

§ 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.

§ 6.3 Regular Motions

From time to time during the course of a lawsuit, a party might need permission (referred to as "relief") from the court to do something, not do something, or make the opposing party do or not do something. The attorney applies to the court for such relief by filing a motion. For example, a party might need an extension of time to file and serve a document. If the parties are not allowed to stipulate (agree) to an extension or if the opposing attorney refuses to stipulate to the extension, the attorney can file a motion requesting that the court grant the extension. A motion asking the court to allow something is a "motion to allow." There are motions to allow leave to amend a complaint, an extension of time to answer, filing of a Cross-Complaint, etc. A motion requesting that another party be compelled to do something is a "motion to compel." There are motions to compel attendance at a hearing, production of documents, further answers to interrogatories, etc. There are numerous other types of motions.

A regular motion is always made up of a Notice of Motion, a Memorandum of Points and Authorities, Declaration(s), and sometimes Exhibit(s) and/or a Separate Statement. Proposed Orders are often submitted along with motions. In our example, Joe Lawyer makes a motion to compel Mr. Wrongdoer to answer interrogatories. The parts of Mr. Lawyer's motion are described below.

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§ 6.3.3 Declarations

A Declaration is the part of the motion by which the attorney states facts supporting the Motion and authenticates the exhibits. (Oral evidence is only allowed at the hearing pursuant to C.R.C., Rule 323(b).) In addition, if the motion seeks an order compelling further responses (i.e., some response was received), the C.C.P. requires that there be a declaration stating facts showing that the attorney made a reasonable and good faith attempt to informally resolve the issues presented by the motion. (C.C.P. §§ 2030(1), 2031(1) and 2033(1)) Declarations are signed under penalty of perjury by someone who has personal knowledge of the facts stated in the declaration. All references to exhibits in the declarations must reference the number or

letter of the exhibit, the specific page, and, if applicable, the paragraph or line number. (C.R.C., Rule 313(h))

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§ 6.3.4 Separate Statement (not shown)

C.R.C., Rule 335 requires any motion involving the content of a discovery request (e.g., a motion to compel further answers as opposed to a motion to compel where no response was received) to be accompanied by a separate document setting forth the specific discovery request, the response given, and the factual and legal reasons for compelling further response. The purpose of the separate statement is to obviate the need to review any other document in order to determine the full request and the full response.

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§ 6.3.5 Exhibits

- See Chapter 1, "Exhibits to Complaint," § 1.2.5, for proper preparation of exhibits.
- C.R.C., Rule 342(g) provides that if the exhibits exceed 25 pages, they should be separately bound and include a table of contents.

§ 6.3.6 Filing and Service of Motion

Attach together the notice of motion, tables, memorandum of points and authorities, declarations, and exhibits. (Remember, though, if the exhibits exceed 25 pages, they have to be separately bound.) Regular motions are filed and served in the same manner as are other documents, except a filing fee is required.

- Follow the procedures in Chapter 2 for filing and service, but call the court clerk or check the applicable website for the appropriate filing fee, adding to the package a check payable to the "SUPERIOR COURT CLERK."

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§ 6.3.7 Opposing the Motion/Replying to the Opposition

The opposing attorney may file and serve P's & A's in opposition to the motion at least 10 calendar days prior to the date of hearing on the motion. The moving party may then file and serve P's & A's in reply to the opposition at least 5 calendar days prior to the date of hearing on the motion. (C.C.P. § 1005(b))

BE SURE TO CALENDAR THE DATE THE OPPOSITION AND REPLY ARE DUE.

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§ 6.3.8 Filing and Service of P's & A's in Opposition to Motion/in Reply to Opposition

- Opposition - File and serve the opposition papers by the method described in Chapter 2 which will meet the 10 calendar day requirement, and ensure delivery not later than the close of the next business day after they are filed. (C.C.P. § 1005(c))
- Reply - File the P's & A's in reply to the opposition at least 5 calendar days prior to the date of the hearing, and personally serve all interested parties as described in Chapter 2, but note that you may bring the proof of service to the hearing, and file it at that time.

§ 6.3.9 Tentative Ruling on the Motion

Before the hearing on the motion, some judges make a "tentative ruling" based solely on the moving, opposing and reply papers. C.R.C., Rule 324 allows the court to follow one of two procedures, one of which makes the tentative ruling the final ruling unless one of the parties advises the others and the court that it wants to present argument at the hearing, and the other of which makes the ruling final at the hearing. These rulings are tape recorded, and are available in the afternoon the day before the hearing. In the former situation, if none of the attorneys gives notice of an intent to appear at the hearing, they are in essence agreeing to submit to the tentative.

If the attorneys submit to the tentative ruling, the next step is to prepare the "Notice of Ruling," § 6.3.11. If they do not submit to the tentative ruling, the hearing goes on as scheduled.