

MARCH 2011 – SECOND ADI NEWS ALERT

BY

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This news alert¹ is a quick follow-up to that of March 22. It covers:

- Deadline for annual dinner registration coming up this Friday.
- Clarification of Division Three e-filing request: service on opposing counsel should be by *hard copy* unless you are part of e-service pilot project.
- Fifth District holds Chelsea's Law ameliorative change to Penal Code section 666 retroactive.

Reservations for Defender Dinner

The registration deadline for the annual Defender Dinner is this **Friday, April 1**. The invitation and RSVP form accompany this alert. The cost for panel attorneys is only \$30 (ADI will pay the remaining \$30 of the charge). Mail your check to: Appellate Defenders, Inc., Attn: Amy Spintman, 555 West Beech St., Suite 300, San Diego, CA 92101.

The featured speaker will be Wilbert Rideau, who spent 44 years in the Louisiana prison system, on death row and then under a life sentence before a retrial in 2005 freed him. He won many of journalism's top national awards for his exposés of prison life and helped produce award winning radio, television, and film documentaries about prison.

The Innocence Project will receive the Paul Bell Award. Panel attorney Robert Boyce will receive the Stan Conant Award.

We urge all panel attorneys to attend this exceptional event, which offers camaraderie, inspiration, good food, and a chance to celebrate and be with those who care about our profession.

Division Three e-filing: service on other parties still by *hard copy* except for those in e-service pilot program

Apparently counsel have been confused by our previous announcement of the Division Three request for a PDF copy of their briefs (in addition to the regular hard copies). Our announcement said Division Three was not requiring e-service on other

¹As always, panel attorneys are responsible for familiarizing themselves with all ADI news alerts and other resources on the ADI website.

parties but left the impression it might be optional. At this time counsel should *not* e-serve briefs on the Attorney General or County Counsel unless they are part of our e-service pilot program.

E-service is not a recognized form of service on appeal under the Code of Civil Procedure and so requires the actual written consent of opposing counsel. Those in a pilot project have executed such a consent, and the Attorney General and San Diego County Counsel have executed a consent for those attorneys who are approved by ADI as a pilot participant; these consents are on file in the Court of Appeal. Pilot participants are given a special e-service address for the agencies. Further, they maintain a dedicated e-mail account of their own for e-service purposes. Until those pre-arrangements are made and the agencies and Court of Appeal are notified that an attorney is approved by ADI, it would be more confusing than helpful to use e-service.

Ameliorative change to Penal Code section 666 under Chelsea’s Law held retroactive

As the ADI website home page has been noting for some time, in addition to increasing sentences for certain sex offenses, Chelsea’s Law, signed September 9 and effective immediately, provides petty theft is a felony only when the defendant has *three or more* prior theft-related convictions and was incarcerated for them, unless the defendant is required to register as a sex offender or has a serious or violent felony prior.

The Fifth District has now confirmed that the change in section 666 is retroactive to cases not yet final for purposes of appellate review. *People v. Vinson* (Mar. 28, 2011, F059302) ___ Cal.App.4th ___ [2011 WL 1120464] applied the principles of *In re Estrada* (1965) 63 Cal.2d 740, 746, which found a presumption that the Legislature intended ameliorative changes in the law to apply retroactively to non-final cases. Cases are not final if there are still opportunities for appellate review, up to and including a petition for certiorari in the United States Supreme Court. (*People v. Vieira* (2005) 35 Cal.4th 264, 306 [“for the purpose of determining retroactive application of an amendment to a criminal statute, a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed”].)

Counsel should review their Penal Code section 666 cases in which clients were convicted on the basis of one or two priors and act if it would be beneficial. They should keep in mind this could change a section 666 felony to a misdemeanor and in some instances conceivably could require immediate steps.