



**DOM SUPPLEMENT # 041
LEGAL MATTERS**

DOM Chapter 1, Article 19, Chapter 5, Article 21

AUTHORITY AND REFERENCES

California Code of Regulations, Title 15, § 3160, 3162, 3165, 3282, and 3413. California Department of Corrections and Rehabilitation, Department Operations Manual, § 14010 and 52060.

APPROVAL AND REVIEW

This procedure will be reviewed annually by the Litigation Coordinator during the month of December and routed to the Warden, for final review and approval.

PROOF OF SERVICE UPON INMATES

A member of the public (i.e. inmate's relatives, attorney's, 3rd parties, etc.) may require important documents be served to an inmate. To ensure an inmate has received such documents, the sender can mail the documents directly to the inmate via certified/registered mail. At other times, the sender may be required to show a court or other entity that a Proof of Service was completed at which time it may be requested that the service be completed by the institution staff. Proof that service was completed requires the sender to include a Proof of Service Form approved by the California Judicial Council to the documents to be served. The sender shall mail the documents, a Proof of Service Form, and a self-addressed return envelope to:

Correctional Training Facility
Proof of Service Clerk
P.O. Box 686, Soledad, CA 93960-0686.

There is no charge for this service. The sender may be provided with the phone extension number of our Proof of Service Clerk, in the Litigation Office.

When a request for Proof of Service is received for an inmate, the documents shall be forwarded and logged by the Proof of Service Clerk in the Litigation Office who will then forward the documents to the Correctional Counselor I (CCI) for service.

The CCI will deliver the legal documents to the inmate and return the signed Proof of Service Form to the Proof of Service Clerk for mailing to the requesting party.

At no time should the inmate's counselor or any other staff agree to have any type of legal documents mailed, from the public, directly to them for an inmate.

INMATE/ATTORNEY CONFIDENTIAL PHONE CALLS

Confidential Attorney/Client phone calls may be approved on a case-by-case basis by the Warden or designee. The Litigation Coordinator has been designated by the Warden to approve or deny confidential attorney/client phone calls.

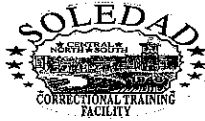
Inmates are guaranteed a right to meaningful access to the courts under the fourteenth amendment, an essential component of which is the right of access to counsel. However, inmates do not have a right to any particular means of access. The Department of Corrections and Rehabilitation (CDCR) provides meaningful access by way of legal mail and attorney visits. Confidential Attorney/Client phone calls are reserved for emergencies and will be reviewed on a case-by-case basis by the Litigation Coordinator.

A confidential call may be denied when the Warden or the Warden's designee determines that legal mail or an attorney visit are appropriate means of communication, and have not been reasonably utilized by the inmate or attorney.

Staff receiving telephone calls from attorneys requesting a confidential phone call shall refer all calls to the Litigation Coordinator at extension 5826. At no time shall staff approve an Attorney/Client confidential phone call without prior approval from the Warden or designee.

PROCEDURE

- All requests for confidential Attorney/Client phone call shall be referred to the Litigation Coordinator.
- Requests for a confidential phone call will be in writing on official attorney office letterhead and will state the nature of the emergency.
- Attorneys requesting a confidential phone call will be required to complete an Attorney/Client questionnaire, provide proof of current registry and good standing with the governing bar association, and complete a Confidential Phone Call Request form (CDCR Form 106-A).
- The completed CDCR Form 106-A will be forwarded to the Administrative Assistant's Office for a California Law Enforcement Telecommunications System (CLETS) check of the attorney through the Department of Justice.
- The Litigation Coordinator will notify the Attorney once the clearance and state bar verification has been obtained and approved.



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- The Litigation Coordinator will arrange a date and time that is the least disruptive and notify the inmate's respective Correctional Counselor who will facilitate the call.
- A confidential call from an inmate shall be placed as a collect call or by the inmate signing a Trust Withdrawal Form for the cost of the call to be deducted from the inmate's trust account.
- Authorized confidential calls shall not be monitored or recorded. However, inmates will be under constant visual observation during the confidential phone call.

