



## 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  
DRAFT AGENDA

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Thursday, September 27, 2018

7:40 to 8:30 a.m. Registration and continental breakfast

8:30 to 8:45 a.m. Welcome and Introductory Remarks

8:45 to 10:00 a.m. The state of the science and how to preserve the record for habeas.

*Chris Fabricant*, Director Strategic Litigation, Innocence Project, New York, New York

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 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))**

*Tom Gaeta*, Research and Writing Specialist, Eastern District of Pennsylvania, Philadelphia, Pennsylvania

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**

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

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

**3. Beyond Strickland**

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

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**

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

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**

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

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 (who decides claims, mentally ill and intellectually disabled clients, etc.)**

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

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

*Kelley Henry*, Middle District of Tennessee, Nashville, Tennessee

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**

*George Couture*, Attorney Advisor, Defender Services Office Training Division, Washington, D.C.

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

**3:45 to 4:00 p.m. Break**

**4:00 to 5:00 p.m. Break-Out Sessions**

**1. Beginner: What is exhaustion anyway?**

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

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?**

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

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

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**

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

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

**4. Tribal court convictions**

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

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**

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

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

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

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 defend 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**

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

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.**

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

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

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

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

TBD

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?**

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

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

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**

**10:45 to 11:45 a.m. Strategies on appeal**

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

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

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**

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

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

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**

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

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

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

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

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

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

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

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

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**