November 4, 2014

A Music Fan's Guide To New California Appeals Rules


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On the "Sgt. Pepper's Lonely Hearts Club Band" album, the Beatles sang what could be the California appellate lawyer's lament: "You're holding me down, turning me round, filling me up with your rules." (The Beatles, "Getting Better.") But in light of various upcoming revisions to statutes and the California Rules of Court, appellate lawyers may soon have cause to sing that "I've got to admit it's getting better, a little better all the time."

The following lyrically annotated list summarizes many of the rule and statutory changes affecting California appellate practitioners as of Jan. 1, 2015.

"When the moon is in the Seventh House, and Jupiter aligns with Mars, then peace will guide the planets, and love will steer the stars." (The Fifth Dimension, "Aquarius.")

Appellate lawyers who assist with posttrial motions have long been frustrated by the inconsistent deadlines for filing new trial motions, motions for judgment notwithstanding the verdict (JNOV), and motions to vacate judgments. On a new trial motion, a party files its "notice of intention to move for new trial" within 15 days after service of notice of entry of the judgment, and then has an additional 10 days to file the supporting memorandum of points and authorities and declarations. But for JNOV motions and motions to vacate, everything is currently due at the time of that initial 15-day deadline.

Assembly Bill 1659 will finally align Jupiter and Mars, amending several sections of the Code of Civil Procedure (Sections 629, 659a and 663a) so that the filing deadlines for all three posttrial motions will be the same. For all three motions, the moving party will file its notice of motion on the 15th day after service of notice of entry of the judgment, and then have an additional 10 days to file the supporting memorandum of points and authorities.

"The best things in life are free, but you can keep them for the birds and bees, Now give me money, that's what I want." (The Beatles, "Money (That's What I Want).")

Under California law, a losing party can stay enforcement of a money judgment pending appeal by posting an appeal bond or by making a cash deposit in lieu of a bond. But the statutes governing the approved forms of cash deposits have been outdated for years — referring, for example, to the deposit of "bearer bonds," which the United States Treasury and the states stopped issuing in 1982. Assembly Bill 1856 amends various sections the Code of Civil Procedure (Sections 995.710, 995.740 and 995.760) to allow a cash deposit using United States Treasury and state bonds, as well as cashier's checks, and to provide that a party can make a deposit in lieu of a bond without having to obtain a court order approving the deposit. These changes will greatly streamline the procedure for staying enforcement of judgments while an appeal is pending.

"We are family, I got all my sisters with me." (Sister Sledge, "We Are Family.")

The general rule (with a broad exception for money judgments, as noted above) is that an appeal automatically stays enforcement of the pending appeal, in order to protect the appellate court's jurisdiction and preserve the status quo. Assembly Bill 2154 adds a new provision to the Code of Civil Procedure (Section 917.75) to provide that on an appeal from a judgment or order awarding attorney's fees or costs in a family law appeal, enforcement of the judgment or order is not automatically stayed, unless an undertaking is given in an amount set by the trial court. The rationale for treating family law

cases differently is that the withholding of payments pending appeal may adversely impact children, especially where awards are based upon need.

"Tell me why, tell me why." (Neil Young, "Tell Me Why.") and "Just give me a reason, just a little bit's enough." (Pink, "Just Give Me A Reason.")

The California Constitution requires that Supreme Court and Court of Appeal decisions determining "causes" must be by opinion "with reasons stated," but it doesn't mention decisions by the superior court's appellate division. Rule 8.887 of the California Rules of Court, however, currently provides that "[a]ppellate division judges are not required to prepare a written opinion in any case, but may do so when they deem it advisable or in the public interest."

Assembly Bill 1932 amends Section 77 of the Code of Civil Procedure to require that a judgment of the appellate division contain at least a brief statement of reasons for the judgment, and that a judgment stating only "affirmed" or "reversed" is insufficient. Whether the Legislature has the authority to impose such a requirement on a court's internal practices when the California Constitution does not require it may present an interesting separation of powers question.

"Give me just a little more time, and our love will surely grow." (The Chairmen of the Board, "Give Me Just A Little More Time.")

In addition to the Legislature's actions discussed above, just this week the Judicial Council of California approved several revisions to the California Rules of Court governing appellate practice. One of them amends rule 8.212, which allows the parties to a civil appeal to stipulate to up to a 60-day extension of time to file an opening, respondent's or reply brief on appeal. The amendment clarifies that if a party has already obtained a court-ordered extension of time to file a brief, a stipulation between the parties cannot be used to further extend the time for filing that brief.

"Though the pages are numbered, I can't see where they lead, for the end is a mystery no one can read." (Sting, "The Book of My Life.")

A change to Rule 8.252, which was also approved by the Judicial Council, will require that the pages of copies of documents submitted with a motion for judicial notice be consecutively numbered, making it easier for the court to locate cited material in those copies.

"Sometimes I wish, often I wish, that I never knew some of those secrets of yours." (Carly Simon, "No Secrets.")

In a previous rule change, the Judicial Council extensively revised the rules governing sealed and confidential records, and the advisory committee comments included probation reports as examples of confidential records. A clean-up revision amends the comments to numerous rules (Rules 8.45, 8.47, 8.320, 8.336, 8.380, 8.384, 8.385 and 8.610) to remove probation reports as one of the examples of confidential records, and to note that under the case law, much of the content of probation reports is not confidential. The revision also highlights that statutes having specific requirements regarding the confidentiality of particular records supersede the Rules of Court.

Links to the actual text of the rule changes (and others) can be found here. The statutory changes are located here.

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