



# CAC BULLETIN

Court of Appeal Court-Appointed Counsel

Vol. II, no. 1

## KENT RICHLAND: AIDOAC's Civil Appellate Attorney

*Kent Richland was appointed by former Chief Justice Ronald M. George in 2007 to serve as the only civil appellate attorney on the Judicial Council's Appellate Indigent Defense Oversight Advisory Committee (AIDOAC).*

### **Kent, why did you choose law as your career – especially appellate law?**

I got into law because I was a frustrated child actor. I had performed throughout my school years and had done some professional acting in movies and in educational films. I was actually cast in a speaking role in the 1950s version of *The Ten Commandments*, but the director, Cecil B. DeMille, decided that I was too small for the part, so I was bodily lifted off the soundstage. I did get to work as an extra, however.

I eventually decided that I wanted to be a trial lawyer so that I could channel some of that acting energy to the courtroom. But the first job I got was working for the California Attorney General's Office in the criminal division doing mainly appellate work. I was there for five years and then went to work as one of the first lawyers for the State Public Defender's Office, representing indigent criminal defendants on appeal. After several years I joined the Second District Court of Appeal and served as an attorney for Justice Otto Kaus,

working on both criminal and civil cases. Justice Kaus was eventually appointed to the state Supreme Court and I went into private practice as a civil appellate attorney, which I have been doing for 30 years.



### **How did you get appointed to AIDOAC?**

Because I had had experience with both the Attorney General and the Public Defender, I was interested in the process. So I expressed interest when I was informed that there was an opening for a civil appellate lawyer on AIDOAC. The projects really have done an amazing job of putting together fantastic panels of independent lawyers who are honing their skills as appellate attorneys, so I wanted to lend my help.

### **What is your role as a civil attorney on AIDOAC?**

I think they wanted someone outside the process who could be looking at appellate defense with an eye towards the standards that are applied in the appellate courts apart from the criminal process. For example,

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[www.courtinfo.ca.gov/courts/courtsofappeal/cac.htm](http://www.courtinfo.ca.gov/courts/courtsofappeal/cac.htm)

(Kent Richland, cont'd)

when I evaluate the briefing, or consider the various rules that are being applied to the lawyers, I'm looking at it from an angle that's a little outside the beaten path – adjusting the claims, evaluating the amount of time being spent on the briefing, evaluating the quality of the briefing, and assessing the most efficient and effective way for the system to work.

**Do you think that, as more experienced attorneys retire, there could be a problem with recruiting lawyers as court-appointed counsel?**

I firmly believe that the program will be attracting a lot of younger lawyers; it will happen naturally. AIDOAC is sponsoring a “greening” process where the programs look at the young lawyers and make every effort to help them gain the expertise to progress. And as the younger lawyers learn about the system, they'll see that it's an attractive, alternative way to practice law.

There are so many advantages to being an appellate lawyer, and I feel enormously fortunate to have stumbled across this specialty. It doesn't allow me to exercise my acting chops, but there is incredible satisfaction in terms of shaping the law, writing, thinking through legal problems, and the autonomy you don't have as a trial lawyer. You can be a litigator as an appellate lawyer and still exercise muscles like thinking through complicated legal problems. But you don't have to be across town every day – you have time to think about the issues and craft your arguments. And our work can have implications in so many other cases.

**You recently argued, and won, a case in the U.S. Supreme Court. Could you describe your experience appearing in the highest court in the nation?**

I argued a case in April of last year (the opinion was issued in May) called *City of Ontario v. Quon* involving the question of privacy rights of public employees in text messages sent on equipment provided by a government employer. I also argued *Marshall v. Marshall* (the Anna Nicole Smith case) in 2006 and will be arguing another aspect of that case in January. I am pleased to say we won both cases unanimously. [Ed.'s note: In September 2010, the Court granted the petition for certiorari in *Stern v. Marshall*, and Mr. Richland argued the case on January 18 of this year.]

I was nervous both times, but one of the things you can do to prepare is to participate in as many moot courts as you possibly can; I did a number of them at law schools. I also attended as many U.S. Supreme Court arguments as I could to watch the justices in action and feel comfortable in the courtroom.

**Do you have any tips or suggestions for the panel attorneys?**

I've been so impressed by the quality of work done by the panel attorneys; it's remarkable how excellent it is. And as one who spends a lot of time trying to draft my own briefs and going through the editing and re-editing process, I can say that they are incredibly efficient as well. They produce very high-quality work in remarkably short periods of time.

