

Chapter 6 MOTIONS

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§ 6.2 Introduction

Motions are probably the most complicated and most frequently used documents in the course of a typical lawsuit. They are governed by the Code of Civil Procedure ("C.C.P.") and the California Rules of Court ("C.R.C.").

There are different types of Motions. This section is divided by subsections, each concerning a different type of motion:

Regular Motions

Ex parte Applications

Motions to Strike

Demurrers

Motions for Summary Judgment and Summary Adjudication

The second and the last subsections rely heavily on the first, so be sure to start by reading Regular Motions and then skip to the appropriate subsection of concern to you.

WARNING!!

THERE MAY BE SEVERAL TIME LIMITATIONS AFFECTING YOUR RIGHT TO MAKE A MOTION. FAILURE TO COMPLY WITH THE DEADLINES WILL RESULT IN THE WAIVER OF YOUR RIGHT TO MAKE THE MOTION.

For example, a motion to compel further answers to interrogatories, requests for production, and requests for admission must be brought within 45 days of the service of the particular response (C.C.P. §§ 2030.300(c), 2031.310(c), 2033.290(c)), and must be heard at least 15 days before the *initial* trial date (C.C.P. § 2024.020(a)). A motion for summary judgment must be served at least 75 days in advance of the hearing, and must be heard at least 30 days prior to trial (C.C.P. §437c(a)).

BE SURE TO CHECK THE APPLICABLE RULES AND CODES AFFECTING THE PARTICULAR MOTION.

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§ 6.3 Regular Motions

From time to time during the course of a lawsuit, a party might need court intervention to allow them to do something or not do something, or to force the opposing party or a third party to do or not do something. The attorney applies to the court for such relief by filing a motion for an order. For example, a party might file a motion for an order allowing them to amend a complaint, or granting an extension of time to respond to something, or for relief from default; a party might seek an order compelling an opposing party to provide further answers to interrogatories or other discovery.

Various rules govern regular motions, including rules regarding contents, number of pages allowed, and deadlines for filing and serving notice of motions, opposition to motions, and replies to oppositions. Below is a table showing some of the basic rules.

General Rules for Regular Motions

| | |
|---|---|
| Last day to hear non-expert discovery motions C.C.P. § 2024.020 | 15 days before the initial trial date |
| Last day to hear expert discovery motions C.C.P. § 2024.030 | 10 days before the initial trial date |
| Notice and motion must be filed and served C.C.P. §§ 1005(b) and 12c | at least 16 court days before the hearing ¹ (counting backward from the hearing date) |
| Opposition must be filed and served C.C.P. §§ 1005(b) and 12c | at least 9 court days before the hearing (counting backward from the hearing date) |
| Reply must be filed and served C.C.P. §§ 1005(b) and 12c | at least 5 court days before the hearing (counting backward from the hearing date) |
| Limit on length of opening/opposing P's & A's C.R.C., Rule 3.1113(d) | 15 pages |
| Limit on length of reply P's & A's C.R.C., Rule 3.1113(d) | 10 pages |
| Separate statement required C.R.C., Rule 3.1345 | motion to compel <i>further</i> answers |

A regular motion always contains a notice of hearing (also referred to as “notice of motion”) and the motion itself, and, unless excepted under C.R.C., Rule 3.1114, a memorandum of points and authorities. It often contains one or more declarations and exhibits. Sometimes a separate statement is required; sometimes a proposed order is submitted. C.R.C., Rule 3.1112(c) allows these various parts to be prepared and filed either as separate documents or combined in one or more documents. If combined, the caption must list all of the attached documents (see following example). If filed separately, it should say so below the title of the notice of motion, e.g., “[Declaration of Joe Lawyer filed concurrently.]”

^{1/} Service must be made earlier if the papers are not personally served. (See § 2.3)

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§ 6.3.1 "Notice of Motion"

The notice of motion informs the court and the parties of the nature of, and the grounds for, the requested order, and the date, time, and place for the hearing. It may also give notice of the moving party's intention to appear at the hearing telephonically. (See § 6.3.10)

All parties must be given at least 16 court days notice, plus the additional time under C.C.P. § 1005(b) if service is by a means other than personal service. (See § 2.3.)

