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# Federal Defender Newsletter

## August 2012

### **CJA PANEL TRAINING**

Panel training is on summer break during August and will resume in September. The next panel training in Sacramento is September 19, 2012. The next panel training in Fresno is September 18, 2012. Have a nice end to your summer!

### **RETIREMENT PARTY FOR AFD CARO MARKS**

Please join us August 24, 2012 at 5:00 p.m. as we celebrate Caro Marks' retirement after 20 years at the Office of the Federal Defender. Buffet dinner and no-host bar will be at Vallejo's Restaurant, 1100 O Street, Sacramento. Please send your \$25.00 check (for dinner and a gift) made out to "Blue Moon" to Cynthia Compton at the FDO by August 17, 2012.

### **CONGRATULATIONS TO AFD ALLISON CLAIRE!!**

AFD Allison Claire has been selected as the next Sacramento Magistrate Judge pending a background check. Allison is currently the deputy chief of the Capital Habeas Unit. She will fill the office of Magistrate Judge Gregory Hollows, who is retiring in November. Allison has worked for the Office of the Federal Defender since October 1995, and is the first person in our district to move directly from an AFD position into a magistrate judge position.

### **AFD TIM FOLEY RETURNING TO PRIVATE PRACTICE**

Tim Foley, an Assistant Federal Defender in the Capital Habeas Unit since 2004 is also planning to leave the Federal Defender office at the end of September and return to private practice. Tim will be concentrating on state and federal trials, appeals, and habeas. Whether he can be talked into remaining the shortstop for the undefeated Federal Defender/CJA & friends softball team remains to be seen.

### **ANNUAL FEDERAL DEFENDER/CJA PANEL GOLF TOURNAMENT**

The annual Federal Defender/CJA Panel Golf tournament will be held this year at The Ridge in Auburn California on Friday, August 31 with a 1 p.m. shotgun start. This is the Friday before the Labor Day weekend. As always, golfers of every size, shape, handicap, and gender are all invited, as are all members of the court family (judges, AUSAs, defense investigators, federal and county defense attorneys, U.S. Marshals, Probation, Pretrial, Court staff, etc.) and their significant others and friends. \$85 will cover golf, range balls, cart, dinner and a chance for various prizes. If you are interested in playing, contact Henry Hawkins at [henry\\_hawkins@fd.org](mailto:henry_hawkins@fd.org). He needs to know your handicap/index and any people you'd like in your foursome.

## **SAVE THE DATE FOR SAFD DENNIS WAKS' RETIREMENT PARTY**

Dennis Waks will be retiring after 24 years with the Office of the Federal Defender. Please save November 9<sup>th</sup> for Dennis' retirement party at the California Auto Museum. More information will be provided as we get closer to the date.

## **ONLINE MATERIALS FOR CJA PANEL TRAINING**

The Federal Defender's Office will be distributing panel training materials through our website - [www.cae-fpd.org](http://www.cae-fpd.org). If a lawyer is not on the panel, but would like the materials, he or she should contact [Lexi Negin@fd.org](mailto:Lexi.Negin@fd.org).

## **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. If you are interested in donating clothing or money to cover the cost of cleaning client clothing, please contact Debra.

## **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 Charles Lee (Fresno) at [charles\\_lee@fd.org](mailto:charles_lee@fd.org) or Lexi Negin (Sacramento) at [lexi\\_negin@fd.org](mailto:lexi_negin@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**

United States v. Yepiz, No. 09-50574 (7-2-12) (Rawlinson, with W. Fletcher and Mills D.J.).

The Ninth Circuit considers a "use it or lose it" approach to jury selection. The district court forced the defense to exercise a strike in every round: if the defense passed ("accepted the panel") it lost that strike. In this case, the defense passed twice and lost its ninth and tenth strike. This meant that it could not exercise a peremptory challenge for any juror who was seated after the actual exercise of the eighth defense strike. After the government exercised its last strike, a juror was seated who had a law degree and had previously interned at the D.A.'s office. The defense was unable to use a peremptory challenge to strike her. The Ninth Circuit finds this system to be "plain error" and contrary to Rule 24. A defendant is entitled to exercise ten peremptory challenges. The acceptance of a jury panel does not mean that defendant has waived challenges regarding prospective jurors who were not members of the panel when it was accepted.

United States v. Valdes-Vega, No. 10-50249 (7-25-12)(Pregerson with Murgia; dissent by Conlon, D.J.). The defendant was stopped 70 miles north of the US-Mexico border. He had committed some traffic violations and had a Mexican license plate. His truck was searched and cocaine was found. In the district court, he argued that the totality of circumstances did not provide reasonable suspicion to believe smuggling was taking place and therefore the search violated the Fourth Amendment. The district court denied the motion. On appeal, the Ninth Circuit agreed with the lack of reasonable suspicion of smuggling, reversed the district court, and suppressed the evidence. The Ninth Circuit found that the "reasonable suspicion" was based only on the fact that a large pick-up with Mexican plates, 70 miles north of the border, committed a couple of traffic infractions, such as going 10 miles over the flow of traffic speed, then slowing

down, and changing lanes without signaling, and that the driver avoided eye contact with the officer. Given the population of the area (San Diego County) and the amount of traffic, the factors applied too broadly to non-smuggling conduct.

United States v. King, No. 11-10182 (8-1-12)(en banc per curiam). In this short en banc per curiam opinion, the Ninth Circuit overrules its precedent that previously stated that parolees and probationers have the same diminished expectation of privacy. In Samson v. California, 547 US 843, 850 (2006), the Supreme Court held that "parolees have fewer expectations of privacy than probationers." Yet, the Ninth Circuit had held the standard for probationers and parolees were the same. Now in the Ninth Circuit, probationers have a higher expectation of privacy than parolees. It is now no longer the rule of the Ninth Circuit that a probation search (like a parole search) categorically never requires reasonable suspicion. The case is returned to the merits panel for determination of what level of suspicion is required for probation searches.