

CCAP New Panel Attorney Guide - It's All About Efficiency Series: Don't Spin Your Wheels¹

By the end of your CCAP online video training, you will have taken in a large amount of information. However, it may be some time before you have an appeal where you have, for example, a custody credit issue. At that point, you will likely have forgotten what you learned about calculating custody credits or doing a *Fares/Clavel* letter. It is inefficient, and frustrating, to spin your wheels trying to recall how to do something or where to find information on it. With this in mind, this section will help you efficiently find what you are looking for by directing you to the applicable resources on the CCAP website. The focus of the discussion below is on those areas that a new panel attorney will most likely come across at the beginning of his or her panel practice. However, there are many more resources on the CCAP website than those discussed here. Remember – the CCAP website is a great resource to avoid spinning your wheels, no matter what stage you are at in your panel practice, new or veteran.

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¹ This article was drafted by panel attorney Conness Thompson who provided first-hand knowledge for starting up a new practice as appointed counsel. CCAP wishes to thank Ms. Thompson for sharing her insights to pass on to others. The project perspective is interwoven to complete the picture. As always, counsel is encouraged to determine what approach works best for your own practice.

Communicating With Your Client

You will spend a lot of time communicating with your client via letters, whether you are doing appointed criminal, juvenile, or dependency appeals. The CCAP website has a lot of useful information on this topic, including effective communications in general, communicating with incarcerated clients specifically, and sample letters.

1. Effective Communications

For a comprehensive discussion on communicating with both your client and his or her trial attorney, go to: http://www.capcentral.org/procedures/client_matters/communication.asp.

2. Incarcerated Client Legal Mail

To learn about the particulars of sending legal mail to incarcerated clients, read the discussion at: http://www.capcentral.org/procedures/client_matters/legal_pitfalls.asp.

3. Incarcerated Confidential Phone Calls

To learn about the particular of confidential attorney-client telephone calls with incarcerated clients, read the discussion at:

http://www.capcentral.org/procedures/client_matters/unmonitored_call.asp

4. Sample Letters

For samples of client letters, go to: <http://www.capcentral.org/resources/language/spanish.asp>. This will take you to the Spanish Resources page in the Foreign Language Resources section of the Resources tab. Use the English translated version of the Spanish letter for English samples. Other languages include Hmong, Laotian, Punjabi, Russian, and Vietnamese.

Dependency client letter samples are in their own collection:

http://www.capcentral.org/juveniles/dependency/dep_client_samples/client_samples_index.asp

Adding to the Record

When you read the record for an appeal, not only are you looking for issues to argue on appeal, but also you are looking to see whether anything needs to be added to the appellate record.

Adding to the record falls into two categories:

- Correcting the Record: The record needs to be corrected when something that is supposed to be included in the clerk's transcript or reporter's transcript is not there (rule 8.340(b)).

- Augmenting the Record: The record needs to be augmented when you want something added to the record that is not required to be there, but which you believe is necessary to fulfill your duty to thoroughly review the record and look for arguable issues on appeal.

The CCAP website has a robust section on adding to the record, whether via augmenting the record or completing the “normal” record. This discussion can be found at:

http://www.capcentral.org/procedures/record_procedures/record_checklist.asp.

For a checklist worksheet that you can use to sort the correct procedures to use – augment or rule 8.340(b) – print the worksheet at:

http://www.capcentral.org/resources/basics/source_docs/record_checklist.pdf

Correcting the Record

California Rules of Court, rule 8.340(b), addresses correcting the record when an item that is part of the normal record is missing. A request to correct the record is done via a letter, which is sent to the superior court that prepared the record rather than the court of appeal. A sample 8.340(b) letter can be found on the CCAP website at:

<http://www.capcentral.org/resources/motion.asp> (go to the “A” section and look for “Augment Informally by Supplemental Record Request: Letter to the Trial Court per rule 8.340(b)”).

Augmenting the Record

After you have read the record for an appeal, you may find that everything that is required to be in the normal record has been included. However, you may also find that there are items that appear to be important to develop a discernable issue. To have such items added to the record, you must file a formal motion to augment. A motion to augment differs from an 8.340(b) letter (requesting correction of the normal record) in two ways: (1) It is sent to the appellate court, not the superior court, and (2) unlike a record correction letter, where the missing item must be provided because it is listed in the Rules of Court, a request to augment is for discretionary items and you must make a case to the appellate court as to why your motion should be granted.

Motion to augment samples can be found on the CCAP website at:

<http://www.capcentral.org/resources/motion.asp> (look for Augmentation in the “A” section).

Note that the Third and Fifth Districts are likely to deny a motion to augment that appears to be an issue “fishing expedition.” Thus, reasons supporting the augmentation request should be clear and specific.

