

2018 FEDERAL CRIMINAL DEFENSE PRACTICE FALL SEMINAR
EASTERN DISTRICT OF NORTH CAROLINA

McKimmon Center
Raleigh, North Carolina

AGENDA

Thursday, October 18, 2018

- 8:00-9:00 REGISTRATION/SIGN IN
8:45-9:00 WELCOMING REMARKS
Alan DuBois, Federal Public Defender, Eastern District of North Carolina
- 9:00-10:00 DIGITAL FORENSICS IN CHILD EXPLOITATION/PORNOGRAPHY CASES
Lars Daniel, Envista Forensics, Raleigh NC
The purpose of this class is to educate legal professionals on how digital evidence can play a critical role in child pornography cases. This class will cover common forensic artifacts found on computers, cell phones, and other electronic devices commonly seen in child pornography cases. In this class attendees will learn about how law enforcement agencies perform online investigations for child pornography and child solicitation. The underlying technology and the evidence created by it will be covered, with particular interest paid to peer to peer file sharing. Case examples are used to illustrate the complexity of child exploitation cases, including issues related to user attribution, file distribution, and forensic artifacts related to the viewing and downloading of contraband. A section of the class is dedicated to how this evidence can be challenged using actual case examples.
(1.0 Regular Credit Hour)
- 10:00-10:15 BREAK
- 10:15-11:15 STORYTELLING AT TRIAL
Fredilyn Sison, Assistant Federal Public Defender, Western District of North Carolina
We experience the world through stories. All of us have story receptors that allow us to more easily track, process and understand material presented in story form. As lawyers—and therefore tellers---we need to learn how to structure and tell our client’s story so that the receiver---the jury---can accept our client’s story as the only one that matters. This means we must learn something about where story comes from, the role of the teller, the structure of a story, the characters and the universal truths, all of which make stories compelling. This session focuses on discovering the story through dramatic methods.
(1.0 Regular Credit Hour)
- 11:15-12:15 MAKING AND RESPONDING TO OBJECTIONS AT TRIAL
William “Woody” A. Woodruff, Professor Campbell Law, Raleigh, NC
This class will cover the law as it applies to how to preserve error when evidence is admitted over an objection as well as when it is excluded and give some practical pointers on how to make sure you comply with the law during the dynamics of a trial. It will illustrate the legal rules and practical suggestions by using hypotheticals arising from objections based on relevance (FRE 401), the Original Document Rule (FRE 1001 et. seq), and selected exemptions/exceptions to the Rule Against Hearsay (FRE 801 et seq.).
(1.0 Regular Credit Hour)

- 12:15-1:45 LUNCH (ON YOUR OWN)
- 1:45-2:45 **NC RULES OF PROFESSIONAL CONDUCT AND USDC EDNC LOCAL RULES**
Suzanne Little, Assistant Federal Public Defender, Eastern District of North Carolina
Joseph B. Gilbert, Former Assistant Federal Public Defender, EDNC
This presentation will use a game similar to the Jeopardy show to educate attending attorneys on the NC Rules of Professional Conduct (RPC) and the U.S. District Court for the Eastern District of North Carolina's Local Criminal Rules (Local Rules). Three attendees will participate as contestants, and they will choose a topic from a game board displayed via Power Point on a large screen. Each topic will present an "answer" and the first person to respond will be required to state the "question." The answers and questions will be displayed for all attendees to see after each has been selected. The power point slides will include specific applicable NC RPC's and Federal Court Local Rules. Select RPC's and Local Rules will also be provided to attendees as a paper handout for future reference.
(1.0 Ethics Credit Hour)
- 2:45-3:00 BREAK
- 3:00-4:00 **FACT-BUSTING YOUR CASE AND BRAINSTORMING**
Joseph L. Ross, II, Assistant Federal Public Defender, Eastern District of North Carolina
This session discusses in detail the elements of fact-busting (a.k.a. brainstorming) and provides a demonstration of techniques to mine the facts of the case, allowing you to highlight good facts, mitigate bad facts and maximize neutral facts for both trials and sentencings.
(1.0 Regular Credit Hour)
- 4:00-5:00 **MAKING YOUR CASE THROUGH EFFECTIVE DIRECT EXAMINATION**
Kelly Dagger, Ellis & Winters, LLP, Raleigh, NC
Paul Sun, Ellis & Winters, LLP, Raleigh, NC
This presentation is intended to focus on trial skills, and particularly direct examination. We will talk about the elements of an effective direct examination, as applied to clients who testify, friendly witnesses, and even adverse witnesses. We will also discuss the applicable evidence rules, strategies for preparing a witness for direct examination, and how to proceed with a witness who cannot be prepared in advance.
(1.0 Regular Credit Hour)

