

## CHAPTER 2 MOTIONS

### Rule 3.2.1

#### General Requirements

**A. Notice of Motion.** All notices of motion and notices of opposition thereto must be in writing and must prominently display on the first page the trial readiness conference and trial dates, a time estimate for the motion hearing, and the number of witnesses to be called at the hearing, if any.

**B. Time for Service (except for motions to suppress heard at the preliminary examination).**

1. All moving papers must be filed and served on the opposing party at least 15 court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least five court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least two court days before the time appointed for the hearing.

4. Proofs of service of the moving papers must be filed no later than five calendar days before the time appointed for hearing.

**C. Points and Authorities.**

1. The memorandum of points and authorities must include a statement of the case and a statement of facts setting forth all procedural and factual matters relevant to the issue presented.

2. The memorandum must clearly specify the factual and legal issues raised and the specific legal authority relied upon for the motion.

3. Only the factual and legal issues set forth in the memorandum will be considered in the ruling on the motion unless it is established that the new issues were not reasonably discoverable before the motion was filed.

4. Failure of the moving party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is without merit.

5. Except as to motions to suppress heard at the preliminary examination, failure of the responding party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is meritorious.

**D. Abandonment of Motions and/or Motions to be Taken Off Calendar or Continued for Other Reasons.**

Any party intending to abandon, take off calendar, or continue a motion must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard. In the event that the party seeks to continue the motion hearing date, he or she must include in the notice to the clerk whether the motion to continue is opposed or unopposed. The party must also notify the clerk immediately if the proceedings are suspended pursuant to Penal Code section 1368 or if the case is disposed of by plea prior to the hearing. If it is the party's intent that the motion hearing date be used as a change of plea hearing, such information must also be included in the notice.

**E. Concession That Motion is Meritorious.** If the responding party elects not to oppose the motion, respondent must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard.

**F. Courtesy Copies of Motions, Oppositions, and Replies.** Courtesy copies of all file stamped motions and/or oppositions together with proofs of service must be e-mailed by the filing party or his or her authorized representative in PDF format to (Court Courtesy Copy E-Mail Box – address to be provided at a later date), by 5:00 p.m. the same day that the motion is filed with the court.

**G. Trial Department Motions.** No party may file in any law and motion department a motion which must be decided by the trial judge. Such motions include, but are not limited to, motions to suppress based on confessions or admissions which are not a product of alleged Fourth Amendment violations (e.g., alleged violations of the Fifth and Sixth Amendments, such as *Miranda* violations, involuntary confessions, or denial of counsel), *Trombetta/Youngblood* motions, and severance motions resting on evidentiary considerations.

**H. Setting of Motions.** The clerk in the department where the pretrial motion is filed will set a date for hearing of the motion at least 15 court days after the motion is filed.

**I. Length of Points and Authorities.** No opening or responding memorandum of points and authorities exceeding 15 pages will be filed, absent an order from the judge of the court in which the motion is calendared. Such an order will be granted only upon a written application including a declaration setting forth good cause for the order. (Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2019)

### Rule 3.2.2

#### Additional Requirements - Special Motions

**A. Motions to Dismiss or Strike (Pen. Code, § 995) and Demurrers.**

1. Defendant must attach a copy of the current complaint, information, or indictment to the motion.

2. The notice of motion must clearly state whether the defendant seeks to dismiss, strike or demur to the entire complaint, information or indictment. If the defendant does not challenge the entire charging document, the notice of motion must set forth the counts, enhancements, allegations, special circumstances, or other aspects of the charging document that are being challenged.

**B. Discovery Motions.** In accordance with Penal Code section 1054 et seq., discovery motions must include a declaration by counsel, under penalty of perjury, setting forth the previous oral and written efforts to obtain discovery by cooperative and informal means, and showing how the opposing party has failed to comply with Penal Code section 1054.1 or 1054.3. The motion must be limited to the disputed items, or class of items, listed in the declaration.