LEGAL COPY SERVICE

Copy service is provided as a convenience for inmates in preparing legal documents. Inmates may be deprived of the service if it results in an unnecessary expense to the CDCR. Duplication of legal materials will be in accordance to the Department Operations Manual (DOM), Section 14010.21-14010.21.4. Non-legal materials will not be copied. Legal documents that are completed and ready to be mailed to the court will be copied (no partial writs or motions will be accepted for copy). Inmates may request copies of legal materials by submitting a Trust Account Withdrawal Slip for 12 cents per page. Only legal materials will be copied. Inmates are only permitted to copy their own legal work.

Inmates must indicate the intent of the legal copy by writing the name and address of the agency on the trust withdrawal. Trust withdrawals received in the trust office without this required information will be processed as regular copy charges.

A legal document to be duplicated for any inmate, including all exhibits and attachments shall be limited to the maximum number of pages needed for the filing, not to exceed 50 pages in total length. Requests by an inmate to duplicate a legal document exceeding 50 pages in length shall be granted when accompanied by a reasonable written explanation of the need. In no event shall staff be required to duplicate a legal document exceeding 100 pages in length in the absence of a court order directing the duplication. An indigent inmate who does not have attorney representation may receive duplication services without charge, as directed in CCR subsection 3162(d). All documents submitted for copying must complete and ready for mailing.

Based on DOM Section 14010.21.2, inmates are required to indicate the exact nature of the copy request on the copy request form. The requirements are:

- Writs-Habeas Corpus, mandate, etc.
- Civil rights complaints
- Civil complaints or answers
- Petitions for hearings in appellate courts
- Motions to proceed "In Forma Pauperis" (without funds to hire counsel)
- Exhibits including slip opinions of the California Court of Appeals, when attached to petitions for hearing in the State Supreme Court

The above would be for any U.S. Supreme, District, and Court of Appeals and State Supreme, District, Superior and Court of Appeals. Under U.S. Supreme Court, an indigent inmate is only authorized one original and "In Forma Pauperis" affidavit for Writs of Habeas Corpus and one original and 8 copies for Appeals and Certiorari Petitions.

When an inmate is totally without funds, the institution will provide the necessary legal copying services at no cost to the inmate. A Trust Account Withdrawal Order will be completed and held for 30 days on the inmate's trust account. Indigence will be verified by the Trust Office. Inmates with funds will be charged 12 cents a page for copying.

Copies intended for 602 appeals, mailroom logs, and medical files are not considered legal documents per Title 15, 3141. DOM Section 14010.21.3 states that non-legal copies are law book pages, review articles, court transcripts, and correspondence with attorneys or public officials. Copies for these purposes will be charged against the inmate's trust account. DOM Section 14010.21.4 indicates the number of copies required by each Court.

PROCEDURE

- The Inmate assembles documents; signs trust account withdrawal copy slip and submits to the Librarian. Copy slips requests will be submitted to the Librarian no less than seven (7) days in advance of the time the inmate requires to have copies completed. It is the responsibility of the inmate to provide timely notice to the Librarian for copies to be made.
- The Librarian determines but cannot insure confidentiality. (If there are confidentiality issues,



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the Librarian will make copies. If not, a clerk will make copies.)

- The Librarian ducats inmates by using the Strategic Offender Management System (SOMS); for inmates to be ducated for copying purposes only. The number of ducats will be determined by the Librarian based on the number of pages to be copied, deadline dates, library occupancy rate, and will be subject to institutional inmate movement and custody issues.
- Inmates with a ducat will abide by the regular scheduled library unlocks and expected behavior in the library. Inmates must be in state blues, bring all materials listed on copy request, wait for copies to be made, and leave the library after copies are made. If the inmate does not bring all materials with him, he will be rescheduled.
- The Librarian will determine if the material to be copied meets the DOM requirements, count the number of pages, and sign the trust account withdrawal.
- Photocopying will be done while the requesting inmate is present in the library to minimize problems resulting from document loss claims and insufficient or unacceptable copies. The Librarian will oversee the copying.
- The charge for photocopying shall be twelve cents (0.12) per page.