The one thing I would suggest – to the extent that it can be done – is that the best writing is something that is *re*-written, so my advice is to edit one's self. Read and re-read one's own work, and if possible have someone else read it as well, because you can get stuck in your own way of looking at things. Ask a spouse or significant other who is *not* a lawyer to look at the work – that's really useful. You want to be able to communicate in a nontechnical way that appeals to any human being, so they can be persuaded even if they don't have knowledge of the technical aspects of the law.

**Finally, what is your view of the importance of the work of AIDOAC?**

AIDOAC is of vital importance, both to give feedback to the programs so they're able to do their work and to provide a sense to the courts and the people of California that the work that is being done is the most efficient and effective use of public funds.

**AIDOAC MEMBERSHIP**

**Hon. Herbert I. Levy (Chair)**, 5th Appellate District  
**Mr. George Bond**, Executive Director, CCAP  
**Hon. M. Kathleen Butz**, 3rd Appellate District  
**Hon. Martin J. Jenkins**, 1st Appellate District, Div. Three  
**Hon. Richard J. McAdams**, 6th Appellate District  
**Mr. Kent L. Richland**, Greines, Martin, Stein & Richland, LLP  
**Hon. Betty Ann Richli**, 4th Appellate District, Div. Two  
**Mr. David Stanley**, Panel Attorney  
**Hon. Thomas Lyle Willhite, Jr.**, 2nd Appellate District, Div. Four  
**Mr. Matthew Zwerling**, Executive Director, FDAP

*Advisory member:*

**Mr. Jonathan B. Steiner**, Executive Director, CAP-LA

## Departing APJs Provide Perspective on CAC Program

*Recently retired Administrative Presiding Justices Arthur G. Scotland of the Third Appellate District and James A. Ardaiz of the Fifth Appellate District offer their thoughts on the Court-Appointed Counsel Program.*

Attorneys appointed to represent defendants who appeal their criminal convictions, and the California appellate projects (CAPs) that oversee this process, play critical roles in ensuring the integrity of California's criminal justice system. The laws and procedures governing criminal prosecutions in our state are vast and sometimes complex. Thus, it is inevitable, although infrequent, that mistakes are made in trial courts of such magnitude

that a defendant is entitled to modification of the judgment or to a new trial.

The right of appeal, available to ensure that a defendant is justly convicted and sentenced, is a hallmark of our exceptional legal system. It could not serve its important function without the work of qualified appointed appellate counsel. And it would not be the hallmark it is without the impressive job that CAPs do to develop panels of qualified counsel, provide continuing legal education to them, monitor their work and compensation, and assist courts in the appointment of counsel. This I know based on my many years on the Court of Appeal.

Having retired as Administrative Presiding Justice of the Third Appellate District, I lift my hat to the dedicated appellate counsel and CAPs who help make California's criminal justice system the best it can be.

*Hon. Arthur G. Scotland (Ret.)*

It is often easy for critics of the criminal justice system to accuse attorneys for indigent criminal defendants of waste and abuse because, in most instances, judgments are upheld and results remain unchanged. But justice is a broader concept than simply a process and a consequence. The justification of a criminal appeal is whether it presents a cognizable challenge to the judgment, and the measure of success is that the system is forced to justify its actions. The justice system requires that it be challenged in order to ensure that the consequences will be accepted as credible and trustworthy.

Ensuring that such challenges are made in a responsible, efficient, and cost-effective manner is the function of the California appellate projects. They are remarkably and commendably successful, and they play an integral role in ensuring that we can have confidence in our justice system.

As Administrative Presiding Justice of the Fifth Appellate District for many years, I have consistently been impressed by the high quality of the work we receive from the attorneys working with our appellate projects. I know that all six districts will continue to receive excellent service. Just as importantly, our system of justice will maintain its credibility, in no small part due to the efforts of the lawyers who accept the work of indigent appeals.

*Hon. James A. Ardaiz (Ret.)*



## New Director Chad Finke Tackles Recruitment and Budget Challenges

After working with the Court-Appointed Counsel program (CAC) for nine months in his new capacity as director of the AOC's Appellate and Trial Court Judicial Services Division, **Chad Finke** quickly has become well acquainted with both the challenges and opportunities endemic to the program. And he continues to be impressed by "what a well-run system it is. This is a fiscally responsible, well-designed program, and the appellate projects do fantastic work," he says.

