

PANEL NEWS ALERT - SEPTEMBER, 2005

Special Panel Rate for Lexis Users

ADI has negotiated a special rate with Lexis for attorneys on the panel. Please contact Jay Nelson at (619) 278-8835 for packages and pricing.

Blakely After Black

Click **here** for a memo from ADI's director offering guidance on handling Blakey cases in the aftermath of *People v. Black* (June 20, 2005) 35 Cal.4th 1238. It covers cases on direct appeal, post-appeal cases, and the future. Attorneys are encouraged to call ADI if they have questions.

Division Three Mail Filings

Division Three requires attorneys to inform the clerk's office by telephone when they are relying on rule 40.1(b)(3)(A) of the California Rules of Court for filing an opening brief. That rule provides a brief is deemed timely filed if the time had not expired when it was mailed by priority or express mail, as shown by the postmark or postal receipt. If the attorney does not call and the brief does not arrive before time runs, the clerk's office will issue a rule 17 notice. (If there has already been a rule 17 notice, the court will not issue a second, but will contact ADI about dismissing the appeal or, alternatively, relieving counsel without compensation and appointing another attorney.)

Addressing briefs to trial counsel or the superior court judge by name

When serving a brief on trial counsel in a public defender's office or district attorney's office or on the superior court, be sure to include the name of the individual attorney or judge involved in the trial. It is a time-consuming job for the clerks in those organizations to go back through closed records and try to identify the attorney or judge. Appellate counsel has the information right on the transcript and can do so much more efficiently. Please include this information on the proof of service, as well. ADI is helping those organizations resolve this problem.

Sade C. briefs in Division One – seeking time for a client who wants to file a pro per brief

Division One dismisses the appeal after receiving County Counsel's motion to dismiss a Sade C. case. It does not ordinarily allow time for the client to file a pro per brief (unlike Divisions Two and Three). If the client actually has said he or she intends to file a pro per

brief, counsel should advise the court of that when filing the Sade C. brief and request time for filing it. The request should not be made routinely, but only when the client has expressed an actual and credible intention of filing it. "Routine" requests, without a specific statement about the client's intent, will be denied.

New Rule Changes & Revised Judicial Council Forms - July, 2005

New and amended rules to the California Rules of Court and updated Judicial Council forms are now available online. The new rules and forms were effective July 1.

California Supreme Court Ruling

In *People v. Howard* (January 27, 2005) 34 Cal.4th 1129 The California Supreme Court recently held violation of Vehicle Code section 2800.2 [driving with a willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer] is not inherently dangerous for purposes of second degree felony murder. This decision should of course be brought up where applicable in any active case. Because it affects the definition of the offense, it also should be fully retroactive, at least to crimes committed after the 1998 amendment to section 2800.2 that added subdivision (b). Please go to the Howard Resource Page under Appellate Practice Articles to review a more detailed memo from Elaine A. Alexander and additional resources prepared by ADI and FDAP.

Supreme Court Expands Web Site Information in Pending Cases

On Wednesday, the California Supreme Court announced a new Internet service that offers links to the complete published Court of Appeal opinions in cases that the high court has accepted for review. (<http://www.courtinfo.ca.gov/opinions/revgranted.htm>) The state's high court accepts appeals in more than 5,000 Court of Appeal cases each year. Although the opinions in those cases are already on the Internet, they have not been linked to the Supreme Court's weekly actions to accept cases for review until now. "We believe that the new service will be a helpful, expedited way for appellate practitioners, and even trial or transaction attorneys, to assess what issues are under review by the Supreme Court," said Frederick "Fritz" Ohlrich, Clerk of the Court. To access the new feature, viewers should go to the Opinions section of the California Courts Web site at <http://www.courtinfo.ca.gov/opinions/>. The next step is to click on "Review Granted Published Opinions," the last choice on the left-hand navigation bar. The new service was suggested by San Francisco appellate lawyer Paul D. Fogel, a member of the Supreme Court's Advisory Committee on Appellate Practice.

