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Research Guide

Ex Parte Applications

Last Updated: July 20, 2007

Last Reviewed: July 20, 2007

Scope:

This research guide assists parties seeking an ex parte hearing or proceeding. Normally, an adverse party must be given notice twenty-one days prior to a pending hearing. However, ex parte proceedings may be appropriate in circumstances where one of the parties seeks immediate relief. For example, ex parte proceedings often occur where a party is fighting an eviction or unlawful detainer action or where a party wants to “freeze” someone’s bank account before he or she empties it.

Note: The procedures for ex parte applications vary, depending upon whether you bring your application in a regular court, Probate Court, or Family Court. Make sure that you follow the correct notice and filing requirements for your venue. **Double check and consult the applicable law (most notably the Rules of Court) to make certain that you comply with the latest requirements. These Rules are updated frequently and there may be changes since this guide was written.**

I. Notification Requirements for Ex Parte Application

- **Civil matters:**

California Rules of Court, Rule 3.1203 states that “[a] party seeking an ex parte order must notify all parties **no later than 10:00 A.M. the court day before the ex parte appearance**, absent a showing of exceptional circumstances that justify a shorter time for notice.” (Emphasis added). The rule also states that “[a] party seeking an ex parte order in an unlawful detainer proceeding may provide shorter notice (than the 10:00 A.M. requirement) provided that the notice given is reasonable.”

- **Probate Court matters:**

San Diego's Probate Courts have similar rules for notification, but there are additional rules as well. For applications for ex parte orders see *San Diego County Superior Court Local Rules, Rule 4.7.5*, and for which matters may be heard, see *Rule 4.7.6*.

- **Family Court matters:**

San Diego County Superior Court Rules, Chapter Three, Rule 5.3.2 states "a party requesting an ex parte hearing must notify the opposing counsel or party, including the Department of Child Support Services if appropriate, by **no later than 10:00 AM on the previous court day.**"

(Emphasis added). You may not give notice by fax unless notice by fax has previously been agreed to by all parties. See the Rule for other acceptable notice methods. See *Rule 5.3.3* for exceptions to the notice requirement. In addition, once you have given notice of an ex parte hearing, you must also ask the court records office to send your court file to the judge. See *San Diego County Superior Court Rules, Chapter Three, Rule 5.3.5* for more information and phone numbers.

There are numerous specialty rules that apply to Family Court issues. Please carefully consult *San Diego County Superior Court Rules, Chapter Three, Rule 5.3.12 - 5.3.15* for details on shortening time, custody and visitation, vacations and holidays, and earnings assignment ex parte motions, et al.

- **Juvenile Court matters:**

The rule for Juvenile Court is slightly different. *San Diego County Superior Court Rules, Rule 6.1.14* states "(a)ny party making an ex parte request for an order from the court in a dependency matter must give 24 hours notice to all other parties or their counsel. A declaration that such notice has been given to all other parties or their counsel must be set forth in the moving papers." The rule details exceptions also.

II. Checklist of Written Papers and Procedures Required for an Ex Parte Application:

- Call the calendar clerk of the court to obtain a hearing date. If the hearing has already been assigned to a judge, **ask the judge's calendar clerk for a hearing date.**
- Some judges require that you file all application paperwork the day before the hearing, so **always** ask the clerk if the judge has any special filing requirements.

For Family Court matters, hearings are held at specific times. Consult *San Diego County Superior Court Rules, Chapter Three, Rule 5.3.1* for detailed listings.

- Application forms **must be typed on pleading paper** (i.e. with the line numbers down the left side). (But see the Family Court requirement below). Word and WordPerfect

both have pleading templates. You can also purchase pleading paper at most office supply stores, and the Reference Desk has a laminated sheet you can photocopy.

- Prepare an **Ex Parte Application**. (*California Rules of Court Rule 3.1201*). See one of the practice guides listed in this guide for sample formats. A reference librarian can assist you to find the practice guides. One of these is *Litigation by the Numbers*, shelved behind the Reference Desk. The Library has also created a motion guide with a sample Application which you can copy and change to fit your situation.

