First District Appellate Project

COMMUNICATING WITH CLIENTS IN THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

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I. INTRODUCTION

Communicating early and often with your client is critical to litigating an appeal effectively and ensuring that your client can actively participate in their own legal representation. This guide surveys the methods available for communicating with clients in the California Department of Corrections and Rehabilitation ("**CDCR**"), including on the new tablets from Securus Technologies, and the ethical and practical implications of using each method. The information in this guide comes from, among other sources, interviews with formerly incarcerated individuals, appellate attorneys, and CDCR employees.

The methods surveyed are legal mail; legal telephone and video calls scheduled through a litigation coordinator; in-person visits; and email, messaging, telephone, and video calls made through the tablets. **CDCR and Securus monitor—and use investigative software to scrutinize—all communications made via the tablets.** If you choose to communicate through the tablets, remember not to share any confidential information and to warn your client not to do so. Other than in-person visits—which require pre-approval for reimbursement—calls scheduled through the prison litigation coordinator provide the highest level of confidentiality for attorney-client communications.

While this guide focuses on the rules and practicalities of client communication, effective communication requires more than just formalistically following the ethics rules. You can build a rapport with your client by understanding how your communications may be perceived by incarcerated individuals. Formerly incarcerated interviewees emphasized that incarceration caused isolation and mental health struggles. They also described how meaningful compassionate communication from their attorneys can be. One interviewee shared that starting your initial interaction with questions such as "tell me about yourself," and "what really happened?" shows your client that you want to work *with* them, not just for them. Another interviewee emphasized that by regularly updating your client on the progress and timeline of their case, you can help them maintain hope. By "showing up" for your client and being attentive to their needs, you can establish truly effective communication.

II. RELEVANT ETHICS RULES

Understanding the available methods and technologies for communicating with clients in CDCR is essential to fulfilling your core ethical obligations of competence, confidentiality, and communication.

Rule 1.1 of the California Rules of Professional Conduct imposes the duty of competence. (Rules of Prof. Conduct, rule 1.1.) This includes a specific "duty of technology competence," which requires attorneys to keep "abreast of the changes in

the law and its practice, including the benefits and risks associated with relevant technology," and to make reasonable efforts to prevent the access or disclosure of information. (*Id.* at com. [1]; State Bar Formal Opn. 2023-208.)

Rule 1.6 imposes the duty of confidentiality, which requires lawyers to "maintain inviolate the confidence, and at every peril to [themselves] to preserve the secrets, of [their] client." (Rules Prof. Conduct, rule 1.6 & com. [1]; Bus. & Prof. Code, § 6068, subd. (e)(1).) The term "secrets" means information the client has requested be kept confidential or where disclosure would be "embarrassing or detrimental" to the client. (Rule 1.6 at com. [1]; State Bar Formal Opn. 1993-133.) It can include any information related to the representation, even information available to others. (See *id.* at com. [3] & rule 1.9, com. [5].)

One reason to maintain confidentiality is to preserve legal privileges, such as the attorney-client and work product privileges. The attorney-client privilege allows an attorney or client to refuse to disclose a confidential attorney-client communication in litigation (see Evid. Code, § 954), while the work product privilege protects an attorney's legal research, impressions, and strategic conclusions from disclosure (see Code Civ. Proc., § 2018.030). Disclosure of communications or work product to a third party may waive these privileges.

Rule 1.4—the duty to communicate—requires attorneys to keep clients informed about their representation. (Rules Prof. Conduct, rule 1.4.) This includes promptly notifying clients of any circumstances requiring their informed consent; reasonably consulting with them about how to achieve their objectives; responding to reasonable requests for information; and keeping clients reasonably informed about significant developments in the case. (*Id.* at subd. (a)(2), (3) & (b).)

Complying with and balancing each of these rules for a client in CDCR requires knowledge of prison practices and procedures regarding confidentiality and available communication methods. The following sections explain these practices and procedures and how to maintain your ethical duties, given the limitations CDCR imposes.

III. CONFIDENTIAL COMMUNICATION METHODS

A. Legal Mail

Legal mail is an essential and commonly used method of communication. It is confidential if marked and used appropriately, although you may encounter delays or other problems.

