



Papers Deposited For Filing Case #SC117126

12 messages

Business Mom <cbtllocator@gmail.com>

Thu, Jul 28, 2016 at 11:42 AM

To: gnakagaki@lacourt.org

Cc: maryloua@comcast.net, ATorres@strozfriedberg.com, nnishimura@cpmlegal.com, TMaddock@contracosta.courts.ca.gov, eyew@scscourt.org, skruer@monarchgroup.com, paposhian@gmail.com, anthony@capozzilawoffices.com, leah.rose-goodwin@jud.ca.gov, karen.viscia@jud.ca.gov, sjud.fax@sen.ca.gov, senator.jackson@sen.ca.gov, senator.Moorlach@sen.ca.gov, 9166514937@fax.com, senator.Monning@sen.ca.gov, 9166514938@fax.com, 619.596.3140@fax.com, 7605102695@fax.com, senator.hertzberg@sen.ca.gov, 9166514918@fax.com, 8189015562@fax.com, senator.leno@sen.ca.gov, 9166514917@fax.com, 8316576320@fax.com, 8314255124@fax.com, senator.wieckowski@sen.ca.gov, 9166514910@fax.com, senator.beall@senator.ca.gov, senator.hancock@sen.ca.gov, 9163192188@fax.com, assemblymember.alejo@assembly.ca.gov, assemblymember.chau@assembly.ca.gov, assemblymember.gallagher@assembly.ca.gov, assemblymember.garcia@assembly.ca.gov, assemblymember.holden@assembly.ca.gov, assemblymember.maienschein@assembly.ca.gov, assemblymember.stone@assembly.ca.gov, assemblymember.ting@assembly.ca.gov, assemblymember.wagner.@assembly.ca.gov, david.chiu@assembly.ca.gov

Mr. Nakagaki,

Allow me to reintroduce myself. We briefly meet and spoke when I was at the Santa Monica division of the Los Angeles Superior Court on Tuesday, July 26, 2016 to file a Statement of Disqualification. Please let me say, I am very concerned about recent repeated refusals of of the deputy clerks there to file my papers for stated reasons not consistent with statute.

I was first assisted at the clerk's window by a deputy clerk who advised me that she would not be able to accept my statement for filing because the judge in question was on assignment in another courthouse. When I explained that I believe that her refusal to file my statement was incorrect, she advised me that I could take a seat and a supervisor would speak to me. About twenty minutes later, we had the opportunity to speak and you and despite my argument and protest, you also advised me that you were refusing to allow the filing of my written, verified statement of disqualification because the judge in question was not in the building.

As you may recall, I referred to California Code of Civil Procedure 170.3 (c) (1) which I believe contradicts this position. It states"

*"any party **may file with the clerk** [emphasis added] a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constitution the grounds for disqualification of the judge.....AND a "statement [of disqualification] shall be presented at the earliest practicable opportunity"*

*"**Copies** [emphasis added] of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers".*

I believe your interpretation that I must wait until the judge was in the building to file the statement with the clerk is inconsistent the language of this statute in several specific ways, 1) I am to file the statement with the clerk and there is NO requirement in the statute that the judge in question be in the building at such time and 2) your insistence that I wait additional days to file my statement is in conflict with the statute which states that the statement shall be presented "at the earliest practicable opportunity", and 3) is inconsistent with the clerks ministerial duty to file papers.

In researching this issue extensively, I found the prevailing authorities on this issue to be contrary to the position of the clerk's office refusing to accept my filing. For this reason, I returned to the courthouse on Wednesday, July 27, 2016 and again requested that my statement be filed. When the deputy clerk refused, I advised her that I wished to have it filed pursuant to law. The deputy clerk advised me that I could have a seat and wait to speak to a supervisor. Upon confirming that I would be again speaking to you, I decided that the proper course of action was to leave my statement of disqualification with the clerk and with the instruction that I was leaving it for filing. I am now writing to you directly to confirm my expectation that the statement (also attached) will be properly docketed in accordance with Government Code § 69846.5 which states "The clerk of the superior court shall endorse on each paper filed with the court the day, month, and year it is filed."

Yesterday's events represent at a minimum the fifth time I have been obstructed from filing papers in the Santa Monica division of the LA Superior Court and to the extent the timing of these obstructions are suggestive of retaliation for my efforts to disqualify the judge in my case, I am particularly alarmed. For that reason, I am cc'ing the members of the California State senate and assembly judiciary committee as well as the members of the commission on judicial performance and judicial council. IN addition, this e-mail will be forwarded by mail or e-mail to any authority or commission responsible for the oversight and/or training of court employees.

Below, are the authorities upon which I have relied in support of my rights to have written, verified Statement of Disqualification filed effective July 27, 2016.

"a paper is deemed filed when it is deposited with the clerk with directions to file the paper. . . . " (**Rojas v. Cutsforth, supra, 67 Cal. App. 4th at p. 777.**)

"state law is clear that a paper is deemed filed when it is presented to the clerk for filing If a paper is thus presented, the clerk has a ministerial duty to file it. (Carlson v. Dep't of Fish & Game, 68 Cal. App. 4th 1268 (Cal. App. 2d Dist. 1998)

"The clerk had no power under state law to reject the filing". (Carlson v. Dep't of Fish & Game, 68 Cal. App. 4th 1268 (Cal. App. 2d Dist. 1998).

"Los Angeles has no local rule which expressly purports to create an exception to the clerk's ministerial state law duty to file. " "[T]here is no basis for finding an implied power in the clerk to enforce local rules by rejecting otherwise conforming papers". "Since the clerk has neither an express power nor an implied power, the clerk has no such power at all. Instead, the clerk must comply with the mandatory duty imposed by state law." (Carlson v. Dep't of Fish & Game, 68 Cal. App. 4th 1268 (Cal. App. 2d Dist. 1998).

"So long as a paper complies with rule 201, it is, in legal contemplation, 'filed' when presented to the clerk for filing. The failure of the clerk to endorse the correct date on the document, as required by Government Code section 69846.5, cannot change the date on which the paper was legally filed. (See, e.g., United Farm Workers of America v. Agricultural Labor Relations Bd., supra, 37 Cal. 3d 912.) If the clerk endorses an incorrect date on a filed paper, the court can order it corrected. (Litzmann v. Workmen's Comp. App. Bd., supra, 266 Cal. App. 2d 203.) "

California courts have ruled in support of the following federal case law in support of my right to have my papers filed:

"the court stated that the standard for 'filing' should be whether the complaint 'was ever in the actual or constructive possession of the clerk" (Leggett v. Strickland, 640 F.2d 774 (5th Cir.1981).

"The clerk had no express power under the local rule to reject the filing" (United States v. Dae Rim Fishery Co., Ltd. (9th Cir. 1986) 794 F.2d 1392).

In the unlikely event that the paper I filed has been lost or destroyed, I am attached a copy to this e-mail which I have already served on the parties and will serve on the judge as soon as I have the opportunity.

Regards,

Marina J Boyd

LA Superior Court Case #SC117126

 **StatementOfDisqualification_7-22-16.pdf**
398K

Mail Delivery Subsystem <mailer-daemon@googlemail.com>
To: cbtlocator@gmail.com

Thu, Jul 28, 2016 at 11:42 AM

Delivery to the following recipient failed permanently:

senator.beall@senator.ca.gov

Technical details of permanent failure:

DNS Error: 27634092 DNS type 'mx' lookup of senator.ca.gov responded with code NXDOMAIN
Domain name not found: senator.ca.gov