

APRIL 2011 – ADI NEWS ALERT

BY

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This news alert¹ updates and summarizes the electronic service and filing programs underway in the Fourth Appellate District. Most of it is unchanged from earlier alerts, but there are a few changes, and we thought it would be useful to bring everything together in one document, rather than requiring attorneys to go from one alert or one website to another to put the pieces together. The information below will also be on the E-Service and Filing Page of ADI's website.² In summary:

The ADI e-service pilot programs with the Attorney General and San Diego County Counsel are unchanged from previous alerts.

The changes in court policy are:

- *Division Two* has joined One and Three in asking attorneys to e-mail PDF copies of briefs and other documents to the court. The Fourth Appellate District now has a uniform policy, summarized below in this alert and on the court website.³
- All three divisions have decided to include *juvenile dependency and delinquency and other confidential cases* in the program. Thus attorneys handling those cases should e-mail their briefs and other listed documents to the court. To help fulfill their duty to maintain the confidentiality of filings, panel attorneys should put a confidentiality advisement at the start of the body of each e-mail transmission in these cases. (Recommended language is provided below.)

¹As always, panel attorneys are responsible for familiarizing themselves with all ADI news alerts and other resources on the ADI website.

²<http://www.adi-sandiego.com/E-Service.html>

³ <http://www.courts.ca.gov/9408.htm>

SUMMARY OF ELECTRONIC SERVICE AND FILING PROGRAMS

Clarification of Terms

- Electronic service means service of PDF copies of briefs and other documents on opposing counsel (San Diego office of Attorney General or San Diego County Counsel) and ADI by means of e-mail. ADI is conducting pilot programs for e-service in criminal/delinquency cases and dependency cases. Only attorneys who have gone through an ADI training group can e-serve opposing counsel. Attorneys should contact Lynelle Hee (lkh@adi-sandiego.com) to enroll in a training group. Eventually e-service will be mandatory.
- E-mailed copies of briefs to the court means transmitting by e-mail a PDF copy of briefs to the Court of Appeal. The three divisions of the Fourth Appellate District request such e-mailed copies of certain briefs, petitions, and other documents. Documents submitted by e-mail are not a substitute for, but *in addition to*, the required paper filings. *Paper* copies remain the official court record, and the date they are received constitutes the official filing date for purposes of meeting deadlines and setting the time for responsive filings. The program applies to all attorneys, not just those in one of the e-service programs described in the preceding paragraph.

These programs are not to be confused with “electronic briefs” containing hyperlinks to the record and authorities cited, nor with the experimental Second District electronic service and filing program described in rule 8.70 et seq. of the California Rules of Court, which has different specifications and requirements. The present alert applies only to the *Fourth Appellate District* and refers simply to *e-mail transmission of PDF copies* of documents.

ADI Assistance

Attorneys with questions or suggestions, technical or otherwise, should feel free to contact any of the following people:

Lynelle Hee, Staff Attorney (619-696-0284, x 29), lkh@adi-sandiego.com

David Rankin, Staff Attorney (x 33), dkr@adi-sandiego.com

Melia Wasserman, Legal Administrator (x 39), maw@adi-sandiego.com

Assistance in converting documents from MS Word or WordPerfect to a PDF format is here. http://www.adi-sandiego.com/Converting_Documents.html

ADI PROGRAMS FOR ELECTRONIC SERVICE ON OPPOSING COUNSEL AND ADI

Overview of Pilot Project

This pilot project is sponsored by ADI in conjunction with the San Diego office of the Attorney General and the San Diego County Counsel.

Initial phase: Panel attorneys in a pilot project training group start by electronically serving all documents on ADI. They set up a dedicated Gmail account using last name and State Bar number (e.g., Alexander043193@gmail.com), convert word-processed briefs into PDF format using an agreed-on system of nomenclature (below), and transmit them by e-mail to ADI at a specified service address (below). Only the e-copy is needed for service on ADI.⁴

Written agreements for e-service: Only attorneys who are, or have been, in a pilot project training group may e-serve opposing counsel. E-service in appellate proceedings is not expressly authorized by the Code of Civil Procedure, and so, as a precaution against any later claim of irregular service, special written agreements between the attorney and the agency involved are required. ADI provides a fillable PDF agreement to panel attorneys who have completed the initial phase of a pilot program. When the panel attorney returns it to ADI, we provide copies to the agency and the court along with a notice of approval for e-service (next paragraph). The copies on file at the court are deemed to be part of the case file in all cases involving the agency and the attorney.

