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Federal Defender Newsletter
December 2013

CJA PANEL TRAINING

Panel training is on break for the winter holidays. See you in January 2014! Please mark your calendar for the first Sacramento CJA Panel Training on January 15th (Third Wednesday) and the first Fresno CJA Panel Training on January 21nd (Third Tuesday).

We'll be scheduling an *Elimination of Bias* noontime training in December or January as we get to the end of a CLE reporting year.

FEDERAL DEFENDER AND CJA HOLIDAY PARTY

Please join us this Friday, December 6th at 4:00 p.m. in the main hall at the Old Post Office Building, 801 I Street, for a holiday celebration. Children are especially welcome to our winter wonderland!

CLIENT CLOTHES CLOSET

Do you need clothing for a client going to trial or for a client released from the jail? Are you interested in donating clothes to our client clothes closet or money to cover the cost of cleaning client clothing? If so, please contact Katina Whalen at 498-5700.

TOPICS FOR FUTURE TRAINING SESSIONS

Do you know a good speaker for the Federal Defender's panel training program, or would you like the office to address a particular legal topic or practice area? Email suggestions to:
Fresno - Janet Bateman, janet_bateman@fd.org, Ann McGlenon, ann_mcglenon@fd.org, or Karen Mosher, karen_mosher@fd.org, or
Sacramento: Lexi Negin, lexi_negin@fd.org.

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Check out www.fd.org for unlimited information to help your federal practice.

ONLINE MATERIALS FOR CJA PANEL TRAINING

The Federal Defender's Office will be distributing panel training materials through our website: www.cae-fpd.org. We will try to post training materials **before** the trainings for you to printout and bring to training for note taking. Any lawyer not on the panel, but wishing training materials should contact Lexi Negin, lexi_negin@fd.org.
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♪ NOTABLE CASES ♫

U.S. v. Arreguin, No. 12-50484 (11-22-13) (Goodwin with Nelson and N. Smith). The Ninth Circuit holds that the police, in getting third party consent, must assess whether the "guest" can give consent to every part of the house. Here the DEA approached a house suspected of drug activity and knocked at the door at 11 a.m. The door was opened by a "sleepy" woman, determined by the DEA to be a guest. The DEA saw the other occupants of the house, one of whom disappeared with a shoebox and reappeared. The DEA got "consent" from the guest to come in and look around. Agents found drugs and money in a master bedroom and in the car. The DEA had no warrant. The Court held that before agents could search, they needed to gather more information regarding the guest's "apparent authority" for the consent. The Ninth Circuit ordered the suppression of items of evidence found in the bedroom, and remanded to determine whether statements and other evidence seized should be suppressed as "poisonous fruit."

Smith v. Oregon Board of Parole, No. 11-35338 (11-26-13) (Hurwitz with Berzon). The Ninth Circuit held that petitioner's Crawford confrontation claim was not procedurally defaulted. It considered the short terse denial of petitioners' petition as having been a denial of the confrontation claim on the merits.

ADDRESS, PHONE OR EMAIL UPDATES

We want to be sure you receive this newsletter. If your address, phone number or email address has changed, or if you are having problems with the e-version of the newsletter or attachments, please call Kurt Heiser, (916) 498-5700. Or if you receive a hard copy of the newsletter but would prefer to receive the newsletter via email, contact Calvin Peebles at the same number.

CJA REPRESENTATIVE

Panel lawyers: Your CJA representative is Carl Faller, (559) 226-1534, carl.faller@fallerdefense.com.

Former Federal Defender Employees Looking for Employment

Becky Darwazeh, darwazeh1@hotmail.com: Secretarial, Legal Assistant

Yvonne Jurado, yvonneee@live.com, (916)230-0483: Paralegal, Secretarial, Legal Assistant, CJA voucher preparation and filing

Karen Sanders, kvs.legaltech@gmail.com, (916)454-2957 (h), (916)216-3106 (cell) Karen has over 20 years of experience as the computer systems administrator at FDO. She'll be providing legal technical and litigation support services. Hourly reasonable rates are available.

Letter from the Defender

December 1 brought a change to how we write our Ninth Circuit appellate briefs and two important changes to the Federal Rules of Criminal Procedure: Rule 11 to reflect the *Padilla* decision, and Rule 16 to essentially exempt more Government work from disclosure.

