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Federal Defender Newsletter

October 2012

CJA PANEL TRAINING

Panel training in Sacramento will be held on Wednesday, October 17th at 5:00 p.m. in the jury lounge of the federal courthouse, 501 I St. The topic will be "The Actualization of Wealth: Business and Tax Aspects of Running a Small or Solo Law Practice." The presenters will be financial advisor Garrett Morgan and accountant Sid Norton from Fountainhead Wealth.

Panel training in Fresno will be held on Tuesday, October 16th at 5:30 to 6:30 p.m. at the Downtown Club, 2120 Kern St., Fresno. The speaker will be Anthony Ortiz, Founding Director of Breakout Prison Outreach/ California Youth Outreach. He will be speaking on gang structures and subcultures.

IN MEMORIAM: MABEL ADAMS

On October 1, Mabel Adams passed away at the age of 78. Mabel was the first Criminal Justice Act Panel Administrator for the Eastern District of California. She created the panel selection, supervision, and payment systems that we still use today and that remain the model for CJA panel management throughout the United States.

Mabel joined the Federal Defender's office in January 1973. She served as the office receptionist, CJA manager, and secretary to then-Federal Defender E. Richard Walker. In 1990, Federal Defender Art Ruthenbeck convinced the Administrative Office of U.S. Courts to create the position of CJA Panel Manager and he fashioned the duties of this newly-created position after all the things Mabel was already doing. Although Mabel retired from the Federal Defender's office in 2000, several current members of the CJA panel were trained, administratively supervised, and aided by Mabel's guidance for many years. Mabel will be missed.

PLEASE JOIN US AS WE SAY GOOD-BYE AND GOOD LUCK TO ALLISON CLAIRE

Please join us on November 1 (new date) from 3 to 5 p.m. at the Federal Defender's Office in Sacramento for a gathering in honor of Allison as she embarks on her new career as a magistrate judge. We will be having a dessert bar and beverages. Please R.S.V.P. to Cynthia Compton by October 26, 2012 with a \$10.00 check made out to "Blue Moon." We will also be accepting additional donations towards Allison's judge's robe and gavel.

PLEASE RSVP FOR SAFD DENNIS WAKS' RETIREMENT PARTY

Dennis Waks will be retiring after 24 years with the Office of the Federal Defender in Sacramento. Please join us on Friday, November 9th at 5:30 p.m. for a fun-filled evening party at the California Auto Museum as we enjoy vintage cars, good company, delicious Mexican food catered by Cilantro's, and Vic's Ice Cream. Wine, beer, and soda bar *included*. Cost is \$35.00 per person made out by check payable to "DWRC." Please RSVP by October 26, 2012 to Dennis Waks Retirement Committee at the Federal Defender's Office. Email: dwrc25@hotmail.com.

RESULTS FROM THE FDO/CJA PANEL GOLF TOURNAMENT

Closest to the pin winners: Linda Miller and Keith Holland

Longest drive winners: Stephanie Hawkins and Humphreys McGee

Overall winner: We had a tie between past winner Terry Butrym and another player, both with net scores of 68. The Ridge staff produced the U.S.G.A. tie breaker rule, which states, "Tie breaker is scorecard playoff with the player who has the lowest back nine score." Terry Butrym shot a back nine of net 38 and Henry Hawkins shot a back nine score of net 32. Henry Hawkins is this year's winner! The trophy is in the FDO office and we'll see you next year!

SAVE THE DATE FOR FEDERAL DEFENDER DAN BRODERICK'S RETIREMENT PARTY AND ANNUAL FDO/CJA HOLIDAY PARTY

Our boss is retiring and going out in style at the annual FDO/CJA Holiday Party. Please save December 7, 2012 to wish Dan a fond farewell.

PLEASE WELCOME OUR NEWEST AFD, ANGELES ZARAGOZA

Angeles comes to us from the Sacramento County Public Defender's Office. She is a graduate of UC Berkeley and UCLA Law School. She will begin on October 9th in the Sacramento office.

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 Samya Burney (Fresno) at samya_burney@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

U.S. v. Leal-Del Carmen, No. 11-50094 (9-14-12)(Kozinski, with Reinhardt & Fletcher).

Government agents deported a witness who said that defendant was not an alien smuggler. They kept the other witnesses (who said he was a smuggler) in the country as material witnesses to testify at trial. The district court refused to dismiss the indictment or admit the video of the exculpatory witness's statement. It also refused to give a missing witness instruction. Defendant was convicted of alien smuggling. The Ninth Circuit reverses the conviction, holding that the government's wrongful deportation of the exculpatory witness, coupled with the evidentiary errors by the district court, deprived the defendant of a fair trial and of his constitutional right to present a defense.

Cudjo v. Ayers, No. 08-99028 (9-28-12)(N. Smith with Kozinski; dissent by O'Scannlain). In this death penalty habeas appeal, the Ninth Circuit grants relief because the state courts wrongly and unreasonably barred the petitioner from introducing trustworthy and exculpatory testimony that his brother, and not him, committed the murder. The evidence was a jail house confession, which the state trial judge kept out on reliability grounds. Under Chambers v. Mississippi, 410 US 284 (1973), the Court held that a defendant must be given a fair opportunity to defend himself. In Chambers the Supreme Court allowed a statement to be admitted that the state court had barred on supposed unreliable hearsay grounds. The state court made the same ruling here. The state courts were unreasonable in barring the confession, which could be attacked by the government for credibility. The reliability of the confession was a jury question. The fact that the prosecutor appealed to racial bias in his closing just added to the prejudice of the error.

Miles v. Martel, No. 10-15633 (9-28-12)(B. Fletcher, with Hug and Paez). The Ninth Circuit reverses the denial of a habeas petition and remands for an evidentiary hearing to determine whether the petitioner received IAC in rejecting a plea offer. The petitioner, a sympathetic military vet, faced a three-strike 25-to-life sentence for passing a fictitious check of around \$470. He claims his lawyer advised him to reject a six year plea offer because the priors would be dismissed by the court. The lawyer was wrong and the petitioner got 25-to-life. The hearing, under Lafler v. Cooper, 132 S. Ct. 1376 (2012), must determine whether counsel advised petitioner to reject the six-year sentence and whether his advice was ineffective.