Examples of possible augmentation requests include:

- Voir Dire: If either the clerk’s transcript or your client or the trial attorney indicates problems with jury selection, you will want to augment the record with the transcripts from the voir dire to evaluate the identified problem.
- Exhibits: With some exception, exhibits are not normally included with the record, but deemed part of it. A situation may arise, however, where you would like the record

augmented to include an exhibit, because you believe that reviewing the exhibit will aid you in your analysis. Examples could include requesting a copy of the criminal protective order that your client was charged with violating at his violation of probation hearing, copies of emails between the victim and your client upon which the prosecution based its charges, etc. Paper/document exhibits are more easily added to the record than physical items.

- Opening Statements: You may want the record augmented with opening statements where, for example, you are developing an argument related to an improper propensity assertion made by the district attorney and you want to see how the district attorney first introduced the case against your client to the jury.
- Hearing Not Included in RT: You may find that in reading a minute order that your client waived his or her right to a jury trial, but the transcript for that hearing was not included in the reporter's transcript. You will want to ask for a copy to evaluate that your client's waiver was knowing, intelligent, and voluntary.

Extensions of Time

You may find that your AOB deadline is fast approaching and you have not yet gotten a response from the superior court regarding your *Fares* letter, or you have not yet heard back from your client regarding how he would like to proceed given the adverse consequences you found, or any number of other hold-ups. When this happens, you will need to ask for an extension of time to file your brief.

For a discussion on the extension of time filing requirements in the 3DCA and 5DCA, including procedural differences between the two, what to include in your request, how to manage a request for more time when you are also doing a motion to augment, etc., go to: <http://www.capcentral.org/procedures/eot.asp>.

For samples of a request for an extension of time for both the 3DCA and 5DCA, go to: <http://www.capcentral.org/resources/motion.asp> (go to the "E" section and look for "Extension of Time Request" samples).

Filing Requirements

A unique feature of being on the CCAP panel is that you will be working in two different district courts of appeal: The Third and the Fifth. Not only do you need know general procedural requirements, but also you need to know the requirements particular to each of these courts and keep them straight, as the procedures often vary. The CCAP website has a number of resources to help you with all of this:

- Procedural Comparison Chart - 3DCA vs. 5DCA: For “everything you ever wanted to know about anything you file in the 3DCA and 5DCA,” go to: <http://www.capcentral.org/procedures/thirdvsfifth.asp>. This chart is updated regularly and should be a first stop for any procedural question you have.
- General Brief and Writ Filing Requirements: Need to know the length of a brief? The color of the cover? How many copies? What rules apply? You can find it at: http://www.capcentral.org/resources/charts_calc/filingreq.asp.
- Date Calculator: The Date Calculator is a handy tool when, for example, you receive an order granting an augmentation request and it says that the opening brief is due thirty days from the filing of the requested augmentation. When is that?! Use this date calculator to find out: http://www.capcentral.org/resources/charts_calc/datecalc.aspx.

There is also a printable version with pre-calculated 60- 40- 30- 20- 15- and 10-day increments at: <http://www.capcentral.org/resources/docs/procedure/CalDaysCalc2013.pdf> [this is the printable 2013 version of this chart; change the year for later versions]
- eFiling Procedures: eFiling is here! Learn the requirements on the CCAP website at: http://www.capcentral.org/procedures/court_policies/efiling.asp.

Brief Writing

The Procedures section of the CCAP website has a wealth of information on brief writing, including AOB format, structuring your argument, correct citation form, effective reply briefs, and samples.

- Brief Writing: http://www.capcentral.org/procedures/brief_writing/index.asp. The long list of articles collected here include how to argue prejudice, how to deal with waiver and forfeiture, and a primer on proper citation form (hint: not Blue Book for 3DCA and 5DCA), amongst others. Spending some time wandering through this section of the website will give you some keys to being a better appellate writer.
- Sample AOB: http://www.capcentral.org/procedures/brief_writing/index.asp (scroll down to “sample AOB”).
- Wende Briefs: For a discussion of *Wende* briefs, differences between the 3DCA and 5DCA, and samples, go to: <http://www.capcentral.org/criminal/wende/index.asp>.

- Phoenix H. Briefs: For a discussion of *Phoenix H.* briefs, differences between the 3DCA and 5DCA, and samples, go to:
http://www.capcentral.org/juveniles/dependency/sade_brief/index.asp.
- CCAP Brief Bank: If you need ideas on possible issues or want to see how others have argued issues you are considering, check out the CCAP brief bank:
<http://www.capcentral.org/secure/search.aspx>
- Supplemental Briefs: For a discussion of gaining permission to file a supplemental brief, go to:
http://www.capcentral.org/procedures/court_policies/supp_brief.asp
Tip: this is another area where the Third and Fifth differ in their procedures!

Appellate Process

A lot of discussion is focused on the middle of an appeal: reading the record, augmenting or correcting the record, writing an opening and reply brief, doing oral argument. But equally important is what happens at the beginning of an appeal and at the end of an appeal. The following links on the CCAP website address these areas.

- Initial Steps in Appeal

CCAP provides both an article and a related MCLE video on the important initial steps in an appeal immediately following appointment of counsel. All of this can be found at:
http://www.capcentral.org/procedures/case_manag/initialsteps.asp.