Chad grew up outside of Chicago in northwestern Indiana and went to Grinnell College in Iowa, a small liberal arts school. A political science major with a focus on political theory, he wasn't directly focused initially on the

legal field, although it soon became clear that a common theme pervading his studies was the role of law in a political society. "Law school began to seem like a natural progression," he recalls.

Upon graduating in 1994, Chad recognized a desire to experience life beyond the Midwest and to attend law school on one of the coasts. After concluding that NYU might induce too much of a culture shock, he enrolled in UC Berkeley's Boalt Hall School of Law and earned his law degree in 1997. He then went into private practice, doing general civil litigation work at Bronson, Bronson & McKinnon (a mid-size firm that folded in 1999 as a result of the dot-com boom and bust) and subsequently working in antitrust law and public utilities regulation at Pillsbury Winthrop.

After hearing about a contract research attorney

position open in the Superior Court of Alameda County, Chad decided to make a switch from the private to the public sector. He soon became a regular employee and his time in the Alameda court provided, as he describes it, an invaluable learning experience. "I got to read hundreds of motions and pleadings, improve my writing skills, and learn what works and what doesn't in court." He soon became the Supervising Legal Research Attorney in the Law and Motion Department ("I found that I really like being a manager," he says), and he served at the court for about five years.

In June of 2005, Chad saw an opportunity to get a broader, more statewide perspective on the judicial branch by joining the AOC, where he became Managing Attorney of the Legal Opinions Unit in the Office of the General Counsel

within two years. In April 2010 he was appointed director of ATCJS after the retirement of former director Marcia M. Taylor.

Chad believes that his biggest challenges with the CAC program are:

- Working with the appellate project directors to address the need for recruiting and training the highest quality court-appointed counsel for the program.
- Working behind the scenes to ensure that the Court-Appointed Counsel program receives adequate funding. "We need to maintain communication with the Legislature and present compelling data to them each year," he says.
- Working with the project directors to address the projects' needs for more up-to-date technological infrastructures. 



**ATCJS Director Chad Finke**

# C L A I M S   C O R N E R

## CLAIMS PROCESSING

- Claims are processed by the AOC's ATCJS division on a daily basis; however, they are transmitted to the State Controller's Office only on Monday, Wednesday, and Friday. Holidays require additional turnaround time.
- To ensure timely compensation, final claims should be filed within 180 days of the remittitur.

## TRAVEL REIMBURSEMENT

*Travel guidelines for court-appointed appellate counsel have now been more fully defined, and counsel are reminded of the following principles of travel expense reimbursement. The full text of the guidelines can be found on the websites of each appellate project (see page 6).*

### Time of Travel

The day, month, and year of travel – as well as departure and return times – should be reported to the project.

### Lodging

All lodging must be pre-approved by the project director. The reimbursement rate for lodging is a maximum of \$110 plus taxes, or \$140 plus taxes in the Bay Area counties of Alameda, San Francisco, San Mateo, and Santa Clara. Panel attorneys are expected to seek out the most reasonable lodging and to use free hotel shuttles when available.

### Meals

The State rates for meals are the actual cost up to \$6 for breakfast, \$10 for lunch, and \$18 for dinner. Meals will be reimbursed only for overnight trips.

### Transportation

*Least costly means:* Transportation costs will be reimbursed only for the least costly and most efficient mode of travel. For example, if a panel attorney chooses to drive to the destination but it is less expensive to fly, the attorney will be reimbursed only for the cost of flying. The attorney may provide to the project a website printout showing the mileage from the departure location to the destination location, along with a copy of an airfare estimate.

*Mileage:* The current mileage rate for court-appointed counsel is \$.485.

*Prison visits:* Travel to visit a client in prison, if the round trip is over 50 miles, must be authorized by the appellate project director or assistant director.

*Cars:* Car expenses should be kept to a minimum. When traveling to and from an airport, a shuttle or other form of public transportation should be used.

*Rental cars:* Rental cars are not reimbursable unless they are unavoidable. In general, reimbursement will be made for round-trip mileage only, at \$.485 per mile. When it is absolutely necessary, the use of a rental car must be pre-approved by the project director or assistant director.

*Taxis:* Taxis are generally not reimbursable unless they are shared and the cost is less than a shuttle. Reimbursement will be only up to the cost of the least expensive form of travel.

