



## OFFICE OF THE FEDERAL DEFENDER

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# Federal Defender Newsletter

## April 2018

### CJA PANEL TRAINING

**Sacramento** CJA Panel Training will be on Wednesday, April 18, 2018 at 5:00 p.m. at the jury room in the Fourth Floor of the U.S. District Court, 501 I Street. Federal Defender Heather Williams will present on "Nobody's Perfect: Responding to Client IAC Claims and Bar Complaints." **This training qualifies for one hour of legal ethics MCLE credit for the California State Bar.**

**Fresno** CJA Panel Training will be on Tuesday, April 17, 2018 at 5:30 p.m. in the Jury Room of the federal courthouse. Professor Irene Oritseweyinmi Joe, from the UC Davis King School of Law, will present on "Effective and Meaningful Voir Dire."

### TOPICS FOR FUTURE TRAINING SESSIONS

Know a good speaker for the Federal Defender's panel training program? Want the office to address a particular legal topic or practice area? Email suggestions to:

Fresno: Peggy Sasso, [peggy\\_sasso@fd.org](mailto:peggy_sasso@fd.org)  
or Karen Mosher, [karen\\_mosher@fd.org](mailto:karen_mosher@fd.org)  
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### **PATHWAYS TO PROGRESS EMPLOYMENT, EDUCATION, AND EMPOWERMENT FAIR**

Wednesday, April 25th, 2018  
1:00 - 4:00 p.m.

U.S. District Court – Kennedy Learning Center, Sacramento (501 I St.)

The Federal Defender, Federal Pretrial Services, and Federal Probation Offices, with the Justice Anthony Kennedy Library and Learning Center, encourage attorneys to invite their clients to attend this resource fair and experience it also. This fair is intended to inform and equip federal formerly-incarcerated individuals with educational, employment, and community resources.

### **IN MEMORIAM:**

#### **CIRCUIT JUDGE STEPHEN REINHARDT**

The Federal Defender's Office is sorry to note the passing of Ninth Circuit Judge Stephen Reinhardt. Many of us appeared before Judge Reinhardt, and all of us cited his criminal justice opinions. As Chief Ninth Circuit Judge Sidney Thomas recently wrote, "Judge Reinhardt was rightly considered one of the giants of the law. He earned his reputation by virtue of a brilliant legal mind, an unmatched work ethic, and deeply held principles. He resolutely pursued justice as he saw it, and was fearless in his decisions." He will be deeply missed.

## CJA Representatives

David Torres of Bakersfield, (661) 326-0857, [dtorres@lawtorres.com](mailto:dtorres@lawtorres.com), is our District's CJA Representative. The Backup CJA Representative is Kresta Daly, (916) 440.8600, [kdaly@barth-daly.com](mailto:kdaly@barth-daly.com).

## PODCAST RECOMMENDATION

### *The Gen Why Lawyer Podcast with Karima*

**Gulick:** This podcast may not be for every lawyer, but it gives fine insight into technology, social networking, life/work balance, figuring out what type of lawyer you want to be and what practice you want to have, and a host of other questions and issues confronting lawyers of all generations in finding satisfaction and making a unique difference.

## CJA Online & On Call

Check out [www.fd.org](http://www.fd.org) for unlimited information to help your federal practice. You can also sign up on the website to receive emails when fd.org is updated. CJA lawyers can log in, and any private defense lawyer can apply for a login from the site itself. Register for trainings at this website as well.

The Federal Defender Training Division also provides a **telephone hotline** with guidance and information for all FDO staff and CJA panel members: 1-800-788-9908.

## IMMIGRATION LEGAL SUPPORT

The Defender Services Office (DSO) collaborated with Heartland Alliance's National Immigrant Justice Center (NIJC) to provide training and resources to CJA practitioners (FPD and Panel lawyers) on immigration-related issues. Call NIJC's Defenders Initiative at (312) 660-1610 or e-mail [defenders@heartlandalliance.org](mailto:defenders@heartlandalliance.org) with questions on potential immigration issues affecting their clients. An NIJC attorney will respond within 24 business hours. Downloadable practice advisories and training materials are also available on NIJC's website: [www.immigrantjustice.org](http://www.immigrantjustice.org).

## SUPREME COURT

The Supreme Court granted certiorari in *Stokeling v. United States*, 17-5554, another case concerning the definition of "violent felony" under the ACCA. The issue: Whether a state robbery offense that includes "as an element" the common law requirement of overcoming "victim resistance" is categorically a "violent felony" under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(i), when the offense has been specifically interpreted by state appellate courts to require only slight force to overcome resistance.

