

AUGUST 2010 – ADI NEWS ALERTS

By

Elaine A. Alexander, Executive Director

This alert¹ covers these topics:

- (1) Reminders to attorneys (separate memo)
- (2) Court news
 - New developments in policies on supplemental briefs
 - Errors in Riverside County minutes
 - Judicial Council forms now fillable and savable
 - Judicial branch on YouTube and Twitter
 - Noted here but not below: court closures have ceased.
- (3) AOC travel policies (separate memo)
- (4) Litigation to watch
 - Gang-related issues (Cal. Supreme Court, *People v. Albillar*, S163905)
 - Prison conditions (U.S. Supreme Court, *Schwarzenegger v. Plata*, 09-1233)

Reminders to attorneys

ADI staff attorney Alice Shotton, with the assistance of Linda Fabian, Laura Furness, and Cheryl Geyerman, has sent a reminder to dependency panel attorneys of important matters needing their attention. The topics include statements of the facts, brief covers, e-mails to ADI, dependency forms on ADI website, use of court website case information including automatic update e-mails, and reply briefs.

Except for dependency forms, all of the points are applicable to non-dependency attorneys, too. Thus *all panel attorneys should review and heed them*. The memo accompanies this alert.

¹As a reminder: Counsel are responsible for all matters covered in e-mail alerts, newsletters, and other information made available to the panel. Past alerts and newsletters are at http://www.adi-sandiego.com/news_alerts.html and http://www.adi-sandiego.com/news_newsletters.html.

Court news

Supplemental briefs

Our June news alert recounted the different policies among the divisions on whether, when adding a new issue, to file a separate supplemental brief or withdraw the original brief and file a single combined brief. Division One has since reconsidered and adopted a policy, subject to future revision after discussion with counsel. This is the current policy in the three divisions:

- Division One: If the respondent's brief has not yet been filed, move to strike a and file a combined brief. If the respondent's brief has already been filed, file just a supplemental brief, along with a motion for permission to file it. (Cal. Rules of Court, rule 8.200(a)(4).)
- Division Two: File a supplemental brief adding one or more new issues, along with a motion for permission to file it. If you have corrections to an existing brief, especially if on multiple pages, instead of sending a simple errata letter, move to strike the brief and file a new, combined brief; the motion should explain what changes are made.
- Division Three: Move to strike the original brief and file a combined one.

Riverside County minutes

Some attorneys have noted substantial errors in minutes from Riverside County. Occasionally the minutes may be inconsistent with what the reporter's transcript reveals or what trial participants recall. This is a training matter for superior court clerks, and the Court of Appeal has been meeting regularly with the clerks' supervisor to address the situation. Meanwhile, it is incumbent on counsel to be vigilant and not accept such records at face value. If the minutes appear to be implausible or inaccurate on a material point, counsel should investigate and if necessary seek a correction of the record. This is true for all kinds of records everywhere, of course, but it is especially salient in Riverside County minutes right now.

Judicial Council forms now fillable and savable

The Judicial Council has announced that, with the efforts of the Superior Court of Orange County, 937 Judicial Council forms can now be filled out online and saved on computers without the need for users to purchase any software.² While most of the forms

²<http://www.courtinfo.ca.gov/forms/>

are for trial court use and even the appellate ones are largely for civil or appellate division cases, some may be useful, at least as models, in our practice. Counsel should familiarize themselves with the forms available online, including those listed under the categories of appellate, criminal, juvenile, and miscellaneous (which includes MC-275, habeas corpus petition,³ the Judicial Council form most likely to be needed by our panel attorneys). ADI's website offers forms applicable to our work, as you undoubtedly are aware.⁴

Judicial branch on YouTube and Twitter

The Administrative Office of the Courts (AOC) has launched the California Courts YouTube Channel and Twitter feed as part of its ongoing public education and outreach efforts about the judicial branch and access to justice.

The California Courts YouTube Channel⁵ will offer news and information videos covering areas from self-help and local court news to courthouse construction projects and actions and activities of the Judicial Council of California.

Those following the California Courts Twitter feed⁶ will receive "tweets" on topics including the announcement of Supreme Court opinions, news releases, and updates on new content and resources posted to the California Courts Web site.

AOC travel policies

The Administrative Office of the Courts has provided written policies for compensating court-appointed counsel for travel. The written policies are a codification of established practice, not a change in practice. The policies in slightly edited form accompany this alert and are posted under "Claims" on the ADI website.

Expanded policies on travel and other subjects are in ADI's claims manual.⁷ Please be sure to consult it. It's alphabetically arranged and is searchable, as well.

³<http://www.courtinfo.ca.gov/forms/documents/mc275.pdf> . See California Rules of Court, rules 8.380 (pro per petition), 8.384 (petition filed by attorney).

⁴http://www.adi-sandiego.com/practice_forms_motion.html (criminal) and http://www.adi-sandiego.com/juvenile_form.html (juvenile).

⁵<http://www.youtube.com/californiacourts>

⁶<http://twitter.com/calcourts>

⁷http://www.adi-sandiego.com/claim_manual.html

Litigation to watch

Besides the usual lists of pending issues in the United States and California Supreme Courts maintained by CCAP,⁸ counsel may want to track these:

People v. Albillar, S163905, which presents these issues:

(1) Did substantial evidence support defendants' convictions under Penal Code, section 186.22, subdivision (a), and the true findings with respect to the enhancements under Penal Code, section 186.22, subdivision (b)?

(2) Should the phrase "felonious criminal conduct," appearing in Penal Code section 186.22, subdivision (a) be interpreted to mean felonious criminal gang-related conduct?

This case came to our attention when the Ninth Circuit referred three gang-related issues to the California Supreme Court (*Emery v. Clark*, S182670; *Emery v. Clark* (9th Cir. 2010) 604 F.3d 1102.) The Supreme Court accepted the case and deferred briefing pending the decision in *Albillar*.⁹

In *Schwarzenegger v. Plata* (09-1233), involving federal court intervention because of prison overcrowding, the United States Supreme Court has set a briefing schedule (to be complete by the middle of November 2010).¹⁰ The Prison Law Office has prepared a detailed explanation of the litigation.¹¹ While appellate counsel are not authorized to do prison condition litigation under their appointments, this information may be helpful in answering queries from clients.

⁸http://www.capcentral.org/high_court/pending.asp

⁹http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=1943018&doc_no=S182670 . See California Rules of Court, rule 8.548 (certification of issue from court of another jurisdiction).

¹⁰<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/09-1233.htm>

¹¹<http://www.prisonlaw.com/pdfs/Overcrowding10.07.26.pdf>