

## SEPTEMBER 2015 – ADI NEWS ALERT

BY

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

- **Electronic filing and service**: Update on electronic service and filing in the Fourth District: (1) service with the Dependency Legal Group will be by email only in all San Diego County dependency appeals as of October 1; (2) panel attorneys are alerted that TrueFiling is scheduled to come to the Fourth District in the first half of 2016; (3) expansion of email service programs to other counties may continue despite TrueFiling.
- **Unneeded paper copies**: Panel attorneys are reminded that paper copies of filings that may be e-filed or e-served are unnecessary and non-compensable.
- **Form for change of address, tax ID, etc.**: The JCC has issued a new mandatory official form for notifying it and the projects of a change of panel attorney information, such as address or tax ID number.
- **Juvenile law section of San Diego County Bar Association**: The SDCBA has created a new practice section for attorneys interested in juvenile law.
- **Anders issues in Wende briefs**: The apparent latest word from the Fourth Appellate District supports inclusion of unbriefed issues in *Wende* briefs.

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### ELECTRONIC SERVICE AND FILING IN THE FOURTH DISTRICT

The movement toward electronic communication and documents is accelerating in the Fourth Appellate District.

**DLG email service will start on October 1; email service of appellate briefs in San Diego County is almost complete**

ADI has entered into an e-service agreement with the Dependency Legal Group of San Diego. Effective October 1, 2015, service by email on DLG will be mandatory in San

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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.

Diego County dependency cases. The e-service address is [writinfo@dlgsd.com](mailto:writinfo@dlgsd.com). The written memorandums of understanding between DLG and ADI accompany this [alert](#) and are posted on ADI's [e-service web page](#).<sup>2</sup> (The copy of the accompanying DLG agreement is unsigned right now, but that office has already approved the MOU. We wanted to give the panel as much advance notice as possible and so are providing a copy of the approved draft. We will post the completed, signed agreement on the web page when it is received. The panel agreement signed by me as agent is already complete.)

DLG handles the dependency appointed counsel system in the San Diego County Juvenile Court, and therefore most San Diego dependency appeals will come from that office. Service on minor's trial counsel, as CAPTA guardian ad litem, is mandated by rule 8.412(e)(2).

With the DLG agreement, email service of appellate briefs on San Diego County agencies is virtually universal now, with the Attorney General, County Counsel, District Attorney, Public Defender, other panel attorneys, and ADI all covered. The glaring exception is the San Diego County Superior Court. That court tells us e-filing is still a long way off and says it does not have much flexibility in the matter. ADI will keep the lines of communication open, in the hopes something might change.

#### **TrueFiling coming next year**

A number of panel attorneys are already quite familiar with TrueFiling, the court-sponsored system for electronic filing. It is in place in the First, Third, and Fifth Districts. The Fourth District expects to introduce it in the first part of 2016, one division at a time. ADI will keep the panel apprised when we get specific information.

#### **Future plans for email service and expansion to other counties**

TrueFiling does provide service on other parties – for a fee. Email service in contrast is essentially free. ADI will investigate how TrueFiling availability would mesh with the ADI email service programs partially in place and still being developed in the Fourth District. Over the last few years, we have been in touch with various agencies in Orange, San Bernardino, Riverside, and Imperial Counties to explore email service. They have been quite receptive. One way or the other, non-paper service will be made available.

#### **UNNEEDED PAPER COPIES**

The court has complained that panel attorneys, especially in dependency cases, are sending paper copies *in addition to* a copy already e-filed. The court says:

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<sup>2</sup>[http://www.adi-sandiego.com/practice/eservice\\_adi.asp](http://www.adi-sandiego.com/practice/eservice_adi.asp)

ADI attorneys [are] continuing to follow-up their electronic filings with paper duplicates. The consensus this was mostly happening in dependency matters. Would you please pass on that electronic filings are in lieu of paper? After ensuring the filings are in fact duplicative of the electronic filing, the deputies wind up just recycling the paper.

In dependency cases, the error is most likely to involve a *Sade C.* letter brief. ADI has warned that unneeded paper copies are not compensable. This includes documents that maybe e-filed with the court and any paper briefs served on an agency with which we have an e-service agreement.

### **NEW FORM FOR CHANGE OF ADDRESS, TAX ID, OTHER INFORMATION**

The JCC (Judicial Council of California, formerly Administrative Office of the Courts) has issued a new official form for notifying it and the projects of a change of panel attorney information, such as address or tax ID number. This form is required. It is posted on the ADI website [here](#)<sup>3</sup> and accompanies this news alert.

Omar Palacio, who manages panel attorney data for ADI, asks all panel attorneys to submit their information *in this format* – not by email, phone call, or messages conveyed through other staff members – so that he can properly update the system.

### **JUVENILE LAW SECTION OF SAN DIEGO BAR**

The San Diego County Bar Association has agreed to institute a new Juvenile Law section, for practitioners interested in that area of the law. A great many lawyers showed up for the meeting on whether to create the section.<sup>4</sup> It should be a dynamic way to learn and contribute. Staff attorney [Michelle Pena](#)<sup>5</sup> has already enrolled and will act as an informal conduit of information for panel attorneys interested in participating.

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<sup>3</sup>[http://www.adi-sandiego.com/pdf\\_forms/AOC and Appellate Project Information Sheet Final.pdf](http://www.adi-sandiego.com/pdf_forms/AOC_and_Appellate_Project_Information_Sheet_Final.pdf)

<sup>4</sup>Twenty were required to show sufficient interest to move forward. Over 100 showed up!

<sup>5</sup>[mdp@adi-sandiego.com](mailto:mdp@adi-sandiego.com)

#### **FOURTH DISTRICT SEEMS TO AGREE: INCLUDE *ANDERS* ISSUES IN *WENDE* BRIEFS**

After the flare-up a year ago caused by the disagreement between two panels of Division Three, the Fourth District seems to have settled, for now, on the side of encouraging the inclusion of *Anders*, meaning unbriefed, issues in *Wende* briefs. The July 29, 2014, opinion in *People v. Hernandez* (2014) 228 Cal.App.4th 539, disapproving the inclusion of what it erroneously termed “arguable but unmeritorious issues,” was granted rehearing. Eventually the panel filed an unpublished, standard *Wende* opinion in *Hernandez*, declining to address the unbriefed issues. *People v. Kent* (2014) 229 Cal.App.4th 293, disagreeing with the original published *Hernandez* opinion, remains good law.

ADI continues strongly to encourage such issues in criminal cases. In non-criminal cases not requiring court review of the record, counsel should consider this policy of inclusion *mandatory* unless compelling strategic considerations militate against it.

Courts and projects around the state vary in their preferences. Counsel should consult the district project about the applicable policies.