

## DIRECTIONS FOR BRINGING A MOTION

### 1. What is a Motion?

A **motion** is the method used to speak to the judge about a matter in your case. For example, a motion may be brought to ask the court to set aside a **default** or **vacate a default judgment**, or it may be brought to ask the court to order a judgment to be paid in installments.

**Due Process** requires that the court only act when ALL sides in the case have had an opportunity to be heard. Therefore, before the court can hear or consider your motion you MUST:

- A. GIVE PROPER **NOTICE OF THE MOTION** TO ALL OPPOSING SIDES.
- B. GIVE A COPY OF THE **MOVING PAPERS** (the papers you file with the court for the motion) TO ALL OPPOSING SIDES.

### 2. How Do I Give Notice of the Motion To the Other Sides?

Code of Civil Procedure (“CCP”) section 1005 states the amount of time required to give notice of most motions. The **moving papers** must be personally given to each opposing side at least **21** days before the hearing on the motion, OR mailed to each opposing side at least **26** days before the hearing on the motion.

If the papers are personally given to the opposing side it is called **personal service**. Personal service can only be carried out by an adult (18 years or older) who is NOT a party to the case. That means that the person is neither a plaintiff nor a defendant in the case. The person who personally serves the papers must sign a **proof of service**. The sheriff’s department or a licensed process server can also serve legal papers. They normally charge a fee for their service.

If the papers are mailed to the opposing side it is called **service by mail**. Service by mail is only permitted once the party being served has **appeared** in the case. This means that the party being served has filed its first **pleading** in the court, whether that pleading be a complaint, petition, answer or other response. Service by mail can only be carried out by an adult (18 years or older) who is not a party to the case. The person who mails the papers must sign a **certificate of service by mail**.

The signed **proof of service** or **certificate of service by mail** is attached to the back of the motion and filed with the court at the time the motion is filed.

**WARNING:** SOME MOTIONS HAVE A DIFFERENT TIME PERIOD. YOU WILL NEED TO READ THE CCP SECTION THAT APPLIES TO THE TYPE OF MOTION YOU ARE BRINGING TO SEE IF IT HAS A DIFFERENT NOTICE REQUIREMENT.

### 3. How Do I Get A Court Date and Time Assigned for the Hearing?

BEFORE you can complete your **moving papers**, or have them served and filed, you need to get a hearing date assigned by the court. Either go to a civil window in room 210 of the Ventura Hall of Justice, or the clerk's office in the East County Courthouse, or call the Ventura court at (805) 662-6620 and ask for a civil clerk. Tell the clerk what type of motion you are bringing, and when you want to have it set. Make sure you choose a date that is far enough away that you can give the other sides the required notice of the hearing. If there is not enough time for you to have the motion heard after giving the required notice, you may have to bring a **motion to shorten time** to have your other motion heard, or bring the motion on an *ex parte*, or emergency basis. (See paragraph 6 below for instructions on how to bring a motion *ex parte*.)

### 4. Is There a Filing Fee for the Motion?

Yes. Most motions cost \$23.00 to file. Certain types of motions, such as a **Motion for Summary Judgment** cost more. When you call the clerk to get a hearing date and time assigned you can ask what the filing fee is. If you are below the federal poverty line and have already applied for, and received a fee waiver in your case, you can complete the forms for an additional fee waiver, which are available in the clerk's office or in the Self-Help Legal Access Center.

### 5. What Do I Need to Include in my Motion?

Most NOTICED motions require a:

- a. **Notice of motion**
- b. **Memorandum of points and authorities**
- c. **Declaration**
- d. **Proof of Personal Service, or Certificate of Service by Mail**

You can obtain some forms to help you with the motion at the Ventura County Superior Court's Self-Help Legal Access ("SHLA") Center. The SHLA Center has created some motion forms, however they are not official court forms. The SHLA Center forms are to assist you only, not to take the place of reading the required code sections and rules of court. YOU ARE STILL EXPECTED TO KNOW THE LAW THAT APPLIES TO YOUR MOTION. The SHLA Center can also refer you to books in the law library. These books may help you learn the law relevant to your motion.

