

## SEPTEMBER 2013 – ADI NEWS ALERT

BY

ELAINE A. ALEXANDER, EXECUTIVE DIRECTOR

### CONTENTS

This alert<sup>1</sup> covers:

- Evaluations will be sent on the request of the panel attorney only, or at ADI's discretion.
- Website news – be on the alert for a major overhaul; many important features already updated and highlighted here.

### EVALUATIONS TO BE SENT TO PANEL ATTORNEYS ONLY ON REQUEST OR AT ADI'S DISCRETION

For the present, ADI will send evaluations only on the panel attorney's request or at the discretion of ADI. Automatic feedback for certain panel attorney classes (such as entry-level ones) will be discontinued.

Since the inception of its long-standing program to provide systematic feedback to panel attorneys, ADI has been sending evaluations automatically to new panel attorneys and selected others, as well as on request. The growth of our entry-level panel in the last few years has made that practice burdensome. With a 20-25 year old DOS-based case management system, we must manually print out, edit, scan, and email each "feedback" evaluation. We do not now have adequate resources to do that on a broad scale. (The good news is that we will soon have a new, high-tech system that will enable us to automate this process.)

Although we can no longer send the evaluations automatically, I do not want to discourage attorneys from filing requests. Feedback helps attorneys keep apprised of how they are doing and offers an opportunity to provide their own perspective for the record, if needed.

To submit a feedback evaluation request, just attach the [request form](#)<sup>2</sup> to the email transmitting the opening brief to ADI. Later requests cannot be honored.

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

<sup>2</sup><http://www.adi-sandiego.com/PDFs/evaluation.pdf>

**ENTIRELY NEW LOOK FOR ADI WEBSITE SOON TO BE ROLLED OUT; MEANWHILE, IMPORTANT UPDATES ALREADY POSTED**

Ever since the website survey of panel attorneys last year, ADI has been working with a professional website developer on a modernized look and improved functionality. ADI has also been updating and improving a great deal of content. A future alert will provide a guide to the “new” website.

This alert calls attention to some modified content already posted. When our staff attorneys mention some of these features to their panel buddies, a frequent reaction is, “I didn’t even know it was there. This is so helpful!” For example:

**[Index to project websites](#)**<sup>3</sup>: Staff attorney Patricia Ihara now maintains the Index, an alphabetical listing of the topics of enduring interest treated on all of the appellate project websites, including law, practice requirements and tips, ethics, news alerts, and much more information. Accessed by the drop-down menus under “News Alerts” or “Research Tools,” it is also searchable. It is presently 51 pages long and changes as new law emerges, as the courts ask us to convey information or policies to the panel, as news alerts are issued, as features are added to the website, etc. The Index is an invaluable help in complying with the requirement that panel attorneys must know the contents of the ADI alerts and website. (See fn. 1, which is standard in every news alert.)

**[Caballero and Miller materials](#)**<sup>4</sup> for pro per petitioners offer help for clients no longer on appeal who might benefit from *People v. Caballero* (2012) 55 Cal.4th 262 or *Miller v. Alabama* (2012) \_\_\_ U.S. \_\_\_ [132 S.Ct. 2455, 183 L.Ed.2d 407]. Inmates sentenced to life without possibility of parole or the equivalent for crimes committed as juveniles might be entitled to relief. Sample pleadings and instructions for presently unrepresented inmates are found under the section entitled *Responsibilities of counsel* and include:

Introductory letter  
Judicial Council habeas corpus petition form (MC-275)  
Answers to Question 6, Grounds for Relief  
Instructions for a *Caballero* or *Miller* habeas corpus petition

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<sup>3</sup>[http://www.adi-sandiego.com/PDFs/Website\\_articles\\_index\\_March\\_2012.pdf](http://www.adi-sandiego.com/PDFs/Website_articles_index_March_2012.pdf)

<sup>4</sup>[http://www.adi-sandiego.com/recent\\_changes\\_cases.html#LWOP](http://www.adi-sandiego.com/recent_changes_cases.html#LWOP) , under *Responsibilities of counsel*.

**Fourth Appellate District practice**<sup>5</sup>: This feature, accessed from the drop-down menu under “Practice Tools,” has been entirely reorganized and rewritten. The user can find the topic in question and then click on the appropriate division button to obtain information on that court’s practices and expectations. The main topics (which are subdivided into smaller units) include:

- Contacting the court
- General information the court makes available
- Notice of appeal
- Extensions, augmentations, record corrections
- Superior court files and exhibits
- Briefs
- Tentative opinion (Div. 2)
- Oral argument
- Petition for rehearing
- Change of address for attorney or client

ADI’s “ambassadors” to our three divisions maintain a dialog with the court, to ensure these practices and policies are current, efficient, and fair.

On a related topic, are you familiar with our page on [California Supreme Court practice](#)?<sup>6</sup>

**Guide to Motion Practice**<sup>7</sup> and **Demystifying the Exhibit Review Process**,<sup>8</sup> both by staff attorney Anna Jauregui-Law, have been updated. They may be accessed under “Practice Tools,” “[Practice Articles](#),”<sup>9</sup> “Fourth Appellate District and ADI nuts and bolts.” They provide a comprehensive guide to the various motions normally encountered in our practice, as well as the process of reviewing and copying superior court exhibits.