Friday, October 19, 2018

- 7:30-8:00 REGISTRATION/SIGN IN
- 8:00-9:00 A RECIPE FOR OPENING STATEMENTS AND CLOSING ARGUMENTS
Joseph Cheshire, Cheshire Parker Schneider & Bryan, Raleigh, NC
Wade Smith, Tharrington Smith LLP, Raleigh, NC
This session will focus on the most critical parts of the trial: openings and closing arguments. Presentation includes how to give an opening statement, making an initial impression during your opening statement that will sit with the jury throughout the trial and showing emotion when it's time to 'argue'.
(1.0 Regular Credit Hour)
- 9:00-10:00 CROSS EXAMINATION
Kevin Tully, Chief Public Defender, Mecklenburg County, NC
This presentation will review basic strategies, requiring the power of persuasion, to get a jury to view, comprehend, and digest the case. Trial is a verbal war where the stakes are high and the consequences are enormous. A critical part of this battle, cross examination is about a "search for the truth."
(1.0 General Credit Hour)
- 10:00-10:15 BREAK
- 10:15-11:15 ETHICAL CONSIDERATIONS WHEN REPRESENTING MENTALLY ILL CLIENTS
Joseph H. Craven, Assistant Federal Public Defender, EDNC
Joseph B. Gilbert, Former Assistant Federal Public Defender, EDNC
This presentation will begin with a power point presentation of NC Rules of Professional Conduct (RPC) applicable to clients with mental disability or mental illness. The presentation will then include group discussion of problems and solutions that have arisen in pretrial, trial and sentencing cases during the last 12 months in the U.S. District Court for the Eastern District of North Carolina. The session will also include role play, with one instructor acting as a mentally ill client and selected attorneys chosen to conduct a client meeting/interview at various stages of the trial process. Group discussion and suggestions for best practices will be included in the role play section. Select RPC's and information designed to improve representation of mentally ill clients will also be provided to attendees as a paper handout for future reference.
(1.0 Ethics Credit Hour)
- 11:15-12:00 DAUBERT COMES TO NORTH CAROLINA
Andrew DeSimone, Assistant Appellate Defender, Durham, NC
The talk will focus on North Carolina's adoption of the *Daubert* standard for the admissibility of expert testimony under Rule 702. It will cover recent caselaw and strategies for litigating *Daubert* hearings.
(.75 Regular Credit Hour)
- 12:00-1:15 LUNCH ON YOUR OWN

- 1:15-1:30 **PANEL ISSUES AND PANEL UPDATES**
Christian Dysart, Panel Representative, Eastern District of North Carolina
This brief question and answer session will provide CJA panel attorneys with updates to the Amended CJA Panel Plan, as well as other issues pertinent to the EDNC.
(.25 Regular Credit Hour)
- 1:30-3:30 **OVERHAULING CRIMINAL DEFENSE – JURY PERSUASION**
David Ball, Malekpour & Ball Trial Consulting, Raleigh, NC
New understandings of juror decision-making based on 21st Century neuroscience research, as well as case-loss-analysis and field testing of new strategies. This session will include topics such as: reasonable doubt revisited; warnings about traditional defense tactics that cause convictions; applications in voir dire, openings, testimony, closing; word choice; and direct and cross strategies.
(2.0 Regular Credit Hour)
- 3:30-3:45 **BREAK**
- 3:45-4:30 **MOTIONS PRACTICE: EMERGING ISSUES TO RAISE AND PRESERVE**
Jackie DiLauro, Assistant Federal Public Defender, EDNC
Jenny Leisten, Research and Writing Attorney, EDNC
This session will provide an update on Supreme Court and Fourth Circuit Court of Appeals decisions since the last CJA seminar and highlight pending cases of note before the two courts.
(.75 General Credit Hour)

****CLE 12.75 hours with 2.0 hours ethics****