1. How to Send Confidential Legal Mail

Mail to or from a licensed attorney should be confidential, provided the following requirements are met. (See Cal. Code Regs., tit. 15, § 3141, subd. (c).) Your envelopes must include your name, title, and office return address, which must match the address listed with the State Bar. (*Id.* subd. (d) & § 3143.) While not formally required by statute, clearly and conspicuously marking the envelope as "Confidential" or "Legal Mail" helps ensure confidential treatment.

You must also avoid "abuse" of the right to legal mail. First, you may not send clients prohibited materials, including money; books and periodicals; any material concerning gambling or a lottery; or metal, including paper clips. (See *id.* §§ 3006 [listing contraband materials] & 3133, subd. (a)(3), (4) [describing requirements for mailing books and periodicals].) Second, legal correspondence *must* relate to the representation. (*Id.* § 3141(a).) To prevent or intercept lapses into general, unrelated correspondence, you can gently remind your clients of this restriction or refer them to a pen-pal program for non-legal communication. Third, you may not forward any material from incarcerated clients to third parties.[1] If asked to do so, you should inform the client that you cannot fulfill their request and ask them whether you should destroy the materials or return them.

2. Practical and Ethical Considerations

Legal mail is the primary way most panel attorneys communicate with clients. It is useful for sharing copies of legal documents and other information related to the representation. At the same time, legal mail can be slow (and institutional conditions such as staff shortages may exacerbate delays), practical realities may raise confidentiality concerns, and it requires postage your client may not be able to afford.

Although legal mail is statutorily entitled to confidential treatment, there may be confidentiality risks. Incarcerated clients lack a secure space to store legal mail. Additionally, clients with disabilities, language barriers, or limited literacy may rely

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[1] Doing so may expose both the client and the attorney to adverse consequences, including potential California State Bar discipline. (See, e.g., *In re Lorna Brown on Discipline* (Hearing Dept. 2013) No. 10-O-06727-PEM, at pp. 4–5, 14 [discipline imposed where attorney relayed client's sealed letter from client to his wife].)

on other incarcerated people to help them read or write letters. This disclosure to a third party may destroy the attorney-client privilege. (See Evid. Code § 952; but see *ibid*. [communication privileged despite presence of third parties "present to further the interest of the client" or "to whom disclosure is reasonably necessary for the transmission of the information"].) Formerly incarcerated interviewees also report that correctional staff opened and read their legal mail, such as in a case where the client was in active litigation against the prison.

Sending mail also costs money. Early in a representation, you should discuss whether your client is concerned about cost barriers to sending legal mail. If so, consider including a self-addressed, pre-stamped envelope when you send mail to the client. You should avoid sending individual stamps to your client, which risks violating CDCR's prohibition on contraband. (See Cal. Code Regs., tit. 15, § 3006, subd. (b).) Clients who qualify as "indigent incarcerated persons"[2] are also entitled to "indigent envelopes"—postage for five one-ounce First-Class letters per week—as well as writing paper, a writing implement, and envelopes for sending mail. (*Id.* § 3138, subds. (a), (b) & (g).) Procedures for issuing these materials vary by institution, but by law facilities should provide them to clients after both request by the client and authorization. (*Id.* § 3138, subds. (a), (e) & (i).)

3. Know Your Client and Communicate to be Understood

Effective use of legal mail requires more than transmitting information. It requires ensuring that your client can understand it. Many incarcerated clients face barriers to comprehension, including limited formal education, language differences, and the effects of trauma or mental health challenges. Before drafting written communications, counsel should take reasonable steps to understand who the client is. The probation report, prior correspondence, and other available materials may offer insight into the client's education level, language ability, and background, all of which should inform how counsel communicates.

Counsel should write clearly and directly, using short sentences, common words, and active voice. Legal terms should be avoided where possible, and when they must be used, they should be explained in plain language. The goal is not to sound formal, but to be understood. Clear, accessible writing allows clients to follow their case and participate meaningfully in their representation.

Tone is equally important. Many clients experience isolation, uncertainty, or distrust of the legal system. Writing in a manner that is respectful, approachable, and straightforward while remaining candid about the case can help build trust and

[2] To meet this definition, a client must have "maintained a trust account with twenty-five dollars . . . or less for 30 consecutive days." (Cal. Code Regs., tit. 15, § 3000.)

improve communication. Taking the time to understand the client and communicate with clarity and care will strengthen the attorney-client relationship and support effective representation.

B. Confidential Telephone Calls

Telephone calls organized through a facility's litigation coordinator are confidential. You may encounter delays in processing call requests.

