

The Home Office Law Practice: Tips For Appointed Counsel Article & Presentation by Sandra Uribe, CCAP Staff Attorney

The tips provided below are a compilation of pointers gathered from experienced panel attorneys. The hope is that they will provide not only some insight on how to do this work efficiently, but also be an effective advocate.

TIME MANAGEMENT AND CLAIMS

1. Keep an accurate calendar and know the procedural requirements of the court your case is in. It is vital to keep track of due dates because the projects take note when the court issues a late letter. If you are on more than one panel, it is imperative to be very careful about the regional differences and varied court requirements. For example, while several districts allow 40 days in which to file the opening brief after an attorney has been appointed, the Third and the Fifth only allow 30. Likewise, while the First District expects an attorney to make use of Rule 8.220(a) time before filing a request for extension of time, the other districts will issue a late letter. The projects provide this information either in a manual or on their web sites, and counsel is expected to know the procedural differences. CCAP procedural comparison chart is located at: <http://www.capcentral.org/procedures/thirdvsfifth.asp>

2. Sign up for e-mail notification from the courts at: <http://appellatecases.courtinfo.ca.gov> as soon as you are appointed on a case. This service is useful to keep track of when the record or a brief is filed, and when an oral argument notice is issued. Unfortunately, however, this service is not provided for delinquency or dependency appeals. You can also bookmark the docket page for each case making checking developments in a particular case even faster. Within a minute or so, you will be able to tell if a motion you mailed to the court (which does not generate an e-mail notification) has arrived.

3. Bill the time you worked, not what you think the guidelines allow. Self-cutting only perpetuates low guidelines and, most of the time, you are probably guessing at what the project will do with the claimed item. The best course of action is to fully bill the time worked and provide an explanation for any time that is unusual or outside of what you would normally spend for a particular activity.

4. Invest in some method that enables you to keep track of your time. Many attorneys use computerized spread sheets, but the time-keeping method can be as basic as a stop-watch. The point is that tasks usually take longer to complete than one imagines. Keeping accurate track of your time will help to ensure that you don't self-cut.

5. Using standard forms and letters saves time and money. Set up templates for any document that you think you will be using more than once. Avoid cutting and pasting from previously filed documents because at some time you will inevitably find yourself in the

embarrassing position of leaving a former client's name or case number in, or at a minimum you will save over the former document unintentionally.

6. Be realistic about how much work you can take on. When you are offered a case and you think that you really don't have time for it, don't take it! Taking too many cases at a time may mean a loss in productivity because you can lose time becoming familiar with a case and then having to re-learn it later when it needs to be set aside because of a pressing deadline in another case. A good rule of thumb is not to accept a case if you will not be able to read the record soon after its arrival.

7. Don't put tasks off any longer than you have to. When something arrives in the mail, handle it right away unless you have a pressing deadline. For example, if you put a client letter aside rather than answering it right away, you are going to waste time because you will have to re-read the letter. Similarly, if you anticipate filing a petition for review, begin to prepare it as soon as practicably possible after reading the opinion. Although you have over a month before the petition becomes due, putting it off generally means losing billable time. You will have to re-read the opinion again if it is not fresh in your mind, and unfortunately, you can only bill for this task once.

8. Avoid going to the post office as much as possible. Buy a postage scale, and keep a variety of stamps in different denominations (39¢, 63¢, 87¢, 24¢, and priority mail stamps). You can also print postage and address labels from <http://usps.com>. Additionally, if you print a priority mail label at this website, you will receive free delivery confirmation which can be tracked on-line. This is true whether or not you purchase the postage on-line. There is no monthly charge for this service. Additionally, rule 8.25(b)(3)(A) allows filing of briefs and petitions via both express mail and priority mail. It is useful to keep priority mail "flat rate" envelopes handy because you might be surprised how many briefs can be stuffed into these flat rate envelopes! Once again, using this method for mailing briefs saves a trip to the post office, and the valuable time that goes with it.

LIBRARY

1. Use computerized online legal research tools. It is a waste of time to go to the law library. If you have to do research that is outside of your basic contract, consult with the provider to see what the cost will be before incurring it. Is there a more cost-effective way to perform that search or obtain it within your basic contract? (Note: Preauthorization for significant research costs may be required for Third and Fifth District cases. Check with the assigned staff buddy.) When submitting the expense, include an explanation on the claim form for the cost, point out the time-savings in your briefing, and include a copy of the bill.

2. Stay abreast of legal developments on a regular basis. This is a must for good issue spotting. There are many ways to do so. One includes signing up for CCAP's "Weekly Case Summaries" updates. Additionally, there is a link on CCAP's website to issues currently pending in both the California Supreme Court and the U.S. Supreme Court; these are updated on a weekly to bi-monthly basis.

