
From: Anthony Martinez [/O=FDO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2DBB0EDF64D67C4005FF8AB06256F69]
Sent: 7/26/2018 8:48:00 AM
To: Joshua B Carpenter [Joshua_Carpenter@fd.org]
CC: JP Davis [JP_Davis@fd.org]; Erin Taylor [Erin_Taylor@fd.org]; Holly Dixon [Holly_Dixon@fd.org]; Mary Ellen Coleman [Mary_Ellen_Coleman@fd.org]; Peter Adolf [Peter_Adolf@fd.org]; William Moormann [William_Moormann@fd.org]
Subject: Re: Appeals / RW Posting DRAFT

Josh,

The posting was sent out yesterday. It should be on fd.org by this afternoon. Don't over think this. It's a lot simpler than what it looks.

Thanks,
Tony

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**Strickland v. US
Trial Ex.
033**

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▼ Joshua B Carpenter—07/26/2018 08:32:22 AM—Good morning everyone, After thinking about this for another day and re-reading everyone's e-mails

From: Joshua B Carpenter/NCWF/04/FDO
To: JP Davis/NCWF/04/FDO@FDO
Cc: Erin Taylor/NCWF/04/FDO@FDO, Anthony Martinez/NCWF/04/FDO@FDO, Holly Dixon/NCWF/04/FDO@FDO, Mary Ellen Coleman/NCWF/04/FDO@FDO, Peter Adolf/NCWF/04/FDO@FDO, William Moormann/NCWF/04/FDO@FDOEX
Date: 07/26/2018 08:32 AM
Subject: Re: Appeals/ RW Posting DRAFT

Good morning everyone,

After thinking about this for another day and re-reading everyone's e-mails and concerns, my recommendation is to go forward with the posting as drafted. Although it would be ideal to have the conceptual stuff sorted out in advance, perhaps the more important point is what Erin suggested -- to find someone good and figure it out from there. If, for example, we find someone with significant

appeals experience, we may give that person something more like 70/30 appeals and, by doing so, free up more time for Jared and Caryn to work on trial-support issues. On the other hand, if the best person is really smart but less experienced, then perhaps we would have that person join Jared and Caryn with something like a 30/70 appeals split. Between the three of them, we need basically one FTE of appeals / post-conviction work, so there are a lot of ways to get there.

With all that said, when the time comes for the structural discussion, I continue to believe that the structure I articulated -- based on Jared's input -- is the one that best serves the office team **as a whole**. I understand that it would be ideal for each of the four trial teams to have a dedicated, full-time RW for the team leader to direct as they see fit. But we don't have the funding capacity for that, so it's a nonstarter. The difference between the single-unit concept (appellate and trial-support together) versus the separate-units concept is fairly minimal in practice. I prefer the single-unit concept because (1) that's how Jared prefers it, from what he told me; and (2) that's how we hired Jared in the first place, and I believe there's a consensus that hiring him has been a strong positive for the office as a whole. But I'm happy to defer further discussion on this until we get the posting up and see what our applicant pool looks like.

Thanks,

Josh

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▼ JP Davis—07/25/2018 02:24:25 PM—My thoughts, en bref: 1) I don't actually care. Like Peter, I have traditionally done all my own wor

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To: Joshua B Carpenter/NCWF/04/FDO@FDO
Cc: Erin Taylor/NCWF/04/FDO@FDO, Anthony Martinez/NCWF/04/FDO@FDO, Holly Dixon/NCWF/04/FDO@FDO, Mary Ellen Coleman/NCWF/04/FDO@FDO, Peter Adolf/NCWF/04/FDO@FDO, William Moormann/NCWF/04/FDO@FDOEX
Date: 07/25/2018 02:24 PM
Subject: Re: Appeals/ RW Posting DRAFT

My thoughts, en bref:

1) I don't actually care. Like Peter, I have traditionally done all my own work, and despite a brief hiatus I expect to return to that model.

