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The rules of court, they are a-changin'

By John A. Taylor, Jr.

In "Tapestry," one of the best-selling albums of all time, Carole King famously sang about the earth moving under her feet. On Jan. 1, 2014, the ground under lawyers is going to shift — if only slightly — when various changes to the California Rules of Court take effect. The lyrically annotated list below summarizes some of the changes that will most broadly affect appellate practitioners.

"Please Mister Postman, look and see (Oh yeah), If there's a letter in your bag for me..." (The Marvelettes, "Please Mr. Postman"). Rule 8.100(g) requires appellants to complete a civil case information statement (form APP-004), to provide the Court of Appeal with important information necessary to process the appeal and determine whether it is timely. Currently, the Court of Appeal clerk is required to mail appellants a copy of the form and to notify them of the deadline for submitting it — imposing copying, mailing and staff costs on the court. Rule 8.100(g) is being amended to relieve the court of this mailing requirement. In the future, appellants will need to be self-starters and file the form (available online) within 15 days after being notified by the superior court that their notice of appeal has been filed. Court of Appeal clerks will not be off the hook entirely, though — they will still have to mail default notices to appellants who miss the deadline, giving them an additional 15 days to cure the default.

"Time is on my side, yes it is..." (The Rolling Stones, "Time Is on My Side"). A revision to rule 8.122 will give superior court clerks the option, in certain cases, of waiting to determine whether the appeal will proceed before preparing a clerk's transcript containing the court documents to be included in the record on appeal. For example, a problem can arise when an appellant has obtained a fee waiver for the clerk's transcript and fails to realize the waiver doesn't also apply to the cost of the reporter's transcript. (Funding, if any, can come from the Transcript Reimbursement Fund, which requires a separate application. See rule 8.130(c).) If the appeal is ultimately abandoned or dismissed because the appellant can't pay for the reporter's transcript, the superior court gets stuck with the cost of the unused clerk's transcript. In the future, the superior court clerk can wait to begin preparing the clerk's transcript until after funds for the reporter's transcript have been deposited and the appeal is more certain to proceed.

"Out of the blue and into the black, They give you this, but you pay for that..." (Neil Young, "My, My, Hey Hey (Out of the Blue)"). Rule 8.130 is being amended to impose a new $50 fee on parties who deposit funds with the superior court when designating which trial court proceedings will be transcribed and included in the reporters' transcript. The new $50 fee, which will be required regardless of the size of the appeal, is intended to cover the court's administrative costs in handling the deposited funds. Appellants can avoid the fee by dealing directly with court reporters and paying them in advance, but the appellants

then assume the risk of a court reporter default. See *Bitters v. Networks Electronic Corp.*, 54 Cal. App. 4th 246, 250 (1997).

"You go back, Jack, do it again, wheels turning round and round, You go back, Jack, do it again..." (Steely Dan, "Do It Again"). An amendment to rule 8.130 should eliminate situations in which appellants have sometimes had to pay twice for preparation of the same reporter's transcripts. Specifically, rule 8.130 is being amended to reduce the amount of the deposit required for transcripts that have already been prepared — e.g., where one of the parties has already purchased a "daily" transcript of that proceeding. The reduced deposit under the revised rule ($160 instead of $650 for a full day; $80 instead of $325 for a partial day) will cover the cost of repaginating and indexing the transcript for appeal so that it meets the requirements of rule 8.144, rather than the expense of re-transcribing the entire proceeding.

"You're holding me down, turning me round, Filling me up with your rules..." (The Beatles, "It's Getting Better All The Time"). Another amendment to rule 8.130 will allow an appellant to submit reporter's transcripts that have already been prepared instead of having to make a cash deposit for preparation of those transcripts — but only when the submission contains *all* of the designated proceedings *and* conforms to all the requirements of rule 8.144. Formerly, an appellant could submit transcripts for some proceedings and cash deposits for others, but that rule was deemed unworkable. The revised rule permitting the appellant to submit transcripts rather than a cash deposit now requires an "all or nothing" approach — the entire reporter's transcript on appeal must be submitted in proper format, or a cash deposit must be made for all designated proceedings. A "mix and match" approach will no longer be authorized.

"Oo baby, here I am, signed, sealed, delivered..." (Stevie Wonder, *"*Signed, Sealed, Delivered I'm Yours"). The adoption of two new rules (rules 8.45 and 8.47) and amendments to multiple other rules governing sealed and confidential records in appellate proceedings will (1) consolidate provisions regarding the format, transmission of, and access to sealed records; (2) add provisions addressing confidential records in civil appeals and writ proceedings; and (3) establish procedures for preventing the disclosure of material from sealed records in briefs, petitions, and other filings. These extensive revisions represent the culmination of years of work by a special subcommittee of the Judicial Council Appellate Advisory Committee, whose mission was to clarify and fill gaps in the rules governing the handling of sealed records in the appellate process.

*"I'm gonna sit right down and write myself a letter, And make believe it came from you..." (*Madelyn Peyroux and various other artists, "I'm Gonna Sit Right Down and Write Myself a Letter"). A new rule, rule 8.42, will eliminate the requirement of having all original signatures on any document filed in the appellate courts when the signatures of multiple parties are required. Signature pages may be scanned, emailed, or faxed, so long as the original signature of one party (typically the filing party) appears on the document, rather than having everyone mail or messenger original signature pages to the person filing the document. (This relaxed procedure currently applies only to stipulations to extend briefing times. Rule 8.212(b)(1).) In addition, rule 8.77 will be amended so that, as in the trial court, a party electronically filing documents that must be signed under penalty of perjury may

retain the original signed document — rather than having to file the original signature pages within five calendar days after the electronic filing, as currently provided.

Links to the actual text of these rule changes (and others) can be found at http://www.courts.ca.gov/documents/jc-20131025-agenda.pdf.

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