

AUGUST 2008 – ADI NEWS ALERTS

By

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This news alert covers several important matters. As always, please review it carefully; counsel are responsible for all matters covered in e-mail alerts, newsletters, and other information made available to the panel.¹

AOC has depleted 2007-2008 funds for compensation claims

As you may know, the Administrative Office of the Courts has been paying compensation claims from fiscal year 2007-2008 funds if they meet the specified criteria (interims – AOB filed on or before June 30, 2008; finals – opinion filed on or before June 30, 2008). The AOC has just announced those funds are exhausted, and so it will be unable to make further payments until a state budget is signed. The announcement, slightly edited for clarity, says:

IMPORTANT NOTICE:

We have depleted all of the funds available to pay claims that met the payment criteria for FY 2007–2008 funds.

All claims transmitted to the AOC through July 23, 2008, that met the payment criteria for 2007–2008 funds were processed and paid. In addition, we were able to pay most of the claims that were transmitted with the date of July 24.

Each project will be e-mailed the case numbers for the claims transmitted on July 24 that were not paid from FY 2007–2008 funds. These and all other transmitted claims continue to be processed through our system and will be held in the Accounting Office until a budget is signed for FY 2008–2009.

For the month of June 2008, the projects transmitted claims that totaled \$2 million more in expenditures than the same period last year, June 2007. *This was a significant increase in expenditures, and resulted in fewer funds available to pay prior year claims that met the criteria for payment after June 30.*

Claims Processing for FY 2008–2009:

The staff will continue to process the claims, and the Accounting Office will prepare claims for payment by the State Controller's Office. Once the budget is signed and a chapter number for the new budget is provided, the AOC Accounting Office will transmit claims for payment.

All of us here hope the budget is signed soon!

¹Past alerts and newsletters are at http://www.adi-sandiego.com/news_alerts.html and http://www.adi-sandiego.com/news_newsletters.html.

We understand all too keenly the hardships many panel attorneys are facing as a result of the budget impasse. The AOC made heroic efforts to keep payments coming as long as their funds held out, and I know every single person at ADI also made it a point of top personal priority to expedite claims processing, so that our panel attorneys could be paid before the money was depleted. We are distressed that the budget has been delayed so long and can only hope lawmakers will put aside differences for the common good.

Update on procedures for viewing exhibits

A few years ago ADI staff attorney Anna Jauregui prepared a memo on the procedures for viewing exhibits in the various courts of the Fourth Appellate District. This information proved highly useful for attorneys facing this sometimes vexing task. By popular demand, she has now updated the information. Her article accompanies this alert.

Complete record before asking staff attorney to review it for issues

This has been the subject of a reminder before, but the problem crops up with some regularity – failure to make sure the record is complete before submitting a case to the assigned staff attorney for a no-merit review under *People v. Wende* (1979) 25 Cal.3d 436 or *In re Sade C.* (1996) 13 Cal.4th 952.

Counsel has a constitutional duty to ensure an adequate record on appeal. (*People v. Barton* (1978) 21 Cal.3d 513, 518-520; see chapter 3 of the ADI Criminal Appellate Practice Manual.) It would be an abdication of that duty to file a no-issue brief without having reviewed the entire relevant record. It is frustrating and wasteful of resources to ask a staff attorney to read a record that is missing potentially important parts. The staff attorney often has to stop the review, return the record, and ask the panel attorney to seek an augmentation or correction. Failure to complete the record before submitting a case for no-merit review is thus a ground for downgrading the evaluation in the case.

File reply briefs routinely

Another reminder: it is ADI policy that ordinarily a reply brief should be filed unless there are unusual reasons for not doing so. It is rare that one has nothing to say in response to the opposing brief. See my article on reply briefs at http://www.adi-sandiego.com/newsletters/2001_october.pdf and the discussion in our Criminal Appellate Practice Manual at § 5.58 et seq.

Follow-through with reply briefs and, where appropriate, oral argument, is a vital part of good advocacy. We monitor each attorney's compliance with our policy, and I may contact those who consistently fail to demonstrate adequate follow-through.

Use heavy tape on stapled briefs

If the briefs filed in the Court of Appeal are stapled, the staples and bound edge must be covered with tape. (Cal. Rules of Court, rule 8.204(b)(8).) Counsel should use *heavy* tape, since cellophane tape tends to rub off.

Division Two matters

_____ *Record correction letters – send to main courthouse, not branch*

Rule 8.340(b) letters must be sent to the appeals division of the main superior courthouse (Riverside Main or San Bernardino). The branch courthouses have not been forwarding the letter to the main courthouse; instead, they just route it to the file and take no action.

Exhibits – where possible, obtain from trial counsel and augment, rather than seeking settled statement

Superior court clerks have been releasing exhibits to counsel rather than keeping them with the exhibits clerk. In a couple of cases, the superior court had to set a motion for settled statement, which has caused a huge delay on appeal. Because the superior courts are backed up with criminal trials, the settled statement hearings get continued repeatedly. The court realizes that this is a problem with the superior court, not our panel attorneys. However, if possible, the court would prefer that appellate counsel obtain exhibits (documents) from trial counsel and file a motion to augment, rather than asking for a settled statement.