

**ASSOCIATE COUNSEL:
Excerpt from [ADI Manual](#)¹**

V. RESPONSIBLE USE OF ASSOCIATE COUNSEL AND LAW CLERKS
[§ 1.79]

Under guidelines issued by the California Supreme Court and Court of Appeal and under ADI's standards for performance of appointed counsel, the attorney of record has full, final, and personal responsibility for the way the case is handled. Although use of associate counsel and law clerks is acceptable, it may be undertaken only under appropriate guidelines, as set out below.

The policy of the Appellate Indigent Defense Oversight Advisory Committee prohibits an attorney handling an *assisted* case to use associate counsel or law clerks.

A. Scope of Appointed Counsel's Personal Responsibilities [§ 1.80]

It is ADI's policy that the attorney of record at all times has complete responsibility for the case. Specifically, this includes:

- (a) meeting all deadlines,
- (b) reviewing the record for potential issues,
- (c) making sure the record on appeal is adequate,
- (d) filing a satisfactory brief and such other pleadings and documents as may be required, and
- (e) making personal appearances.

The policy of personal accountability applies, not only to final filed documents, but also to preliminary drafts submitted to ADI. ADI attorneys do not have time to train law clerks employed by other attorneys or revise the work of relatively inexperienced associate counsel in cases where ADI has deliberately recommended appointment of more experienced counsel. ADI expects an attorney's work at all stages to reflect his or her own experience and other personal qualifications.

Personal appearances (such as oral arguments) require special care, because supervising another's work in a courtroom is essentially impossible. Unless advance arrangements have been made, ADI expects appointed counsel to make all appearances

¹<http://www.adi-sandiego.com/panel/manual.asp>

personally. Both the court and ADI must approve an appearance by an attorney other than counsel of record. The court may also require the client's consent.

B. Delegation Guidelines [§ 1.81]

ADI uses a sophisticated and comprehensive method of evaluating attorneys' performance and selecting them for particular cases. Its efforts would be undercut if attorneys were to allow others, not put through this screening process or not even members of the State Bar, to assume control of the case. Thus it is not acceptable to become a "general contractor" for the production of appellate briefs. Occasionally a staff attorney has phoned the attorney of record to talk about the brief, only to be told that the associate attorney or law student who prepared the brief is out just then and the appointed attorney knows nothing about the case. That degree of delegation is not acceptable.

It is acceptable for the attorney of record in an independent case to employ others to *assist* in any of the attorney's functions. However, the attorney is fully accountable at all times for what has or has not been done on the case.

For example, the attorney may have an assistant research a particular issue. But it is the attorney's own responsibility to ensure that the research is complete and that all citations are accurate and up to date. Similarly, the attorney may have another prepare a draft of part or all of any pleading or brief. Again, however, it is the attorney's own responsibility to see that the document is proper and complete in both form and substance, accurately states all facts and law, and is argued intelligibly, coherently, grammatically, and persuasively.

The failure to supervise adequately the work of subordinate attorney or non-attorney employees or agents is a failure to act competently on behalf of a client. (See Rules Prof. Conduct, rule 3-110, "Discussion," and cases cited therein.)

C. Compensation [§ 1.82]

As discussed in § 1.128 et seq. on compensation, *post*, associate counsel's time is included in the amount of attorney time reported on the case. ADI also converts the expense of law clerks and paralegals to the equivalent attorney time to determine whether a claim is reasonable after the cost of these services is added. Counsel who wish to be reimbursed for the costs of associate counsel, law clerk, or paralegal assistance need, not only to assume full responsibility for the case, but also to monitor the assistant's time to make sure it does not cause the total claim to become excessive.