



## NON CAPITAL HABEAS CONFERENCE

### ADMINISTRATIVE OFFICE OF THE U.S. COURTS DEFENDER SERVICES OFFICE TRAINING DIVISION

Hyatt Centric French Quarter Hotel  
800 Iberville Street  
New Orleans, Louisiana 70112  
September 27-28, 2018  
FINAL AGENDA

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#### Thursday, September 27, 2018

7:40 to 8:30 a.m.    **Registration and continental breakfast – New Orleans Foyer**

8:30 to 8:45 a.m.    **Welcome and Introductory Remarks – New Orleans Ballroom**  
*Arianna Freeman*, Managing Attorney, Non-Capital Habeas Unit,  
Eastern District of Pennsylvania, Philadelphia, PA  
*Megan Hoffman*, Chief, Non-Capital Habeas Unit, District of Nevada,  
Las Vegas, NV  
*Lori Green*, Chief, Defender Services Office Training Division,  
Washington, DC  
*Claude Kelly*, Federal Defender, Eastern District of Louisiana, New  
Orleans, LA

8:45 to 10:00 a.m.    **The state of the science and how to preserve the record for  
habeas - New Orleans Ballroom**  
*Chris Fabricant*, Director Strategic Litigation, Innocence Project, New  
York, NY

Learn what is on the cutting edge of forensic sciences and how to  
preserve the record in appeals and habeas cases.

10:00 – 10:15 a.m. Break

10:15 to 11:15 a.m. Break-Out Sessions

1. **Beginner: Are your client’s petition and/or claims timely? Does your client qualify for tolling? (2244(d))**

**Holmes Room A**

*Arianna Freeman*, Managing Attorney, Non-Capital Habeas Unit, Eastern District of Pennsylvania, Philadelphia, PA

*Megan Hoffman*, Chief, Non-Capital Habeas Unit, District of Nevada, Las Vegas, NV

How do you know if your client’s petition is timely? And what kinds of tolling are available? This session will break it down for beginner advocates.

2. **2254 Advanced: Unreasonable determination of facts**

**Holmes Room B**

*Ryan Norwood*, Assistant Federal Defender, District of Nevada, Las Vegas, NV

This session will undertake a review of relevant caselaw and discuss the question left open in *Wood v. Allen*.

3. **Beyond Strickland - New Orleans Ballroom**

*Keith Hilzendeger*, Assistant Federal Defender, District of Arizona, Phoenix, AZ

What are the various standards of review in federal habeas? This session will identify which standards are more favorable and allow a better chance of success.

4. **2241 - Indefinite Ice Detention - Holmes Room C**

*David Menninger*, Assistant Federal Defender, Central District of California, Los Angeles, CA

Ripped from the headlines: how do you represent clients who are stuck in indefinite ICE detention? Is there recourse for them?

11:15 a.m. to

12:15 p.m.

**Keynote Address - Orleans Ballroom**

*The Honorable Jeffrey S. Sutton, Circuit Judge, Sixth Circuit Court of Appeals, Columbus, OH*

Judge Sutton will discuss why American federal constitutional jurisprudence should account for the role of state courts and state constitutions.

12:15 to 1:45 p.m. **Lunch on your own**

1:45 to 2:45 p.m. **Managing clients with complex issues (including who decides claims, mentally ill and intellectually disabled clients, etc.)**

**New Orleans Ballroom**

*Tony Bornstein, Moderator, Assistant Federal Defender, District of Oregon, Portland, OR*

*Amelia Bizzaro, Panelist, Assistant Federal Defender, District of Nevada, Las Vegas, NV*

*Arianna Freeman, Panelist, Managing Attorney, Non-Capital Habeas Unit, Eastern District of Pennsylvania, Philadelphia, PA*

*Keith Hilzendeger, Panelist, Assistant Federal Defender, District of Arizona, Phoenix, AZ*

This roundtable discussion will cover example client scenarios and their resolution in light of federal constitutional caselaw and the ethical rules governing our profession.

2:45 to 3:45 p.m. **Habeas Case Update - New Orleans Ballroom**

*George Couture, Attorney Advisor, Defender Services Office Training Division, Washington, DC*

This presentation will review and discuss the status of habeas caselaw in our circuit courts.

3:45 to 4:00 p.m. **Break - New Orleans Ballroom Foyer**

**4:00 to 5:00 p.m. Break-Out Sessions****1. 2254 Beginner: What is exhaustion anyway?****Holmes Room A**

*Ann McClintock*, Assistant Federal Defender, Eastern District of California, Sacramento, CA

What is exhaustion anyway? Why do we have to exhaust? What is actually required? And if a claim is unexhausted, what do we do next?

**2. 2254 Advanced: Default arguments - what actually works?****Holmes Room B**

*Lisa Freeland*, Federal Defender, Western District of Pennsylvania, Pittsburgh, PA

*Ryan Norwood*, Assistant Federal Defender, District of Nevada, Las Vegas, NV

Using a case study, this session will demonstrate a variety of default arguments and defenses. For example, how to find a way to assert there is no available state corrective process? How do you establish that state procedural rules are not adequate/not firmly established and regularly applied? How do you prove the state procedural rule is not independent from the constitutional question? Where does the *Martinez* analysis come into play?

