

2023 FEDERAL CRIMINAL DEFENSE PRACTICE SEMINAR
EASTERN DISTRICT OF NORTH CAROLINA
Beaufort, NC

AGENDA

Thursday, October 26, 2023

8:00-9:00 **REGISTRATION/PROGRAM CHECK IN (SIGN IN)**

8:45-9:00 **WELCOME AND FPD REMARKS AND UPDATES**

Alan DuBois, Federal Public Defender, Office of the Federal Public Defender for the Eastern District of North Carolina, Raleigh, NC
(.25 General CLE)

9:00-10:30 **INTEGRATING MITIGATION**

Dave Wicclair, Assistant Federal Public Defender, Office of the Federal Public Defender for the Eastern District of North Carolina, Raleigh, NC

Macon Hollister, Mitigation Specialist, Office of the Federal Public Defender for the Eastern District of North Carolina, Raleigh, NC

As criminal defense attorneys, we all know the importance of presenting mitigation on behalf of our clients at the sentencing hearing. But in a district where mandatory minimums are prevalent and the guidelines reign supreme, the use of mitigation at sentencing alone is often not enough. This presentation will begin by discussing the importance of mitigation generally and developing strategies for building mitigation in your client's case. We will then identify ways to utilize your client's mitigation before the sentencing hearing. We will end the presentation by sharing mitigation resources that are available to attorneys in our district. (1.5 General CLE)

10:30-10:40 ***BREAK***

10:40-12:10 **ETHICS & PROFESSIONALISM**

Fredilyn Sison, former Assistant Federal Public Defender, Office of the Federal Public Defender for the Western District of North Carolina, Asheville, NC

This ethics and professionalism session will address issues related to conflict of interest, confidentiality, the scope of representation, and practical ways to diffuse unethical and/or unprofessional conduct or situations. (1.5 Ethics CLE)

12:10-1:30 **LUNCH BREAK – ON YOUR OWN**

1:30-2:30 **HOPE COURT/DRUG COURT AWARENESS**

Ed Gray, Assistant Federal Public Defender, Office of the Federal Public Defender for the Eastern District of North Carolina, Raleigh, NC

Vidalia Patterson, Research and Writing Attorney, Office of the Federal Public Defender for the Eastern District of North Carolina, Raleigh, NC

Sala Abdallah, Community Organizer, Southern Coalition for Social Justice

There has been growing interest on the part of federal judges, probation officers, and others in establishing reentry court programs to manage the reintegration of offenders from prison to the community. They employ the authority of the court to impose graduated sanctions and positive reinforcements in a team approach typically involving a judge, probation officer, assistant U.S. attorney, assistant federal defender, and medical/psychological services provider. This session will discuss the EDNC reentry Courts (known as H.O.P.E. and S.T.A.R. Court), the role that the defense bar plays in this system, the ethical and procedural issues that reentry courts raise, and discuss the criteria that members of the bar can use to identify whether their clients can benefit from this reentry court program.

(1.0 General CLE)

2:30-2:45 **BREAK**

2:45-4:00 **SUPREME COURT UPDATES/4CCA UPDATES**

Patrick Bryant, Assistant Federal Public Defender, Eastern District of Virginia, Alexandria, VA

Eric Brignac, Appellate Chief, Office of the Federal Public Defender for the Eastern District of North Carolina, Raleigh, NC

The Supreme Court and Fourth Circuit update highlights relevant appellate criminal law decisions published between April 2023 and October 2023, with guidance to practitioners as to how these decisions may be used to benefit clients. We will also preview cases of note coming before the Supreme Court in the October 2023 term.

(1.25 General CLE)

4:00-5:00 **INTERACTION BETWEEN FEDERAL AND STATE CHARGES**

Michael McDonald, Assistant Federal Public Defender, Eastern District of North Carolina, Raleigh, NC

Leza Driscoll, Assistant Federal Public Defender, Eastern District of North Carolina, Raleigh, NC

The practice of federal criminal defense is vastly different from the practice of state criminal defense. Many defendants face charges in both federal and state courts. When this happens, complex issues arise involving primary custody, jail credit, and sentencing. This session will discuss federal and state criminal defense practices, their differences, and the interaction between state and federal sentencing.

