

OCTOBER 2009 – ADI NEWS ALERTS

By

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This alert covers these topics:¹ e-mail filing of documents in Division One and e-mail service, Division Two miscellaneous orders, Division Three oral argument, notice to clients regarding work not covered by malpractice insurance, taping over staples used to bind briefs, new CDCR form for requesting confidential a client phone call in prison, and providing the court with the client's current address in *Wende* cases.

E-mail documents in Division One; e-mail service in all divisions

Briefs sent to the court by e-mail (as well as by hard copy)

As we pointed out in our last news alert,² Division One is inviting attorneys to submit briefs and other listed documents electronically, in *addition to* (not instead of) hard copies in order to refine its internal procedures in preparation for wholly electronic filing sometime down the road. The details are spelled out in the court's announcement, which we attached to our alert.³ Among these:

- As mentioned, a hard copy is still required, and that will be the official brief for purposes of meeting deadlines and calculating due dates for responses.
- The e-mailed brief must be a searchable PDF document, no greater than 5 MB, free of potentially harmful codes and viruses.
- The subject line of the e-mail must include the appellate case name and number.
- The document must be named in this form: appellate case number followed by a code identifying the type of document, as specified in section I of the court's announcement. E.g., D012345AOB.pdf.
- It must be sent to 4d1ebrief@jud.ca.gov. (Note that the third character is the numeral 1, not a lower case letter *l*.)

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.

²<http://www.adi-sandiego.com/PDFs/089%20August%202009%20II%20alert.pdf>.

³<http://www.adi-sandiego.com/PDFs/Invitation%20for%20email%20briefs.pdf>

- Technically, the e-mail must be copied to all other parties, but I have discussed with the court the fact that we and the Attorney General are engaged in a pilot program to test electronic service between that office and ours (next), and we are holding off on initiating that phase for the panel at large. They have okayed that deviation from the requirements. So panel attorneys may send a brief by e-mail to the court without copying the e-mail to other parties, as long as they include the usual proof of service by regular mail or personal delivery.

E-mail service on and by Attorney General

We have met with the Attorney General's office to discuss implementing service of all documents by e-mail. We agreed that ADI and that office will serve each other by e-mail, with an additional hard copy for certain documents.

We also agreed that ADI would select a small group of panel attorney volunteers to participate in a pilot project for electronic service between the appellant's counsel and the Attorney General and e-service by panel attorneys on ADI. Once we have the bugs worked out on this procedure, we hope to expand the program to all panel attorneys.

Forewarning: To avoid hopeless confusion, use of e-mail service will probably be mandatory, once established, and so panel attorneys should familiarize themselves with the creation and reading of PDF documents. ADI will be happy to offer technical guidance once the time comes.

Division Two miscellaneous orders

Every year Division Two issues miscellaneous orders covering a variety of administrative matters. ADI has placed them on our website to ensure attorneys are familiar with them (most of them apply to criminal and/or dependency cases). See http://www.adi-sandiego.com/legal_rules.html

Division Three oral argument

Division Three has advised us that the court values and encourages oral argument. Justices have seen some incidents in which they regretted a waiver and thought oral argument would have been beneficial. Please keep this in mind in deciding whether to request or waive in that court.

Notice to clients of work not covered by malpractice insurance

Effective January 1, 2010, by State Bar rule 3-410⁴ an attorney must advise a client in writing if the attorney does not carry malpractice insurance. As most panel attorneys know, ADI and other projects provide such insurance for cases handled under our program, and so that is not an issue in our cases. For privately retained, pro bono, or other work not under our program, however, panel attorneys must arrange for coverage independently⁵ or else advise the client of the lack of coverage.

Taping over staples used to bind briefs

The court has asked us to remind panel attorneys that for briefs bound by stapling, the staples and bound edge must be covered with tape. (Cal. Rules of Court, rule 8.204(b)(8).) The sharp points and edges are hazardous to clerks handling a large volume of documents each day.

CDCR form for requesting confidential client phone call in prison

The California Department of Corrections and Rehabilitation has a form, CDCR 106-A, for requesting a confidential telephone call with an incarcerated client. It is on the ADI website.⁶ Counsel must include a letter on official letterhead indicating the purpose for the call.

Wende briefs must show client's current address, or else counsel must separately inform the court of the address

The proof of service on a *Wende* brief must include the client's current address. The court needs it to send notice to the client of the right to file a supplemental brief in pro per. If the brief is not sent to the client at the client's request (e.g., it has information that might jeopardize the client's security), the proof of service can note the client's copy was held in the file or mailed to a different address. In that case counsel should include a cover letter to the court with the client's current address.

⁴http://calbar.ca.gov/state/calbar/calbar_generic.jsp?sImagePath=Current_Rules.gif&sCategoryPath=/Home/Attorney%20Resources/Rules/Rules%20of%20Professional%20Conduct&sFileType=HTML&sCatHtmlPath=html/RPC_Current-Rules-3-410.html

⁵Panel attorneys may contact the panel organization, California Appellate Defense Counsel, for details about the coverage it has negotiated for such situations.

⁶<http://www.adi-sandiego.com/PDFs/Confidential%20Phone%20Call%20Request%20CDCR%20106-A.pdf>.