

SIXTH DISTRICT APPELLATE PROGRAM

A NON-PROFIT CORPORATION

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February 19, 2021

February 2021 Panel Alert

Dear Panel Attorneys:

I hope this email finds you safe and well as we continue to march on through this pandemic. I appreciate everyone's hard work and patience as we deal with a reduced caseload and delayed records. I am optimistic that things will continue to improve.

This letter has several important updates on old claims, MCLEs, panel management, and record delays. Please review it and reach out to SDAP with any questions.

Old Claims

In the next few weeks, we will be sending out emails to panel attorneys who have not filed final claims in cases that have been final for several months or longer. Instructions will be included in the email sent to you. If you receive one of these emails, please file your claim. As always, contact us with any questions.

MCLE Update/Trainings

We are still awaiting State Bar certification for the "Foundations of Appellate Practice" series we held last fall. We have received approval for some of the dates, but not all of them and would like to send them out in one batch. We truly apologize for this delay and will send them out as soon as we get them.

If you did not attend the “Foundations of Appellate Practice” series, the videos have been recorded and are available to be viewed for MCLE self-study credit on the CCAP website (www.capcentral.org). CCAP has a wonderful library of self-study MCLE videos, so I encourage you to check out all their videos.

Once we get approval for the “Foundations of Appellate Practice” series, we will be applying for MCLE provider status. This will allow us to get certification forms out to you more promptly. We are aiming to have several Zoom-based MCLEs throughout 2021 on both criminal and dependency law. If there are any topics you think would be helpful, please feel free to email suggestions to Patrick McKenna (patrick@sdap.org) and Lori Quick (lori@sdap.org).

Panel Management

Throughout 2021, our staff will be meeting monthly to discuss all aspects of how we oversee our panel, exploring ways to improve our recruitment and retention of dedicated appellate attorneys – from how we run our panel application process to the amount of cases we assign out to the ways we conduct both formal and informal trainings. Our goal is to have tangible improvements in place for 2022 that will improve the panel experience across the board.

If there are specific areas or things that we can do to improve your experience on the panel – thereby improving the experience for ALL panel attorneys – please let us know by emailing Patrick McKenna (patrick@sdap.org) and Lori Quick (lori@sdap.org).

Record Production

I know, I know – there are a lot of record production problems in the Sixth District, mainly from Santa Clara County. While there have been some improvements – both SDAP and the Court of Appeal have been very proactive in dealing with this – I know that there is still a lot of frustration and confusion based on the long delays. Below, I will detail the record production process in each of our four counties – including information on the transition to electronic records – and provide you with some advice on how to best deal with any record-related issues that you come across. As always, if you do have record-related issues, please reach out to your SDAP buddy – we are happy to help and have become pretty creative in dealing with these problems.

(1) San Benito County

As a resident of San Benito County, I like to believe we are small but mighty. Whether that's true or not, the record production process here is relatively straightforward. Records are being produced on a timely basis, and hard copies of all records – RTs and CTs – are being produced. Most of the time, these records (original and augmented) will be mailed to you from SDAP, though occasionally San Benito County Superior Court will send them straight to you. While we don't get many cases out of San Benito, we have not been having any problems with the records.

(2) Monterey County

Like San Benito, Monterey County is producing hard copies of all appellate records. By and large, these are being promptly produced. Once the records are done, Monterey County Superior Court contacts SDAP directly, and we advise them where to send the record. If it's your case, SDAP will cc you on these emails, so you can see where the record is going. If the case is assisted, it will be mailed to your SDAP buddy first, so they can review it; once they finish reviewing it, they will mail it directly to you. (On occasion, the court has forgotten to ask us where to mail the record and has sent assisted records straight to the panel attorney; if this happens to you, please contact your buddy to scan or mail the record to them.) If the case is independent, it will be mailed directly to you by the court. We had a few problems with Monterey records at the start of the pandemic, but they have been pretty good for the last six months or so.

