and the probation office of the entry of this Order.

DATED this 9<sup>th</sup> day of April, 2003.



\_\_\_\_\_  
DONALD W. MOLLOY, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MELISSA HARRISON  
Assistant Federal Defender  
Federal Defenders of Montana  
Missoula Branch Office  
P.O. Box 9380  
Missoula, MT 59807  
Phone: (406) 721-6749

FILED  
MISSOULA, MT

2003 JUN 30 PM 4 27 *Transcribed*

PATRICK E. DUFFY

BY \_\_\_\_\_  
DEPUTY CLERK

Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

<p>UNITED STATES OF AMERICA,  Plaintiff,  vs.  FRANK DARVIS,  Defendant.</p>	<p>Crim No. CR-03-01-M-DWM  <b>DEFENDANT'S SENTENCING MEMORANDUM</b></p>
--	--

**1. INTRODUCTION**

Frank Darvis the above named Defendant comes before the Court for sentencing on the offense of Embezzlement of Union Funds in violation of 29 U.S.C. 501(c) as charged in the indictment. He faces a maximum of five years imprisonment and/or a \$250,000 fine. There is no mandatory minimum sentence.

COPY

1 The United States Probation Officer has calculated a Guideline range of 0-6 months. (Total  
2 Offense Level 8; Criminal History Category I. The parties do not dispute that calculation.

3 Mr. Darvis requests that this Court sentence him to a term of probation of one year.

4 **II. ARGUMENT**

5 **A. No Unresolved Objections**

6 Mr. Darvis hereby requests that the Court adopt the PSR's facts and matters therein as the  
7 findings of the Court.

8 **B. No Dispute with Calculation of Guideline Sentencing Range**

9 Mr. Darvis agrees with the Probation Officer's calculation of the Guideline sentencing range  
10 in this case, to wit: 0-6 months (Total Offense Level 8; Criminal History Category I). Mr. Darvis  
11 requests that Court adopt the Guideline Calculations in the Presentence Investigation Report as the  
12 findings of the Court.

13 **C. Reasons for Requested Sentence**

14 Mr. Darvis requests the lowest probationary sentence possible. The reasons are set forth by  
15 the probation officer in the presentence report. The defendant paid restitution in full in September  
16 1999, over three years and well before he was indicted. He wrote a letter of apology to the union  
17 members also before he was indicted and has exhibited extraordinary acceptance of responsibility.  
18 He went through a very difficult divorce. His ex-wife suffers from mental illness, and he has been  
19 through an extraordinary amount of stress with the death of his child, the divorce and documented  
20 financial hardship. A considerable amount of time has transpired since this offense. Incarceration  
21 would serve no purpose in this case. The defendant has shown in the elapsed time since this offense  
22 that he can deal with financial stress within the boundaries of the law.  
23  
24  
25

1 D. Witness List

2 Mr. Darvis does not anticipate calling any witnesses at his sentencing hearing.

3 **III. CONCLUSION**

4 For these reasons, Mr. Darvis requests a probationary sentence of one year.

5 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of June, 2003.

6  
7 FRANK DARVIS

8 By: Melissa Harrison

9 MELISSA HARRISON

10 Assistant Federal Defender

11 Federal Defenders of Montana

12 P.O. Box 9380

13 Missoula, MT 59807-9380

14 Counsel for Defendant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CERTIFICATE OF SERVICE**

I hereby certify that on March 26, 2003, a copy of the foregoing was served, either by mail  
or personal delivery, on:

KRIS A. MCLEAN  
Assistant U.S. Attorney  
P.O. Box 8329  
Missoula, MT 59807  
Counsel for the United States

JOSEPH MCELROY  
United States Probation OfficeR  
P.O. Box 7675  
Missoula, MT 59807

FRANK DARVIS  
P.O. Box 1313  
Whitefish, MT 59937  
Defendant

  
\_\_\_\_\_  
FEDERAL DEFENDERS OF MONTANA

PIRF - Sentencing

Date: 7/10/03

CR#: 03-01-M-DW USAO#: 02R0069

Operation Name:

Defendant(s) Name: Frank Davis

Assigned AUSA: Kris

Investigative Agencies: Dep't. of Labor

Presiding Judge: Molloy

Location of Court Appearance: Missoula

Crime Charged (Common Name): Embezzlement of Union Funds

COP  trial  re-sentencing after appeal

Prison Term: \_\_\_\_\_

- consecutive  to another sentence on other counts
- concurrent  to another sentence on other counts
- split sentence  community confinement term: \_\_\_\_\_
- home arrest term: \_\_\_\_\_

Probation Term: 18 months

Supervised Release Term: \_\_\_\_\_

Community Service Term: \_\_\_\_\_

Restitution  Fine

Amount: \$ \_\_\_\_\_

Special Assessment

Amount: \$ 100<sup>00</sup>

Forfeiture

Description: \_\_\_\_\_

Comments:

*Kat*

Distribution:

Kalospell, Missoula

Guideline Information

Adjusted Offense Level (AOL) 10 CHC I

Guideline Range -

Adjustments

USSG *acceptance* - 2

USSG + 1

Final AOL = 8

Final Guideline Range 0-6

Departure Information

Departure  Departure

Substantial Assistance

Appeal If not, explain: \_\_\_\_\_

FAXED KU 7-1003



UNITED STATES DISTRICT COURT 7/10/03

MISSOULA DIVISION

District of

PATRICK ~~MURPHY~~, CLERK

UNITED STATES OF AMERICA

V.

FRANK DARVIS

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 9:2003CR00001

Melissa Harrison  
Defendant's Attorney

*[Handwritten signature]*  
**RECEIVED**

THE DEFENDANT:

pleaded guilty to count(s) I

pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

JUL 11 2003  
U.S. ATTORNEY  
MISSOULA, MT

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
29 U.S.C. § 501(c)	Embezzlement of Union Funds	12/16/1998	I

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.: 517-62-1926

Defendant's Date of Birth: 03/03/1949

Defendant's USM No.: 07643-046

Defendant's Residence Address:

121 Mill Avenue, Apt C

Whitefish, MT 59937

Defendant's Mailing Address:

same

July 10, 2003  
Date of Imposition of Judgment

*[Handwritten Signature]*  
Signature of Judicial Officer

Donald W. Molloy, Chief Judge  
Name and Title of Judicial Officer

July 10, 2003  
Date

DEFENDANT: FRANK DARVIS  
CASE NUMBER: 9:2003CR00001

## PROBATION

The defendant is hereby sentenced to probation for a term of 18 months

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) the defendant shall pay the special assessment imposed or adhere to a Court-ordered installment schedule for the payment of the special assessment.

DEFENDANT: FRANK DARVIS  
CASE NUMBER: 9:2003CR00001

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100	\$ 0	\$ 0

- The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
----------------------	----------------------------------	--	--

TOTALS	\$ _____	\$ _____
--------	----------	----------

- If applicable, restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
  - the interest requirement is waived for the  fine and/or  restitution.
  - the interest requirement for the  fine and/or  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: FRANK DARVIS  
CASE NUMBER: 9:2003CR00001

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100	\$ 0	\$ 0

- The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
----------------------	----------------------------------	--	--

TOTALS	\$ _____	\$ _____
--------	----------	----------

- If applicable, restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
  - the interest requirement is waived for the  fine and/or  restitution.
  - the interest requirement for the  fine and/or  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: FRANK DARVIS  
CASE NUMBER: 9:2003CR00001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A  Lump sum payment of \$ 100 due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance with  C,  D, or  E below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  E below); or
- C  Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.