1. How to Schedule a Confidential Telephone Call

To schedule a confidential call, you should submit a written request on law-firm letterhead to the institution's litigation coordinator. (Cal. Code Regs., tit. 15, § 3282, subd. (g)(1).) Although you may send the request by mail or fax, email is routinely used. (*Ibid.*) The letter attachment must state your request, name, mailing address, date of birth, driver's license or state-issued identification card number, bar number, and status as the client's attorney. (See *id.* § 3282, subds. (g)(1) & (2).) You should also fill out and include Form 106-A.[3]

Some facilities may request additional items, such as an appointment order, explanation of why legal mail is inadequate, or Form 2311.[4] You may choose to submit these materials with the initial request to avoid delays. Any explanation of your reason for the confidential call should avoid disclosing confidential information. You can say, for example, that you need to discuss appellate issues and written correspondence is insufficient.

After receiving a call request, CDCR will conduct a California Law Enforcement Telecommunications System ("**CLETS**") background check and verify your credentials with the bar.[5] (*Id.* § 3282, subd. (g)(4).) After verification, the institution will contact you to schedule the call. (See *id.* § 3282, subd. (g)(5) [CDCR officials determine the date, time, duration, location, and manner of the call].) Both section 3282, subdivision (g), and CDCR policy provide that approved confidential attorney-client calls must not be monitored or recorded. (CDCR, Operations Manual (2024) § 52060.8, p. 414.)

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[3] The form is available at <https://capcentral.org/wp-content/uploads/2022/11/CDCR_Form_106A.pdf> [as of Apr. 5, 2026].

[4] Form 2311 is available at <https://slodefend.com/wp-content/uploads/2023/07/CDCR-Form-2311.pdf>.

[5] Attorneys must pass CLETS clearance at each CDCR facility where a client they communicate with is incarcerated. Clearance is typically valid for one year, after which re-verification is required. (Cal. Code Regs., tit. 15, § 3282, subd. (g)(4).)

2. Practical and Ethical Considerations

Attorneys report that legal call approval practices and timing vary across institutions. One litigation coordinator reported that confidential call appointments are commonly scheduled within one to two weeks, although requests can be processed more quickly if CLETS clearance has already been completed. Panel attorneys report, however, that it can take many weeks or even a couple of months for the call to actually occur.

Penal Code section 5058.7, subdivision (a), holds that CDCR must "approve an attorney's request to have a confidential call with the inmate that they represent." The approved confidential call shall be "at least 30 minutes once per month, per inmate, per case, unless the inmate or attorney requests less time." (*Ibid.*) The California Code of Regulations provides that CDCR has discretion to deny confidential call requests if, in its opinion, other communication methods were available and not reasonably used. (See Cal. Code Regs., tit. 15, § 3282, subd. (g)(6).) Arguably, this regulation conflicts with the statutory mandate, but litigation coordinators do sometimes deny requests.

Some litigation coordinators have interpreted Penal Code section 5058.7(a) as a ceiling, limiting confidential calls to *no more than* thirty minutes per month. Proposed changes to the regulations, however, would eliminate section 3282, subdivision (g)(6), and "ensure that the institution head shall not limit the duration of a confidential call between an incarcerated person and their attorney . . . in accordance with section 5058.7, which establishes a minimum duration of 30 minutes per call." (Notice of Change to Regulations 25-08 (Sept. 19, 2025), pp. 2 & 13.)

Sometimes, more than one thirty-minute call per month will be necessary to fulfill your duty to communicate with your client. If CDCR denies you additional (or longer) calls, you can attempt informal resolution by following up with the litigation coordinator, emphasizing that the plain language of the Penal Code guarantees "at least" thirty minutes per month, and explaining any time-sensitive need for communication. You may also consult with your assigned FDAP attorney. If informal efforts fail, you may consider contacting the warden, the director of the facility, or CDCR headquarters. As a last resort, you could seek judicial review in the Court of Appeals. If there is an impending brief deadline and you are unable to speak with your client, you may file an extension-of-time request. In your request, explain that the CDCR facility has delayed or denied your efforts to schedule a confidential call, and emphasize that additional time is necessary to provide effective assistance of counsel. If you cannot arrange a confidential call in the time you need, you should weigh the urgency of the call against the sensitivity of the subject matter in deciding whether to communicate via non-confidential means.