3. Make a yearly investment in a desk top Penal Code and keep the editions for the last five years or so. The former editions are useful to check the language of statute when your client's conviction arose from an incident in a previous year (i.e. check to see if there were changes in the sentencing triad or whether there are ex post fact issues.)

4. Need a blurb? Create a personal index or folder where you can store quotes or cites from cases on topics that you think will be useful in the future.

5. Make use of brief banks. Although it is necessary to check the continuing validity of cases cited and update with more current case law, there is no use in re-inventing the wheel. The CCAP brief bank is linked to victories and published cases.

6. Legislative research. When having to do legislative research, the California State Archives at: <http://www.ss.ca.gov/archives/archives.htm> is an indispensable tool. If counsel knows the specific chapter or bill, the staff at the archives will do the research for free and will only charge for costs of copying the materials you request. (Note: Preauthorization for copying costs may be required for Third and Fifth District cases. Check with the assigned staff buddy.) You can also track a pending bill at: <http://www.leginfo.ca.gov/bilinfo.html>. Finally, the LRI is a very good resource for both free instructional materials on the use of legislative intent material, as well as providing assistance in research for free or for a charge: <http://www.lrihistory.com/> (Watch an MCLE video presentation by the founder of LRI for straight-forward guidance on how a legislative history can be used ethically and confidently in presenting legal arguments, called "How to Make Ethical & Winning Use of California Legislative History.")

COMMUNICATION WITH CLIENT

1. Anticipate and deflect. Client communications is one of the most important areas where panel attorneys have to strive to maintain control because it can become a financial drain when it takes up too much time. As expressed by one panel attorney, a good rule of thumb is to "anticipate and deflect." Many questions posed by clients come up on a regular basis. Some of these questions arise from the differences in the trial and appellate process. By addressing these points in a form letter, you can save time in this category. For example, inform the client at the start that you will not be visiting him in prison unless the case presents extraordinary circumstances; let the client know that only one set of transcripts is provided for the defense and since you will need it to handle the appeal, he will not get the copy of the transcripts until the end of the process; tell the client that there are big gaps of time between the major milestones in the appeal, and that consequently you will not be contacting him after every letter he writes, but that you will notify him whenever anything significant happens.

2. Written communications. When sending letters to clients, not only should the attorney name be included in the return address on the envelope, but also it is good practice to sign the outside of the envelope in blue ink, in addition to noting on the envelope "Legal Mail"

(preferably stamped in a different color, such as red). There have been reports of clients who have tried to pass contraband through the prison mail system by labeling it as attorney-client communication. The blue signature and different color stamp makes it more difficult for unscrupulous clients to simply photocopy the outer envelope and pass off the mail as coming from his attorney. In fact, because of such security concerns, the Warden at Pelican Bay State Prison has been known to request a sample of “outer envelope style” from attorneys representing inmates who are housed there. Finally, do not forward non-legal mail from the client to a third party – it is considered to be an abuse of the attorney-client confidential mail system. (For suggestions on handling these problems read more in an article on “Avoiding Legal Mail Pitfalls” on the CCAP website at:

http://www.capcentral.org/procedures/client_matters/legal_pitfalls.asp)

Another potential problem is keeping correspondence envelopes: which ones to keep, which ones to toss out? Many attorneys develop a sixth sense about ones that might be troublesome. Generally, they keep all envelopes received from the client, and any envelope that took a long time to be delivered. Assess who is most likely to make an allegation that would later have to be refuted by you about who sent who what when? Keep the envelopes that would help document your file if you were called to testify.

3. Phone communications. In order to avoid excessive phone calls from clients, counsel should advise the client at the beginning of the appeal that written correspondence is preferred. The virtue of writing, especially where adverse consequences are involved, is that it documents your communication. Some ideas for establishing this ground rule are to remind the client of confidentiality concerns since inmate calls are always monitored; and that written correspondence is preferred so that the client’s ideas and concerns can be reviewed when counsel is ready to prepare the opening brief. (Although written communication is almost always preferable, keep in mind that in some cases you may have a client who is not literate and the telephone is the only way he or she can communicate.)

Even when counsel arranges a “private, confidential” call through a counselor, it should be presumed that these calls are at least partially monitored in that an inmate is almost never left alone in a counselor’s office – sometimes a guard is left just outside the open door, or even in the same room. Therefore, the counselor is privy to at least the client’s side of the conversation. Begin the conversation with a series of questions to determine the situation. It is a good idea not to discuss adverse consequences over the telephone unless you can be sure that the client is in fact alone, or unless you can impart the information on your end with responses that require simple yes/no answers from the client.