§ 6.3.1.1 Setting the Hearing

To set a hearing, you must coordinate: (1) any applicable motion cut-off date, (2) the service method, and (3) the court's availability (some courts only hear motions on specified days of the week).² **C.C.P. § 12c requires counting backward from the hearing date to determine adequacy of notice. Thus, while you will likely count forward to "guesstimate" the hearing date, the only way to make sure the date is far enough away to serve by a particular method is to then count backward.** (See § 2.10 at Step 4B(2)(c))

ONCE YOU HAVE A HEARING DATE, BE SURE TO CALENDAR:

- the date and time of the hearing
- the deadlines for filing and serving the moving papers, the opposition, and the reply (see table on p. 6-7)
- a reminder to check the tentative ruling (see § 6.3.9)
- a reminder to give intent to appear by telephone, if any (see § 6.3.10)

§ 6.3.1.2 Preparing the Notice

- 1▶ Use the same caption as on previous pleadings.
- 2▶ The title must list all of the attached documents (C.R.C., Rule 3.1112(c)). If the attorney plans to appear telephonically (see § 6.3.10), add "Telephone Appearance" immediately below the title of the document. The footer is an abbreviation of the title. (C.R.C., Rule 2.110)
- 3▶ Below the title, enter the date, time, and department or division for the hearing, the name of the judge, if known, the date the action was filed, and the trial date, if set. (C.R.C., 3.1110(b))
- 4▶ Type the standard introductory clause as described on page 5-10, Step 3.
- 5▶ Type "PLEASE TAKE NOTICE" in all caps at the beginning of the next paragraph. This paragraph must include the nature of the order being sought and the grounds for issuance of the order. (C.R.C., Rule 3.1110(a))

² For example, discovery motions must be heard at least 15 days before trial. If the court does not hear motions that day, you must set it earlier. Always check with the court before setting a hearing.

Notice of Motion (page one)

| | | | |
|----|----|---|---|
| 1▶ | 1 | JOE LAWYER, ESQ. (State Bar #7756234) | |
| | 2 | 1000 Colorado Boulevard | |
| | 3 | Suite 555 | |
| | 4 | Los Angeles, California 90001-1234 | |
| | 5 | Telephone: (213) 452-0000 | |
| | 6 | Facsimile: (213) 452-0010 | |
| | 7 | Email: joe@joelawyerlaw.com | |
| | 8 | Attorney for Plaintiff | |
| | 9 | FRED A. WRONGED | |
| | 10 | | |
| | 11 | | SUPERIOR COURT OF THE STATE OF CALIFORNIA |
| | 12 | | FOR THE COUNTY OF LOS ANGELES |
| | 13 | | |
| | 14 | FRED A. WRONGED, | Case No. C 126447 |
| | 15 | Plaintiff, | } 2▶ NOTICE OF MOTION AND MOTION |
| | 16 | | FOR ORDER COMPELLING |
| | 17 | vs. | ANSWERS TO PLAINTIFF'S FIRST |
| | 18 | | SET OF INTERROGATORIES TO |
| | 19 | JAMES A. WRONGDOER, and DOES 1 | DEFENDANT; MEMORANDUM OF |
| | 20 | through 10, inclusive, | POINTS AND AUTHORITIES; |
| | 21 | | DECLARATION OF JOE LAWYER |
| | 22 | Defendants. | IN SUPPORT THEREOF |
| | 23 | | Date: January 5, 1999 |
| | 24 | | Time: 9:00 A.M. |
| | 25 | | 3▶ Dept: 83 |
| | 26 | | Judge: Honorable June Justice |
| | 27 | | Action Filed: August 3, 1998 |
| | 28 | | Trial Date: Not set |
| 4▶ | 20 | TO: Defendant, JAMES A. WRONGDOER, AND TO HIS ATTORNEY OF | |
| | 21 | RECORD: | |
| 5▶ | 22 | PLEASE TAKE NOTICE that Plaintiff, FRED A. WRONGED, will and does hereby | |
| | 23 | move for an order compelling Defendant, JAMES A. WRONGDOER, to answer the First Set of | |
| | 24 | Interrogatories propounded to him by Plaintiff, and for an order that Defendant and Defendant's | |
| | 25 | attorney, or either of them, pay to Plaintiff the reasonable attorneys fees incurred in preparing and | |
| | 26 | making this Motion and obtaining the orders sought herein, in the sum of One Thousand Four | |
| | 27 | Hundred Fifty Dollars (\$1,450.00) on the grounds that said interrogatories are material and | |
| | 28 | relevant to the issues herein, relate to non-privileged matter, such answers should be required, | |
| | 29 | | -1- |
| 2▶ | 30 | MOTION TO COMPEL ANSWERS TO INTERROGATORIES | |