Although legal calls are confidential, incarcerated individuals remain under visual observation by a correctional officer during the call. At some, but not all, facilities, confidential calls occur in rooms with soundproof windows that allow staff to observe the incarcerated person without hearing the conversation. As a precaution, you should confirm at the beginning of each call that the client is alone and the conversation cannot be overheard. If correctional staff stand close enough to hear the conversation, you should politely request additional privacy. At the outset, you should also ask the officer how much time you have to ensure you do not go over time, which may result in negative consequences for your client.

C. Confidential Video Calls

CDCR interviewees report that video calls organized through a facility's litigation coordinator are confidential. These video calls are relatively new, however, so you should take extra precautions to ensure confidentiality is maintained in practice.

1. How to Schedule a Confidential Video Call

Video calls have become an increasingly important method of attorney-client communication since the COVID-19 pandemic. You may ask your client if they would prefer a confidential video call over a regular telephone call. The process of requesting a confidential video call is the same as that for requesting a confidential telephone call. (See *supra*, III.B.1 How to Schedule a Confidential Telephone Call.) The only difference attorneys report is that litigation coordinators often ask them to provide the videoconferencing link. Some institutions accept standard Zoom links, while others require use of specific platforms such as Webex; Microsoft Teams; or SIP-enabled Zoom accounts, which can require a more expensive monthly subscription. If the institution provides the video call invitation, take extra precautions such as checking that no unauthorized parties are present in the video meeting and that there is no recording or transcription notification.

2. Practical and Ethical Considerations

There is no ethical prohibition on communicating with clients by video call. In fact, to meet an attorney's duty of communication, "teleconferences or videoconferences may be needed." (State Bar Formal Opn. 2023-208.) At the same time, Rule 1.6 requires that attorneys make reasonable efforts to prevent the disclosure of confidential information. (See Rules of Prof. Conduct, rule 1.6.)

With video calls, reconciling these duties requires understanding the videoconferencing platform and the client's surroundings. One attorney recommended using a "waiting room" to control who is joining a call. Another attorney explained that if the client's screen is visible to passersby and monitoring officers, screenshared material is not necessarily confidential. Because practices vary across

facilities, attorneys should assess a video call's level of privacy before discussing confidential matters or using screen-sharing features.

The client's experience of the video call may also differ slightly from their experience of a legal telephone call. Before the scheduled time, correctional staff escort the incarcerated individual to a designated room equipped with a monitor and camera. Confidential video calls are conducted using CDCR-provided equipment. The physical setup varies across institutions. Some facilities use the same room as for telephone calls; others have separate rooms. The monitor may be mounted in a fixed location, sometimes far from the client, which can affect communication quality.

Some clients may prefer video calls because they communicate more easily when they can see their attorney face-to-face. Video calls may also allow attorneys to keep clients in the loop in innovative new ways. One attorney shared, for example, that she was able to screenshare an oral argument with her client over Zoom.

D. Attorney Visits

In-person attorney visits are confidential and not time-restricted, but you must seek pre-approval for expenses.

1. How to Schedule a Confidential Attorney Visit

To request a confidential in-person visit, first check where your client is located,[6] and find the contact information for the litigation coordinator at that facility.[7] You should email the litigation coordinator a PDF letter requesting the visit.[8] If you have not visited that prison within the past year, the letter must include the following information for use in a background check: name, mailing address, date of birth, valid driver's license or state-issued identification card number, proof of current registry and good standing with the bar association, the jurisdiction(s) where you are licensed to practice law, and your status as the person's attorney.[9] (*Ibid.*) Facilities may also

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[6] Check the California Incarcerated Records and Information Search page at <https://ciris.mt.cdcr.ca.gov/search> to locate your client.

[7] Check the litigation coordinators information page at <https://www.cdcr.ca.gov/ombuds/ombuds/litigation/> for contact information.

[8] The regulation also allows you to call to schedule a visit, although you would need to send additional required information in writing. (See Cal. Code Regs., tit. 15, § 3178, subd. (d).)

[9] If relevant, you must report any felony convictions and explain any prior suspension or exclusion from a correctional facility. (Cal. Code Regs., tit. 15, § 3178, subd. (d).)

require Form 2311,[10] a security clearance application that compiles the required information. Upon receipt, the facility will conduct a CLETS background check,[11] verify that your bar license is active, and contact you to schedule the in-person visit.