NOTARIZATION OF LEGAL DOCUMENTS

The Litigation Coordinator is designated as the Notary Coordinator for the Correctional Training Facility. The Litigation Coordinator will ensure that adequate staff are trained and certified as Notary Public. A list of Notaries will be maintained in the Litigation Coordinator's office.

Inmates requesting Notary services shall complete an Inmate Multi-Purpose Form (CTF-304) and forward to the Litigation Coordinator requesting notary services. The Litigation Coordinator shall review the Supplemental Notary ID log maintained in the Litigation Office to determine if the inmate has an existing Supplemental Notary ID on file and also verify that the inmate has funds available to satisfy the notary fee. If needed a Supplemental Notary ID Card request shall be submitted to the Receiving and Release (R&R) Sergeant requesting a Supplemental Notary ID. The R&R Sergeant will ducat the inmate to R&R within 48 hours of notification by the Notary Public Coordinator. R&R staff will provide a positive identification utilizing the CIIMAS Database and the inmates CDCR Identification Card. Once completed,

the R&R Sergeant will deliver the card to the Litigation Coordinator for filing, storage and tracking. The Notary Public Coordinator will coordinate the requested notary services. The established notary fees will be consistent with the maximum fees provided in Government Code Section 8211. Some of the established fees for notary include:

- Acknowledgements (notarized signature) \$10.00
- Certified Power of Attorney \$10.00

Documents requiring notary may be notarized only upon the inmate's payment of the established notary fee. In most cases a declaration under penalty of perjury instead of a notary will meet the legal requirements for submitting documents to the Courts.

NOTARY IDENTIFICATION CARDS

The Supplemental Notary Identification Card (Attachment A) shall have the following headings:

- California Department of Corrections and Rehabilitation (CDCR)
- Temporary supplemental identification for notary purposes only.

The Supplemental Identification Card shall also contain the following information:

- Inmate's photograph
- First and last name
- CDCR number
- Date of photograph
- Height
- Weight
- Hair color
- Eye Color
- Date of Birth
- Gender
- Inmate's signature

The Supplemental ID Card will only be used as a means to identify the inmate for notary purposes and will not be released to the inmate. The Supplemental ID Card will be stored in the Litigation Office and be made available to institutional notaries upon request. Notaries will be responsible for returning any issued Supplemental ID Cards to the Litigation Coordinator's office before close of business each day to ensure accountability. The Notary Public Coordinator or designee will be responsible for destroying the



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Supplemental ID Card when an inmate transfers or paroles.

LAWSUITS AGAINST EMPLOYEES

The U.S. Government Code, Title 42, Chapter 21, Section 1983, also known as the Civil Rights of Institutionalized Persons Act enables inmates to file lawsuits on perceived violations of their civil rights in Federal and State courts. The Litigation Coordinator ensures litigation compliance at the local level while acting as a liaison for the Office of the Attorney General (OAG) and the Office of Legal Affairs (OLA).

All employees are subject to being sued concerning actions arising from their employment with the Department. The Courts will accept the lawsuit for filing as long as certain procedural requirements have been met, i.e. the inmate has exhausted his administrative remedies (inmate appeal process - CDC 602) regardless of whether a lawsuit lacks merit. When an employee requests representation, the Office of the Attorney General must respond to the lawsuit with a responsive pleading on behalf of the employee within 20 days for State lawsuits and 30 days for Federal lawsuits.

Summons, Complaints and Subpoenas are normally received by the Litigation Coordinator. The Litigation Coordinator will determine if service is accepted. Employees receiving such legal documents that are work related will contact the Litigation Coordinator on the day of receipt. Voice-mail is available during non-business hours. Time constraints provided by such legal process make it imperative that the legal process is processed quickly. Regardless of how the employee receives the legal process, i.e. by mail, by process server, the employee will not acknowledge receipt by his/her signature prior to notifying the Litigation Coordinator.