An article on our site discusses obtaining Unmonitored Prison Phone Calls:

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

And the CDCR form: http://www.capcentral.org/procedures/client_matters/CDCR.asp

Another point to keep in mind regarding phone communications is that the phone provider you chose may affect your ability to receive calls from prisons. There are several major phone companies which provide service to and from correctional facilities. This is done by bidding for a contract with each individual facility, and is not handled regionally. In the recent

past, many panel attorneys have also have trouble receiving collect calls from clients because (1) some providers will not place the call if you do not have an account with that provider and (2) because there might be a block on your phone number. Some phone companies, such as Verizon and SBC, have the ability to bill for third party calls handled by other service providers, while others, such as MCI and ATT cannot. Below are some helpful numbers:

To determine if there is a block on your number, call MCI at 1-866-770-4896. You will be connected with an operator to who can tell you whether your number is blocked. If you have been told that there is no MCI block on your phone and you still cannot receive calls, you may be dealing with a correctional facility who has a different service provider. The operator at the number listed above will also be able to inform you whether MCI is the provider for a particular facility.

The number for Verizon Inmate Calling is: 800-686-2611. They can provide you with the same information listed above. In addition, VSSI Direct Billing is the company that handles billing for Verizon. So, if your local provider is one of the companies that does not participate in third party billing, and you need to receive phone calls from a correctional facility that is handled by Verizon, you can set up an account directly with them. VSSI's number is: 800-453-1437.

Finally, counsel should keep in mind that most cell phones do not accept collect calls.

4. Visiting the prison. Call ahead to find out about that prison's rules and regulations for attorney visits. Most prisons have specific visiting hours and procedures. Some require faxing ahead your State Bar card and appointment order. Most prisons have regulations about the clothing visitors can wear because they do not want the visitors to be dressed in the same color as the inmates. Women attorneys should also be mindful that a problem may arise regarding the wearing of underwire bras. Whether or not it is permitted may depend on the individual doing the processing. Sometimes such bras are not allowed, since they set off the metal detectors. On the other hand, women have also been turned away for not wearing a bra. The safest bet is to have one in your wardrobe without a wire that you can wear.

In the Third and Fifth District, prison visits require preauthorization if you want to be compensated for your travel time and expenses. Check the requirements for preauthorization in the CCAP Procedural Policy Comparison Chart at: <http://www.capcentral.org/procedures/thirdvsfifth.asp>

5. Client file & transcripts. The original file and the transcripts belong to the client. Normally the transcripts in the hands of the appellate attorney for the duration of the appeal are sent to the client when the case is over; that postage is a compensable expense. The attorney's file is usually sent only on request, and postage for that is also compensable. However, since the original is sent to the client, any copying of the file is for the attorney's own records and protection and is not a compensable expense. Most attorneys send off the original record or file to the client with a cover letter cautioning the client that this is the *only* copy available and that

they should keep track of it because it cannot be replaced if lost.

Appellants will frequently request a copy of the record early on in the appeal. Most attorneys deflect this request by advising their client that the copy they have is the client's copy and will be returned to the client at the end of the case, unless other arrangements are made. For persistent clients, sometimes copying and sending a specific portion of the record, such as the sentencing hearing, may also deflect repeated demands for all of the record. However, copying the record for the client for excerpts exceeding 50 pages is usually not compensable. Counsel must seek preapproval if it seems necessary to do more.

When mailing transcripts back to the client at the conclusion of an appeal, be aware that, at times, there have been problems with delivering them. Some prisons have been known to refuse delivery of legal mail that arrives at the regular mail address. Transcripts should be returned to the client/inmate via a service such as UPS or other similar service provider which provides both a tracking number and insurance as part of their service. "Tracking number" means you are given a package number and can track when it was delivered to the prison. UPS will not deliver to a Postal Box address; use the street address for delivery, which is listed in our Facilities Phone Directory under "Shipping Address":

<http://www.capcentral.org/resources/phoneweb.asp>

The package or box of transcripts must be properly marked with the attorney's name, return address and "Confidential Legal Mail." The return address must match the address listed with the State Bar.

Chapter 5, Article 41 of the CDCR Dept. Operations regs "Inmate Mail" does not say that a box or package cannot be accepted for delivery from an attorney (there are restrictions on boxes from other sources). If a prison refuses a UPS delivery because of their interpretation of the regs, then call the prison litigation coordinator for that institution and ask for assistance. See also, Art. 41, sec. 54010.12.1 "Persons with Whom Inmates May Correspond Confidentially."

Finally, when you are successful in an appeal and the case is remanded back to the superior court, try to obtain permission from your client to send the appeal transcripts back to trial counsel instead of to the client. Not only may the transcripts prove to be useful to trial counsel for any future proceedings, but also there have been many stories of CDC losing inmate property during transfers between institutions.

6. Family communications. Nip them in the bud. These communications are generally only compensable if they were reasonably necessary for the handling of the case, such as a need to facilitate communication with a mentally impaired client, or to translate.