*Parking:* Parking is reimbursed based on the least costly parking method. When using airport parking, you must use the least expensive long-term parking lot. Valet parking is non-reimbursable; therefore, use self parking.

*Out-of-state travel:* Reimbursement will be for round-trip travel to the destination from the California border. The attorney will need to calculate the least expensive mode of travel. If driving, calculate the cost from the border to your destination or travel by train or air from a border point of entry into California. Sometimes, however, the cheapest mode of travel may be a direct flight from, for example, Chicago to San Diego. This would be allowable as long as it is less expensive than travel from the border to the destination.

*Note:* Time spent waiting at airports or in the air is reimbursable only if it is spent working.

## DIRECT DEPOSIT PROCESSING

Processing of enrollment in the direct deposit program takes approximately 30 days from the submission of the request. Additional time is then needed to test the connection with the banking institution. Forms can be found at:

[www.courtinfo.ca.gov/courts/courtsofappeal/cac.htm](http://www.courtinfo.ca.gov/courts/courtsofappeal/cac.htm).

*CAC Bulletin* is published by the Administrative Office of the Courts. We welcome news about appellate counsel who dedicate their valuable efforts to assisting indigent appellants in California.

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**Hon. Tani Cantil-Sakauye**  
Chief Justice of California

**William C. Vickrey**  
Administrative Director of the Courts

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### **Court-Appointed Counsel Program**

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Court Services Analyst  
415-865-4252

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Administrative Coordinator  
415-865-4254

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415-865-4250

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Questions regarding lost checks, changes of address, and tax ID forms:

**Dora Acosta**  
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[APHelp@jud.ca.gov](mailto:APHelp@jud.ca.gov)

Direct deposit questions:

**Elena Estipona**  
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Back issues of *CAC Bulletin*:  
[www.courtinfo.ca.gov/courts/courtsofappeal/cac.htm](http://www.courtinfo.ca.gov/courts/courtsofappeal/cac.htm)

## **VIDEO EDUCATION FOR MCLE AND LEGAL SPECIALIZATION**

Each appellate project provides classes, open to panel attorneys, that offer valuable educational opportunities to strengthen your skills while earning needed MCLE credits. Please contact your appellate project(s) to find out what classes are available in your area.

Of special interest are the educational videos now provided on the Central California Appellate Project (CCAP) website: [www.capcentral.org](http://www.capcentral.org) (look for MCLE under the Links tab). The site is open to all panel attorneys statewide and provides 49 videos covering practice and substantive law topics relevant specifically to the work done by panel attorneys. Videos range in length from 15 minutes to an hour. Presenters include staff attorneys from several of the projects, panel attorneys, appellate court justices and court attorneys, law school professors, and other experts. A panel attorney can earn all of his or her MCLE credits (at no cost) because all of the categories required by the State Bar are covered. Contact Laurel Thorpe at CCAP at (916) 441-3792 or [lthorpe@capcentral.org](mailto:lthorpe@capcentral.org) for site registration and login information.

### **Appellate Project Contact Information**

First District Appellate Project — First Appellate District  
Website: [www.fdap.org](http://www.fdap.org)

California Appellate Project — Second Appellate District  
Website: [www.lacap.com](http://www.lacap.com)

Central California Appellate Program — Third and Fifth Appellate Districts  
Website: [www.capcentral.org](http://www.capcentral.org)

Appellate Defenders, Inc. — Fourth Appellate District  
Website: [www.adi-sandiego.com](http://www.adi-sandiego.com)

Sixth District Appellate Program — Sixth Appellate District  
Website: [www.sdap.org](http://www.sdap.org)

**The following appellate project handles capital cases:**  
California Appellate Project — San Francisco  
Website: [www.capsf.org](http://www.capsf.org)

## **BY THE NUMBERS**

*(2008–09 figures are in blue)*

- ◆ Panel attorneys in the CAC program: **901** (892)
- ◆ Appointments, 2009–10: **9,400** (9,778)
- ◆ Amount of claims, 2009–10: **\$46.7 million** (\$48.8 million)
- ◆ Average amount of claims processed daily: **\$201,356** (\$203,000)
- ◆ Average number of claims processed daily: **61**
- ◆ Case breakdown: **74% criminal, 26% juvenile dependency**  
*(75% criminal, 25% dependency)*