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Federal Defender Newsletter
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CJA PANEL TRAINING

Panel training in Sacramento will resume on September 21 at 5:30 p.m. at 801 I St., 4th floor. Attorney Tivon Schardl will be training on "The Ethics of Representing the Mentally Impaired." This session will explore the responsibilities of defense counsel who represents a defendant with mental illness, intellectual disability, or a developmental disorder. Topics include the relevant standards of professional responsibility and cases applying them, diagnostic criteria, and the ways in which symptoms impair competence for trial. This presentation qualifies for ethics MCLE credit.

Fresno panel training will resume on September 20 at 5:30 p.m. at the Downtown Club, 2120 Kern St. The topic will be announced.

TRIAL PRESENTATION TRAINING

The one-day trial presentation training seminars have now been completed in both Sacramento and Fresno. Special thanks to AFD Matt Scoble and Assistant National Litigation Support Administrators Kelly Scribner and Alex Roberts for their excellent and well-received presentations on Power Point and Trial Director. Because several panel attorneys were unable to attend these seminars, we will try to arrange another day of training later in the Fall.

TENTH ANNUAL FEDERAL DEFENDER'S GOLF TOURNAMENT

The Federal Defender's Golf Tournament will be held September 9, 2011 at the Empire Ranch Golf Club in Folsom, with a shotgun start at 1:30 p.m. There will be a dinner (tri tip, chicken, or salmon/vegetarian) to follow the golf tournament. The tournament features hole prizes, raffle prizes, and a winner's trophy. Entry includes golf, cart, range balls, a full tournament set up, and a free 90 minute clinic from head professional (to be redeemed in the future later.)

All skill levels are welcome to play. Scoring is individual with an established handicap. Cost is $90.00 per person, and should be sent to Henry Hawkins before September 9th. Please include your handicap, proposed foursome, and dining request for fish or vegetarian.

Please share this announcement with peers, friends and family. As always, any donations for prizes will be gratefully appreciated. Any questions, please call Henry Hawkins at 498-5700.

RESENTENCINGS UNDER THE FSA

On July 15, 2011, Attorney General Eric Holder reversed the position of the DOJ and stated that the reduced mandatory minimums in the Fair Sentencing Act should apply to all crack cocaine defendants sentenced after August 3, 2010: "I have concluded that the law requires the application of the Act's new mandatory minimum sentencing provisions to all sentencings that occur on or after August 3, 2010, regardless of when the offense conduct took place."

Any defendants that have been sentenced after that date to mandatory minimums that pre-existed the FSA may be eligible for relief. If you represented a client in this situation, please contact Rachelle Barbour at rachelle_barbour@fd.org and provide the name of the client and case number. The Federal Defender's Sentencing Resource Counsel are providing guidance on how to address those cases where defendants received too much time under the FSA because of the government's insistence that pre-FSA mandatory minimums continued to apply.

LEGAL SUPPORT REGARDING IMMIGRATION ISSUES

Thanks to an initiative by the Federal Defender Services Training Branch, the Heartland Alliance's National Immigrant Justice Center (NIJC) will be accepting and responding to inquiries from CJA panel attorneys on immigration-related issues. NIJC makes a commitment to respond to inquiries within 24 (workday) hours. The contact information for NIJC's Defenders Initiative is:

208 S. LaSalle Street
Suite 1818
Chicago, IL 60641
(312) 660-1610
defenders@heartlandalliance.org
www.immigrantjustice.org

Please identify yourself as a CJA Panel Attorney when inquiring about immigration matters related to a federal case in which you are appointed.

CLIENT CLOTHES CLOSET

If you need clothing for a client going to trial or for a client released from the jail, or are interested in donating clothing to the client clothes closet, please contact Debra Lancaster at 498-5700.

TOPICS FOR FUTURE TRAINING SESSIONS

If you know of a good speaker for the Federal Defender's panel training program, or if you would like the office to address a particular legal topic or practice area, please e-mail your suggestions to Melody Walcott (Fresno) melody_walcott@fd.org or Rachelle Barbour (Sacramento) at rachelle_barbour@fd.org.

