



CAC BULLETIN

Court of Appeal Court-Appointed Counsel

Vol. I, no. 1

CAC Initiative Efforts Continue

For more than 15 years, the Administrative Office of the Courts (AOC) has worked with the Courts of Appeal, the appellate projects, the Appellate Indigent Defense Oversight Advisory Committee (AIDOAC), and panel attorneys to provide effective representation for appellants and ensure quality training and appropriate compensation for the nearly 900 panel attorneys who participate in the noncapital Court-Appointed Counsel (CAC) Program.

Over the years, the AOC has advocated to the state Department of Finance for adequate funding for the CAC program that will keep pace with caseload growth and the ongoing financial needs of the panel attorneys and appellate projects. The Administrative Presiding Justices and the AIDOAC members have consistently supported increases to the hourly rates for panel attorneys in order to bring these rates more in line with the market.

Initiatives that the AOC has promoted in recent years include:

Restoration of guidelines. In October 2004, the guidelines for reading the record were restored to 50 pages per hour, down from the previous 60 pages. In addition, a guideline of one hour for case-related administrative tasks was added as an allowable billable expense on final claims.

Compensation increases. Hourly compensation rates for court-appointed counsel were increased for the first time in 10 years in 2005 by \$5 an hour. A further \$10 increase was implemented in July 2006, with an additional \$5 increase taking effect in July of 2007. The cumulative changes represent up to a 31 percent increase in compensation over the last four years.

Direct deposit. In October 2005, as a result of collaborative efforts with the State Controller's Office, the AOC announced

that direct deposit had become available to appointed counsel as a voluntary alternative to paper warrants.

CAC training programs. Over the last few years, the AOC has sponsored and provided financial support to help fund training programs that were organized by the appellate projects. The training programs provided the panel attorneys with Mandatory Continuing Legal Education (MCLE) credits and covered a range of topics — e.g., guilty pleas, issue spotting, and delinquency and dependency matter updates.

Payment during budget impasses. Five years ago, the AOC developed protocols that enabled panel attorneys to continue to be paid for services performed prior to the end of a fiscal year during budget impasses. Additional efforts to persuade the State

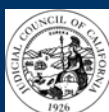
Controller to include the CAC program in the category of essential services that continue to be paid when the state's cash flow is low have been unsuccessful, but the AOC will continue to advocate for this.

There is no doubt that the improved compensation rates and guidelines, as well as the excellent training provided by the projects, have contributed to the retention of experienced attorneys on the panel and to the commitment of newer attorneys to a career in appellate defense work. The AOC also works collaboratively with the appellate projects and the California Appellate Defense Counsel to address issues that affect the ability of the panel attorneys to continue to provide effective representation to their clients. We will continue to pursue available options for working with the Legislature to enhance appointed counsel compensation and fund ongoing training, even in the face of the extreme budget challenges facing the judicial branch.

CAC Bulletin Launches

Welcome to the premier issue of *CAC Bulletin*, a semi-annual newsletter produced by the AOC for court-appointed counsel in noncapital cases in California. Watch for articles on the state budget, interviews with appellate attorneys, information about the claims process, and other news. We also welcome your questions and suggestions. Back issues will be posted on the new Court-Appointed Counsel Program Web site: www.courtinfo.ca.gov/courts/courtsofappeal/cac.htm.

CAC PROGRAM	1
MESSAGE FROM THE CHIEF	2
AIDOAC OVERVIEW	2
HON. HERBERT I. LEVY	3
CHOOSING INDEPENDENT WORK	4
CLAIMS CORNER	5
ELAINE ALEXANDER RECEIVES AWARD	6
MESSAGE FROM THE AOC	6



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MESSAGE FROM THE CHIEF JUSTICE



I am pleased to introduce the inaugural issue of *CAC Bulletin*, a periodic newsletter that will provide information about the Court of Appeal Court-Appointed Counsel (CAC) program and the panel attorneys who provide the representation.

This premier issue includes an overview of developments in the CAC program over the years; information about the Judicial Council's Appellate Indigent Defense Oversight Advisory Committee; an interview with the committee's excellent chair, Bert Levy; and a discussion with three experienced appellate attorneys about the challenges and rewards of independent work. In addition, a column in this and subsequent issues will be devoted to claims and compensation matters. Please feel free to submit, to the editor, your content ideas and any suggestions for improvement as the newsletter evolves in the coming months.

The representation of indigent defendants on appeal always has been one of my highest priorities. I cannot overstate my appreciation for the work you do to ensure that these appellants have access to effective counsel. I am well aware of the effect the budget crisis has had on you, and I know that many of you received IOUs during and even after the impasse. Yet the quality of representation continues to impress me, and I thank you for your sustained excellence in these times of budgetary uncertainty.

