

## **MAY 2017 – SPECIAL ALERT**

BY

**ELAINE A. ALEXANDER, EXECUTIVE DIRECTOR**

### **CONTENTS**

This alert<sup>1</sup> covers extension requests and billing records:

- [Use Judicial Council forms for extension requests and fill them out properly.](#)
- [Keep accurate time records to the nearest one tenth of an hour.](#)

### **Use Judicial Council forms for extension requests and fill them out properly**

#### **Use standardized extension request forms**

We remind counsel to use the Judicial Council extension forms [CR-126](#)<sup>2</sup> (criminal appeals), [JV-816](#)<sup>3</sup> (delinquency appeals), and [JV-817](#)<sup>4</sup> (dependency appeals) to request more time to file a brief.

Division One Presiding Justice Judith McConnell has expressly requested that more attorneys use the form. She noted her review of the request is much facilitated by having a uniform format, so that she knows exactly where to find the information she needs.

It makes sense that all decision-makers would want to find relevant information with minimal time navigating through the document. All of our presiding justices accept the Attorney General form based on the Judicial Council ones. These are the primary decision-makers, and so it behooves us to make their job as easy as possible.

#### **Proper use of form**

At our request, the Judicial Council has fixed what had been an obstacle to using the criminal form, CR-126. The all-important question is number 10, on the reasons for the extension. CR-126 provided a space for the answer, but on a number of computers it was not an active field that could be filled out on the computer. It apparently had to be printed

---

<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.courts.ca.gov/documents/cr126.pdf>

<sup>3</sup><http://www.courts.ca.gov/documents/jv816.pdf>

<sup>4</sup><http://www.courts.ca.gov/documents/jv817.pdf>

out and finished by hand, then scanned for filing. That defeated the goals of easy completion and enhanced readability.

We finally figured out a work-around after hours of experimentation on various computers, but it was not particularly intuitive. Activating the comments field required doing things in a certain sequence, depending on the browser. So we asked the Judicial Council form makers if they could make the field active to begin with, in the way that the two juvenile forms operate.

They have done so, but pointed a major reason for the way the field operated in CR-126 (as a “smart” field) was to make sure that users correctly indicated whether the response was in the blank space *or* in an attachment and did not put part of their explanation on the form and the rest on an attachment. Judges prefer to have the explanation in a continuous document.

So that altering the field to be more accessible to all users did not introduce other problems, we agreed to emphasize these points to the panel:

1. *Check box:* Check the correct box showing whether the explanation is provided in the space on the request form or in an attachment. That way the court will be able to tell easily whether they should be looking for additional pages.
2. *Unified explanation:* Present the reasons in a unified form. If the explanation for the extension request<sup>5</sup> will take more space than the field allows – a comparatively rare occurrence, probably – use form [APP-031A](#)<sup>6</sup> (attached declaration in Court of Appeal) to begin with. Don’t split the explanation between the space and the attachment.
3. *Use Reader:* Use Adobe Reader to view and complete the request, not another PDF viewer such as one provided by a browser. The form is constructed to operate optimally with Reader, which can be downloaded for free.
4. *Download the document before filling out:* One reason a number of computers could not get an active field for question 10 in CR-126 was that the user was filling it out online before downloading, and certain browsers (notably Chrome) could not activate the field the way it was constructed. Although the Judicial Council’s change to the form may have corrected that problem, it is a good practice to save the document to your computer right away. You’ll have to save it eventually, anyway, to e-file and maintain a proper case file.

---

<sup>5</sup>Question number 10 in CR-126, number 9 in JV-816, and number 7 in JV-817.

<sup>6</sup><http://www.courts.ca.gov/documents/app031a.pdf>

5. *Signature*: The signature on an electronically filed document under penalty of perjury is governed by rule 8.75(a). Counsel keeps a signed, printed copy in the case file but does not need to sign the filed document.

### **Keep accurate time records to the nearest one tenth of an hour**

This reminder has appeared several times, but we still see evidence some attorneys are not keeping accurate time records for claims purposes. Judicial policy is that appointed counsel claims must be based on records of actual time, maintained to the nearest one tenth (0.1) of an hour.

The JCC and projects keep extensive computer records on claims, and so tracking any given attorney's billing patterns is possible. Telltale signs of noncompliance include always billing to the guidelines; billing the same amount for the same service (e.g., client communication) time and again, even though the need for the service varies;<sup>7</sup> rounding off to the nearest hour or half hour; admitting an amount was an estimate, not a true count, etc.

The [ADI Claims Manual](#)<sup>8</sup> says, under "Reporting and Recording Time":

Actual time must be kept and reported to the nearest one tenth of an hour. Estimating the time or just claiming to the guidelines is unacceptable. Rounding off to whole hours or larger fractions of an hour is also improper; counsel may be asked to redo the claim. Counsel who round down have the burden of explaining. Expenses likewise should not be rounded off.

The [ADI Appellate Practice Manual](#)<sup>9</sup> says in § 1.130:

Counsel are required to keep time records to the nearest one-tenth of an hour and may be required to produce them on request. Only *actual* time may be claimed. The claim must never be premised solely on the guidelines (for example, by simply dividing the record length by the guidelines' pages per hour) or an estimate ("I know I spent at least X hours on this").

Given that claims are made under penalty of perjury and are subject to scrutiny and audit in several different ways, counsel should take these rules seriously and conform to them at all times.

---

<sup>7</sup>An exception here is the 1.0 hour allowed for administrative work on the case.

<sup>8</sup>[http://www.adi-sandiego.com/pdf\\_forms/Claims\\_manual.pdf](http://www.adi-sandiego.com/pdf_forms/Claims_manual.pdf)

<sup>9</sup>[http://www.adi-sandiego.com/panel/manual/Chapter\\_1\\_Basic\\_Information.pdf](http://www.adi-sandiego.com/panel/manual/Chapter_1_Basic_Information.pdf)