ADDRESS, PHONE OR EMAIL UPDATES

Please help us ensure that you receive this newsletter. If your address, phone number or email address has changed, or if you are having problems with the email version of the newsletter or attachments, please call Kurt Heiser at (916) 498-5700. Also, if you are receiving a hard copy of the newsletter but would prefer to receive the newsletter via email, contact Karen Sanders at the same number.

NOTABLE CASES

Ocampo v. Vail, No. 08-35586 (6-9-11) (Berzon with Canby and Noonan). In a lengthy and comprehensive opinion, the Ninth Circuit finds a violation of the right of confrontation under Crawford. The police testified to statements made by an identifying witness who did not appear at trial. The general nature of the testimony rather than explicit detail (regarding the investigation and an alibi defense) did not excuse the Crawford violation. It was prejudicial. Under AEDPA, the state's interpretation was unreasonable.

US v. Gonzalez-Melchor, No. 10-50111 (7-8-11)(M. Smith with D. Nelson and Bybee). The defendant went to a bench trial on a 1326 charge, lost, and the district court suggested that he waive his appeal for a sentence below the guidelines. The Ninth Circuit held that the plea waiver was invalid and unenforceable. The district court cannot get involved in plea negotiations. The appellate waiver violated that rule.

US v. Kennedy, No. 10-30065 (Ikuta with B. Fletcher and Paez). The defendant was convicted of possessing and transporting child pornography. The court ordered $65,000 in restitution to be paid to two victims. The Ninth Circuit reverses this restitution because the government failed to carry its burden of proving that the defendant's conduct proximately caused the victims' losses. The opinion focuses on 18 USC § 2259 which requires restitution to victims in such cases. However, the harm must be proximately caused. The defendant's viewing of the pictures could not be linked directly back to the injuries suffered by the victims.

US v. Duncan, No. 08-99031 (7-11-11) (Graber with Fisher and M. Smith). The Ninth Circuit remands to the district court to assess the competency of the defendant to waive his right of appeal from his federal death sentence.

US v. Yepez, No. 09-50271 (7-25-11) (Wardlaw with W. Fletcher; dissent by Timlin, Sr. D.J.). California state judges enjoy wide latitude to modify ongoing probationary terms under California law. As such, defendants facing federal mandatory sentences sometimes get state judges to retroactively terminate probation right before the federal crime took place. This can make them eligible for the safety valve. In this case, one district court deferred to the state's nunc pro tunc termination; another did not. The Ninth Circuit held that in calculating criminal history points for purposes of safety valve eligibility, district courts must credit state orders terminating probationary sentences. This accords with federal/state comity, allows federal judges more discretion; and recognizes the flexibility of state judges who are aware of the consequences. The Guidelines do not forbid such an action. Moreover, these were not completed sentences, but were sentences where the state court still had supervisory authority. The Ninth Circuit distinguishes precedent that does not allow state courts to alter completed probationary terms. There is now a circuit split with the Eighth and Tenth Circuits on this issue.

US v. Bagdasarian, No. 09-50529 (7-19-11)(Reinhardt with Kozinski; partial concurrence and partial dissent by Wardlaw). The Ninth Circuit reverses a conviction for threatening a presidential candidate under 18 USC § 879(a)(3). The defendant wrote racist ugly message board posts directed against then candidate Obama. The postings include statements referencing weapons ("shoot the ---" and "...he will have a .50 cal in the head soon."). He was tracked down and admitted to writing the statements, but also said that he was drinking at the time. He possessed multiple firearms at his home. On appeal, the Ninth Circuit finds that the speech, although repugnant, was constitutionally protected. The Ninth Circuit reviews the history of smear campaigns and vicious speech in campaigns, extolls the virtues of free speech, discusses the jurisprudence of threats (Black), and clarifies the standard in such speech/threat cases (objective and subjective).

Greenway v. Schriro, No. 07-99021 (7-28-11)(Schroeder with Rawlinson and Bea). The Ninth Circuit remands IAC claims for district court consideration. These claims were not procedurally barred because they were presented in the first round of post-conviction (on remand). The state trial court erred in barring them.