

NEWS ALERTS FOR ADI PANEL

**By Elaine Alexander, Executive Director
April 2007**

Request that counsel use e-claims

ADI again strongly encourages attorneys to submit their claims via the Internet using the e-claims system. While it is not required, it is preferred, and we request that you give it a try. Attorneys familiar with the system say it is a pleasure to use. It is easier and more efficient than paper claims, saves considerable time, and helps avoid errors. You may obtain a temporary password by contacting Jay Kohorn at CAP-LA, 213-243-0323. The log-in is at http://www.lacap.com/eclaims/login/login_form.cfm.

Change in mileage rate

With apologies for our tardiness in reporting this in a news alert, we are pleased to tell attorneys that reimbursement for personal car use has increased to 48.5 cents per mile for travel on or after January 1, 2007. The overall policies are: Travel on or after January 1, 2007 is reimbursed at 48.5 cents per mile. Travel on or after July 1, 2006, and before January 1, 2007, is paid at \$0.445 per mile. Travel before July 1, 2006, is paid at \$0.34 per mile. (For information on travel and other claims topics, see the ADI claims manual <http://www.adi-sandiego.com/Articles/Claims%20manual%2002.07.07-2.pdf>.)

Dependency motions in Division One – fax or e-mail to other counsel on the appeal

Division One requests that parties filing a motion in a dependency appeal immediately send a copy via fax or e-mail to counsel for any other parties. The court needs to expedite these cases as much as possible. It will call opposing counsel upon receiving the motion and ask if counsel has any objection to it. If counsel cannot answer because he or she has not received it, the court must wait to rule on the motion, even if it turns out to be noncontroversial.

ADI Criminal Appellate Practice Manual updated; hard copies available soon

A version of the manual reflecting the newly renumbered Rules of Court and updated to April 2007 is online (<http://www.adi-sandiego.com/manual.html>). At this point ADI is planning to print hard copies for sale and distribution. We will announce the cost and order procedures soon.

Augmentation not the proper procedure to bring exhibits before court

Some courts have been receiving (and denying) improper augmentation motions asking that exhibits be added to the record. Under California Rules of Court, rules

8.320(e) and 8.404(f), exhibits *are* part of the record and thus do not need to be augmented. The only way to transmit an exhibit to the Court of Appeal is through a rule 8.224(a) request.¹

We are sympathetic to the advantages of using the augment process as a shortcut. It allows counsel to see documentary exhibits without traveling to the superior court. The 8.224 transmittal process is cumbersome; most importantly, it is of no use in writing an opening brief since it can be invoked only after the respondent's brief is filed.² We will look at the possibility of a rule change permitting a more efficient alternative.

Meanwhile, if an attorney wants to see a exhibit without making a trip, an ADI staff attorney may be able to make copies, take pictures, etc. We are near the San Diego court and travel regularly to Divisions Two and Three, as well. Please give the request to the staff attorney assigned to the case.

Procedures in cases with no arguable issues

ADI has offered guidance on handling cases in which counsel is unable to identify any arguable issues. (E.g., ADI California Criminal Appellate Practice Manual, ch. 1, § 1.24 et seq.; ch. 4, § 4.73 et seq.) The recent decisions in *People v. Kelly* (2006) 40 Cal.4th 106 [opinions] and *In re Ben C.* (2007) 40 Cal.4th 529 [conservatorships] have again brought no-issue cases into the spotlight. In response to *Ben C.*, Division One has informed us how they intend to handle no-issue conservatorship appeals. Attached are a letter from Presiding Justice McConnell and a memo from me summarizing no-issue procedures and suggesting issues raised by the letter and the recent Supreme Court cases.

¹Rule 8.224(a) provides:

“(1) Within 10 days after the last respondent's brief is filed . . . , a party wanting the reviewing court to consider any original exhibits that were admitted in evidence, refused, or lodged but that were not copied in the clerk's transcript . . . must serve and file a notice in superior court designating such exhibits.

“(2) Within 10 days after a notice under (1) is served, any other party wanting the reviewing court to consider additional exhibits must serve and file a notice in superior court designating such exhibits.

“(3) A party filing a notice under (1) or (2) must serve a copy on the reviewing court.”

²Division Two invites counsel to request early transmission of exhibits under rule 8.224(d), which provides in part that “At any time the reviewing court may direct the superior court . . . to send it an exhibit.”