

JANUARY 2018 – ADI NEWS ALERT

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Practical Perspectives from Defense Warriors: Resisting, Defending, and Surviving – USD and Community Defenders, Inc., annual seminar." Saturday, January 20, at Warren Hall, Room 3A, University of San Diego School of Law.

Electronic reporters' transcripts now arriving. New Code of Civil Procedure section 271 requires computer-readable reporter's transcripts in most cases as of January 1. Courts are addressing appointed counsel's need for paper transcripts for clients.

TrueFiling hack. Personal information contained in court filings may have gone to third party hacker.

Second District formatting guidelines. These are not applicable in other districts. The "Guidelines," as opposed to the "Requirements," are discretionary even in the Second District. In the Fourth District, follow the California Rules of Court where there is a conflict, and use common sense and good judgment otherwise.

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

MCLE opportunities in the first few months of 2018

ADI brownbag series (modification of previous notice)

All are at noon in ADI's Paul Bell Library, preapproved for 1.0 hour MCLE general credit unless specialty credit is announced for the particular program. All are available also as a webinar via WebEx. ADI will circulate WebEx log-in details and more information about each of the programs before they take place. (Note: This alert corrects several errors in the email alert of January 3. We apologize for any problems caused.)

- **New Laws for Criminal Practitioners – Garrick Byers. Wednesday, January 17.**

Garrick Byers, currently in private practice, will discuss the most important new laws relevant to criminal practitioners. Mr. Byers is a former Senior Defense Attorney for the Fresno County Public Defender and Contra Costa Public Defender as well as a former member of the Legislative Committee of the California Public Defenders Association. Mr. Byers drafts an annual treatise summarizing the most relevant new laws for criminal practitioners; the most recent edition will be available, with his permission, on ADI's website. Preapproved for 1.0 hour general MCLE credit.

- **Compassion Fatigue and Attorneys – by Dr. Ellen Stein. Friday, February 23.**

Dr. Ellen Stein, a forensic and clinical psychologist, will discuss compassion fatigue, also known as vicarious trauma or secondary traumatic stress, and its effects on criminal defense attorneys. In addition to maintaining a clinical practice, Dr. Stein has extensive experience in forensic evaluations of adults and adolescents. She has lectured frequently on the topic of compassion fatigue as well as other issues relevant to the intersection of psychology and criminal law. The program is pre-approved for 1.0 hour of specialty MCLE credit in the area of substance abuse and mental or physical issues that impair professional competence.

- **Dial H for Homicide: Il Buono, Il Cattivo, Il Brutto – by George Schraer. Wednesday, March 21.**

George Schraer, ADI's Paul Bell Memorial Award winner in 2002, will provide an overview of the substantive law on all variations of homicide. His work has shaped the criminal law we take for granted today. E.g.:

People v. Mayberry (1975) 15 Cal.3d 143 [“Mayberry Defense” – a defendant's reasonable and good faith mistake of fact regarding a person's consent to sexual intercourse is a defense to rape];

People v. Loewen (1983) 35 Cal.3d 117 [“high rate of crime” in an area does not transform innocent-appearing circumstances into a reasonable suspicion of criminality];

People v. Laiwa (1983) 34 Cal.3d 711 [“accelerated booking search” is not a permissible exception to the warrant requirement];

People v. Ramkeesoon (1985) 39 Cal.3d 346 [murder conviction reversed based on instructional error];

People v. Fletcher (1996) 13 Cal.4th 451 [reversing a first degree murder conviction for Aranda/Bruton error];

People v. Swain (1996) 12 Cal.4th 593 [intent to kill is a required element of the crime of conspiracy to commit murder, and cannot be based on a theory of implied malice];

People v. Mosley (2015) 60 Cal.4th 1044 [defendant has no right to jury trial on the factual findings subjecting him to sex offender residency restrictions].