2. Practical and Ethical Considerations

Prior to scheduling an in-person visit, you should contact your assigned FDAP staff attorney about seeking advance approval for reimbursement. All client visits must be pre-approved, with the sole exception of local visits involving less than 50 miles of round-trip travel. (See California Appointed Counsel Claims Manual (2025), pp. 37, 54 (hereafter "**Claims Manual**"), at https://capcentral.org/wp-content/uploads/2025/11/CAC-statewide-claims-manual.pdf [as of Apr. 5, 2026].) Although an in-person visit is not always possible, formerly incarcerated interviewees emphasized how meaningful these visits were to them. They stated that appellate attorneys who visited clients "humanized" them and gave them hope. They also reported that in-person visits allowed them to speak at length, with the highest level of confidentiality available.

IV. NON-CONFIDENTIAL TABLET COMMUNICATION METHODS

A. Non-Confidential Securus Technologies

All communication using Securus EVOTAB tablets and wall phones is not confidential and should not be used to discuss confidential information.[12] Some attorneys report that tablet communication can be useful to establish rapport and relay non-confidential information, while others do not use the tablets, primarily because the client could respond with confidential information.

1. How to Use Non-Confidential Securus Technologies

Each incarcerated individual in CDCR has, or will soon receive, a personal Securus EVOTAB tablet. Tablets permit various modes of non-confidential communication

[10] See *supra*, fn. 4.

[11] See *supra*, fn. 5.

[12] While the Securus-CDCR contract states that Securus "does not record any calls with entities your agency has designated as private, such as calls with legal counsel," a CDCR interviewee reported that CDCR has not designated tablet attorney-client calls as private communications. (Securus-CDCR Contract (Feb. 26, 2025) Agreement No. C5611826, at pp. 23-24 <https://www.law.berkeley.edu/wp-content/uploads/2026/03/SecurusCDCRContract-2025.pdf> ("**Securus Contract**").) They indicated, however, that CDCR is open to adding confidential attorney-client communications on tablets in the future.

with your client: electronic messaging, telephone audio calls, and video calls. Facilities also offer wall phones, although these are generally only used by incarcerated people so new to a facility that they are still waiting to receive their tablet or whose tablet privileges have been revoked. Each facility can set its own hours for the incarcerated population to have tablet and wall-phone access.

CDCR facilities offer Securus "eMessaging," which operates similar to email. Attorneys may sign up for non-confidential electronic messaging with their clients through the Securus website or Securus Mobile App.[13] Because tablet-based electronic messaging incurs costs, attorneys must also maintain an account to deposit funds. A breakdown of applicable costs is available on the CDCR webpage.[14]

Additionally, clients can place telephone and video calls from their EVOTAB tablets to their attorneys and other contacts. To be able to accept non-confidential audio or video calls initiated by your client, you should sign up through the Securus website or Securus Mobile App. All audio and video calls are capped at 15-minute increments, but clients can call back to continue the conversation. Tablet audio calls are free for clients, while the cost breakdown for video calls can be found on the CDCR website. (Tablets and Telephones, *supra*, fn. 14.)

All audio and video calls from the tablets are made within the housing units. While audio calls can be placed from any location within a housing unit, video calls can only be initiated when the tablet is attached to a designated docking station.[15] Clients can also place video calls from the communal kiosk tablets. When using a kiosk, an incarcerated person enters their personal log-in credentials. Whether made from the docking stations or kiosks, tablet video calls may be visible to passersby. Securus also provides wall phones that clients can use to place non-confidential telephone calls if they prefer to use a more traditional landline.

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[13] (See CDCR, Welcome, California Department of Corrections and Rehabilitation Friends and Family <https://www.securustechnologies.com/consumer/cdcr> [as of Apr. 5, 2026].)

[14] (See CDCR, Tablets and Telephones <https://www.cdcr.ca.gov/family-resources/tablets/> [as of Apr. 5, 2026].)

[15] CDCR staff described a docking station as a metal box with a spot in the middle that is embedded with something similar to tap-to-pay technology. To connect to the station a tablet must have a particular sticker registered in the system, which then enables the tablet's camera functions to be used.

Fig 1.1: Front & back of Securus EVOTAB Tablet

Fig 1.2: Securus Mounted Tablet ("Kiosk")

2. Practical and Ethical Considerations

Attorneys report numerous instances of tablet communications being used against incarcerated individuals, such as at parole hearings. Securus retains all communications records for at least seven years from the file creation date. (Securus Contract, appen. A, at p. 80.)