- Final Steps in Appeal

It may feel like you are done with an appeal after you have submitted your reply brief, or after you have given an oral argument. However, there are several important steps that occur subsequent to the reply brief and/or oral argument, such as the issuance of the opinion, the remittitur, and the transfer of the case back to the trial court. And what about getting that bulky record back to the client? Learn about these important milestones and what you need to be doing for each at: http://www.capcentral.org/procedures/case_manag/finalsteps.asp.

- Retaining Files

For an in-depth discussion on your requirements under the California Professional Rules of Conduct regarding retaining client files, go to:
http://www.capcentral.org/procedures/client_matters/retain_file.asp.

Getting Paid

Until you have a few eClaims under your belt, you will likely have questions about what gets billed where and what the guidelines are. Answers to these questions can be found on the CCAP website as follows:

- Panel Claims Manual: http://www.capcentral.org/claims/claims_manual.asp.
- eClaims Memorandum:
http://www.capcentral.org/claims/using_eclaims_memo.pdf
- Guidelines: <http://www.capcentral.org/claims/guidelines/statewide.asp>.
- Line-by-Line Guide (how to fill out the claim line by line):
http://www.capcentral.org/claims/tips/line_by_line_guide.asp
- Statewide Travel Guidelines:
http://www.capcentral.org/claims/travel_guidelines_for_CAC.pdf
- Preauthorization Requirements and Procedures:
http://www.capcentral.org/procedures/court_policies/preauthorization_procedures.asp
- Using Interpreters: <http://www.capcentral.org/resources/language/interpreters.asp>
- CCAP Preauthorization Limits on Interpreters and Travel:
http://www.capcentral.org/claims/tips/preauthorization_expenses.asp
- Expanding Your Appointment:
http://www.capcentral.org/procedures/expand_appt.asp
- Binding Expenses (AIDOAC policy):
http://www.capcentral.org/claims/guidelines/bind_expenses.asp
- Limitation on Reading Prelim Pages:
http://www.capcentral.org/claims/guidelines/prelim_pages.asp
- Family Communication Time:
http://www.capcentral.org/claims/tips/family_communications.asp
- Frivolous Issues Policy (Third District):
http://www.capcentral.org/claims/tips/frivolous_issues.asp

Criminal Specific Matters

There are two areas that you will want to always check on for each of your criminal appeals: custody credits and fines/fees. These areas can be confusing both for the trial court, as evidenced by the number of errors in these areas, and the appellate attorney, who needs to make sure not only that what the trial court did was correct, but also that no adverse consequences attach to what was done. There are a number of resources on the CCAP website to help you figure out both custody credits and fines/fees.

Custody Credits

- Awarding Custody Credits After Realignment: This document, considered by many to be the bible of custody credits, can be reached via the CCAP website, which provides a link directly to the document on the court's website: http://www.courts.ca.gov/partners/documents/Credits_Memo.pdf.
- Calculating Conduct Credits: For a topline summary of calculating conduct credits, as laid out in the "Awarding Custody Credits After Realignment" article, go to: http://www.capcentral.org/criminal/credits_calc.asp.
- Day and Date Calculator: Always check the probation report's custody dates to make sure the presentence days were correctly calculated. This can be done easily using the Day and Date Calculator on the CCAP website, found at: http://www.capcentral.org/resources/charts_calc/datecalc.aspx.
- Fares Procedure: If you find an error in the abstract of judgment related to the calculation of custody days and/or credits, you will need to do either an informal *Fares* letter, or a formal *Fares* motion. Learn all about this at: http://www.capcentral.org/procedures/record_procedures/fares_motions.asp.
- Fares Samples - Formal and Informal: The CCAP website has samples of *Fares* letters and motions at: <http://www.capcentral.org/resources/motion.asp> (under "F").

Fines/Fees

Fines/fees is another commonly confusing area. Use the handy Fines Chart found on the CCAP website at http://www.capcentral.org/criminal/crim_fines.asp to make quick work of determining both whether any unauthorized fines or fees were imposed and whether there are any adverse consequences in this area.

Dependency Specific Matters

The CCAP website has a large amount of information on dependency appeals, which is a good first stop in answering many questions you may have.

- Dependency Articles: Topics include briefing, fast track appeals, issue spotting, etc. Go to: http://www.capcentral.org/juveniles/dependency/articles/dep_articles.asp.
- Dependency Client Samples: To find sample introductory letters specific for the dependency client, AOB cover letters, and letters related to a *Phoenix H.* brief, *Phoenix H.* AOB samples, etc. go to: http://www.capcentral.org/juveniles/dependency/dep_client_samples/client_samples_index.asp.

Not Finding What You Are Looking For?

The best way to keep the CCAP website as relevant and robust as possible is to let CCAP know about anything you were looking on the website, but did not find, whether it is a particular sample document, an article discussing a particular area, or if you found a document or article, but it was out of date. Email your suggestions to: resources@capcentral.org