

NOVEMBER 2011 – ADI NEWS ALERT

BY

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This news alert¹ covers:

- Invitation to December 8 holiday lunch.
- Clarification and change in where to bill certain claim items.
- Nondisclosure of identity policy for certain persons.
- Reminder of ADI policy and procedures on substitution of retained counsel for appointed counsel.
- Change in method of e-filing a brief in the Fourth Appellate District.

Holiday lunch featuring Justice Patricia Benke

Panel attorneys are cordially invited to attend the holiday lunch sponsored by the Appellate Court Committee of the San Diego County Bar Association on Thursday, December 8, 12:00-1:30. Justice Patricia Benke will be the featured speaker, and other justices are also invited. It will be at the county bar building. The cost is \$25. It is a non-MCLE event. The flyer and online registration form are at www.sdcba.org/2011AppellateLuncheon. We hope to see you there!

Where to bill certain items

The appellate projects have noted a lack of uniformity in billing for certain kinds of services. This causes difficulty for the Administrative Office of the Courts in analyzing costs statistically and can cause delays in processing claims. The attached memo reflects the projects' agreement on some uniform policies, and the AOC has approved it. Please read it carefully and follow it from now on.

It will mean some changes in ADI claims, and we have modified our [claims manual](#) accordingly. Specifically:

- Time spent on considering or waiving oral argument and waiting time in court for argument go on line 17 (not 24).

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

- Time spent on a document not filed (motion, brief, petition, etc.) is claimed on the line for that document (not line 24).
- Investigation of a potential habeas corpus petition is filed on line 11, whether or not a petition is actually filed.
- Review of materials from the file or exhibit room sent to counsel and not viewed onsite should be billed on line 20 (not 24).
- Communications that are part of a habeas corpus investigation should be included on line 1, if with the client and/or trial counsel, or line 23, if with others.

This list is not necessarily exhaustive; follow the attached memo and check with us when in doubt.

Nondisclosure of Identity Policy for certain persons

The [ADI Criminal Appellate Practice Manual](#) (“ADI Manual”) says, at § 5.21:

Briefs should be sensitive to privacy interests in identifying persons, whether on the cover, in headings, or in the text. Victims of sex crimes and parties involved in juvenile court or other confidential proceedings generally should be kept anonymous – e.g., “Susan T.,” “the complaining witness,” “the child,” etc.

I would like to stress the importance of following this policy in these days of increasing accessibility to information and ease of using bits of information to learn much more about persons.

The office of the Reporter of Decisions, which regulates the way opinions are prepared for public distribution, follows a Nondisclosure of Identity Policy (“Policy”). It is set forth in the California Style Manual (4th ed. 2000) section 5:9 et seq. (See attachment for full policy.) It prescribes that documents must protect against disclosing the identity of protected persons by avoiding use of full names and other identifying information.

- *Protected persons* include living victims of sex crimes, most minors, LPS conservatees, trial jurors and sworn alternates, and some victims and witnesses in criminal matters.
- *Identifying information* includes last names, middle names or middle initials, street addresses, full birth dates, parent’s last name if same as minor’s, siblings’

first names if the grouping would tend to identify the family, and other information that might disclose identities that are protected.

Although the official Policy technically applies to opinions, not briefs, the Style Manual is widely followed in appellate offices throughout the state (see Cal. Rules of Court, rules 1.200, 8.204(b), Advis. Comm. Comment), and ADI urges its use (ADI Manual, § 5.66). It would undermine the Policy if information in briefs, which are presumptively accessible to the public, were to contain the very information that the Policy is trying to protect from disclosure.

Accordingly, e-filed briefs (last section below) must comply with the policy as part of the terms of use (attached). The same requirement applies to copies of briefs sent electronically to the Supreme Court under rule 8.212(c)(2)(A) and Second Appellate District in its e-filing pilot program.

The practices should also be followed in hard copy briefs. Indeed, since the courts are pushing for e-filed briefs in every case, and these must be identical to hard copies, there is no practical reason not to comply. Many attorneys already do so, and it is now ADI's policy.

Reminder of ADI policy and procedures on substitution of retained counsel for appointed counsel

On occasion panel attorneys have been informed that an attorney has been retained to take over a case to which they are appointed. In our [July 2003 newsletter](#), again in § 1.37 of the ADI Manual, and on our website [FAQ page](#), we have asked panel attorneys to consult with the staff attorney or me in such a situation before signing a substitution agreement, sending the record, or relying on the other attorney to get an extension, augment, etc. Nevertheless, we are often notified of a substitution by getting a form already signed by the panel attorney. It is time for a reminder and further guidance.

One reason for prior consultation is that substitution is not automatic: sometimes the person informing the panel attorney about the retained attorney is mistaken, and the attorney did not accept the case; sometimes the family hires the attorney without getting the necessary consent of the client; sometimes the court declines to approve the substitution; sometimes there is a legitimate reason to resist the substitution, etc. Another reason is that the court has asked ADI to screen retained substitutions and ensure they are in order. A third is that ADI needs to be in the loop to wind up its responsibilities, update its records, and process the panel attorney's claim.

When you are approached about being substituted off a case:

- Notify the ADI staff attorney and ask him or her to contact me, or notify us both by e-mail.
- Do not sign the substitution. It is not required under rule 8.36(b), and you don't want to give any appearance of "approving" the change.
- Make sure that the client has agreed to the substitution in writing. See if it appears to be his or her handwriting.
- Send (or ask the retained attorney to send) any substitute form or letter to ADI, not the court. We review it and send a special form order to the court vacating the appointment and noting the appearance of the retained attorney. ADI's involvement saves the court administrative time and gives them the assurance the substitution has been examined.
- Do not send the record to the retained attorney until the court has approved the change.
- Until you have officially been prelieved, it is your responsibility to get any needed extensions and to handle any other matter requiring immediate attention.

E-filing in the Fourth Appellate District now done online, rather than by e-mail

The Fourth Appellate District has been soliciting electronic copies of briefs for some time now. Although previously it asked attorneys to email the briefs, it now has a method of online submission. Documents can be submitted to the court online at the following links:

- Division One: <http://www.courts.ca.gov/15317.htm>
 Division Two: <http://www.courts.ca.gov/15318.htm>
 Division Three: <http://www.courts.ca.gov/15319.htm>

As with e-mailed briefs, briefs filed online are *in addition to* paper copies, which remain the official ones.

ADI is creating a web page with these links and further information, including the terms of use, among which is the Nondisclosure of Identity Policy discussed above.