Rule 11's *revision* reads:

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) ***Advising and Questioning the Defendant.*** Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

* * * * *

.....; and

(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

* * * * *

Of course, a client's citizenship and status in the U.S. should be a standard question for all defense counsel. If you have any question of the possible immigration consequences of the charges or any plea offered, never hesitate to call our Office: if we can't answer your questions, we'll put you in touch with someone who can. Of course, you may not get a definitive answer – some convictions are uncharted territory, which is a valid concern and piece of information for your client. To not research, ask and advise is likely ineffective assistance of counsel.

During the hearing itself, keep in mind that the court is only required to advise during any change of plea, "*Do you understand that, if you are not a citizen of the United States, conviction of this offense may result denial of any citizenship application, in your formal administrative removal from the United States, commonly called a deportation, or you being denied admission to the United States in the future?*" Unless your client is pleading guilty to a §1326 offense, this is not the time for the court to elicit or require your client to acknowledge on the record whether she is a U.S. citizen or not. We are not obligated under Rule 11's amendment to provide any admission which could be used in future charges of unlawful entry or reentry.

Next, Rule 16's *revision* reads:

(a) Government's Disclosure.

* * * * *

(2) ***Information Not Subject to Disclosure.*** Except as permitted by Rule 16(a)(1)(A)-(D), (F), and (G), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case. *Nor does this rule authorize the discovery or inspection of statements made by prospective government witnesses except as provided in 18 U.S.C. § 3500.*

* * * * *

This amendment essentially continues the expansion of government prosecutors' and agents' work-product privileged documents. While I doubt that, in 1947, the Supremes contemplated the work product privilege in a civil case (*Hickman v. Taylor*, 329 U.S. 495, 510-11) would, or even should expand, to the witnesses statements taken or reports generated during a criminal investigation or case preparation, this rule is a rule of **disclosure**, not of privilege.

We are fortunate in this District that our U.S. Attorney's Office's disclosure policy doesn't follow hard and fast the *Jencks* Act, 18 U.S.C. §3700, as further explained by Fed.R.Crim.Proc. 26.2. Some district U.S. Attorney Offices strictly adhere to the statute. Frankly, any Office hiding behind the *Jencks* Act - a law passed at the height of McCarthyism to curtail the Supreme Court decision in *Jencks v. United States*, 353 U.S. 657 (1957) – should be ashamed. (See my article from a few years ago: *Justice Unbalanced: Clinton Jencks – The Man – The Act*, http://www.nacdl.org/Champion.aspx?id=14500.) Hopefully, our District's prosecutors will continue their just and fair practices and this current amendment to Rule 16 won't be any issue here.

Of course, *Brady*'s exculpatory evidence disclosure requirements trump Rule 16's limitations.

Finally, the amendment to Federal Rule of Appellate Procedure 28(a) (on Appellate Briefs) consolidates subsections (6) and (7) "to remove the requirement of separate statements of the case and of the facts. . . . The statement of the case should describe the nature of the case, which includes (1) the facts relevant to the issues submitted for review; (2) those aspects of the case's procedural history that are necessary to understand the posture of the appeal or are relevant to the issues submitted for review; and (3) the rulings presented for review. The statement should be concise, and can include subheadings, particularly for the purpose of highlighting the rulings presented for review."

Have a safe, happy and healthy holiday!

~ Heather E. Williams
Federal Defender, Eastern District of California

Defender Services Office
Training Branch
National Trainings
http://www.fd.org/navigation/training-events

PANEL ATTORNEY PROGRAMS

WINNING STRATEGIES SEMINAR

HILTON HEAD ISLAND, SOUTH CAROLINA | January 30 - February 01, 2014
REGISTER HERE
FINANCIAL ASSISTANCE APPLICATION

FUNDAMENTALS OF FEDERAL CRIMINAL DEFENSE

HILTON HEAD ISLAND, SOUTH CAROLINA | January 30 - January 31, 2014
REGISTER HERE
FINANCIAL ASSISTANCE APPLICATION

COMBINED FEDERAL DEFENDER STAFF and PRIVATE CJA PRACTITIONERS PROGRAMS

LAW & TECHNOLOGY SERIES: TECHNIQUES IN ELECTRONIC CASE MANAGEMENT WORKSHOP

SAN FRANCISCO, CALIFORNIA | January 23 - January 25, 2014
REGISTER HERE
DRAFT AGENDA
FINANCIAL ASSISTANCE APPLICATION

SENTENCING ADVOCACY WORKSHOP

LONG BEACH, CALIFORNIA | March 06 - March 08, 2014

TRIAL SKILLS ACADEMY

SAN DIEGO, CALIFORNIA | April 27 - May 02, 2014