Experienced panel attorneys report varying approaches to tablet use for communicating with clients in CDCR. Some avoid non-confidential tablet messaging due to the risk that they may be used against the client and that, even if an attorney limits communication to non-confidential matters, the client may nonetheless respond with confidential information. Attorneys also report that once communication via messaging begins, clients may send increasingly frequent, or even inappropriate, messages. If this occurs, you can contact your assigned FDAP attorney for assistance.

Other attorneys report using tablet communication to build rapport with their client. Additionally, some panel attorneys maintain that tablet messaging can be useful for limited case-related purposes, such as coordinating confidential calls or sending non-confidential, procedural updates about the appeal. If you rely on tablets to coordinate logistics, be aware that (1) access to tablets may be restricted for compliance or disciplinary reasons; and (2) you should repeatedly remind clients not to discuss confidential information using Securus technologies, whether they are communicating with attorneys, family, or friends.

Written communications made using Securus' products and services are always recorded, with no exceptions. Securus' contract with CDCR states that "Word Watch filters automatically screen and flag for review all incoming and outgoing [electronic] messages that include a word on the CDCR Word Watch List. The flagged words will appear in red for fast review." (Securus Contract, *supra*, at pp. 30–31.) Securus advertises its messaging tools as "an additional communication stream which increases the opportunity to gather investigative data and analysis." (*Id.* Exhibit 23, at p. 13.)

Audio and video calls are also always recorded and may be subject to live monitoring by correctional officers, who can disconnect the call using Securus' investigative software. Securus further scrutinizes tablet calls with a tool called "Investigator Pro" that uses voice biometric analysis to identify either party to a call by their voice. (*Id.* Exhibit 23, at p. 23.)

Additionally, although Securus' contract with CDCR does not expressly identify this capability, Securus' president, Kevin Elder, has reported the company using "a massive database of recorded calls to train AI models to detect criminal activity." (See O'Donnell, *An AI Model trained on prison phone calls now looks for planned crimes in those calls*, MIT Technology Rev. (Dec. 1, 2025) <https://www.technologyreview.com/2025/12/01/1128591/an-ai-model-trained-on-prison-phone-calls-is-now-being-used-to-surveil-inmates/>.) The AI tool detects and flags language suggesting planned or "contemplated" crime, with flagged messages subject to human review. (See *ibid.*)

V. SPECIFIC COMMUNICATIONS CONTEXTS

Each of your clients will have specific needs that should inform your communication with them. By learning about communication barriers that may arise and proactively adapting your communication strategies, you can effectively represent your clients while maintaining your ethical duties. Although this Guide does not address every possible circumstance, the following sections provide practical guidance on representing clients with disabilities,[16] overcoming language barriers, and navigating client concerns about sensitive case materials.

A. Disabilities

Incarcerated people with disabilities may face additional barriers to communication, sometimes compounded by the difficulty of securing accommodations in the carceral setting. Yet effective communication is key to effective representation.

There are many possible points of institutional failure. Initial medical assessments may not fully capture a client's needs, and accommodations may be delayed or inadequate. Further, a client's needs may evolve during their incarceration. Beyond bureaucracy, "prison politics," such as the need to stay on a correctional officer's "good side," may interfere with a client's ability to take advantage of an accommodation.

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[16] This Guide uses both person-first and identity-first language because disability advocates and community members have promoted using both. (See, e.g., Emily Kibler, *Our New Disability Language Series: Person-First vs Identity-First Language*, Alliance of Disability Advocates (Aug. 29, 2025) <https://adanc.org/person-first-vs-identity-first-language/>.) Note that there is a wide range of disabilities, including chronic illnesses such as asthma, diabetes, high blood pressure, and a history of cancer.

To establish effective communication, you will need to understand what, if any, disability your client has; how well it is accommodated; and how you can meet their communication needs.

When you are assigned a new client, you may straightforwardly ask them if they have any disabilities.[17] You may be concerned that this is offensive, but according to disability experts, asking apologetically and euphemistically suggests shame, while asking directly shows respect for your client's lived experience.

Every person's experience of a disability is different, so you should ask each client which communication methods they prefer and how you can make communication more accessible to them. Be prepared to offer your client options.[18] For example, you could ask: Do you want me to speak more slowly, or do you prefer having an interpreter? Do you want captions on our video call?[19] Once a client selects a certain communication method or accommodation, you may want to check in periodically about whether your current approach or a different one would work better.

