

**MINUTES OF THE MEETING OF THE APPELLATE COURTS SECTION
OF THE LOS ANGELES COUNTY BAR ASSOCIATION**

Tuesday, September 12, 2017
4:30 p.m. to 6:00 p.m.
Court of Appeal
Second Appellate District
Employee Lounge on Third Floor
300 S. Spring Street
Los Angeles, California 90013

**“State of the Court with Justice Dennis Perluss
and Joseph Lane, Clerk of the Court”**

Presiding Justice Dennis Perluss of Division Seven, who is serving as the Acting Administrative Presiding Justice of the Second District, and Joseph Lane, the Second District’s Clerk/Executive Officer of the Court, provided information regarding the state of the court, preceded by a brief preview from Associate Justice Brian Hoffstadt of Division Two of an upcoming appellate program and followed by a report from Superior Court Judge Kevin Rosenberg regarding opportunities for lawyers to participate in civic education programs in schools.

Justice Hoffstadt

Justice Hoffstadt spoke briefly about the annual Appellate Judges Education Institute (AJEI) Summit, which will take place from November 2 through 5 in Long Beach, California. The event is co-hosted by AJEI, Duke Law School, and the American Bar Association, and will include 15 to 16 hours of CLE programs on appellate practice. Early-bird registration ends on September 30. Immediate past-Chair of this Section, Brad Pauley, who has attended the Summit for the past 14 years, encouraged everyone to attend and provided printed programs for people who were interested.

Presiding Justice Perluss

Justice Perluss first explained that he has the position of Acting Administrative Presiding Justice because he has the longest tenure as a Presiding Justice in the District. He then discussed the state of the court. Some highlights:

Vacancies/Appointments

- There are six current judicial vacancies. Two are Presiding Justice positions, one in Division Two (replacing Justice Boren) and one in Division Five (replacing Justice Turner). Four vacancies are Associate Justice positions – two in Division Three, one in Division Five, and one in Division Seven. The vacancies put a strain on the justices, particularly in the two divisions with two vacancies.
- Given the vacancies, the pro tem justices have been a big help. But the L.A. Superior Court policy is that judges can serve no longer than four months. This limitation does not apply, however, to retired judges serving under the retired judges program or to pro tem judges from other superior courts.
- The process for appointing pro tems varies somewhat by division, and the process for judges to make themselves available as pro tems varies as well. Historically, pro tems were often used to take the lead on large-record cases, but increasingly pro tems are called upon just to cover normal caseloads from vacancies.

Budgeting and Caseloads

- The budget has not been restored fully but has not been cut further. The court is keeping up with the caseload in terms of the time from notice of appeal to opinion even though the time to prepare the record has increased. The time to complete cases is a bit longer in divisions that are using more pro tems, except for Division Five.
- The number of appellate filings has been affected in recent years by Proposition 47 and to a lesser extent Proposition 36. The Prop 47 issues have been largely resolved but retroactivity issues remain. The California Supreme Court has been issuing grant-and-hold orders more frequently than in past years in criminal cases, which move faster than civil cases in that court.
- The Court of Appeal is expecting to start seeing cases under Proposition 66, under which habeas petitions in capital cases will no longer be filed first in the California Supreme Court but will begin in the Superior Court and under

which there will be a right to appeal the Superior Court's rulings to the Court of Appeal.

- The practice of Court of Appeal justices filling vacancies on the California Supreme Court does not materially affect the Second District's caseload processing.

Settled Statement Procedures

- Regarding the increasing need for settled statements on appeal given the lack of court-provided court reporters, there has been some variation among the Superior Court judges and Court of Appeal divisions in how to address the lack of a reporter's transcript. It would be best to develop a more uniform and standard approach.

Upcoming e-Filing

- E-filing begins on October 30.

Joseph Lane

Joseph Lane addressed a number of points, including the following:

Budgeting and Caseloads

- The size of the appellate records and briefs have significantly grown.
- The Second District is number one in median length of time from cases being fully briefed to opinions issuing for civil and criminal cases, but not for juvenile dependency cases. There is no further statistical breakdown by types of civil cases; this would have to begin at the trial court level.
- The past few years, appellate filings had gone up because of Propositions 36 and 47, but filings were down in the last calendar year by 100 in the Second District.

Upcoming e-Filing

- There is an effort to make formatting requirements for e-filed documents standardized statewide.

- E-filing is probably premature because the Superior Court probably cannot provide digital records on appeal for a couple of years. Hyperlinking briefs to the record on appeal will be the key to speeding up the appellate process.
- The California Rules of Court will be updated in the next couple years to reflect some of the technological advancements.
- The Second District formatting guidelines are intended to make briefs easier to read on handheld devices. Other districts are considering whether to adopt these guidelines; there is some support but it will not happen overnight. However, all other districts and the California Supreme Court will accept briefs prepared under the Second District guidelines.
- In very large record cases, an option is to contact the Court of Appeal and ask to provide the record on a thumb or flash drive.
- The requirements for a 300-page limit per volume and for consecutively paginated multiple volumes are being looked at statewide but there is no resolution on the horizon.
- On October 3, there will be a webinar in the Court of Appeal employee lounge on the new e-filing (TruFiling) procedures. On October 24, there will be another webinar that can be accessed from off-site.

Judge Kevin Rosenberg

Judge Rosenberg provided an update on various civics education programs designed to increase the state of civic knowledge in elementary, middle, and high schools in which lawyers can participate, including ACE, LACBA's Dialogues on Freedom, and Teen Court. The Constitutional Rights Foundation website is a good resource for more information.

Sarvenaz Bahar (Section Chair)

Sarvenaz previewed some upcoming Section programs and events: the TruFiling (e-filing) program on October 3; a program featuring Judge Kozinski at the Ninth Circuit on October 19; a program on appellate dispositions on November 14; and a holiday party in December. Also, the Section is co-sponsoring an all-day event at

the Ninth Circuit on February 10, 2018, focused on President Carter's appointees to that court.

Approved on September 25, 2017

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Kent J. Bullard
Secretary, Appellate Courts Section