EDMOND M. CONNOR
MATTHEW J. FLETCHER
MICHAEL R. WILLIAMS
DOUGLAS A. HEDENKAMP
SHIRY TANNENBAUM

CONNOR, FLETCHER & WILLIAMS LLP

ATTORNEYS AT LAW

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Beth J. Jay, Esq.
Principal Attorney
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: Unauthorized Copying and Sale by Westlaw and LexisNexis of Appellate Briefs Served on Supreme Court Pursuant to Rule of Court 8.212

Dear Ms. Jay:

Three months ago, you sent me a letter, dated July 23, 2009, in which you promised to respond to my letter to Chief Justice George and William Vickrey, dated July 16, 2009. Over the past 90 days, I have received nothing further from your office.

I am particularly disappointed that, over the past three months, no action has been taken to halt the Court's practice of freely providing Westlaw and Lexis with at least two of the four copies of all appellate briefs that are served on the Supreme Court in compliance with Rule 8.212 of the California Rules of Court. As you know, the sole reason why extra copies of briefs are required to be served on the Supreme Court pursuant to Rule 8.212 is so that they can be distributed to the four depository law libraries in Sacramento, Oakland, Los Angeles, and San Diego (the "Depository Libraries").

As I explained in my July 16th letter, it is my understanding that, instead of being sent to the four Depository Libraries as contemplated by Rule 8.212, copies of appellate briefs served on the Supreme Court are being turned over, free of charge, to two commercial vendors, Westlaw and Lexis, without the knowledge and approval of the litigants and their counsel who incur the time and expense of providing those extra copies to the Supreme Court. Despite my July 16th letter, that practice has apparently continued unabated for the past three months.

Although there is a separate legal issue to be resolved as to whether Westlaw and Lexis are violating federal copyright laws by digitally encoding and selling copies of appellate briefs for commercial profit without the permission of the authors of those briefs, there is a more fundamental issue to be resolved by the Supreme Court as to <u>why</u> it is still requiring litigants and their counsel to serve the Court with four (4) hard copies of all appellate briefs when <u>no</u> such copies are being distributed to <u>any</u> of the Depository Libraries?

Based on my conversations with Ms. Fran Jones, two of the four copies of each appellate brief served on the Supreme Court pursuant to Rule 8.212 are being turned over to

2600 MICHELSON DRIVE, SUITE 1450 IRVINE, CALIFORNIA 92612
T: 949.622.2600 F: 949.622.2626
E-MAIL: econnor@businesslit.com

Westlaw and Lexis. The question that naturally arises, therefore, is what is happening to the other two copies? Are they just being thrown away by the Court? If that is the case and expensive copies of briefs served on the Court are being routinely tossed in the waste bin, then, in fairness to litigants throughout the state, Rule 8.212 should be immediately amended to reduce the number of copies required to be served on the Supreme Court to one (1), instead of four.

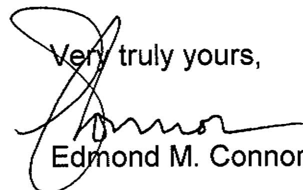
Service of one (1) hard copy of every appellate brief will allow the Supreme Court to arrange to have it digitally encoded, i.e., scanned, and then shared with each of the Depository Libraries. Alternatively, Rule 8.212 could be amended to require appellants to serve an electronic version of each appellate brief on the Supreme Court. At a minimum, however, the Supreme Court should immediately issue a statewide order relieving all litigants and their counsel of the pointless obligation to serve multiple copies of each appellate brief on the Court. Rule 8.212 can then be amended accordingly, but, in the meantime, litigants will not have to incur the needless time and expense of providing the Court with extra copies of briefs that the Court simply discards--or gives away to vendors.

The bigger question, of course, is whether the Supreme Court should be diverting any copies of appellate briefs to commercial vendors with full knowledge that these vendors are adding these briefs to their electronic databases and selling them to their subscribers to use them as they see fit, such as cutting, pasting, and plagiarizing the briefs to their heart's content. By providing these vendors with free copies of appellate briefs, the Supreme Court is assisting them in circumventing the federal copyright laws and, with all due respect, the Court should not be a party to this type of enterprise.

What would seem to be a far more appropriate way for the Court to proceed would be to revise Rule 8.212 along the lines suggested in my July 16th letter. That way, both the courts and the non-profit legal aid organizations in California could start realizing benefits from a more fair and equitable procedure for making appellate briefs available online through commercial vendors such as Westlaw and Lexis.

In closing, I would kindly request the courtesy of a reply to my letter of July 16, 2009, and to this follow-up letter.

Very truly yours,



Edmond M. Connor

cc: Hon. Ronald M. George, Chief Justice of California
William C. Vickrey, Administrative Director of the Courts