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Federal Defender Newsletter

February 2009

CJA PANEL TRAINING

Sacramento panel training is on February 18, 2009 at 5:30 p.m. at 801 I Street, in the 4th Floor conference room. AFD David Porter will present the 2009 Supreme Court update. Fresno panel training is on February 17, 2009 at 5:30 p.m. at the Downtown Club, 2120 Kern St., Fresno. The topic is "Immigration Consequences in Criminal Cases" presented by AFD Doug Beevers.

SENTENCING COMMISSION TRAINING

The United States Probation Office would like to extend an invitation to the panel to attend training provided by the United States Sentencing Commission on March 4, 2009 from 9:00-4:30 at the U.S. Courthouse, 501 I Street, Courtroom 9, 13th Floor. The topics will be sentencing updates, firearms and sex offenses. Please respond to USPO Cynthia Mazzei, 930-4315 if you plan to attend the training.

FRESNO JOB OPENINGS

The Fresno Federal Defender's Office has two job openings: one for an experienced investigator, and one for an Assistant Federal Defender. This position will remain open until filled.

TOPICS FOR FUTURE TRAINING SESSIONS

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

ADDRESS, PHONE OR EMAIL UPDATES

Please help us ensure that you receive the 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.

CLIENT CLOTHING & FOOTWEAR

The clothes closet is available to all AFDs and panel attorneys. It contains suits, shoes, socks, and shirts that clients can wear for court appearances. We also have some clothes that can be given away when necessary. Donations are greatly appreciated.

If you take borrowed clothes to the jail or U.S. Marshal's Office for your clients, please put either your name/phone number or our name/phone number on the garment bag so that the facility will contact us for pickup of the items. Please note that you do not have to pay for the cleaning of any items used. The district court has graciously arranged for funds to pay the cleaning costs.

See Becky Darwazeh at the Sacramento Office or Nancy McGee at the Fresno office to pick up or drop off clothes.

NOTABLE SUPREME COURT CRIMINAL AND HABEAS CASES

In Chambers v. United States, No. 06-11206, the Supreme Court held that a prior Illinois conviction for failing to report for penal confinement is not a "violent felony" that can support a recidivist sentence under the Armed Career Criminal Act.

In Jimenez v. Quarterman, No. 07-6984, the Supreme Court resolved a technical issue concerning the running of the statute of limitations in federal habeas corpus cases. The court decided that where a state court grants a criminal defendant the right to file an out-of-time direct appeal during state collateral review, but before the defendant has first sought federal habeas relief, his judgment is not "final" for purposes of 28 U.S.C. §2244(d)(1)(A)--and thus the limitations period does not commence--until the conclusion of direct review or the expiration of the time for seeking certiorari review of that appeal.

In Spears v. United States, No. 08-5721, the Supreme Court clarified in a per curiam opinion that Kimbrough v. United States, in which it held that federal district judges are allowed to deviate from the U.S. Sentencing Guidelines provisions governing crack cocaine offenses, allows judges to reject and vary categorically from those guidelines on the basis of a policy disagreement with them.

Reaffirming – yet again – the advisory nature of the Guidelines in Nelson v. United States (08-5657), the Supreme Court makes clear that "[t]he Guidelines are not only not mandatory on sentencing courts; they are also not to be presumed reasonable" (emphasis in the original). Since it was "plain from the comments of the sentencing judge that he did apply a presumption of reasonableness to Nelson's Guidelines range," the Court reversed the Fourth Circuit's affirmance of his sentence for the second time.

NOTABLE NINTH CIRCUIT CRIMINAL CASES

United States v. Esparza, No. 07-50293 (1-20-09). This opinion deals with supervised release conditions in a child pornography case. Specifically, the sentencing court failed to make specific findings to support conditions that could mandate the taking of all prescribed medication, physiological testing, and the delegation of the potential for inpatient treatment. The 9th per curiam (Graber, Clifton and Trager) vacated these conditions and remanded for the court to support its findings. The court in sentencing unduly burdens liberty interests in requiring medication and psychological testing. Inpatient treatment cannot be delegated to the probation officer, and that condition is stricken. The court however may choose to mandate inpatient treatment but it has to make findings and not delegate the power to the probation officer.

United States v. Aguila-Montes De Oca, No. 05-50170 (1-20-09). The 9th grants a rehearing in this case, and issues a new opinion, wherein it still finds that the defendant's prior California burglary is not a crime of violence under the Guidelines because, under the state scheme, an entry for a burglary does not require it to be unlawful or unprivileged. The prior decision of Navarro-Lopez controls, 503 F.3d at 1073.