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Federal Defender Newsletter

April 2012

CJA PANEL TRAINING

The next Sacramento panel training will be April 18, 2012 at 5:00 pm at the jury room on the fourth floor of the federal courthouse, 501 I Street. The topic is, "QUEEN FOR A DAY? How to navigate the safety valve debrief and limited immunity agreement - and what to do when the government decides your client was the JESTER that day." Presented by CJA Panel Attorney Scott Cameron.

Fresno CJA Panel training will be on Tuesday, April 17, 2012 at the Downtown Club, 5120 Kern St., Fresno at 5:30 p.m. The topic will be announced.

JUSTICE LEAGUE SOFTBALL SEASON

The Federal Defender's Office softball team is recruiting players for the upcoming Justice League softball season!! The season starts May 1 and runs through July. If you are interested in joining us, please contact Henry Hawkins at Henry_Hawkins@fd.org for team and game information. All games are played at McKinley or Glen Hall parks in East Sacramento in the evenings.

SERVICES OF COORDINATING DISCOVERY ATTORNEYS AVAILABLE IN SELECT CJA CASES

Attorneys Russ Aoki, Shazzie Naseem, and Emma Greenwood, are now available to assist Criminal Justice Act (CJA) counsel with the management of large volumes of discovery in selected federal CJA cases. CDAs can provide additional in-depth and significant hands-on assistance to CJA panel attorneys and FDO staff in cases that require technology and document management expertise.

To contain costs and maximize benefits, the CDAs will focus on a limited number of cases each year that have been identified as needing a CDA, whether due to the complexity of the matter, the number of parties involved, or the nature and/or volume of the discovery. If a panel attorney or FDO is interested in utilizing the services of a CDA, they should first contact the National Litigation Support Team. Sean Broderick (National Litigation Support Administrator) or Kelly Scribner (Assistant National Litigation Support Administrator) at 510-637-3500, or by email: sean_broderick@fd.org, kelly_scribner@fd.org

ONLINE MATERIALS FOR CJA PANEL TRAINING

The Federal Defender's Office will be distributing panel training materials through our website - 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 or Lexi Negin (Sacramento) at 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

SUPREME COURT

Martinez v. Ryan, No. 10-1001 (3-20-12) (Kennedy, J., with Roberts, C.J., Ginsburg, Breyer, Alito, Sotomayor, and Kagan, JJ.) Justice Kennedy, writing for seven Justices adopts "a more narrow, but still dispositive"

rule that a "federal habeas court may excuse a procedural default of an ineffective-assistance claim when the claim was not properly presented in state court due to an attorney's errors in an initial-review collateral proceeding."

Missouri v. Frye, No. 10-444 (10-31-11) (Kennedy, J., with Ginsburg, Breyer, Sotomayor, and Kagan, JJ.) The Court held that the Sixth Amendment right to the effective assistance of counsel extends to the negotiation and consideration of plea offers that lapse or are rejected, and that defense counsel has a duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the client.

Lafler v. Cooper, No. 10-209 (10-31-11) (Kennedy, J., with Ginsburg, Breyer, Sotomayor, and Kagan, JJ.) The Court decided that when a defendant rejects a favorable plea offer on the basis of defense counsel's inadequate assistance and goes to trial, the fact that he is subsequently convicted after a fair jury trial does not preclude a showing of prejudice that would make him eligible for relief under Strickland v. Washington. In such a case, defendant can demonstrate prejudice from counsel's deficient performance if he can show that, but for the bad advice, the plea offer would have been presented to the court, the court would have accepted it, and the conviction and/or sentence under the offer's terms would have been less severe than under the judgment and sentence that were imposed.

NINTH CIRCUIT

United States v. Whitney, No. 10-10118 (3-7-12)(Reinhardt, with B. Fletcher and Tashima). In the Eastern District of California, a deal was struck between the government and the defendant. At sentencing, the prosecutor breached provisions of the deal. Specifically, the prosecutor disclosed information from a debriefing that the parties agreed was to

remain confidential. Further, the prosecutor made an argument about criminal history that supported an upward departure. In this fraud case the guideline range was 41 to 51 months. The sentencing judge departed upward to 87 months on the basis of under representation of criminal history. The Ninth Circuit reiterated that plea agreements are contracts, and the breaking of an agreed term is a violation. The Ninth Circuit found that the government broke its promises. Moreover, the sentencing judge erred in a guideline determination, because no evidence existed to support an adjustment for being an organizer. The case is remanded for resentencing before a new judge.

Congratulations to CJA Panel Attorney Tim Warriner on the win!!!

Phillips v. Ornoski, No. 04-99005 (3-16-12)(Reinhardt, with B. Fletcher; partial dissent by Kleinfeld). In this capital petition, the Ninth Circuit excoriates the prosecutor for wilfully misleading the jury and withholding evidence as to a special circumstance that may have impacted the death verdict. Although the “deceptive ruse” did not affect the guilt verdict, and the denial of the petitioner's claims related to them was affirmed, the Ninth Circuit did vacate the death sentence. The issues revolved around what the motive was for the killing, and the hidden information concerned benefits received by the cooperating witness.