Notice of approval for e-service on opposing counsel: Once they have gone through this training and executed the agreement, ADI notifies the court and the agency involved – the Attorney General or San Diego County Counsel, as the case may be – that the attorneys are approved for e-service. The attorneys will serve the agency by e-mail, and the agency in turn will serve them by e-mail. Certain specified documents require a paper copy, as well (below); for other documents, e-mail is the exclusive method of service.

Signing up for e-service training: Attorneys should contact Lynelle Hee (lkh@adi-sandiego.com) to enroll in a training group.

⁴Supporting attachments, such exhibits for a writ petition, may be provided as a hard copy, instead of or in addition to an electronic copy, at the option of either the panel attorney or the staff attorney.

Exclusions

Excluded from the e-service program at this time and still requiring solely hard copy service are:

- Service on *opposing counsel*: dependency cases in counties other than San Diego⁵ (service on *ADI*, on the other hand, is included in the pilot project for all cases)
- Counsel for parties other than the Attorney General or San Diego County Counsel – e.g., co-appellants, non-appealing minors, misc. respondents, etc.
- Agencies other than the San Diego office of the Attorney General or San Diego County Counsel (for example, a People’s appeal handled by a district attorney’s office is not included)
- Any documents involving California Supreme Court filings (the court does not recognize e-service yet)
- Cases outside the ADI program
- Amicus curiae filings

Ask ADI when in doubt.

Formatting Documents for E-service

E-service documents should be a single, text-searchable PDF file that is an exact duplicate of the paper copy (including the cover sheet, tables, and proof of service). Assistance in converting documents from MS Word or WordPerfect to a PDF format is on our website. <http://www.adi-sandiego.com/Converting_Documents.html>

⁵We have not expanded the dependency program yet to include other counties of the Fourth Appellate District. Such expansion requires special arrangements with the County Counsel in those counties.

Document Naming Conventions and E-Mail Subject Line

The document should be named with the appellate *case number and client name*, followed by the *document type* identifying code (see below). For example: D012345-Smith-AOB.pdf, E012345-JohnS-ARB, or G012345-JS-PTR.

Document type designations are as follows:

<u>Document</u>	<u>Identifying Code</u>
Appellant's opening brief	AOB
Respondent's brief	RB
Appellant's reply brief	ARB
Petition for rehearing	PR
Answer to petition for rehearing ⁶	APR
Petition for review	PTR
Answer to petition for review	APTR
Petition for habeas corpus	PHC
Request for extension of time	EOT
Motion to augment	AUG
Motion for judicial notice	JUD
Rule 8.340 letter	RULELTR
Supplemental brief	SUP
Other brief	OB
Other petition	OP
Other motion*	OM
Other miscellaneous document**	MISC
Other dependency documents:	
<i>Sade C.</i> letter	SADEC
Minor's letter in lieu of brief	MINORLTR

* Includes all miscellaneous requests (i.e., requests for permission to file oversized briefs), letter requests (i.e., errata and *Fares* letters), and applications (i.e., applications for pre-approval of investigation expenses).

** Includes request or waivers of oral argument.

The subject line of the e-mail transmitting the document should identify it by repeating this information. For example: D012345-Smith-AOB.

⁶An answer to a petition for rehearing is permitted only on invitation by the court. (Cal. Rules of Court, rule 8.268(b)(2).)

E-Mail Addresses for E-Service

Service on ADI: Attorneys in a pilot program e-serve ADI as follows:

- Criminal and delinquency cases in Fourth Appellate District:
eservice-criminal@adi-sandiego.com
- All dependency cases: eservice-civil@adi-sandiego.com

Service on opposing counsel: Once approved by ADI upon completing a pilot program, panel attorneys use these addresses:

- *Attorney General:* All criminal and delinquency cases in Fourth District (except for cases where the Attorney General is not counsel of record, such as many People's appeals): ADIEService@doj.ca.gov
- *San Diego County Counsel:* Dependency cases from San Diego County:
SDCCJD.Appeals@sdcounty.ca.gov

Panel attorneys: As noted above, panel attorneys set up a Gmail account dedicated to e-service, using last name and State Bar number (e.g., Alexander043193@gmail.com). The account is free.

Documents That Also Need To Be Served Via Hard Copy

Although our ultimate vision is a paperless system, right now, because of counsel's need for a copy for the client, the work flow in agency offices, and similar considerations, some documents require a paper copies in addition to the e-mailed one. The documents requiring a paper copy include:

Service on Attorney General

- Motions to augment the record and motions to take judicial notice
- Appellant's opening brief
- Appellant's reply brief
- Supplemental briefs and letter briefs
- Any writ petition, return or other opposition, and traverse or other reply
- Respondent's brief in a People's appeal
- All filings in the California Supreme Court, including petitions for review, briefs on the merits, and other documents.