Most civil lawsuits (Summons and Complaint) arrive via the U.S. Postal Service from the Courts and are routed to the Litigation Coordinator for acceptance of delivery. A Deputy Sheriff, U.S. Marshall, or a private Process Server, at times, may also deliver the documents in person to the institution. With a few exceptions, the Litigation Coordinator accepts service. Exceptions may include the employee transferred, no longer employed, retired, Special Assignment, Administrative Time Off, Industrial Disability Leave, Absent With Out Leave, or the Litigation Coordinator is unable to serve the legal documents to the employee within five days (DOM

14010.6.7). If the Litigation Coordinator does not accept service for the employee, the employee will be notified of this within seven days. When an employee receives legal documents in his/her institutional mailbox or other means, the employee shall immediately notify the Litigation Coordinator and shall provide the following: date of service; place of service; name, or title, of the person who served the documents; method of service (DOM 14010.7.5); and envelope if mailed. The employee shall not sign any type of acknowledgement of receipt. Any Request Waiver of Service and Acknowledgement of Receipt forms will be forwarded to the Office of the Attorney General by the Litigation Coordinator. The Office of the Attorney General will sign and return acknowledgement forms if appropriate.

Within seven days of the Litigation Coordinator receiving the civil complaint, the Litigation Coordinator will notify the named defendant employee. The Litigation Coordinator will serve the employee a copy of the civil complaint and all accompanying documents. The Litigation Coordinator will give the employee a Request for Representation Form and any other appropriate forms with directions on how to complete the forms and to whom they should be submitted to. Employees are encouraged to request legal representation as soon as possible after being served. Employees shall submit their request for representation to the Litigation Coordinator. The Litigation Coordinator will send the employee's request for legal representation to the Office of the Attorney General. The Office of the Attorney General shall respond to the employee within twenty calendar days of receipt of the employee's request for legal representation.

If the OLA denies the request for legal representation, or subsequently withdraws legal representation, the employee shall be notified via a letter. Furthermore, the OLA shall notify the employee, in the letter, of his or her right to grieve the denial. The letter shall be personally served or sent first-class mail and certified return receipt requested.

Any demand for Arbitration of the employer's denial of the request for legal representation for employees represented by California Correctional Peace Officer Association (CCPOA) shall be submitted in writing by CCPOA to the Fourth Level Department of Personnel Administrative (DPA) within 21 calendar days of the employee's receipt (the date of service on the return receipt card or personnel service) of the denial letter,



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or 30 days from date of first-class letter. CCPOA will provide a copy to the DPA Legal Department with this demand. Representatives of CCPOA and DPA Legal Department shall immediately select an arbitrator and arbitration dates, pending the decision of the Fourth Level.

EMPLOYEES SUBPOENAS

All employees of the Department are subject to being subpoenaed concerning actions arising from their employment with the Department. Any employee who receives a subpoena in any action regarding an event or transaction which the employee perceived or investigated in the course of the employee's duties, or as an expert witness, shall immediately notify the Litigation Coordinator. A person who fails to obey a subpoena, which was properly served, can be held in contempt of court. Employees shall appear in court, pursuant to a subpoena, unless they are directed not to appear by one of the following:

- The person issuing the subpoena.
- A representative of the AG's Office assigned to the case.
- An attorney from the OLA.
- A Litigation Coordinator working on the case in which the employee is subpoenaed.

INMATE SUBPOENAS

All Inmate subpoenas issued shall be forwarded to the Litigation Office for review. Once the Subpoena has been reviewed it will be forwarded to the appropriate department (i.e. Custodian of Records, Out to Court Desk). Subpoenas for inmate/parolee records shall always be referred to the AG's Office except under the following circumstances:

- The subpoena was issued by the inmate's / parolee's own attorney. The attorney shall be informed that the inmate's / parolee's written consent is required for the attorney to review the record. If the attorney is unwilling to fulfill this requirement, the matter shall be referred to the Department's OLA.
- Inmate / parolee medical records are sought in a civil action, not involving the Department, where the inmate/parolee is a party. Notice shall be given to the inmate / parolee and the inmate will be required to sign the appropriate HIPAA releases necessary prior to disclosure.

M. E. Spearman

M. E. SPEARMAN
Warden

1-16-15

Date