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You are not James Bond

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EXCEPTIONALLY APPEALING

You Are Not James Bond

"Bond is back! This month the 25th James Bond movie comes out, 'No Time To Die.'" Well, that's how this column was supposed to start, when written for an anticipated April 2020 publication. Of course, the worldwide villain COVID-19 delayed the movie's release to November 2020, and now to April 2021. But we just won't wait any longer. Instead, we'll quote a line from M in the movie's trailer, available online: "Come on, Bond, where the hell are you?" So, as they say on the set, here's take two:

"Bond is (coming) back! (At some point.) James Bond, MI6's agent 007, is one of the world's most recognized fictional characters. Everyone fantasizes about being the suave secret agent, who drinks hard, loves hard, dispatches bad guys with aplomb, and always saves the world. And everything Bond does is legal, because he's a Double-O secret agent.

But guess what? You are nothing like a superspy. You are just a lawyer -- a desk-jockey, billing hours, suffering from Walter Mitty syndrome. Indeed, you're possibly even an appellate lawyer, and thus even dorkier than trial lawyers, who can at least entertain delusions of grandeur about impressing a jury. (By the way, the jurors are not fooled.)

So while the Double-O means something in Ian Fleming's espionage stories, it means nothing in our world. The Double-O designation gives Bond a license to kill, but when lawyers misuse it, they're merely abusing their license to ill. Wait, what are we talking about? Well, we're not talking about nuclear missiles, space-based lasers, or nefarious supervillains. We're talking, of course, about annoying citations to appellate records and exhibits. Surely you've been thrilled to see 007 in action. But how do you feel when you see a record citation to an appellant's appendix that reads "AA 007"? Or how about "AA 00007"?

Let's be perfectly clear: To any normal person, page "007" is just page 7. No rational writer would preface a number with leading zeros like that. Those leading zeros are absolutely meaningless. Full stop. Only a lawyer would feel compelled to write such nonsense.

Do you hear that evil devil-lawyer on your shoulder explaining why it's fine, indeed required, to include leading zeros? That devil is whispering that the actual page really is numbered 007, so it would be wrong, if not unethically misleading, not to use that actual number.

Let's debunk this now. Beginning at the beginning, in the Law-Firm Jurassic Age, secretaries manually bates-labeled stacks of paper using contraptions with adjustable rubber stamps. Depending on size and sizzle, these steampunk gizmos had five, six, or seven numbers on separate wheels. Using this preindustrial device physically required that leading zeros be stamped on each page, along with the meaningful number at the end. Nothing could be done about this, and we accepted it.

But in modern times, there is no need to continue the tradition of leading zeros. Any decent computerized numbering program can now easily automatically number pages any way you like, especially without leading zeros. So there's no need to have leading zeros in pagination at all anymore. But even putting contemporary technology aside, assuming that leading zeros exist on a page (for whatever bad reason), there is still no defensible justification for actually repeating the leading zeros in citations anyway. Page 007 still only means page 7, and no one -- least of all any intelligent reader -- could conceivably be *confused* by omission of the leading zeros. Nor would any reader care about the "missing" zeros. It's a mercy to the reader to provide citations that look like "AA 5-13" rather than "AA 00005-00013."

Admittedly, inane leading zeros are not a threat to civilization as we know it. Using them will not make the "Skyfall." But it does annoy the "Living Daylights" out of many, who won't just "Live and Let Die" on this issue. So don't leave this "Spectre" to "Die Another Day." Starting now, the next time you're tempted to use leading zeros, please just say "(Dr.) No"! Your reader will thank you for that "Quantum of Solace."

While we're discussing "stupid things that lawyers do with numbers," let's also throw in the pointless parentheticals. Just like the lame leading zeros we've rubbed out, you've no doubt seen parenthetical spellings of numbers following numerals or vice versa, resulting in monstrosities like this: "The seven (7) plaintiffs each joined the motion" or "All 7 (seven) plaintiffs joined the motion." This sheer idiocy rivals the abuse of leading zeros in unhelpfulness. Bryan Garner politely calls this a "noxious habit" (Garner, "A Dictionary of Modern Legal Usage") and Judge Mark Painter calls it "especially irritating," "hard to read," and outright "silly." Mark P. Painter, "Legal Writing 201: 30 Suggestions to Improve Readability or How to Write for Judges, Not Like Judges" (Rule 21) (2002) (available at www.JudgePainter.org). Spelling out numbers made sense back when lawyers used quill pens to draft documents, and numerals might be unclear or easy to manipulate by forgers. But in 21st century legal writing, where briefs are typewritten by computers, there is no need for this ridiculous redundancy.

