

§ 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.

§ 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.

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. A table summarizing the general rules discussed in this chapter is shown below.

General Rules for Regular Motions

<u>Specifications</u>	<u>Regular Motions</u>
Advance notice required	16 court days
Opposition due # days prior to hearing	9 court days
Reply due # days prior to hearing	5 court days
Limit on opening P's & A's	15 pages
Limit on opposing P's & A's	15 pages
Limit on reply P's & A's	10 pages
When Separate Statement required	With Motion to Compel Further Answers

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. C.R.C., Rule 3.1112(c) allows these to be prepared and filed either separately or combined as one or more documents, but if they are combined, the caption must list all of the included documents. 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.

§ 6.3.1 "Notice of Motion"

The notice of motion informs defendant Wrongdoer of the nature of the order being requested from the court, the date, time, and place of the hearing on the motion, and the grounds for the motion. If applicable, the notice would also advise the parties that the moving party intends to appear at the hearing by telephone. (See § 6.3.10)

Rule change effective 1/1/05

THE OPPOSING PARTIES MUST BE GIVEN 16 COURT DAYS NOTICE PLUS THE ADDITIONAL TIME ALLOTTED PURSUANT TO 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

Before you can prepare your notice of motion, you have to set the hearing on the motion. Each court has its own rules, some only hearing motions on certain days of the week. Call the calendar clerk in the department where the motion will be heard (or check the applicable website) to ascertain the day and time the motion can be heard, ensuring that the opposing parties can be given 16 court days plus the additional time allotted pursuant to C.C.P. § 1005(b) if service is by a means other than personal service. (See § 2.3)

BE SURE TO MARK THE DATE IN THE OFFICE CALENDAR.

Now you have the necessary information to type the notice of motion.

§ 6.3.1.2 Preparing the Notice

- 1' Use the same caption as on previous pleadings.
- 2' This document serves as the cover page for all of the attached documents, so its title, typed in all caps, lists all of the documents constituting the motion, each separated by a semicolon. (C.R.C., Rule 3.1112(c)) The footer is an abbreviation of the title. (C.R.C., Rule 2.110)
- 3' Below the title, type 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)) If the attorney plans to appear telephonically (see § 6.3.10), type "Telephone Appearance" right below the title of the document.
- 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))

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 FRED A. WRONGED,)
14 Plaintiff,)
15 vs.)
16 JAMES A. WRONGDOER, and DOES 1)
17 through 10, inclusive,)
18 Defendants.)

Case No. C 126447

2> NOTICE OF MOTION AND MOTION
FOR ORDER COMPELLING
ANSWERS TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES TO
DEFENDANT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF JOE LAWYER
IN SUPPORT THEREOF

3> Date: January 5, 1999
Time: 9:00 A.M.
Dept: 83
Judge: Honorable June Justice
Action Filed: August 3, 1998
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,

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2> MOTION TO COMPEL ANSWERS TO INTERROGATORIES