RONALD M. GEORGE
Chief Justice of California

The Appellate Indigent Defense Oversight Advisory Committee (AIDOAC): The Appointed Counsel Connection

The Judicial Council's Appellate Indigent Defense Oversight Advisory Committee (AIDOAC) was created by the Chief Justice of California in 1994 in an effort to bring uniformity and fairness to the court-appointed counsel system while maintaining adequate representation for indigent defendants.

AIDOAC comprises six appellate court justices, two appellate project directors, two attorneys, and advisory members appointed by the Chief Justice. The committee provides the Chief Justice and the Administrative Presiding Justices of the Courts of Appeal with policy recommendations related to the Court-Appointed Counsel (CAC) program; audits court-appointed counsel claims from cases that have become final; reviews the appellate projects' methods of evaluating claims to ensure statewide uniformity; and provides ongoing review of compensation guidelines.

The term "audit" typically does not carry a benevolent connotation and has been known to invoke terrified responses from even the very hardy, but the goals of the AIDOAC audits are to:

- identify inconsistent policies and procedures and ensure their fair and consistent application to court-appointed counsel; and
- ensure quality of representation for indigent appellants in California.

The audits may result in changes to the policies and procedures guiding the CAC program or in payment adjustments to individual claims. While the committee may adjust claims downward, it

may also make restorations (upward adjustments) to the claims, consistent with its guidelines.

After reviewing the work of counsel, AIDOAC members regularly give commendations to attorneys who have produced outstanding work on a particular case and whom the committee feels should be recognized.

Currently the committee's efforts are focused on attracting and retaining both new and experienced appellate attorneys and securing adequate compensation for them within existing budget parameters.

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

HON. HERBERT I. LEVY: Chair of the Appellate Indigent Defense Oversight Advisory Committee

Associate Justice Bert Levy had been on the Fifth District appellate bench for less than a year when he found himself appointed in 1998 to serve as a member of the Appellate Indigent Defense Oversight Advisory Committee (AIDOAC). Now, more than a decade later, he chairs the committee and exudes a still-fresh commitment both to the court-appointed counsel process and to the appellate attorneys whom he continues to hold in the highest regard.

“The professionalism of the panel is truly outstanding,” he notes, “and I am extremely impressed with the high quality of representation provided by panel attorneys to their clients. They often deal with extremely difficult and complex issues and very demanding clients, and their unique talents result in briefs that reflect very creative and logical thought, high intellect, and legal representation of the highest caliber.”

One of the compelling reasons for Justice Levy’s longevity with the committee has been his sense of pride in the uniqueness of California’s court-appointed counsel model – a system that he considers to be “one of the finest of its kind in the country.” He praises the symbiosis among AIDOAC, the Administrative Office of the Courts, the Courts of Appeal, the attorneys, and the appellate projects, which work closely with the attorneys to help polish briefs and produce what continues to be, in his estimation, an outstanding work product. “Everyone works together to ensure the highest quality of representation possible,” he says, “so it’s a tribute to everyone that it works so well.”

As AIDOAC’s chair, Justice Levy has concentrated the committee’s efforts in recent years on the well-being of the panel attorneys. “We’ve tried to work closely with the projects to develop programs to benefit panel attorneys and advance their careers,” he reports. “The projects have been creative, responsive, and innovative by instituting programs and classes to further the panel’s professional development and skills.” With the collaboration of the appellate projects, AIDOAC has developed programs for recruitment and retention and has encouraged the projects’ own recruitment efforts. Over the last few years, AIDOAC also has begun to more aggressively recognize outstanding

work and has been commending a greater number of panel attorneys for their excellence.

Nevertheless, the committee faces some daunting challenges, especially in the area of attorney compensation. Justice Levy points out that AIDOAC has supported every increase in hourly compensation that has come before it, and in recent years the rate has increased by \$20 per hour. He also notes that the committee has been successful in providing additional compensation by other means as well;

for example, it has restored former guidelines for reading the record, as well as for performing administrative tasks. Still, he says, “AIDOAC is certainly aware that compensation needs to be increased as the cost of living and overhead goes up. Unfortunately, we’re in a very difficult budget environment at this time. But the compensation issue will definitely stay at the forefront of AIDOAC’s agenda.

“There are especially serious compensation issues for newer attorneys coming onto the panel,” he continues. “Many have huge law school loans, which is why I will be delighted if they can make use of any federal loan forgiveness programs.” [See box, this page.]

Although legal victories for panel attorneys may not be great in number, notes Justice Levy, their work is widely appreciated. “I see them in oral argument, but I wish I had an opportunity to converse with them on a more regular basis,” he says. “I truly admire these appellate attorneys in the trenches who are so dedicated to their clients in the highest ethical sense.”