(1.0 General CLE)

Friday, October 27, 2023

8:00-9:00 **PROGRAM CHECK IN/SIGN IN FOR DAY TWO SESSION**

9:00-9:15 **PANEL ISSUES AND PANEL UPDATES**

Christian Dysart, CJA Panel Representative, Dysart Willis, Raleigh, NC

(.25 General CLE)

9:15-10:00 **EVOUCHER TIPS AND TRICKS**

Alyssa Hockaday, Attorney Advisor, Office of the Clerk for the Eastern District of North Carolina, Raleigh, NC

A review of new features, best practices, and answers to common questions for users of the Eastern District of North Carolina eVoucher system. (.75 General CLE)

10:00-10:15 **BREAK**

10:15-11:15 **RETHINKING SECOND AMENDMENT LITIGATION AFTER *BRUEN*: USING TEXT AND HISTORY TO CHALLENGE FEDERAL GUN LAWS**

Cullen Macbeth, Assistant Federal Public Defender, District of Maryland, Greenbelt, MD

Last year's opinion in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), heralded a new era in Second Amendment litigation. Rather than conducting means-ends balancing, as courts did in the wake of *District of Columbia v. Heller*, 554 U.S. 570 (2008), *Bruen* instructs judges to assess firearms statutes by looking only to (1) "the Second Amendment's plain text" and (2) "the Nation's historical tradition of firearm regulation." *Bruen*'s new approach provides promising avenues for attacking numerous federal firearms regulations, from 18 U.S.C. § 922(g) to the National Firearms Act to enhancements in the Sentencing Guidelines. This session will introduce you to the fundamentals of Second Amendment law and offer lessons learned from the first fifteen months of *Bruen* litigation—where we've had success, the best responses to common government arguments, and how to correct lower courts' misapplications of *Bruen*. (1.0 General CLE)

11:15-12:15 DUELING SOVEREIGNS: MAKING SENSE OF PRIMARY AND SECONDARY CUSTODY

Andrew Szekley, Assistant Federal Public Defender, District of Maryland, Baltimore, MD

When your client has both federal and state charges or sentences, it can get messy fast. This session will cover the basics of the primary/secondary custody doctrine, help you identify common pitfalls, and provide some practice pointers to help you effectively advocate for your clients when they are dealing with multiple charges and sentences. (1.0 General CLE)

12:15-1:30 LUNCH BREAK (ON YOUR OWN)

1:30-3:00 ARE YOU STUCK IN THE WAITING PLACE? HOW TO KEEP THINGS MOVING (AND MAYBE EVEN WIN RELEASE) FOR YOUR INCOMPETENT CLIENTS

Jackie Tarlton, Assistant Federal Public Defender, Office of the Federal Public Defender for the Eastern District of North Carolina, Raleigh, NC

Joseph Craven, Assistant Federal Public Defender, Office of the Federal Public Defender for the Eastern District of North Carolina, Raleigh, NC

Any of us can find ourselves with an incompetent client, whether we handle revocations, misdemeanors, or felonies. But too often, these most vulnerable clients fall to the wayside because courts, prosecutors, and unfortunately sometimes even defense lawyers aren't sure how to keep these cases moving. The good news is that this is a place where the statute and case law are actually good for us! We will walk you through the governing statute, 18 USC 4241; nationwide caselaw; and sample pleadings that can protect these clients from languishing indefinitely in competency and restoration proceedings and perhaps even avoid civil commitment.

(1.5 General CLE)

3:00-3:15 BREAK

3:15-4:15 **CRIMES OF VIOLENCE: THE EVOLVING LEGAL
LANDSCAPE POST-*JOHNSON***

*Jennifer Leisten, Assistant Federal Public Defender, Office of the
Federal Public Defender for the Eastern District of North Carolina,
Raleigh, NC*

Understanding how to interpret and apply the term “crime of violence” is key to potentially avoiding many severe penalties for your client. Since the Supreme Court’s 2015 decision in *Johnson v. United States*, courts have been narrowing the definition, giving zealous advocates more opportunities to steer clear of the Armed Career Criminal Act, career offender designation, convictions under 18 U.S.C. § 924(c), deportation, and other consequences. In this presentation, we will review the shifting legal landscape since *Johnson* and discuss why the categorical approach is critical to minimizing your client’s exposure. We will also examine the Sentencing Guidelines’ upcoming changes to the crime of violence definition, focusing on how these changes will affect existing caselaw, particularly within the Fourth Circuit. (1.0 General CLE)

4:15-4:30 **CLOSING REMARKS AND ADJOURN**

*Alan DuBois, Federal Public Defender, Office of the Federal Public
Defender for the Eastern District of North Carolina, Raleigh, NC*

****10.5 General CLE hours and 1.5 Ethics CLE Hours****