You should also make your default practices accessible to a wider range of clients. Use plain language and avoid legalese to make your communications more accessible to clients with learning disabilities, limited English literacy, and limited bandwidth (e.g., due to trauma). Use large font in all written correspondence. And check for understanding, especially in initial conversations with a client.

If your client lacks adequate accommodations, discuss advocacy with your client before acting. Your client may or may not be comfortable with self-advocacy and familiar with possible accommodations. Reviewing the range of available

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[17] Try questions like: Do you have any physical disabilities, like limited mobility or trouble speaking? Do you have any mental illnesses, like PTSD, depression, or bipolar disorder? Sometimes people have trouble understanding things; does that happen to you?

[18] To learn about the range of accommodations you or CDCR can provide, see *Informational Resources: California Prisons*, Prison Law Office <https://prisonlaw.com/informational-resources-california-prisons> [as of Apr. 5, 2026] [compiling guides listing available accommodations by "type" of disability and other resources].

[19] For a sheet showing different typeface and font-size options, see Accommodations for People with Learning Disabilities Handout, Prison Law Office (2024) attachment 1, p. 12 <https://static1.squarespace.com/static/658e00fdc5430956416678f7/t/682b610ff03b2471b888df0f/1747673362346/Armstrong+Learning+Disability+%28February+2024%29+w+attachments.pdf>.

accommodations for your client's disability—or disabilities—enables you to offer more tailored, specific support and better understand their legal rights, in case advocacy is necessary.[20]

B. Language Barriers

To comply with the ethical duties of competence and communication, attorneys must "be able to communicate adequately with the client," with "consideration . . . given to language impediments which would materially impact the attorney's ability to communicate adequately in the specific circumstances." (State Bar Formal Opn. 1984-77.) If there is a language access issue, "the lawyer must evaluate whether engagement of an interpreter, translator, and/or the use of other assistive or language-translation technologies is needed to satisfy the lawyer's professional obligations." (ABA Formal Opn. 500.) Failure to do so can deprive the client of their right to effective assistance of counsel. (See *People v. Carreon* (1984) 151 Cal. App. 3d 559, 567 [recognizing effective assistance includes sufficient ability to consult with one's lawyer "with a reasonable degree of rational understanding."].)

Article I, Section 14, of the California Constitution also provides that a "person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings." Although it is not clear whether "the proceedings" includes out-of-court translation, the California Supreme Court has held it unconstitutional to borrow the defendant's court-appointed interpreter to translate for a witness, in part because this interfered with the translator's "essential" duty to facilitate in-court attorney-client communications. (See *People v. Aguilar* (1984) 35 Cal.3d 785, 790.)

CDCR regulations permit attorneys to bring certified language interpreters to attorney visits. (Cal. Code Regs., tit. 15, § 3178, subd. (c)(2).) Attorneys can be reimbursed for using a translator or interpreter during correspondence with their client and, with pre-approval, for live client meetings. For services exceeding $1,700, a request must be submitted to the Court of Appeal. (FDAP, *First District Policies on Expert, Investigator and Translator Expenses*, <https://www.fdap.org/panel-attorneys/claims/#unique> [as of Apr. 5, 2026] (hereafter "**FDAP Expert Policy**").)

Translation of lengthy documents such as briefs is not compensable. (Claims Manual, *supra*, at p. 36; FDAP Expert Policy.) You should summarize legal documents, then have a qualified human translator translate the summary. Consult FDAP and the Claims Manual for further guidance on reimbursement for translation services.

While CDCR may not be legally required to provide interpreter services, anecdotally they sometimes provide such services. Attorneys should exercise caution when

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[20] See *supra*, fn. 18.

relying on institution-provided interpretation services because the presence of CDCR staff raises confidentiality concerns and could undermine the attorney-client privilege.

C. Sensitive Case Materials

In some cases, incarcerated clients may prefer not to receive written materials related to their case. This concern most often arises in cases involving sensitive subject matter, such as sex offenses, where the presence of legal documents could expose the client to retaliation or harm from others in the facility.

Although legal mail is generally treated as confidential within CDCR facilities, it is not entirely risk-free. (See *supra*, III.A Legal Mail.) Attorneys should raise these concerns with a client early in the representation, such as in their introductory letter,[21] and determine the client's preferences regarding written communications.[22] Depending on the circumstances, clients may prefer those sensitive materials not be sent to the facility; be summarized rather than transmitted in full; be redacted; or be sent to a trusted third party outside the facility.