EFFECTIVE NOTE TAKING AND WRITING

1. Develop a consistent method for note taking. There are many ways to do this, but it is important to find the one that works for you. Many attorneys like to take notes on their computer since they can subsequently "search" their notes for particular terms. Other panel attorneys use a yellow highlighter, since it does not photocopy, to mark relevant parts of the record. However, this latter method may not be helpful in cases with long records. Additionally, many attorneys

also like to “tag” important pages with small sticky notes, finding they make it easy to quickly refer to certain parts of the record.

2. Chart complex charges. If you are appointed on a case with numerous counts and/or multiple victims, consider using a chart to keep track of each charge and any corresponding enhancements, the findings on each, and the resulting sentence. The chart is useful in pointing out sentencing errors -- alerting you, for example, to whether the trial court forgot to impose a sentence on a count of conviction or an enhancement.

3. Consider an argument “template.” As a starting point, most arguments should have 6 sub-parts:

- 1) Introduction
- 2) Standard of Review
- 3) Applicable Law and Analysis
- 4) Standard of Prejudice
- 5) Remedy Sought
- 6) Conclusion

You don’t need to keep the sub-parts labeled as such, but this “template” makes sure you have addressed each necessary point. Your introduction should tell the reader what the error or issue is – don’t keep the reader guessing. Also, don’t forget to federalize a claim whenever possible.

4. Chart jury instructions. Consider a jury instruction chart that lists the CALJIC instruction number, and the cite to the Clerk’s Transcript, to the Reporter’s Transcript, and any reference made to it by the prosecutor in closing argument which can subsequently be used for showing prejudice. This type of chart is a useful tool in issue spotting and also provides a time-saving reference when an instructional argument is made.

5. Integrated statement in dependency cases. For dependency cases, many appellate practitioners have adopted the suggestion described in *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522, fn. 2, and begun writing an integrated Statement of Case and Facts. The attorneys using this method think this integrated statement “flows better,” and avoids needless repetition.

6. Make use of the “buddy system.” Team up with another appellate practitioner and agree to read each other’s opening briefs before filing. Email each other your briefs. Although there is time incurred in reviewing someone else’s, this non-billable time is more than compensated by the improvement in the quality of your own work, exposure to more issues, and by the access you will have to someone else’s briefing right on your own computer for future use (your own mini brief-bank).

If you are fortunate enough to develop a reciprocal working relationship with someone in your geographical area, the buddy system also comes in handy when you plan to take a

somewhat lengthy vacation. No matter how well you try to organize your schedule, there are some parts of the appeal that are beyond your control (i.e., when the respondent's brief is filed, or when the court issues an oral argument notice, a request for supplemental briefing, or an opinion.) Arranging with another panel attorney to check each other's mail while on vacation is a good way to resolve a potential crisis while you are away.

MISCELLANEOUS TIPS

1. Back up your hard drive! For a nominal fee, there are now back-up disk services that will automatically back up your entire hard drive automatically on a daily basis. (Some companies even offer a free trial period.) Unless counsel is meticulous in creating rescue disks and daily back ups, the small fee for such a service is worth the cost for peace of mind. If you do opt to back up your work on disks on your own, remember to store your disks elsewhere to protect them from a catastrophic situation such as an office fire or a burglary.

2. Virus protection! Virus protecting your computer is a sound business practice. Purchase an annual subscription from a reputable virus protection company that will protect you from virus or worm-infested emails, downloads and internet surfing; the annual subscription fees have become quite reasonable and are well worth it. Also, opting for having your computer receive automatic internet updates means that you don't have to keep track of new virus threats; the computer will do this work for you. Notwithstanding this, do not open attachments from a suspicious or unknown email sender.

Special Note to Norton/Symantec Users: Unfortunately, the Norton Internet Security software is known to cause many problems on some web pages, including CCAP's. The Norton software will automatically insert code into pages before it displays them in the Internet browser. Most of the time, you will never notice a difference. However, there are several pages on our site that Norton "breaks" which causes them to only be partially displayed. There are instructions on the CCAP web site Help Center page which will allow you to get around this problem.

3. Hardware. If you are investing in a new printer, consider buying a multi-function device, which is now quite affordable. One that has a good copy function can be a huge time-saver because it avoids trips to the copy shop for at least smaller jobs.

4. Network. While one of the advantages of being a solo-practitioner is the freedom it provides, this can also develop into feelings of isolation. Find ways to communicate with other like-minded people that do the same type of work you do. Join local organizations where you can meet people with whom you can brainstorm and keep up on topics of interest. Email affords this opportunity as well.

5. Be honest. If you take lots of cases, you will eventually develop a reputation in the Courts of Appeal. If you are not honest, for example in providing reasons for extension requests, you do both yourself and your client a disservice. If you blow a deadline, own up to your mistake and do your best to explain what happened. A phone call to the clerk to personally explain the situation and reiterate that you are sorry might also go a long way in fixing the problem.