



NEWS ALERT

December 2023

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DEAR PANEL MEMBERS,

From all of us at ADI, to each of you, we hope you have a joyful, restful holiday season.

Staff Updates

Daniel Tanwangco has joined ADI as a receptionist. He's a San Diego native and recently returned after receiving his bachelor's degree from Penn State University. He double majored in Criminology and Sociology and minored in Psychology.

Court & ADI Holidays

- Christmas Day – Monday, December 25th
- New Year's Day – Monday, January 1st

JCC Extension of Time Form – Unsecured Version Available

ADI has posted an unsecured pdf version of the Judicial Council extension form in criminal cases. It can be found on ADI's website: https://adi-sandiego.com/practice/forms_samples.asp. This unsecured version should be much easier to use. Thanks to SDAP for locating this.

MCLE Opportunities

CSI: Behind the Forensic Curtain | Hybrid Seminar

Presented by the 2024 USD School of Law Community Defenders, Inc. on January 20, 2024, from 8:30 a.m. to 2:45 p.m. This seminar will offer counsel essential tools for understanding scientific evidence and making the most effective use of it in court. For information about the program agenda and how to register, click [here](#).

Dependency and Criminal Case New Legislation Discussion and Open Forum | Remote Seminar

Join us for a one-hour program on Thursday, January 18, 2023, at noon. The program will be hosted by ADI staff attorneys Cristina Sanchez and William Melcher. During the first half hour, Cristina and Bill will discuss several new laws relevant to dependency and criminal law taking effect in 2024. One half hour (0.5) of general and appellate specialization MCLE credit will be given for this portion of the program.

The second half hour will be an open forum for staff and panel attorneys. We encourage panel attorneys to discuss and brainstorm any specific issues they are currently encountering with their cases including how the recent changes in the law can be utilized. In anticipation of this discussion, panel attorneys are encouraged to email any

specific questions or topics they would like to discuss. Please direct your dependency questions or topics to Cristina at CMS@adi-sandiego.com and criminal questions or topics to Bill at WPM@adi-sandiego.com

A registration link will be circulated shortly before the seminar.

New Legislation Highlights for 2024

[Assembly Bill No. 1118](#) – amendment to Penal Code section 745 (Racial Justice Act)

Effective January 1, 2024, the newest amendment to the Racial Justice Act adds two sentences to subdivision (b). These sentences clarify: (1) that an RJA claim may be raised in a direct appeal, and (2) that appellant may move to stay the appeal so that an RJA claim may first be made in a superior court motion. Subdivision (b) now states:

(b) A defendant may file a motion pursuant to this section, or a petition for writ of habeas corpus or a motion under Section 1473.7, in a court of competent jurisdiction, alleging a violation of subdivision (a). For claims based on the trial record, a defendant may raise a claim alleging a violation of subdivision (a) on direct appeal from the conviction or sentence. The defendant may also move to stay the appeal and request remand to the superior court to file a motion pursuant to this section. If the motion is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section.

In light of this statutory change, on November 15, 2023 the Supreme Court in [S282159](#) ordered nonpublication of *People v. Lashon* (Sept. 1, 2023, A163074, formerly 95 Cal.App.5th 136), which had held an RJA claim could not be raised on direct appeal.

Appellate counsel are likely familiar with the stay and remand action in the Proposition 47 context, as described in *People v. Awad* (2015) 238 Cal.App.4th 215. (See also *People v. Braxton* (2004) 34 Cal.4th 798 [limited remand appropriate under Pen. Code, § 1260 to allow trial court to resolve one or more factual issues affecting validity of the judgment but distinct from issues submitted to the jury, or for the exercise of any discretion that is vested by law in the trial court].) Like any motion, the request for stay and remand so that an RJA motion may be filed must be supported by good cause. (Cal. Rules of Court, rule 8.50.) Appellate counsel should communicate with trial counsel and, perhaps, the client to determine whether sufficient foundation supports a good cause declaration. A sample *Awad* motion is on the [Forms & Samples](#) page of ADI's website. Your ADI assigned staff attorney is also available to consult about the matter.

[Assembly Bill No. 600](#) – amendment to Penal Code section 1172.1

Effective January 1, 2024, amendment to Penal Code section 1172.1 (formerly Penal Code section 1170, subdivision (d)) expands sentence recall procedure to allow the court to act *on its own motion* “at any time if the applicable sentencing laws at the time of the original sentencing are subsequently changed by new statutory authority or case law...” to recall and resentence a defendant. A court acting on its own motion with respect to a conviction reached by a jury is not permitted to resentence the defendant on a lesser included or lesser related offense without agreement by the defendant, deleting the requirement that the prosecution concur. A court acting on its own motion with respect to a conviction reached by a plea bargain is not permitted to resentence the defendant on a lesser included or lesser related offense without agreement by the defendant and the prosecution.

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The revised statute also requires rather than permits the court to consider post-conviction factors and specifies defendant-favorable evidence that the court must consider in determining whether release is in the interest of justice. Finally, the amendment requires the court to advise a defendant regarding the right to appeal.

Clients may have heard of this new, broader authority to recall a sentence. Unfortunately, this new scheme does not entitle a defendant to file a request for resentencing, and the court is not required to respond to such a request. (§ 1172.1, subd. (c).) If the client believes their case presents a good potential for resentencing, they may want to contact trial counsel to determine if the court would be amenable to such action.

As always, please reach out to me if you have any questions, concerns, or suggestions.

~ Lynelle