Most motions brought on an *EX PARTE* basis require a:

- a. **Declaration re *ex parte* notice**
- b. ***Ex Parte* Application**
- c. **Memorandum of Points and Authorities**
- d. **Declaration in support of application**
- e. **Proof of service of the moving papers on the other side**

An *ex parte* application or motion is a motion brought on an emergency basis because there is not enough time to bring the motion with the full amount of time required for notice to the other side. In your declaration you will have to explain to the court the nature of the emergency that prevents you from bringing the motion as a **noticed motion**. You will also need a **Declaration re *Ex Parte* Notice** in which you state when and to whom you gave telephone notice of the hearing on the motion. Instructions on how to bring the motion on an *ex parte* basis are set forth in the following paragraphs.

## 6. What If I Have an Emergency and Need the Court to Hear My Motion Right Away?

You can bring a motion on an *ex parte* basis if you have an emergency that will not wait until the court can hear your motion with the full notice required under CCP section 1005, or the applicable code section for your motion. **EVEN IF YOU ARE BRINGING THE MOTION ON AN *EX PARTE* BASIS, YOU STILL NEED TO GIVE NOTICE OF THE MOTION AND COPIES OF THE MOVING PAPERS TO THE OPPOSING SIDES AS SOON AS POSSIBLE BEFORE THE HEARING.** You can deliver or fax these copies to the opposing sides when possible.

Rule 379 of the California Rules of Court states the requirements for giving telephone notice to the opposing side. **READ THIS SECTION CAREFULLY.** It will tell you to notify the opposing sides by telephone by 10:00 a.m. the court day before your scheduled hearing. Therefore, if your hearing is set for a Monday, you must give telephone notice to the opposing sides no later than 10:00 a.m. the Friday before.

You will also need to complete a **Declaration re Ex Parte Notice** and file it with the court no later than 12:00 noon the court day before the hearing. Also, all **moving papers** must be filed with the court no later than 12:00 noon the court day before the hearing. Some judges schedule their *ex parte* hearings by appointment only, so check with the civil clerk to see if you have to call the judge's secretary to schedule the hearing before you complete your moving papers or give notice to the other side.

## 7. What Happens at the Hearing on the Motion?

Most motions are decided by the court based on the paperwork submitted. This includes the **moving papers** you file, the opposition papers filed by the other side, and your reply papers, if you choose to file any. Very limited discussion takes place in the courtroom, since there may be several matters calendared for the same short time period. Therefore, make sure to include in your moving papers the legal and factual issues you wish the court to consider. The courtroom discussion on the motion is called **oral argument**. Even though it is referred to as "argument," it is actually conducted quite orderly and respectfully with the judge asking specific questions of each side or inviting each side to present its position on a specific issue.

The judge may rule on the motion at the time it is heard, or may take it under **submission**, meaning he or she will decide the outcome of the motion after further research or consideration, and you will get the decision in the mail.

Often judges issue **tentative rulings** before you or the opposing party appear at the hearing on the motion. In such a case the judge has made a tentative decision based on the papers submitted in support of, and in opposition to, the motion. The court may hold to the tentative ruling, or may change its ruling from the tentative after **oral argument** at the actual hearing on the motion.

## 8. How Does the Court's Ruling Become an Order?

The court will enter a **minute order** based on the judge's ruling at the hearing on the motion. If your motion is granted, you need to present an **order** for the judge to sign consistent with his or her ruling. The SHLA Center has prepared some of these order forms to assist people in submitting an order in the proper format, however you are responsible for the wording of the language in the order. Just as with the motion forms, the order forms are not official court forms, but have been developed to assist only, not to take the place of reading the required code sections and rules of court.

### **WARNING:**

THE SHLA CENTER IS NOT REPRESENTING YOU, OR TELLING YOU WHETHER TO BRING, OPPOSE, OR REPLY TO A MOTION. THE SHLA CENTER HAS ONLY ASSISTED YOU IN REPRESENTING YOURSELF BY PROVIDING LIMITED INFORMATION ABOUT THE PROCEDURE FOR BRINGING A MOTION. NO ATTORNEY FROM THE CENTER WILL APPEAR IN COURT TO REPRESENT YOU AT ANY HEARING. YOU ARE REPRESENTING YOURSELF. THE SHLA CENTER STRONGLY RECOMMENDS THAT YOU SEEK THE ADVICE OF AN ATTORNEY IN THIS MATTER IF YOU CAN. IF YOU DESIRE FURTHER REFERRAL INFORMATION REGARDING SECURING AN ATTORNEY, YOU MAY CALL THE LAWYER REFERRAL SERVICE OF THE VENTURA COUNTY BAR ASSOCIATION AT (805) 650-7599.