LOAN RELIEF: Panel attorneys paying off student loans may wish to investigate the new federal Income-Based Repayment (IBR) plan that became available on July 1 (as part of the College Cost Reduction and Access Act). The plan may be useful to newer panel attorneys, who have relatively small incomes and may have significant debt. For more information, see www.equaljusticeworks.org/resources/student-debt-relief/default.

CHOOSING INDEPENDENT WORK: Incentives and Rewards

A clever freelancer once said that independent contractors “trade the illusion of security for the illusion of freedom.” *CAC Bulletin* recently spoke with long-time appellate attorneys **Kyle Gee**, **Marcia Levine**, and **David Stanley** about their choice to do independent court-appointed work in the public sector.

How long have you been an appellate attorney, and what legal work did you do before that?

MR. GEE: When I got out of law school in 1976 I went to work with another guy doing everything we could get, which included court appointments. That was in the very olden days, when the appellate projects didn’t exist and the courts were handling all the appointments.

MS. LEVINE: I started doing appointed appeals in 1986, and from 1975 until 1986 I worked as a deputy D.A. in Sacramento and Ventura.

MR. STANLEY: I’ve been a court-appointed counsel for about 15 years, and before that I was on the project side, serving as the Executive Director of FDAP [First District Appellate Project] for three years and Assistant Director of CCAP [Central California Appellate Program] in Sacramento. Prior to that I did appellate work with the State Public Defender’s Office and trial work as a public defender in Santa Barbara and Del Norte Counties.



Kyle Gee

Why did you decide to choose this profession?

MS. LEVINE: I was tired of trial work, and what I liked best about criminal law was doing the research and writing part (I was in charge of the Writs and Appeals Unit at the D.A.’s office). When I was ready to leave the D.A.’s

office, they were starting CAP-LA [California Appellate Project – Los Angeles] and I was the first attorney they hired. In 1990 I got married and we moved up to Truckee, so I became a panel attorney and have been one ever since.

MR. STANLEY: I liked the academic side as opposed to trial work, which is more stressful. I liked the different pace of appellate work, and there was not much reading, research, and analysis at the trial level.

About how many hours per month do you work, on average?

MR. GEE: I’m in the office 225 hours a month, and I submit claims for 80 percent of that. The rest of it is not billable because I’m doing bookwork or things like that.

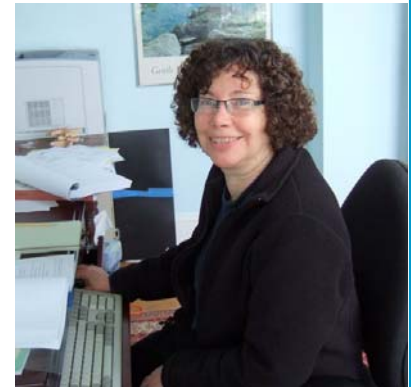
MS. LEVINE: I work about 80 to 100 hours a month (about 20 to 25 billable hours a week).

MR. STANLEY: My practice is 100 percent California appointed appeals, even though I live in Oregon. I seem to be working all the time, but billable hours is another question. I spend a fair amount of time on the CADC [California Appellate Defense Counsel] listserves getting and giving advice, because I’ve been in this system so long, on both the project and panel sides. Overall I tend to be at my desk 7 days most weeks, maybe 4 or 5 billable hours a day.

What do you find to be the advantages and disadvantages of court-appointed work?

MR. GEE: We’ve discussed some of the disadvantages with AIDOAC. Of course, our hourly compensation is the primary concern. And although I have all the work I can handle and could bill 70 hours per week if I wanted to be that busy, an issue for people just starting out is that they may not have full-time work. The biggest advantage is that you have a lot of flexibility. As long as you put in your hours, it doesn’t matter whether you get up pre-dawn like I do, work on the weekends, or sleep until noon and work into the middle of the night.

MS. LEVINE: The disadvantage has been the uncertainty of pay; there’s no guarantee that our hourly rate is going to increase along with the cost of living. The biggest advantage is not only schedule flexibility but



Marcia Levine

Choosing Independent Work *(cont'd.)*

being able to take as many or few cases as I want to. For me, the advantages outweigh the disadvantages.

MR. STANLEY: Cash flow can be difficult, because we can bill only twice in the life of a typical case, which can last a year to 18 months. It's especially a challenge for the newer people, although AIDOAC under Justice Levy is trying to improve cash flow issues for newer attorneys. The biggest advantage is that the work itself is very challenging. We rarely win, so every case challenges us to be creative and spot something unusual and interesting.

What would you advise newer attorneys who are thinking of doing criminal appellate work?