**Filing & Service Chart**<sup>10</sup>: No need to guess or hunt through the rules to find out formatting and content requirements, filing deadlines, length limits, service lists, number

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<sup>5</sup>[http://www.adi-sandiego.com/Fourth\\_District.html](http://www.adi-sandiego.com/Fourth_District.html)

<sup>6</sup>[http://www.adi-sandiego.com/supreme\\_court\\_practice.html](http://www.adi-sandiego.com/supreme_court_practice.html)

<sup>7</sup>[http://www.adi-sandiego.com/PDFs/Motion\\_Practice\\_2.pdf](http://www.adi-sandiego.com/PDFs/Motion_Practice_2.pdf)

<sup>8</sup><http://www.adi-sandiego.com/PDFs/EXHIBIT%20REVIEW%20UPDATED%202010.pdf>

<sup>9</sup><http://www.adi-sandiego.com/articles.html>

<sup>10</sup>[http://www.adi-sandiego.com/FILING\\_AND\\_SERVICE\\_SUMMARY\\_eff\\_1-1-2011.pdf](http://www.adi-sandiego.com/FILING_AND_SERVICE_SUMMARY_eff_1-1-2011.pdf)

of copies, cover color, etc., for various kinds of documents. They are laid out systematically in this nine-page chart, along with supporting rule references. The chart is accessed by a button on the home page.

**FAQ's for attorneys**<sup>11</sup>: On this page attorneys can find answers to questions they may have been afraid to ask or not even have known they were supposed to ask. These include:

As an ADI panel attorney, where can I find written guidance on handling appointed appeals and writs in California reviewing courts?

Where can I find answers to my questions about compensation claims?

Whom should I contact about administrative questions concerning a particular case, such as appointment or claim information?

Whom should I contact for help with substantive issues or procedural matters in a specific case?

When is it mandatory (or strongly advisable) for a panel attorney to consult ADI?

What recourse do I have if the staff attorney and I cannot reach agreement on a matter or I want to make a confidential complaint or inquiry?

How can I find out my standing on the ADI panel or obtain a reference from ADI?

**Self-help for non-lawyers**<sup>12</sup>: This new section, accessed by a button on the home page, is divided into two parts – (1) criminal, delinquency, and civil commitments cases and (2) dependency and Family Code cases. Both parts are available in Spanish, as well. (The lead page lists some court resources for non-dependency civil litigants, but that topic is not otherwise covered on these pages of the ADI website.) This section is designed to help represented parties understand the process and also to guide self-represented litigants<sup>13</sup> in our cases to resources that may be available. Topics include:

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<sup>11</sup><http://www.adi-sandiego.com/FAQ-Contact.html>

<sup>12</sup>[http://www.adi-sandiego.com/Self-help\\_for\\_non\\_lawyers.html](http://www.adi-sandiego.com/Self-help_for_non_lawyers.html)

<sup>13</sup>Because our practice involves the right to court-appointed counsel, self-representation is highly limited. The court policy requiring counsel has been virtually universal for criminal appeals since *Martinez v. Court of Appeal* (2000) 528 U.S. 152. BUT: rarely, dependency litigants may be granted the right to represent themselves;

*Starting:* How can I start an appeal?

*My Lawyer:* How can I get a lawyer to do my appeal?

*Do it Yourself?* (1) Can I represent myself? (2) Can I file my own brief if I am represented by a lawyer?

*Supreme Courts:* My lawyer on appeal is not going to take my case to (1) the California Supreme Court or (2) the United States Supreme Court on issues that I lost in the Court of Appeal. What can I do on my own?

*Another Way to Go - Habeas Corpus:\** I want to challenge my conviction, but I understand appeal is not an option. What can I do?

*Make a Federal Case Out of It?\** My state appeal is over. How can I get into federal district court to attack my conviction?

*More!* How can I get additional self-help information?

*\* These topics are on the criminal page only.*

**[Claims guidelines and policies](#)**<sup>14</sup>: Staff attorney Cindi Mishkin has reorganized the claims corner of the website. Guidelines and various policies are set out together, and forms, direct deposit, and eClaims are on their own pages. The **[Claims Manual](#)**,<sup>15</sup> maintained by staff attorney Leslie Rose, remains the most comprehensive guide to claims policies we can provide.

**[Practice resources](#)**<sup>16</sup> by Cindi Mishkin: The new page has highly practical information on such matters as:

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many habeas corpus proceedings are initiated by pro per petitioners; attorneys are told to offer clients guidance on petitions for review, if counsel will not be filing one ([http://www.adi-sandiego.com/PDFs/Pet\\_for\\_review\\_info\\_Oct\\_2012\\_\(2\).pdf](http://www.adi-sandiego.com/PDFs/Pet_for_review_info_Oct_2012_(2).pdf)); in no-merit criminal and conservatorship cases, the appellant has a right to file a brief (cf. *In re Phoenix H.* (2009) 47 Cal.4th 835 [no such right in dependency appeal].)