The same goes for electronic briefs that are now e-signed using "s/Joan P. Lawyer." There is no reason to reprint below the "s/" signature the name of the signer, which is already printed perfectly clearly. In olden days, when handwritten signatures were used, they often could not be read at all and thus benefitted from having the person's name typed out underneath. Those days are gone.

Having zeroed in on an issue that is literally about nothing, let's shift gears to another secret-agent topic, this one can be filed under "how not to blow your cover."

The Rules of Court require basic information about the court, case caption, and lawyers (including contact information) on brief covers. This should be really hard to get wrong, and yet all-too-human lawyers have always found a way. Most typos and insignificant errors are overlooked. But in *Sayre v. Selznick* (B203507, Aug. 4, 2009), an initial

footnote calls out appellant's counsel for incorrectly listing his own bar number and for filing briefs signed by a purported lawyer whose name and information appear nowhere on the cover.

Back in 2013, Rule 8.40(c) was amended to require that, if more than one lawyer from the same firm is listed on a brief's cover, an asterisk must be placed before the name of one of them to designate that single lawyer as the one to receive notices from the court. The idea was to make it easy for a court clerk to know who to contact and to reduce sending unnecessary notices to multiple lawyers at the same firm.

In the ensuing years, lawyers have been astoundingly creative in finding ways to violate this simple rule. Briefs are often filed with no asterisks (when there should have been one or more), with multiple asterisks designating lawyers from the same firm, with asterisks following (not preceding) the lawyer's name, with asterisks designating lawyers who are the only lawyer listed from their firm, with asterisks tagging one lawyer of several from a firm -- yet not tagging any lawyers at a co-counsel's firm (or tagging any lawyers from a separately represented party joining the brief), with asterisks tagging lawyers from the same firm but listed at different addresses, and so on.

As of this year (2020), the asterisk rule now appears in the rules twice, at Rule 8.40(b)(2) and Rule 8.74(a)(9). Perhaps this repetition will foster better and more precise compliance. Hope springs eternal. (By the way, that optimistic expression comes from Alexander Pope's "An Essay on Man," written to vindicate the ways of God to man. Lawyers, however, need not merely accept the asterisk rule as an inexplicable cosmic force. The rule has a divine purpose -- to make life easier on the court. Recognizing that purpose should, in theory, make it easier to follow.)

No, you're not James Bond, and exceptionally precise briefing will not save the day; it may not even be enough to win your appeal. But you can be the "star" of your appeal (asterisk means "little star") by at least properly starring your name on your brief cover, and respecting your reader by eschewing annoying leading zeros and asinine redundant parentheticals.

Epilogue: Bond fans have always wanted to ask "So, Dr. No, is that an M.D. or Ph.D.?" Our now-chief justice solved that classic riddle in *In re R.F.* (C059596, 2010) (Dr. No is a dermatologist). And did you know California has its own Casinos Royale in Sacramento and San Bruno? See *Park v. City of Sacramento* (C086871, 2020), *People v. Blessett*, 22 Cal. App. 5th 903, 911 (2018); *People v. Liu*, 46 Cal. App. 4th 1119, 1125 (1996). "James Bond" also assumes identities as appellants' counsel in *SDCWA v. MWD* (A098526, 2004), a Beverly Hills' condo owner in *Meyer v. CIT Bank, NA* (B272208, 2018), and a State Fish and Game Warden in *People v. Nguyen*, 161 Cal. App. 3d 687 (1984). Finally, as for those suffering delusions of Bondhood, see *People v.*

Collado (B196718, 2007) and *People v. Reichlein* (E058873, 2014) (defendant had delusions of being "the president, a justice of the Supreme Court, [and] James Bond").