Even when a client requests that certain materials not be sent to the facility, attorneys must still ensure the client is adequately informed about the case. (Rules of Pro. Conduct, rule 1.4(a)(3).) This may require balancing the client's safety concerns with the attorney's duty to communicate and ensuring the client remains able to make informed decisions about their representation. You should consider whether more frequent confidential phone calls are necessary. At a minimum, you should ensure that the client is aware of all the filings and their general content, to the extent possible.

VI. GUIDANCE FOR CLIENT COMMUNICATIONS

In a criminal appeal, appointed counsel may need to communicate with an incarcerated client at several key stages of representation.[23] The chart on the following two pages outlines these stages and provides recommendations on when to use different communication methods.

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[21] For a sample initial contact letter, see Appellate Defenders Inc., *Appellate Practice Manual* (2023) p. 88 <https://www.adi-sandiego.com/wp-content/uploads/2026/03/Manual-5th-Edition-FINAL-03102026.pdf>.

[22] See *id.* at p. 45, fn. 26.

[23] See also FDAP, *Appeal Checklist* <https://www.fdap.org/panel-attorneys/appeal-checklist/> [as of Apr. 5, 2026] [listing stages of an appeal, including communications].

Guidance for Client Communications

✔	Communication Trigger	Action
	Upon appointment	Send introductory letter by **legal mail**.[24] If your client responds by calling you from their **tablet**, introduce yourself but remind them that Securus and CDCR officials scrutinize these calls.
	After reading the record	Check in with your client to remind them you are still working on the case by **legal mail** or a non-confidential avenue, such as **tablet messaging**, if you feel comfortable with it. If you use the latter, warn your client that all tablet messages are monitored.
	After completing any research or outline	Inform your client of the potential issues that you plan to raise on their behalf and seek their input. You must also advise clients of potential adverse consequences early. This conversation may require a confidential **telephone** or **video call** scheduled by the litigation coordinator or an **in-person visit**. Because confidential calls can take many weeks to schedule, initiate your request with time to spare, if possible.
	Upon getting an extension	If you receive an extension of time, notify your client of the updated timing and the next steps of the appeal. You can do so using **legal mail.** Alternatively, you could use **tablet messaging** but, again, warn your client not to reply with confidential information.
	Upon filing or receipt of a brief	While briefs are usually publicly filed documents, there are reasonable caution-side arguments for not sending them outside confidential channels. You can send both the brief and your confidential explanatory letter by **legal mail.** Follow up with a **confidential telephone** or **video call** as needed. If non-confidential means are appropriate, you may choose to send the brief itself by **tablet messaging** and note that a confidential explanatory letter will follow by **legal mail**. Again, warn your client not to reply with confidential information and weigh the risks of opening this communication channel.

[24] For a sample initial contact letter see *supra*, fn. 21.

	If a month or so has passed without client contact	Consider checking in to avoid your client wondering whether you are still working on their case. You can use **legal mail**. Or use **tablet messaging**, with a warning not to reply with confidential information.
	When researching and investigating habeas issues	If there is a potential habeas issue in your client's case, you may need to speak with them after filing the AOB to obtain any facts outside the record. Because this discussion may involve strategy and new facts, schedule a **confidential call** or meet **in person** if possible.
	When the court schedules oral argument	In preparing for oral argument, consider meeting with your client via a **confidential telephone** or **video call** if there is something to discuss. In almost all cases, incarcerated clients cannot attend oral argument. After argument, you should send **legal mail** or schedule a **confidential telephone** or **video call** to explain the issues discussed and next steps.
	Upon receipt of the decision of the Court of Appeal	Immediately after the Court of Appeal issues its opinion, you must send the client a copy and explain the outcome; **legal mail** works best here. You may consider a **confidential telephone** or **video call** to explain the opinion and why you do or do not recommend pursuing the appeal further. If you do not plan to file any further petitions, you must either send the client the case record and transcripts or ask the client if they would like them. As with sending other legal documents, **legal mail** works best.
	After the appeal	You should inform your client that the appeal is formally final and over and that the representation has ended. This can be conveyed in a letter sent through **legal mail**. If there are more proceedings in the superior court (e.g., resentencing), note that you are available to speak with your client's trial attorney about the appeal, if it would be helpful.