(3) Santa Cruz County

Other than a few cases at the beginning of the pandemic (if this was one of your cases, we emailed you long ago about it), Santa Cruz County has been producing records in compliance with Sixth District Local Rule 3 (<https://www.courts.ca.gov/38112.htm>). The rule permits electronic records in non-criminal appeals, and it also permits electronic CTs in criminal appeals. It requires hard copies of RTs in criminal cases. Santa Cruz County will email you copies of any electronic records and mail you any hard copy records (except in assist cases where your SDAP buddy will receive the hard copy records, review them, and mail them to you). Overall, Santa Cruz County has been timely with producing their records.

(4) Santa Clara County

There is not much consistency in Santa Clara County, which is where a vast majority of our record problems are occurring. There has been an uptick in record production, but there are still many cases with lengthy delays. Records are being produced in both electronic and paper forms but not necessarily in compliance with Local Rule 3. That is, you may receive a

paper record, an electronic record, or a case where half the record is in one form and half is in another. Similarly, you will sometimes receive the record (electronic or paper) from SDAP, and sometimes directly from the court. It varies case to case. At SDAP, we will do whatever we can to get it over to you.

With that said, here are few pieces of advice/updates on the record production process there:

(a) I spoke with a supervisor at the court and advised them there has not been consistent compliance with Local Rule 3 – that is, we have not always been receiving hard copy Reporter’s Transcripts in criminal cases as required under the rule. He was unaware that this was happening so frequently and asked me to notify him of any existing criminal cases where hard copies of the RTs have not been produced. If you have a Santa Clara County criminal case and did not receive hard copies of the RTs, please email me (patrick@sdap.org), and I will notify the court to produce them.

(b) If you receive electronic transcripts in a given case, please contact your SDAP buddy before printing any of them (if you are hoping for reimbursement for printing costs). In general, we will permit printing reimbursement if the client desires a copy of the transcripts and is unable to receive an electronic transcript at the end of the case – that is, the client is in custody or the client is out of custody and does not have a way to access an electronic transcript. Before printing, you should reach out to the client to determine if they desire a transcript and if they can receive an electronic transcript. Upon receiving this information, please notify your SDAP buddy that you need to print the transcript.

(c) SDAP has made up a list of cases with augmented or original records that have been pending since September 1, 2020 or earlier. Over the next month and a half, I will personally be reviewing this list and contacting panel attorneys about ways to solve the record problems. If you receive such an email, please do not be surprised.

(d) When you are initially appointed on a case, you will receive – among other documents – a copy of the notice sent to the court reporters about what transcripts must be produced. Please review this upon receipt and determine if any dates are missing – for example, you may get a jury trial appeal but only the sentencing transcript is requested on the form. SDAP tries to review these, but it is a good idea for you to double check them. If there are errors, email your SDAP buddy, and we will contact the superior court to issue a corrected notice. This will prevent the problem – and potential delay – from occurring after the record has been produced.

(e) If you are missing only a few documents in a record omission letter (and this does not include missing RTs), I encourage you to reach out to trial

counsel (or the DA/county counsel) to try and obtain these documents as opposed to waiting for the superior court clerks to respond to the omission letter. Trial counsel may be able to provide these documents to you directly; if so, then you can attach them to an augment motion (with a declaration attesting to their authenticity). SDAP is scheduled to get access to some of the court records in the future; when we do, I will notify you about what documents we can pull for you and how to request we do so.

(f) Please do not file a motion with the Court of Appeal requesting dismissal of the case, issuance of an order to show case, or a finding that the clerk is in contempt unless you have gotten prior approval from your SDAP buddy. Again, we have gotten pretty creative at solving many of these issues ourselves, and so we should exhaust these means before filing such a motion. The Court of Appeal has been issuing OSCs on its own motion in select cases.

I hope this letter has been informative and helpful. As always, please contact me with any thoughts or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick McKenna', with a stylized, cursive script.

Patrick McKenna
Executive Director
Sixth District Appellate Program