2) I thought we were hiring this person to be more like 50/50 trial and appeal. If that's the case, then I think they are close enough to an appellate RW that they would report to the appeals chief. If they are 70% trial support, then they're basically the same as our current RWs and I'm not sure what the distinction is between the positions. Am I misremembering?

3) To my knowledge, every Charlotte trial team meets regularly. My team's RW hasn't really been acting as an RW so I'm not sure I can speak to the utility of having them in meetings.

4) On the one hand, having a free flowing RW unit seems to me to be a little contrary to the team structure Tony had in mind. On the other hand, 3 does not divide evenly by 4. These seem to be the main issues in tension from my point of view.

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▼ Joshua B Carpenter—07/25/2018 11:16:42 AM—I agree with thinking more about it. But because the theoretical question is highly relevant to this

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Cc: Anthony Martinez/NCWF/04/FDO@FDO, Holly Dixon/NCWF/04/FDO@FDO, JP Davis/NCWF/04/FDO@FDO, Mary Ellen Coleman/NCWF/04/FDO@FDO, Peter Adolf/NCWF/04/FDO@FDO, William Moormann/NCWF/04/FDO@FDOEX
Date: 07/25/2018 11:16 AM
Subject: Re: Appeals/ RW Posting DRAFT

I agree with thinking more about it. But because the theoretical question is highly relevant to this posting -- and pretty much irrelevant in every other context -- we need to figure it out sooner rather than later.

Here are a few points of information relevant to the conversation:

- 1 -- I agree that when Erin was an RW, she was not in any way part of the appellate unit. Nor was I even here at that time. RWs were used differently then, as a training ground for future trial AFPDs. I don't think anyone is intending to go back to that model, but let me know if I'm mistaken.
- 2 -- The current iteration, in which the RWs have been ostensibly a part of the "appellate unit," began when we posted for the position that ultimately led to Jared's hiring. This was a vision that Ross and I had, believing that someone who assisted with more traditional RW or trial-support tasks would greatly benefit the office. From the time I arrived in 2012 until Jared joined in 2015, the trial AFPDs either did their own motions or they didn't get done. We believed adding someone like Jared would enhance the overall practice of our office, and I think that's been a success. Let me know if anyone disagrees.
- 3 -- I also agree with Erin that having the RWs participate in team meetings can be a good thing. Not all teams do those meetings on a regular basis, but I don't believe that the outcome of the structural discussion impacts the ability of team leaders to ask RWs to participate in team meeting when appropriate (and if "always" is the appropriate answer, that's fine with me). In fact, if a trial team has more than one RW in the meeting because more than one RW is working on the trial team's cases, that would seem like an even better outcome more likely to facilitate the brainstorming process.
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- 4 -- I also agree with Erin that I don't much care what unit they belong to, in a theoretical sense. But it is relevant to how we advertise and fill the current open slot. Based on our meeting Friday, I believe we all envision that position's initial workload balance being something like 70% trial-support and 30% traditional appeals or post-conviction. If we are using a separate-unit structure or an embedded-within-a-single-trial-team structure, then we need to advertise the position that way. We would also, I think, be well advised to advertise it as an RW slot if we want to use either of those structures. And the structure also logically affects who participates from our end in the interview process.

- 5 -- To illustrate the point, here is why I believe it is critical to think through the structural question now. Imagine, in the interview, that an applicant asks "So if I'm hired, who would be my supervisor?" It's a reasonable question, right? In the appellate-unit structure, that person would technically be me, though we would explain that Jared will be serving as the gatekeeper for trial-support assignments and that the person will be expected to participate in trial-team meetings for cases they are assigned. In the separate-unit structure, the supervisor would be Jared -- I'm not sure he wants that responsibility, but if we decide it's best, I'm sure we can talk him into it. If the answer is an embedded-in-a-single-trial-team structure, then the answer would be the trial team leader. The point is -- if we post this as an "appellate" position, then the answer to that question has to be the appellate chief. Otherwise, we need to frame the posting differently.

