



# NEWS ALERT

May 2, 2022

## TOPICS

Claims: Judicially Noticed Records

Division One and Three Updates

Destruction of Old Court Records

Calendar of Events

## DEAR PANEL MEMBERS,

I hope this newsletter finds you well. I've included an update on claims, our courts, and upcoming MCLEs.

### Where to Claim Time for Review of Judicially Noticed Records

If the judicially noticed record could have been obtained by an augment motion or a correction letter request, the transcripts should be added to the transcript page count and the time for reviewing can be claimed on line 2. This comes up most often in the Penal Code section 1170.95 appeals.

All other judicially noticed records should be claimed on line 24 with an explanation.

### Division One: Extension and Augment Requests in Criminal Cases

In Division One, Justice McConnell reviews every request for an extension of time. The court does not automatically grant one 30-day extension. When considering whether to grant an extension of time, the court will consider the length of the record and sentence. The court will also consider whether the client is on probation, and thus mootness might become an issue. The court encourages counsel to provide specific reasons for needing an extension of time, such as the need to obtain additional transcripts (e.g. Penal Code section 1170.95 appeals), or the complexity of the argument.

The court asked that counsel file an augment motion as soon as possible so the record completion is timely and does not hold up the appeal.

### Division Three News

*Augment Motions, Rule Corrections, and Extensions of Time*

Division Three requests that augment motions and other record completion requests and/or trial court letter corrections be filed as soon as possible. (The court understands that subsequent augments and record completion letters need to be filed in cases where the augmented transcript reveals additional materials that need to be part of the record.)

With regard to extension requests, the court requests that counsel include specific case-related reasons for the extension request, including an update on the work that has already been completed.

### *Direct Appeal Records in Penal Code section 1170.95 Appeals*

Division Three prefers a motion for judicial notice, rather than an augment motion, to incorporate the direct appeal record into the current appeal. (Note: If the trial record was marked and admitted as an exhibit, then it simply needs to be transmitted to the Court of Appeal.) The Attorney General's Offices across the state will obtain and share the original direct appeal records in these cases. Contact your ADI staff buddy to obtain a copy of the record.

### *Division Three Policy -- Dependency Records in Non-Party Appeals*

The superior court clerks are responsible for making sure that records provided for non-party appellants include only information to which the non-party had access below. If the clerks make a mistake and the attorneys for a non-party appellant receive a record which includes information to which they should not have access, counsel should file a motion to correct the record or strike with the Court of Appeal as soon as possible. The motion should identify what parts of the record were included by error. To gain access to the confidential parts of the record, counsel will need to follow the procedure set forth in Welfare and Institutions code section 827.

### **Destruction of Old Court Records:**

The Court of Appeal, Fourth Appellate District, Division One (in San Diego) has announced its intention to destroy some old records in selected criminal, juvenile, and civil cases. (See Cal. Rules of Court, rule 10.1028(c).) Here is the [Announcement](#), with a link to the list of cases/files selected for destruction and instructions how to request retention of a record/file.

### **Calendar of Events**

ADI is offering one virtual MCLE seminar in May; the Office of the State Public Defender is offering three. Check out the [Calendar of Events](#) section of the ADI's website for details.

*As always, please reach out to me if you have any questions, concerns, or suggestions.*

*Lynelle*