• **Fighting the Digital Dragnet: How to Rein in Digital Searches and Fight Compelled Decryption and Password Disclosure – by Stephanie Lacambra. Friday, April 27.**

Stephanie Lacambra, a staff attorney with the Civil Liberties Team at the Electronic Frontier Foundation, will discuss the impact of technology, social media accounts, and online search engines on digital privacy and Fourth Amendment challenges to government searches of computers, cell phones, and other devices. Ms. Lacambra is a long time indigent criminal defense trial attorney and immigration defense activist who graduated from UC Berkeley’s Boalt Hall School of Law in 2004. She began her career as a staff attorney with Federal Defenders of San Diego, Inc., and then worked for a decade as a deputy public defender with the San Francisco Public Defender’s office.

California Appellate Defense Counsel annual conference – Friday-Saturday, March 23-24, at the SFO Bayfront Hilton

Registration is now open for CADC’s Annual Conference and Seminar scheduled for March 23-24, 2018, at the SFO Bayfront Hilton. Boalt Hall Professor Avani Mehta Sood will give the keynote address on Friday afternoon, and the two-day conference will include numerous presentations, including criminal and dependency break-out sessions, providing a total of up to 9.5 hours of MCLE credit. Both one- and two-day registrations are available. For more information and registration material, attorneys are advised to visit CADC’s website: <https://cadc.net/product-category/conference/>.

Practical Perspectives from Defense Warriors: Resisting, Defending, and Surviving – by USD and Community Defenders, Inc. – annual seminar, Saturday, January 20, at Warren Hall, Room 3A, University of San Diego School of Law.

The seminar provides 5 hours of MCLE credits including 2.5 hours of general credit, 1.0 hour of credit for Recognition and Elimination of Bias in the Legal Profession and Society, and 1.5 hours of credit for Legal Ethics. It is at a discounted rate of \$40 for all ADI staff and panel attorneys. Coffee and pastries in the morning and lunch are included. The [brochure for the seminar](#)² is posted online. It contains registration info, the line up for the day and other information helpful for attendees.

Electronic reporters’ transcripts are here

On January 1, 2018, new section 271 of the Code of Civil Procedure came into effect. Enacted as [Assembly Bill number 1450](#) in 2017,³ it mandates that reporter’s transcripts be created and delivered in electronic, rather than paper, form. It provides exceptions for cases where electronic transcripts are not yet technologically feasible for the trial court or reporter or where a party requests its copy in paper form. (Requests for paper copies presumably must be timely – before the electronic version is delivered. The bill does not appear to contemplate parties getting two free copies of the same transcript, one in each form.) Clerk’s transcripts are not affected by the new law.

The projects have called the courts’ attention to the problem that panel attorneys have an ethical duty to send the transcripts to clients on request, at the conclusion of the case.⁴ Many clients are in custody or otherwise lack the means of accessing electronic documents. The costs of printing a paper copy from an electronic version could be substantial.

At the projects’ suggestion, the Courts of Appeal have taken various stopgap measures to address this problem. Counsel must consult the applicable project for the situation in each district. The Fourth District has elected to promulgate a local rule, number 5,

²http://www.adi-sandiego.com/pdf_forms/2018_Community_Defender_Brochure.pdf

³http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1450

⁴State Bar Rules of Professional Conduct, rule 3-700(D)(1), requires an attorney to promptly release to the client, at the request of the client, all client papers and property. Part of the client file is the record on appeal.

deeming counsel in a felony appeal to have requested a paper copy unless within prescribed time limits, counsel has specifically requested an electronic version. Happily, the same rule applies in all three divisions. Local rule 5 provides, as to “Felony Appeals”:

(a) Except as provided in (b), defendant’s counsel is deemed to have requested under Code of Civil Procedure section 271(a)(1) that his or her copy of the reporter’s transcript be delivered in paper form.

(b) Within 15 days after the notice of appeal is filed, defendant’s counsel, or, if the defendant is not yet represented by appellate counsel, the district appellate project, may serve the lead court reporter and the superior court with a request that defendant’s counsel’s copy of the reporter’s transcript be delivered in electronic form.