- I apologize for the length of this e-mail. I recognize that I've spent the last 24 to 48 hours puzzling about this, and talking it through with Jared and Mary Ellen, while many of you are now thinking about it for the first time. I'm very much open to further thoughts and discussion -- I just want to do what's right for the office. Frankly, I was somewhat undecided about this until I talked to Jared last night, and he convinced me that the concept of a single-unit providing support to everyone best suits his understanding of what we've been doing and what we hope to accomplish in the future.

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▼ Erin Taylor—07/25/2018 10:47:30 AM—I have to disagree with the suggestion that this marks any kind of significant change. In fact, I was basing this articulation

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To: Joshua B Carpenter/NCWF/04/FDO@FDO
Cc: Peter Adolf/NCWF/04/FDO@FDO, Anthony Martinez/NCWF/04/FDO@FDO, Holly Dixon/NCWF/04/FDO@FDO, JP Davis/NCWF/04/FDO@FDO, Mary Ellen Coleman/NCWF/04/FDO@FDO, William Moormann/NCWF/04/FDO@FDOEX
Date: 07/25/2018 10:47 AM
Subject: Re: Appeals/ RW Posting DRAFT

I think we all need to take a step back, and discuss this further as Peter suggested. I do want to add that having the R&Ws participate in our team meetings has proven to be extremely valuable because they add a great deal to our brainstorming sessions, which also makes their involvement in trial cases more fluid when something comes up. I also believe that the R&Ws find value in being involved from the ground up. Frankly, I don't care what "unit" they belong to so long as we don't lose their team involvement. Also, when I was an R&W, I never saw myself as part of the Appellate unit, nor was I treated as such. Remember, the trial team structure is brand new for us, so deciding exactly where the R&Ws will end up may be a bit premature. Let's just get someone in here who can do the work and we can tweak everything else later.

Sent from IBM Verse

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Joshua B Carpenter --- Re: Appeals / RW Posting DRAFT ---

From: "Joshua B Carpenter" <Joshua_Carpenter@fd.org>
To: "Peter Adolf" <Peter_Adolf@fd.org>
Cc: "Anthony Martinez" <Anthony_Martinez@fd.org>, "Erin Taylor" <Erin_Taylor@fd.org>, "Holly Dixon" <Holly_Dixon@fd.org>, "JP Davis" <JP_Davis@fd.org>, "Mary Ellen Coleman" <Mary_Ellen_Coleman@fd.org>, "William Moormann" <William_Moormann@fd.org>
Date: Wed, Jul 25, 2018 10:34 AM
Subject: Re: Appeals / RW Posting DRAFT

I have to disagree with the suggestion that this marks any kind of significant change. In fact, I was basing this articulation of things in part on your e-mail from over the weekend, Peter. I don't understand how or why this would affect an R&W's involvement in a trial case at all. In your hypothetical, when an RW becomes involved with a suppression, I agree that it might naturally lead to participation in a hearing, to the extent both the RW and the trial lawyer believe that is appropriate -- Jared, of course, never does this; but other RWs might want to. None of that changes at all. In other words, when a RW begins working on an assignment in a particular trial case, they become a part of that trial case team.

Based on my conversation with Jared, he and I both view this as simply an articulation of the way we've viewed the relationship as previously existing, not as marking any kind of change.

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Peter Adolf—07/25/2018 10:21:33 AM—While it doesn't affect the posting one way or the other in my view, the proposed single-unit struct

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To: Joshua B Carpenter/NCWF/04/FDO@FDO
Cc: Anthony Martinez/NCWF/04/FDO@FDO, Erin Taylor/NCWF/04/FDO@FDO, Holly Dixon/NCWF/04/FDO@FDO, JP Davis/NCWF/04/FDO@FDO, Mary Ellen Coleman/NCWF/04/FDO@FDO, William Moormann/NCWF/04/FDO@FDOEX
Date: 07/25/2018 10:21 AM
Subject: Re: Appeals/ RW Posting DRAFT