## NINTH CIRCUIT OPINONS

US v. Adkins, No. 15-10566 (3-5-18)(Nelson w/Schroeder & McKeown). The defendant was convicted of a violent crime in aid of racketeering under 18 USC § 1959. The indictment alleged an assault under the Hawaii code, but in the jury instructions, the district court adopted the federal definition of "knowingly" rather than the state definition. The state definition also contained a self-defense element. The instructions were erroneous.

US v. Aguilar Diaz, No. 16-50102 (3-9-18)(Christen w/Graber & Murguia). This is a significant case for consideration of minor role adjustment, especially in drug courier cases. The Ninth Circuit remanded because the denial of minor role rested on incorrect interpretations of the § 3B1.2 guideline and Amendment 794. The district court seemingly just adopted the government's position, which was based on pre-amendment precedent. The Ninth Circuit focused on the 5 factors listed in 3B1.2 cmt. n. 3(C). The intent of the Commission and Amendment was to expand the application of minor role. The factors are (i) the degree the defendant understood the scope and structure of the

criminal activity; (ii) the degree of participation in planning or organizing; (iii) the degree of decision-making authority; (iv) the nature and extent of the participation in the activity, including the acts performed, the responsibility and discretion; and (v) the degree of benefit. The Ninth Circuit stressed the expansion of the adjustment and the need for courts to grant it.

## U.S. SENTENCING COMMISSION MEETS THE 21<sup>ST</sup> CENTURY?

The U.S. Sentencing Commission has embraced new technology (sort of) and created an app version of the *Guidelines Manual*

<https://www.ussc.gov/guidelines/introducing-guidelines-app> and <https://guidelines.ussc.gov/>.

This includes calculators for:

- Drug Equivalency <https://guidelines.ussc.gov/de>;
- Drug Quantity <https://guidelines.ussc.gov/dol>; and
- Guideline ranges <https://guidelines.ussc.gov/grc>.

Before you get your hopes up that this might be a step-by-step application so you don't miss any of those "I never thought of that" or "I never realized that" Guideline sections which might apply to your client – it isn't. It just saves to the weightlifting routine you came to count on from lugging the *Guidelines Manual* around to jail and court.

There may be hope, however:

*Sentencing.us* A free U.S. Federal Sentencing Guidelines calculator  
<http://www.sentencing.us/>

We haven't testdriven this yet, but it seems intuitive and may be a good starting point. HOWEVER, it's based upon the Nov. 2015 *Guideline Manual*, so you'll need to double check the most current version to make sure nothing's changed.

Let us know if these work for you.

# NEWS YOU CAN USE

## WHEN YOU'RE THE NEXT ATTORNEY ON THE CASE

You get a call from the CJA department, inquiring whether you can take over a case from an attorney who had to withdraw. Sure! Of course! But when this happens, you'll want to take a few extra steps to ensure a smooth transition. Here's a checklist:

### REPORTS IN eVOUCHER

You can access information about prior representations easily in eVoucher. Just log in, open up the case in question, and check out the sidebar on the left. This is where you click on "Create a Voucher." But you can also run reports here. Look for these, which will tell you which service providers have worked on the case and how much has already been expended:

#### [Defendant Detail Budget Report](#)

Provides all items and amounts expended/submitted for the defendant selected.

#### [Defendant Summary Budget Report](#)

Provides summary payment information for the specific defendant.

### 1. Get the File from Prior Counsel.

The parts of a client file that should be transferred to a new attorney vary by jurisdiction; check your local Rules of Professional Conduct for more guidance. Rule 1.16 of the ABA Model Rules also covers this situation. You likely won't get paid for duplicating prior counsel's work, so it's important to know what's already been done. If you need to revisit prior counsel's work, be sure to explain the necessity in your funding request or billing voucher.

### 2. Make Sure You Have All the Discovery.

The most efficient way to do this is by asking the prosecutor for a copy of all the disclosure letters and then comparing those to what's in the file. If there have been several attorneys on the case, some items might be missing.

### 3. Check eVoucher. Check eVoucher. Check eVoucher.

■ If an investigator for Attorney #1 interviewed five fact witnesses, a new investigator likely won't get paid to go out and do the same interviews all over again. eVoucher can provide the name of every service provider who's worked on the case. Once you have that information, you can decide whether to continue with that provider. You'll also know what service provider notes and reports to ask about when speaking to prior counsel.

■ The case statutory maximum does NOT reset with each new appointment. If you're in a jurisdiction that requires prior authorization to exceed the statutory maximum, eVoucher will tell how much was paid to prior counsel and how much funding remains.