

The Federal Defender Training Program Description and Goals, Federal Defenders Lisa Freeland, Tina Hunt and Carlos A. Williams

For many years, federal criminal practice has been exceedingly complex. Although no definitive count exists, experts believe there are currently 45,000 existing federal criminal statutes. Furthermore, there is widespread agreement by all participants in the federal criminal justice system that cases have become more complex. Criminal cases in federal court are complex for a variety of reasons. First, discovery is routinely voluminous and increasingly technical. Second, relevant legal rules are changing and ambiguous. Third, the adversarial nature of federal criminal defense practice generates difficulty whether negotiating a just resolution of the case, trying the case to verdict, litigating sentencing issues, perfecting an appeal, or pursuing collateral relief. To provide effective representation, indigent defense counsel require training at least equal, if not more, than federal prosecutors receive.

A successful indigent defense program should have two training tracks: (1) basic federal criminal training for newer lawyers; and (2) advanced training for all lawyers. The Defender program attempts to accomplish both tracks through national and local training.

As for national training, the Training Division of DSO provides substantial training and other resource support to Federal Defender Organization (FDO) staff and CJA panel attorneys. The Training Division has seven principal tasks:

- Providing substantive information on federal criminal law and procedure, publications, training materials and other online resources to CJA panel attorneys and FDO staff through the Training Branch websites, www.fd.org and www.capdefnet.org.
- Designing, implementing and teaching at national and local training programs for CJA panel attorneys and FDO attorneys, paralegals, and investigators.
- Delivering training programs to FDO attorneys, paralegals and investigators through an interagency agreement with the Federal Judicial Center (FJC) and assisting in the design of those programs.

- Working with contractors on the planning and implementation of federal death penalty and federal capital habeas corpus training for FDO staff and CJA panel attorneys.
- Providing guidance and information to members of the CJA panel and FDO staff on CJA cases regarding all aspects of criminal law and procedure through a hotline
- Implementing the Supreme Court Advocacy Program, which arranges moots, performs legal research, provides substantive and strategic advice, or editing and writing drafts of merits briefs, to CJA panel members and FDO attorneys representing CJA-eligible defendants in the United States Supreme Court.
- Providing advice and consultation on litigation support tools, services and processes to federal courts, federal defender organizations, and CJA panel attorneys.

Attached as Exhibit A is the Defender Services Training Spending Plan for fiscal years 2014-2016, which details the programs that were offered in FYs 2014 and 2015 and were proposed for 2016. Training is divided into “core” and “other” trainings; capital and non-capital.

Core non-capital Federal Defender programs include the Assistant Federal Defender Orientation, which is a 4-5 day program designed to train new lawyers in Defender Traditional and Capital Habeas Units (“CHU”); the Advanced Federal Defender Seminar, which is a two-and-a-half day annual program for the more advanced defender attorney staff; and the CHU Conference, a two-and-a-half day annual training program for lawyers, investigators and paralegals in Defender office CHUs. These programs involve plenary sessions and numerous break-out options. Core defender training also includes appellate and sentencing advocacy training as well as training Computer Systems Administrators and management training for Defenders, Administrative Officers and Supervisors.

The CJA panel attorney representatives also meet annually and every other year that training is held jointly with the Federal Defender management conference to enable defenders and panel representatives an opportunity to address issues of mutual interest and concern. Other “non-core,” but nevertheless critical programs include trial skills, non-capital mitigation, law and

technology, forensics, and persuasive writing. Training is also offered for paralegals and investigators.

Much of the faculty for these national training programs is made up of defender staff who, although busy with casework, devote a substantial amount of time and energy to assist with training. A “Train the Trainers” program is offered periodically to help prepare and train the future trainers.

Other than the CHU conference, which is planned by and attended by defender staff only, nearly all of the national capital training is planned by the capital resource projects and offered to defender staff and CJA attorneys. A variety of training types is offered, including bring-your-own-case, workshops and hands on skills trainings.

Changes to the procurement process following the structural reorganization of the Administrative Office have made securing adequate facilities for programs planned by the Training Branch more difficult. Last year, one program had to be cancelled. It is our understanding that discussions are ongoing about how to improve the process. If the pre-reorganization process is not reinstated, we suggest that the current process be changed to provide the Training Branch with the flexibility needed to secure adequate facilities in a timely and cost-effective manner.

Local training for defender staff is the responsibility of the Defender, who provide this training in a number of ways. Defenders also provide local training for CJA attorneys. Attached as Exhibit B is information from the Annual Reports on Federal Defender Organization Local Training and Resource Activities (2004-2014), which shows (1) the number of Defender offices providing training to CJA attorneys; (2) the number of programs; the total number of attendees, broken down between CJA attorneys and defender staff over a ten year period.

Although most Defenders offer training to members of their CJA panel, most district CJA Plans do not require training in federal criminal practice – either to be admitted to the CJA panel or to remain on it. Some do, however, include “Training Panels,” or “Mentoring Panels,” which give attorneys who do not meet the qualifications for admission to serve as “second chair” and gain the experience needed to be admitted to the CJA panel. In addition to providing hand-on training opportunities for those aspiring to serve, training panels can be useful in helping districts add diversity to their CJA panels.

Although the Defender program has made great strides in providing a sufficient number of national training programs to afford defender staff and CJA panel attorneys with the opportunity to get necessary training, some challenges remain. The written statements of the individual Defender witnesses will address some of those challenges.