**3. Unique Issues in 2255 Cases - New Orleans Ballroom**

*Janice Bergman*, Assistant Federal Public Defender, Southern District of Florida, Fort Lauderdale, FL

This session will discuss hot topics in 2255 cases and will include time to brainstorm scenarios with the audience.

**4. Tribal court convictions - Holmes Room C**

*Dan Kaplan*, Assistant Federal Defender, District of Arizona, Phoenix, AZ

How are tribal court convictions unique? And what are the available post-conviction remedies.

### Friday, September 28, 2018

**7:30 to 8:00 a.m. Continental breakfast - **New Orleans Ballroom Foyer****

**8:00 to 9:30 a.m. Ethics & Professionalism: Navigating the thorny issue of prior counsel in post-conviction cases - **New Orleans Ballroom****

*C.B. Kirschner*, Assistant Federal Defender, District of Nevada, Las Vegas, NV

*Lori Teicher*, First Assistant, District of Nevada, Las Vegas, NV

This session will cover ethical and professionalism considerations present in every habeas case, including: How do you effectively work with prior counsel on IAC claims? Is privilege waived in every evidentiary hearing? How do you respond if you find yourself on the receiving end of an IAC claim?

**9:30 to 10:30 a.m. Break-Out Sessions**

**1. Beginner: Your claims are exhausted. Why they still might not be heard on the merits - **Holmes Room A****

*Megan Hoffman*, Chief, Non-Capital Habeas Unit, District of Nevada, Las Vegas, NV

This session will address the bread & butter of habeas: procedural default. What is a procedural default? And what can we do to overcome the default.

**2. Advanced: Real case brainstorm. - **Holmes Room B****

*Lisa Freeland*, Federal Defender, Western District of Pennsylvania, Pittsburgh, PA

*Elisa Long*, Assistant Federal Defender, Western District of Pennsylvania, Pittsburgh, PA

Bring a case to brainstorm with experienced post-conviction litigators!

**3. *Johnson/Dimaya* cases: Where are we now?  
**New Orleans Ballroom****

*Amy Baron-Evans*, National Federal Defender Sentencing Resource Counsel, Boston, MA

This session will discuss the current standing of cases under *Johnson* and *Dimaya*, and what legal arguments you can and should be making.

**4. Constitutional challenges to AEDPA: Is it Time?**

**Holmes Room C**

*Jonathan Kirshbaum*, Assistant Federal Defender, District of Nevada, Las Vegas, NV

*Alex Spelman*, Assistant Federal Defender, District of Nevada, Las Vegas, NV

Might it be time that certain Justices on the Supreme Court are willing to consider legitimate challenges to the AEDPA? This session will discuss legal arguments being made and how you can incorporate them into your practice.

**10:30 to 10:45 a.m. Break - New Orleans Ballroom Foyer**

**10:45 to 11:45 a.m. Strategies on appeal - New Orleans Ballroom**

*Carolyn Wiggin*, Assistant Federal Defender, Eastern District of California, Sacramento, CA

*Jason Carr*, Assistant Federal Defender, District of Nevada, Las Vegas, NV

Learn unique strategies for habeas appeals, including how to seek a Certificate of Appealability, when to request certification of an uncertified claim, and how to keep a judge interested when the procedural history can go on for what seems like days.

**11:45 a.m. to  
12:45 p.m.**

**Investigating and pleading a winning claim**

**New Orleans Ballroom**

*Brian O'Leary*, Investigator, Eastern District of Pennsylvania, Philadelphia, PA

*Tony Bornstein*, Assistant Federal Defender, District of Oregon, Portland, OR

This session will address the effective use of an investigator in a non-capital habeas case, and how to use the product of that investigation in the pleading of the claims in your petition.

**12:45 to 1:00 p.m. Closing remarks - *New Orleans Ballroom***

**1:00 to 2:00 p.m. Optional Session: Creating a Non-Capital Habeas Unit  
*New Orleans Ballroom***

*Tony Bornstein*, Assistant Federal Defender, District of Oregon, Portland, OR

*Lisa Freeland*, Federal Defender, Western District of Pennsylvania, Pittsburgh, PA

*Arianna Freeman*, Managing Attorney, Non-Capital Habeas Unit, Eastern District of Pennsylvania, Philadelphia, PA

*Megan Hoffman*, Chief, Non-Capital Habeas Unit, District of Nevada, Las Vegas, NV

*Lori Teicher*, First Assistant, District of Nevada, Las Vegas, Nevada

*Elisa Long*, Assistant Federal Defender, Western District of Pennsylvania, Pittsburgh, PA

*Carolyn Wiggin*, Assistant Federal Defender, Eastern District of California, Sacramento, CA

Join the NCH Conference Planning Committee for an informal brainstorm on creating an NCH Unit. How do you get started? How do you get judges on board? How can you set up and manage a Unit? What resources will you need?

**2:00 p.m. Adjournment**