<sup>14</sup>[http://www.adi-sandiego.com/claim\\_guidelines\\_policies\\_main.html](http://www.adi-sandiego.com/claim_guidelines_policies_main.html)

<sup>15</sup>[http://www.adi-sandiego.com/claim\\_guidelines\\_policies\\_main.html](http://www.adi-sandiego.com/claim_guidelines_policies_main.html)

<sup>16</sup>[http://www.adi-sandiego.com/practice\\_resources.html](http://www.adi-sandiego.com/practice_resources.html)

Computer tips  
Date calculations  
FAQ for attorneys (see above)  
Index (see above)  
Legislative research  
Organizations helpful to our practice  
Prisoner and parolee information and services  
Prosecutorial misconduct study  
State Bar information  
Statistical resources

**Forms and samples**<sup>17</sup>: New samples have been posted, and others will soon be ready. See also **Dependency Forms**.<sup>18</sup>

The **ADI California Criminal Appellate Practice Manual**<sup>19</sup> is always being updated and should be a staple in every panel attorney's repertoire. Attorneys must be familiar with its general contents and consult it when it might apply. To assist in this potentially extensive endeavor, we offer ways of navigating through it to find a given topic efficiently; for example:

- The manual is in PDF format and can be searched. (See Instructions at bottom of **lead manual page**.<sup>20</sup>)
- The **Table of Contents**<sup>21</sup> contains every section heading and subheading in each chapter and is itself searchable.
- The **manual as a whole**<sup>22</sup> is bookmarked for each heading and subheading (i.e., each section number), as is each chapter. Simply click on the applicable bookmark to go directly to the appropriate part of the text. Assistance with using bookmarks is available from staff attorney Lynelle Hee.<sup>23</sup>

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<sup>17</sup>[http://www.adi-sandiego.com/practice\\_forms\\_motion.html](http://www.adi-sandiego.com/practice_forms_motion.html)

<sup>18</sup>[http://www.adi-sandiego.com/juvenile\\_form.html](http://www.adi-sandiego.com/juvenile_form.html)

<sup>19</sup><http://www.adi-sandiego.com/manual.html>

<sup>20</sup><http://www.adi-sandiego.com/manual.html>

<sup>21</sup>[http://www.adi-sandiego.com/PDFs/Manual\\_April\\_2013/TableOfContents.pdf](http://www.adi-sandiego.com/PDFs/Manual_April_2013/TableOfContents.pdf)

<sup>22</sup>[http://www.adi-sandiego.com/PDFs/Manual\\_April\\_2013/Appellate\\_Practice\\_Manual\\_April\\_2013.pdf](http://www.adi-sandiego.com/PDFs/Manual_April_2013/Appellate_Practice_Manual_April_2013.pdf)

<sup>23</sup>[ikh@adi-sandiego.com](mailto:ikh@adi-sandiego.com).

*Dependency practitioners:* My aspiration is to expand the manual to make it equally applicable to dependency as well as criminal appeals. But take note: much of the manual is already applicable to those cases,<sup>24</sup> and *all* attorneys are responsible for being familiar with those parts relevant to their cases.

**Recent victories**<sup>25</sup>: This page, supervised by staff attorney Anita Jog, lists favorable outcomes in ADI cases for each month. It not only recognizes successful work by individual attorneys, but also aids advocacy, by alerting counsel to issues that the courts have found persuasive.

**Recent changes in the law**<sup>26</sup>: The ever-changing kaleidoscope that constitutes the legal landscape must always be re-examined as new laws are passed or court decisions come down. Besides descriptions of the new laws, the “Recent Changes” pages offer analyses of potential issues, limitations and possible hazards, and often sample arguments. ADI also offers links to other websites that compile lists of **pending issues in high courts**.<sup>27</sup>

**General**<sup>28</sup> and **dependency**<sup>29</sup> MCLE materials – handouts from ADI’s regular MCLE programs are online.

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<sup>24</sup>For example, chapters 1, 3, 5, 6, 7, and 8 are largely applicable to dependency cases (panel basics; pre-briefing responsibilities; briefing; oral argument; decisions; state writs). Significant parts of chapters 2 and 4 are, as well (starting an appeal; issue spotting). Only chapter 9, on federal habeas corpus, is solely or primarily criminal.

<sup>25</sup>[http://www.adi-sandiego.com/recent\\_victories.html](http://www.adi-sandiego.com/recent_victories.html)

<sup>26</sup>[http://www.adi-sandiego.com/changes\\_in\\_the\\_law.html](http://www.adi-sandiego.com/changes_in_the_law.html)

<sup>27</sup>[http://www.adi-sandiego.com/news\\_issues\\_review.html](http://www.adi-sandiego.com/news_issues_review.html)

<sup>28</sup>[http://www.adi-sandiego.com/ADI\\_MCLE\\_Materials.html](http://www.adi-sandiego.com/ADI_MCLE_Materials.html)

<sup>29</sup>[http://www.adi-sandiego.com/ADI\\_Dependency\\_MCLE\\_Materials.html](http://www.adi-sandiego.com/ADI_Dependency_MCLE_Materials.html)