Service on San Diego County Counsel

- All filings in the California Supreme Court, including petitions for review, briefs on the merits, and other documents.

Service on Panel Attorney

The Attorney General or San Diego County Counsel will send the panel attorney one hard copy of the following documents, as well as the e-copy:

- Respondent's brief
- Appellant's opening brief and reply brief in a People's or County appeal (if the Attorney General or San Diego County Counsel is counsel of record)
- Supplemental briefs
- Petitions for rehearing
- Writ petition, return, or other opposition, reply
- All filings in the California Supreme Court, including petitions for review, briefs on the merits, and other documents.

*Attorneys may contact Melia Wasserman (maw@adi-sandiego.com) at ADI if the agency does not serve the designated hard copies or they encounter other service problems. She is our contact with these agencies on technical compliance aspects of the program.

Confidentiality Warning To Be Included with All E-Served Documents in Juvenile and Other Confidential Cases

In juvenile dependency and delinquency and other confidential cases, attorneys should add the following language at the start of the body of the email transmitting the e-service document:

“By law, the attachment is confidential. (Welf. & Inst. Code, § 827.[⁷]) If you are not an authorized recipient under the law, you may not open it. Please notify the sender immediately and delete this email.”

⁷If it is not a juvenile case, the appropriate citation should be substituted.

COURT PROGRAM FOR E-MAILED PDF COPIES OF BRIEFS TO THE THREE DIVISIONS OF THE FOURTH APPELLATE DISTRICT

All three divisions of the Fourth Appellate District request the transmission by e-mail of PDF copies of civil, criminal, and juvenile appellate briefs, petitions for rehearing, and other enumerated documents (see list of documents covered, below). All panel attorneys, not just those in the e-service pilot program described in the preceding section, are asked to participate. This program assists the court and parties to process cases more efficiently and assist in the implementation of electronic filing. The announcement is on the court website: <http://www.courts.ca.gov/9408.htm>.⁸

Briefs or documents submitted by e-mail are not a substitute for, but are *in addition to*, the required paper filings,⁹ which remain the official court record. The *date the paper copies are received* constitutes the official filing date for purposes of meeting deadlines and setting the time for responsive filings. (See Rule 8.25(b).)

Documents Covered, Naming Conventions, and Identifying Codes

Parties should use this document naming convention: the appellate case number, followed by the document type designation. For example: D012345AOB.pdf (for an appellant’s opening brief), D012345ARB.pdf (reply brief), etc.¹⁰

<u>Document</u>	<u>Identifying Code</u>
Appellant’s Opening Brief	AOB
Respondent’s Brief	RB
Appellant’s Reply Brief	ARB
Petition for Rehearing	PR

⁸To repeat: The e-mail transmission program under discussion here is not to be confused with “electronic briefs” containing hyperlinks to the record and authorities cited, nor with the experimental Second District electronic service and filing program described in rule 8.70 et seq. of the California Rules of Court.

⁹California Rules of Court, rule 8.44(b) specifies the number of copies to be filed in the Court of Appeal. A brief requires an original and four copies. See ADI filing and service summary for required copies of various documents.
http://www.adi-sandiego.com/FILING_AND_SERVICE_SUMMARY_eff_1-1-2011.pdf

¹⁰Only the identifying codes applicable to criminal and juvenile cases are listed here. The court’s list includes certain codes applicable only to ordinary civil cases.

Answer to Petition for Rehearing ¹¹	APR
Amicus Curiae Brief	AC
Answer to Amicus Curiae Brief	ACA

Requirements

In submitting the brief or document by e-mail the filer certifies that:

- All reasonable steps have been taken to ensure that the copy does not contain computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.
- The electronic brief is a single, PDF file (text-searchable highly preferred, but non-searchable is acceptable), no larger than 5 MB in size, and is an exact duplicate of the paper copy. If the size limitation is a problem contact the court.
- The attachment is transmitted within two weeks of its paper counterpart being filed with the court.
- The attached file follows the prescribed naming convention.

Court E-Mail Addresses

The PDF brief or document is e-mailed to:

- Division One 4d1ebrief@jud.ca.gov (The third character is the numeral 1, not a lower case letter *l*)
- Division Two 4d2ebrief@jud.ca.gov
- Division Three 4d3ebrief@jud.ca.gov

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The court encourages parties’ participation in this project to enable it to develop and implement improved document management technologies.

¹¹An answer to a petition for rehearing is permitted only on invitation by the court. (Cal. Rules of Court, rule 8.268(b)(2).)