While it doesn't affect the posting one way or the other in my view, the proposed single-unit structure would be a significant change, for better or worse. The appellate/R&Ws' involvement in trial unit cases would change from case-based to task-based. As an example, currently an R&W's involvement in identifying suppression issues or drafting a suppression motion might naturally lead to participation in questioning police witnesses at a suppression hearing, or even second-chairing the trial at which those same witnesses testify, any of which would naturally also lead to more client contact and trial/plea strategy involvement. That would all be because the R&W is part of the trial team from the beginning, whether utilized or not, and presumably has some familiarity with the case from team meetings if nothing else. All of that is much less likely to happen if the R&W/AFD is officially part of the appellate team only. Also, I am aware that R&Ws have drafted sentencing memos for some lawyers in the past, which presents a more awkward fit for an appellate lawyer unfamiliar with the case and client at the time a sentencing date is set.

I don't have a strong opinion one way or the other about how trial R&W work gets assigned, because frankly I use R&Ws very little – really only for occasional issue-spotting for suppression issues and narrow research for guidelines objections, since I usually write my own suppression motions and sentencing objections/memos. It might be worthwhile to talk to the trial lawyers more generally about the role of R&Ws in their cases, either informally one-on-one, through team meetings, or in a larger attorneys' meeting.

-PSA

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Joshua B Carpenter—07/25/2018 08:49:22 AM—All, With thanks to Bill for sending me a draft with all the technical requirements, I'm attaching

From: Joshua B Carpenter/NCWF/04/FDO
To: Anthony Martinez/NCWF/04/FDO@FDO, JP Davis/NCWF/04/FDO@FDO, William Moormann/NCWF/04/FDO@FDOEX, Peter Adolf/NCWF/04/FDO@FDO, Erin Taylor/NCWF/04/FDO@FDO, Holly Dixon/NCWF/04/FDO@FDO, Mary Ellen Coleman/NCWF/04/FDO@FDO
Date: 07/25/2018 08:49 AM
Subject: Appeals/ RW Posting DRAFT

All,

With thanks to Bill for sending me a draft with all the technical requirements, I'm attaching for everyone's input a draft of the Appeals / RW posting. The posting is drafted to reflect the way I envision the appellate team, which is as a single unit that serves the rest of the office by providing support to the trial teams and by handling appeals and post-conviction issues. This is the vision we had for the appellate team when we posted in 2014 / 2015 for an Appellate RW position, which is the posting that led to Jared's hiring, and it is the way I have continued to envision it. But I've been putting a lot of thought -- probably too much -- into this conceptual issue, because it would be also possible, I suppose, to treat the Appellate and RW (trial-support) units as separate and distinct.

Because I was working through this conceptual issue, I reached out to Jared and had a lengthy conversation with him last night about his preference between these two structures. He told me that he prefers the single-unit structure rather than the separate structure, in large part because he likes that, under that structure, he has me as an outlet to address any workload or personnel issues that arise. He also reminded me that this is what happened on the Bradley case, where we recently won the motion to suppress -- when Mary Ellen made the help request, Jared was at capacity and Caleb and Caryn were too, so Jared reached out to me and I helped Ann juggle some things to allow her to work with Mary Ellen on the initial motion.

Please let me know if anyone has thoughts or concerns about this whole issue. I feel sure I've been over-thinking it. But if, for some reason, we do prefer the alternative structure -- with the Appellate and RW (trial-support) units being separate -- then I think we will need to rework the posting. Most importantly, I don't think we can advertise an "Appellate" position if the person would be located within the RW (trial-support) unit rather than the Appellate unit under that alternative structure.

Finally, I inserted a priority date of August 17 -- let me know if anyone has thoughts on moving that one way or the other.

Thanks,

Josh

[attachment "App AFD posting.docx" deleted by Peter Adolf/NCWF/04/FDO]

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