MR. GEE: You may not have a full year's work in your first few years (newer attorneys tend to start off with less lengthy cases that don't involve multiple issues). Watch your time management; keep your records every day, because if you let it slip and try to recreate the records at the end of the week, you will cheat yourself. I have proved that to myself. I would also tell them that it helps a lot to be involved in CADC. We lean on each other with shared briefs and so there are resources around.



David Stanley

MS. LEVINE: I would advise them to have a good balance in their savings account when they start out *[laughs]*. And to get a good grounding in criminal law, which you don't have coming right out of law school. My biggest help was having a background in trial cases.

In court, too, you're used to working efficiently, which is really important in our business.

What are the rewards and challenges of doing appellate law?

MR. GEE: You know, we invited a psychologist to talk to a group of appellate lawyers about stress. We're handling very, very serious sentences of people convicted of doing very, very serious things. It can be emotionally difficult. I got writer's block when I was handling the case of someone involved in the Chinatown Massacre. Plus your success rate is very low. When I was done laying it all out, he said, "I don't have any suggestions for you. You really should all be participating in professionally managed support groups!" But I do love the work. I receive very respectful treatment from the Courts of Appeal, and I feel like I'm doing an important thing: keeping trial judges and lawyers on their toes, knowing someone will look over their shoulder one day.

C O U R T O F A P P E A L O F T H E S T A T E O F C A L I F O R N I A

C L A I M S C O R N E R

DCA No. _____ DISTRICT _____ DIVISION _____

Communications Hours
 Please note that the procedure for reporting communications hours has recently changed. Hours are now divided between a) communications with a client or trial counsel [line G1] and b) communications with others [line G23]. Note: Communications with family members serving as proxies for clients should be recorded on line G1.

Direct Deposit Available
 Panel attorneys are encouraged to enroll in the voluntary direct deposit program, which provides consistent, secure deposit of your compensation payments directly into the financial institution of your choice without the waiting time associated with mail deliveries. Funds are available on the fifth banking day following the electronic submission of your claim to the State Controller's Office. To enroll, complete the Direct Deposit Enrollment Authorization Form available on your appellate project website (e.g., www.fdap.org/dd.shtml), which also contains FAQs) or contact CAC program staff at (415) 865-4250. Mail the form, along with a copy of a void check or deposit slip, to Administrative Office of the Courts, 455 Golden Gate Ave., 7th Floor, San Francisco, CA 94102, Attn.: AOC Accounting.

Please feel free to e-mail Deborah Collier-Tucker at deborah.collier-tucker@jud.ca.gov with suggestions for making the claims process more efficient.

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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For links to the five appellate projects, or to obtain back issues of *CAC Bulletin*, go to
www.courtinfo.ca.gov/courts/courtsofappeal/cac.htm

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Elaine Alexander Receives Award

In October, **Elaine A. Alexander**, Executive Director of Appellate Defenders, Inc. of San Diego, was awarded the Kathleen McCree Lewis Award by the American Academy of Appellate Lawyers for “an individual or organization whose work has had an exceptional impact on the delivery of appellate justice.” Ms. Alexander says that the award is a reflection of the appointed counsel system’s contributions and achievements. “No one would even be considered for any honor,” she says, “if the California system of appointed appellate counsel did not work so well and produce quality representation so consistently.” For more information about the award, see www.appellateacademy.org.

Message From the AOC: Budget Impasse Communications

Although AOC staff did our best to secure timely and accurate payment information from the State Controller’s Office (SCO) during the recent budget impasse, some of the details provided by the SCO were inaccurate. We had made a decision to provide all the information that was available to us, especially because the possibility of IOUs was looming and timing was critical. We feel that it is our responsibility not to withhold information and cause potential anxiety among counsel, but we also recognize that the budgetary landscape can change rapidly during impasse times and there is always the possibility that the current information at hand may be incorrect. Please be assured that we will continue to make every effort to ensure the accuracy of information we provide.

BY THE NUMBERS

(FY 2007–08 indicated in blue)

- ◆ Attorneys in the CAC program: **892** (847)
- ◆ Appointed counsel cases, 2008–09: **9,778** (9,927)
- ◆ Claims filed, 2008–09: **15,116** (15,056)
- ◆ Amount of claims, 2008–09: **\$48.8 million** (\$43.4 million)
- ◆ Amount of claims processed by AOC daily: **\$203,000** (\$180,000)
- ◆ Case breakdown: **75% criminal, 25% juvenile** (same)

CALL FOR SUBMISSIONS

CAC Bulletin encourages the submission of articles, letters, or questions on issues pertinent to appointed counsel.

Please send your contributions by either hard copy or e-mail to:

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(Please note that manuscripts will not be returned and that AOC staff reserve the right to select and edit submissions for publication.

In addition, staff may be unable to answer all submitted questions.)

REMINDER: COURT CLOSURE DAYS — Third Wednesday of every month