

AUGUST 2009 – ADI NEWS ALERTS II

By

Elaine A. Alexander, Executive Director

This alert covers these topics:¹ payment of claims and redemption of warrants; move of Division One courtroom; confidential records and briefs; late reply briefs; e-mailing briefs in Division One.

Payment of claims

You can get information about redeeming warrants in your possession on the State Treasurer's website at <http://www.treasurer.ca.gov/warrants/index.asp#how>.

To redeem by mail, send the registered warrant to State Treasurer's Office, Attn: Registered Warrant Desk, 915 Capitol Mall, Sacramento, CA 95814. That office advises attorneys not to endorse the warrants on the back and suggests that, if they redeem them by mail, they enclose a self-addressed, stamped envelope to expedite the return. It is prudent to keep a record of each warrant sent and to use a delivery method (such as certified mail) that allows it to be tracked.

Division One courtroom now on *third* floor

As of the September calendar, attorneys attending oral argument at Division One should go to the third floor of the building at 750 "B" Street in San Diego. The new courtroom is there.

Confidential records and briefs or other documents referring to them

A recent incident has caused us to advert to the problem of referring to confidential records in briefs and other documents. The briefs (both opening and respondent's) in one case discussed matters contained in a sealed transcript. When the court discovered this, it ordered the briefs sealed and ordered the attorneys to file public briefs redacting such references.

Rule 8.160 of the California Rules of Court applies to sealed records in civil appeals, and subdivision (g) provides: "A record filed publicly in a reviewing court must not disclose material contained in a record that is sealed, lodged conditionally under seal,

¹As a reminder: Counsel are responsible for all matters covered in e-mail alerts, newsletters, and other information made available to the panel. Past alerts and newsletters are at http://www.adi-sandiego.com/news_alerts.html and http://www.adi-sandiego.com/news_newsletters.html.

or subject to a pending motion to seal.” “Record,” as used the first time in that sentence, includes briefs, motions, petitions, and other documents. (Rule 8.160(b)(1).) “Sealed” means closed to public inspection by court order. (Rule 8.160(b)(2).)

There is no counterpart to rule 8.160 for sealed records in criminal appeals, but in our experience the court applies that rule to such cases. The Appellate Advisory Committee of the Judicial Council will be looking at rules for confidential records in criminal cases and addressing this gap in the next cycle.

Counsel should also be conscious that contents of certain records are made confidential, not by court order (sealing), but by *statute*, such as probation officer reports (Pen. Code, § 1203.05) or diagnostic reports (Pen. Code, § 1203.03, subd. (b)). Only the individual who is the subject of the report and his or her counsel and certain enumerated officials, including the prosecuting attorney, may have access to it. Thus counsel should be circumspect in referring to the contents of such reports and, if detailed reference to confidential information is necessary, should consider filing the brief under seal under rule 8.160. Rule 2.550(d) sets out the criteria for sealing. Please contact ADI if the situation arises. Again, we hope to address this larger problem by seeking a rule of court on the matter; thus this is interim guidance.

Late reply briefs

The court reminds us that attorneys must file a request for an extension of time for a reply brief, as well as an opening brief, if they are unable to make the deadline. The court frowns on a late filing, even if accompanied by the required request for relief from default under rule 8.60(d). Still worse is simply submitting a brief late with *neither* a prior extension of time nor a rule 8.60(d) request.

Coming soon: Division One encouraging briefs submitted by e-mail (in addition to a hard copy, for now)

Division One has recently announced a program inviting attorneys to e-mail their briefs to the court – and also to ADI, opposing counsel, and other parties. This is in *addition* to a hard copy for now, although the ultimate goal is electronic filing. We are distributing this announcement (attached) for informational purposes – a “heads-up” for the future, so that attorneys can prepare. But *temporarily we ask attorneys not to use it for ADI cases*, until we and the Attorney General have made arrangements for e-mail service. We will provide details about this pilot project, as it applies to our cases, as soon as they are worked out.

Note: The court is not yet making this option available in dependency cases but will address it in a few months. The San Diego County Counsel has indicated it is

interested. For several months we have had a pilot project in which that office serves ADI's copy of the respondent's briefs under rule 8.412(e)(3)(B) by e-mail. It has worked smoothly, and we will now focus on expanding it.

We hope panel attorneys will participate in this program as soon as it is ready. Once e-service replaces hard copies, it will be a great benefit to attorneys and the state, saving both time and money. Now is the time to prepare:

- Be sure you have reliable, virus-protected e-mail service and confirm ADI has a valid e-mail address for you.
- Take steps to ensure your computer can read and create PDF files. Adobe Reader can be downloaded free. See <http://get.adobe.com/reader/>. Our website will post instructions for converting Microsoft Word and Word Perfect to PDF files.

While we are making plans, we would appreciate input from panel attorneys as to the benefits and particular problems they foresee and any features of the program they would like. Please feel free to send your thoughts and questions to one of these staff attorneys:

Anita Jog – apj@adi-sandiego.com, 619-696-0284, ext. 37

Cheryl Geyerman – cag@adi-sandiego.com, 619-696-0284, ext. 23

David Rankin – dkr@adi-sandiego.com, 619-696-0284, ext. 33

Alice Shotton – acs@adi-sandiego.com, 619-696-0284, ext. 61.