

## **RULE 127 – SUBMISSION OF DOCUMENTS FOR FILING**

A. Except as otherwise ordered by a judicial officer, parties may not submit documents to courtroom clerks and/or judicial officers for filing. All documents to be filed with the court must be submitted via the Clerk's Office or the court's electronic filing system.

B. Documents allowed by a judicial officer to be submitted for filing in a courtroom may experience a delay in being entered into the court's electronic records system. The providing of conformed copies may also be delayed.

## **RULE 128 – INTERLINEATION OF DOCUMENTS**

No complaint, information, petition, application or other document may be amended by interlineation. Unless specifically allowed by a judicial officer, changes to documents must be made via the filing of an amended pleading or document.

## **RULE 407 – COURT POLICY ON INMATE PERSONAL PROPERTY CLAIMS**

The Court receives numerous personal property-related claims from inmates under the custody of the California Department of Corrections and Rehabilitation and/or Kings County Jail. These claims seek monetary damages or replacement of personal property alleged to have been damaged, lost or destroyed by prison/jail officials. (Hereafter "inmate personal property claim".) Such claims are often plagued by defects which ultimately frustrate litigants and result in unnecessary delays and the expenditure of limited inmate and public resources. These policies have been developed in an effort to guide plaintiffs/petitioners towards the most effective and efficient manner of addressing their inmate personal property claims.

Where the value of the property placed at issue in an inmate personal property claim is less than \$10,000.00, ***IT IS THE PREFERENCE OF THE COURT THAT THE CLAIM BE PURSUED IN ITS SMALL CLAIMS DIVISION.*** (Cal. Code of Civ. Proc. §116.221.) The summary nature of trials in the Small Claims Division makes the resolution of inmate personal property claims less time consuming and a less expensive remedy for litigants to pursue. Small claims court actions by inmates are resolved without the assistance of counsel and by declaration and/or authorized appearance of another individual. (See, Cal. Code of Civ. Proc. §§116.530(b), 116.540(f); Rule 403(E).) In addition, the filing fee for a claim pursued in the Small Claims Division is significantly less than that charged in connection with petitions for writ of mandate or a civil complaint for damages. [In 2014, Small Claims Division filing fees ranged from \$25 to \$75. (Cal. Code of Civ. Proc. §116.230(b).)]

Inmates choosing to pursue their inmate personal property claim via a petition for writ of mandate or civil complaint for damages will be charged the full amount of the filing fee required by statute. A granted Fee Waiver does not excuse an inmate from paying the required fee. (Cal. Govt. Code §68635.) The fee is collected by installment payments

paid from the inmate's trust account. The entire filing fee must be paid even if the petition is summarily denied, or judgment is entered due to a motion for judgment on the pleadings before a hearing on the merits. [Unlimited civil complaints/ writ of mandate filing fee in 2014 was \$435.]

Any inmate personal property claim pursued as a civil complaint for damages shall be reviewed for sufficiency prior to a case management conference being set. A pretrial order may issue when it is apparent on the face of the pleading and its exhibits that the inmate has failed to exhaust administrative remedies, or failed to file a government claim as required by Government Code section 911.2, et seq. The exception to the filing of a government claim set forth in *Escamilla v Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, is limited to bailment situations. It does not apply to disputes concerning property declared by the prison authorities to be contraband, or disputes about the value of replacement property offered to the inmate by prison authorities. (See, *Flores v Department of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 208.)

Inmate personal property claims pursued as petitions for writ of mandate shall be reviewed for sufficiency prior to any hearing or case management conference being set. The court may deny a petition for a writ of mandate "out of hand" when it appears from the face of the petition that a peremptory writ will not be issued. The court may do so even though the defendant has not appeared by answer or demurrer. (*Kingston v. Dept. of Motor Vehicles* (1969) 271 Cal. App. 2d 549, 552; *Lewis v. Superior Court* (1999) 19 Cal. 4th 1232, 1269 (dis. opn. of Kennard, J.)) The most common ground for summary denial of a petition for writ of mandate is a failure by the inmate to demonstrate exhaustion of administrative remedies prior to seeking judicial relief.

In regards to all inmate personal property claims, some showing of a pre-filing exhaustion of administrative remedies is required. It is recommended that litigants make such showing by attaching copies of relevant administrative decisions to their initial pleading.

Except in the rarest circumstances, petitions for writ of mandate and/or civil complaints addressing inmate personal property claims are resolved via declaration or other means not requiring the personal appearance of the inmate. The Court does not have statutory authority to transport an inmate to court in connection with a civil complaint for damages. (*Swarthout v Superior Court* (2012) 208 Cal.App.4th 701, 707 [there is no non-statutory power for courts to order inmate transfers]; *Wood v Superior Court* (1974) 36 Cal.App.3d 811, 813-814 [state inmate does not have a guaranteed right to be personally present at civil trial proceedings]; *Payne v. Superior Court of Los Angeles County* (1976) 17 Cal. 3d 908, 924-925 [except in a few specified circumstances, a court has no statutory authority to command the Department of Corrections and Rehabilitation to transport a prisoner to a civil courtroom; if a court determines due process requires the inmate's personal testimony, the court may employ other alternatives to transporting the inmate].) The trial court determines the appropriate

remedy to secure access to the civil courts in the exercise of its sound discretion. Access may be achieved by a variety of procedures including, *but not limited to*, deferral of the action until the inmate is released and/or telephonic appearances.

The Court will not grant a motion for appointment of counsel in connection with an inmate personal property claim. The appointment of counsel in connection with a civil action is considered a gift of public funds. In addition, at present time the Court does not possess sufficient monetary resources to make an appointment of counsel in connection with inmate personal property claims and Kings County lacks an active pro bono attorney program from which such appointments can be made.

Should the inmate file a writ of mandate or civil complaint relating to personal property worth less than \$10,000, the court will stamp the pleading as received and send the inmate a copy of this local rule. The clerk will keep the pleading for 21 calendar days.

If within such period a letter of intent to pursue recovery in the small claims court is received from the plaintiff/petitioner, one of the following will occur:

1. If a postage-prepaid envelope is included, the clerk will return the pleading and all its copies to the inmate; or,
2. If a postage-prepaid envelope is not received along with the letter, the pleading and all its copies will be disposed of.

The time between when the pleading was received and when it was returned or disposed of (plus five days for mailing) will not count towards any time deadline in filing the small claims court complaint. (Cal. Code Civ. Proc. §1013.)

If no letter of intent to pursue remedy in the small claims court is received within the 21 day period set forth above, and provided that all filing fees have been paid in full or addressed under California Government Code Section 68635, the complaint or petition will be filed. The filing date of the pleading will be backdated to the date the document was received by the Court. No extensions of time will be granted in connection with the 21 calendar day period.

This rule is intended to apply to any individual within the custody of the California Department of Corrections and Rehabilitation, any out-of-state correctional facility, and any jail.