**C. Suppression Motions (Pen. Code, § 1538.5).**

1. Defendant must attach a copy of the current complaint, information, or indictment to the motion.
  2. If relevant to the motion, the defendant must attach to the motion legible copies of the search warrant, affidavit in support of the warrant, and receipt and inventory of property.
  3. The motion must include a list of specific items to be suppressed. A general request to suppress “all items seized” is not sufficient and may be deemed an abandonment of the motion. Only listed items will be considered by the court for suppression or return, unless any newly identified item could not reasonably be specified prior to the hearing.
  4. **Motions Made at Felony Preliminary Examination.** Motions made at a felony preliminary examination must comply with Penal Code section 1538.5, subdivision (f). Defendant may, but is not required to, file a reply brief. Proofs of service must be filed by the date of the hearing.
  5. **Motions Made in All Other Cases.**
    - a. Defendant must specify the precise grounds for suppression of the evidence, including the inadequacy of any justification for the search and seizure. If defendant’s motion alleges the lack of a warrant as the sole basis for suppression, any opposition filed by the People should specify the justification for the warrantless search. The defendant should then file a reply specifying the inadequacies of the justification. The reply brief must be filed and personally served at least two court days prior to the hearing. The raising of new issues in the reply may constitute good cause for continuance to permit the prosecution to prepare for the hearing.
    - b. A motion brought following a felony preliminary examination must state whether the party stipulates to the preliminary examination transcript, whether the motion was raised at the preliminary examination, and, if so, must specify what factual findings and legal conclusions were made by the magistrate. Failure to indicate whether or not the party stipulates to the preliminary examination transcript will be deemed a stipulation to the admission of the transcript.
- (Adopted 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

### **Rule 3.2.3**

#### **Additional Requirements - Felonies**

- A. At the post-bindover arraignment on the information or arraignment on an indictment, the judge will set a filing deadline for all pretrial motions which will be 21 calendar days after the arraignment or such other date as the judge may, for good cause, assign.
  - B. All such motions, including motions to join in motions, must be filed no later than the close of business on the assigned date.
  - C. No moving papers will be accepted thereafter for filing except by order of the supervising criminal judge extending time or granting relief from default.
- (Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

### **Rule 3.2.4**

#### **Motions Settings - Misdemeanors and Infractions**

Except where there is an order setting a hearing date, the moving party may request a date for the hearing. Dates are subject to confirmation by the clerk’s office and mandatory time provisions of statutes, the California Rules of Court, and these rules.

(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

### **Rule 3.2.5**

#### **Discovery Motions for Jury Services Information and/or Related Motions to Challenge Jury Selection System**

- A. All discovery motions for jury services information and/or related motions to challenge the jury selection system must be filed in the department of the Supervising Criminal Judge, located in the San Diego Central Courthouse, whether or not the criminal case has been assigned to a judge for all purposes.
  - B. Moving papers relating to such motions must identify arguments as to why the jury selection system is defective.
  - C. All moving papers relating to such motions must be separately served on the Jury Commissioner or Manager of Jury Services, the same date the moving papers are served on responding party. Proof of service must be filed with the original moving papers.
  - D. The Jury Commissioner, Manager of Jury Services, or court employees whose primary employment is in the Jury Services Office will not be called to testify at a hearing on a discovery motion for jury services information and/or related motions to challenge the jury selection system unless given three court days prior notice.
  - E. For good cause shown, the Supervising Criminal Judge may waive any of the above requirements.
- (Adopted 1/1/2008; Rev. 1/1/2017)

### **Rule 3.2.6**

#### **Exhibits to Motions or Other Pleadings**

The court will not accept for filing any media storage device, such as a Compact Disc (CD), Digital Video Disc (DVD), or flash drive, that is attached as an exhibit to a motion or pleading. Such exhibits must be “lodged” with the

court and will be returned to the submitting party, as provided below. This rule does not apply to exhibits identified and marked for the record at the time of trial or other hearing.

**A. Permissible Format**

Absent leave of court, and except as provided in subdivision B, an exhibit attached to or filed with a motion or other pleading must be filed in paper format, or by e-filing if available. Such exhibits must be legible and complete, and must not require use of another resource to view the exhibit. CDs, DVDs, flash drives, and other types of media storage devices are specifically prohibited as an exhibit attached to or filed with a motion or other pleading.

**B. Sound and Sound-and-Video Recordings**

A party who would like the court to review an electronic sound, video, or sound-and-video recording prior to any hearing on the motion or other pleading to which it pertains must:

1. Lodge the recording and, if reasonably feasible, file a transcript of any relevant sound portions.
  2. File an original and one copy of a notice of lodgment that includes a numbered listing and brief description of all lodged items.
  3. File proof of service of the lodgment and notice of lodgment on all opposing parties, and provide the court with the means of return of the lodgment in accordance with California Rules of Court, rule 3.1302(b).
  4. Upon return of the lodgment, store and maintain it for the time required for the case type in which it was lodged as set forth in Government Code section 68152, unless the recording is identified and marked for the record at the time of trial or other hearing.
  5. Return the lodged recording to this court or a reviewing court if required by law, requested, or ordered for purposes of reconsideration, appeal, or other review by the court.
- (Adopted 1/1/2019)