The California Supreme Court offers these other online information services:

- A case information system with complete docket information about all pending Supreme Court cases and with e-mail notification of key actions in each case:

<http://appellatecases.courtinfo.ca.gov>.

- All state appellate court opinions published in the California Official Reports since 1850, in a fully searchable database: <http://www.courtinfo.ca.gov/opinions/continue.htm>.

- Notice of forthcoming court opinions and current calendars, minutes, and a list of actions taken at the court's weekly conferences:

<http://www.courtinfo.ca.gov/courts/supreme>.

- All Supreme Court and Court of Appeal published opinions issued in the past 120 days. Supreme Court opinions are made available precisely at the time of filing, with filing times announced in advance for the convenience of litigants, the public, and the press:

<http://www.courtinfo.ca.gov/opinions>.

- The Internal Operating Practices and Procedures of the court, part of a 57-page booklet that provides an overview of the court's work, membership, and history:

<http://www.courtinfo.ca.gov/courts/supreme/iopp.htm>.

- Biographies and photographs of the court's seven justices:

<http://www.courtinfo.ca.gov/courts/supreme/justices.htm>.

- Detailed information and applications for court-appointed counsel in death penalty appeals: <http://www.courtinfo.ca.gov/courts/supreme/dpenalty.htm>

COURT PERMISSION REQUIRED TO APPEAR FOR ATTORNEY OF RECORD

Our court has asked that the court's permission be obtained before counsel who is not attorney of record appears or makes a filing on behalf of appointed counsel. Permission is not required to associate counsel to assist on a case if associated counsel will not be appearing or making a filing. The court recognizes that the need occasionally arises for an attorney to "pinch hit" for another. But the court's obligation to appoint counsel for indigent litigants entails not only the initial appointment, but approval of subsequent counsel appearing on the client's behalf. ADI expects strict compliance with this requirement.

Extension of Time Requests

The court is tightening up on extension requests and has asked us to pass on some reminders. All extension requests should be specific about the reasons for the request and the progress on the case to date. A request for fewer than 30 days, especially in dependency cases or in cases with prior extensions, might be more successful than a "routine" 30-day one.

In criminal cases, extension requests should include the following information:

- Total pages of record.

- Number of volumes of record.
- Client's sentence.
- Use of the form on ADI's Web site is helpful. In dependency cases, counsel should include all of the information on ADI's extension request form as provided in the Juvenile Appeals section of our site.

Updating boilerplate and forms to include current rule references

As of January 1, 2004, the criminal rules of the California Rules of Court were revised and renumbered. Following the revisions, we noted that many attorneys nevertheless continued to use boilerplate statements of appealability and other procedural passages referring to the rule numbers and provisions as they were before January 2004. For example, many statements of appealability still refer to "rule 31," the former rule dealing with notices of appeal, rather rule 30, the current one. Attorneys of course should make sure their standard language referring to rules, and indeed any other references to rules in their pleadings, are accurate. The ADI Web site has a chart comparing the former and current rule provisions: http://www.adi-sandiego.com/ADI_News/RulesChanges.htm

Assistance from Innocence Projects on Cases Potentially Involving a Factual Innocence Investigation:

Whenever a case may involve, in your judgment, a factually innocent client, consult ADI and consider referring the case to the law school innocence project in the region. In the Fourth Appellate District and other Southern California areas, that would be:

California Innocence Project
Justin Brooks, Executive Director
California Western School of Law
225 Cedar Street, San Diego, CA 92101-3046
(619) 525-7079

<http://www.cwsl.edu> Northern California cases should be referred to the Northern California Innocence Project, <http://www.ncip.scu.edu>.

ADI can help you determine whether the innocence investigation is within the scope of the appellate appointment. If it is, the innocence project may be able to give you valuable guidance; if it is not, the project may be able to take over the investigation.