Under the regulations governing local rules (see Cal. Rules of Court, rule 10.1030), the draft rule has to be distributed for public comment for at least 45 days before it becomes effective. Unless an obstacle appears during that period, it will go into effect on February 23.

Juvenile cases are not included in the new rule. Presumably, counsel will get electronic reporter’s transcripts in those cases unless the trial court or reporter is unable to produce them.

Until the local rule goes into effect, most counsel should be receiving electronic reporter’s transcripts after January 1. ADI has advised the Judicial Council that it will recommend full compensation for the costs of printing and sending a paper copy, provided the panel attorney states the client requested⁵ a copy of the record and is unable to access an electronic version.

We recommend counsel review the [ADI Appellate Practice Manual, chapter 1](#), § 1.60 et seq., on handling client records.

TrueFiling hack

We have been informed that an outside company, Docket Alarm, which collects court filings for later sale as samples, hacked into TrueFiling and without authorization or notice inserted itself as a recipient of document service in a number of cases. It did in fact gain possession of several documents this way. Docket Alarm has since been removed from the TrueFiling system.

⁵Counsel does not have a duty to send the file to the client if there is no request for it, although counsel must notify the client it is available on request.

The Court of Appeal is notifying affected parties and attorneys directly and identifying the documents that fell into Docket Alarm's hands. (See posted [sample notification](#).⁶)

In *criminal* cases, the situation is not especially alarming, since generally service documents are public, anyway. If any of the affected briefs were filed under seal, there could be serious problems, but no such cases have come to ADI's attention so far.

Juvenile cases are another story, since filings by the parties are not accessible to the public. (Cal. Rules of Court, rule 8.401(b).) If notified by the court of a document inadvertently served on Docket Alarm in a juvenile case, counsel should contact the ADI buddy and examine the filing carefully, to ascertain whether personal information was communicated. If so, counsel and ADI can work on appropriate notification to the client. (So far ADI has seen no such personal information – just one joinder to a request to complete the record.)

This is a good opportunity to remind counsel not to include confidential information in documents unless unavoidably necessary for the argument. Birth dates, full names in juvenile cases, Social Security numbers, addresses, and other such matters should presumptively be redacted, even when the filings are theoretically not public. Counsel should review the courts' [Nondisclosure of Identity Policy](#),⁷ for additional areas of sensitivity. The Docket Alarm situation is an excellent example of why such vigilance is important.

Second District formatting guidelines

Some panel attorneys have asked whether the fairly detailed [formatting guidance](#)⁸ promulgated by the Second District when inaugurating TrueFiling will be adopted in other districts. We have had no indication from Fourth District courts that they are inclined to do that.

The Second District guidance is divided into mandatory "requirements" (pages 1-2) and discretionary "guidelines" (pages 3-4). The requirements are similar to other districts'

⁶[http://www.adi-sandiego.com/pdf_forms/Sample Docket Alarm Letter from Court.pdf](http://www.adi-sandiego.com/pdf_forms/Sample_Docket_Alarm_Letter_from_Court.pdf)

⁷[http://www.adi-sandiego.com/news_alerts/pdfs/2011/NONDISCLOSURE POLICY.pdf](http://www.adi-sandiego.com/news_alerts/pdfs/2011/NONDISCLOSURE_POLICY.pdf)

⁸<http://www.courts.ca.gov/documents/2DCA-Electronic-Formatting-Req-Guide.pdf>

rules. The guidelines, however, deal with some of the details of typography, such as fonts, smart quotes and apostrophes, line spacing, page size, etc.

Some of the Second District discretionary guidelines are contrary to the Rules of Court, such as page size and line spacing (see Cal. Rules of Court, rule 8.204(b)(1)⁹ and (b)(5)¹⁰). In that case we emphatically recommend following the Rules of Court. Otherwise, counsel should follow their own good judgment. If a guideline helps make a point more clearly, counsel may well wish to follow it, but a radical recasting of one's format settings is surely not necessary.

⁹Page size must be 8 1/2 x 11.

¹⁰Line spacing must be “at least” 1.5. To the extent we have queried our justices, they prefer double spacing.