For family court matters, you must fill out a pre-printed “Ex Parte Application” form (SDSC D-46), which is available only from the court clerk. If the opposing party is present, you must personally serve him or her with the Ex Parte Application form, and present it to the judicial officer or the bailiff of the Court prior to the ex parte hearing. (See *San Diego County Superior Court Rules, Chapter Three, Rule 5.3.8*). There are some exceptions to these rules, listed in *San Diego County Superior Court Rules, Chapter Three, Rule 5.3.10*.

- All **Applications for Ex Parte Orders in Probate Court** must be reviewed by Probate Examining before presentation to the judge. Examiners will be available just before the court’s ex parte hours for making this review. (See *San Diego County Superior Court Local Rules 4.7.5*). Also, matters which may be heard ex parte in Probate Court are limited, and explained at *San Diego County Superior Court Local Rules 4.7.6*.
- Your Ex Parte Application must also include a **Declaration of Notice** which shows that you properly notified (or tried to notify) all other parties of the hearing. (See *California Rules of Court Rule 3.1201(3)* and *Rule 3.1204 (b)*). The Declaration should identify the person(s) whom you informed of the hearing and it should state the date, time, and manner that you used to do so. The Declaration should also describe the relief you requested and any response the other party or parties made.

Furthermore, the Declaration should indicate whether your opponent said he or she will oppose the ex parte application. If you cannot locate your opponent, then the declaration should describe your good faith attempts to do so. It should also state reasons why you should therefore not be required to give notice.

- You must include facts showing that you will suffer irreparable harm or immediate danger if you are not allowed to bring this motion without a regularly-scheduled hearing. You can provide facts that show that you are entitled to the relief you seek through notarized affidavits or signed declarations. (See *California Rules of Court Rule 3.1202*).
- In family court, **both sides must meet and confer** on the issues in dispute before appearing in court. Failure to do this may result in sanctions. (See: *San Diego County Superior Court Rules, Chapter Three, Rule 5.3.7*).

- You must include a **Memorandum of Points and Authorities** (See *Rules of Court Rule 3.1201*). Look in *California Points and Authorities*, KFC 1010.B4, for sample Points and Authorities for various areas of law. Tailor your Memorandum according to the particular facts of your dispute and be certain that all laws or cases you cite are current.
- Include a proposed **Order** for the judge to sign granting the relief you have requested. (See *California Rules of Court, Rule 3.1201(5)*). Consult a practice guide for sample orders.
- On the day of the hearing, **bring to court enough copies** of your papers to file one with the court, and to give copies to the judge and anyone else who appears at the hearing. When you arrive at court, check with the bailiff for any sign-in or other requirements that the judge may have.
- After the hearing, make photocopies of the judge's signed Order. File the signed Order with the court, and serve copies of the Order on the other parties. Make sure to **serve copies of all the papers** on any party who did not appear at the hearing.

Other useful resources: (be sure to check for the regular updates to these volumes)

California Forms of Pleading and Practice (Matthew Bender, 2002), KFC 1010.A65 C3.

Within California Procedure (4th Edition, 1997), KFC 995. W52.

Weil and Brown; California Practice Guide: Civil Procedure Before Trial (The Rutter Group) KFC 995 W4.

California Eviction Defense Manual (CEB, 2d ed. 2003) KFC 1028.E9 M68.

Related material located at the Reference Desk:

California Rules of Court – State, KFC 992.A24.

San Diego County Superior Court Rules, KFC 993.S26 A125.

Litigation By the Numbers, KFC 995. G67 2007, Chapter 6, Motions, Section 6.4, Ex Parte Motions. Be sure to check the updates filed in the front of the book.

CONSULT A REFERENCE LIBRARIAN FOR ADDITIONAL ASSISTANCE

Disclaimer: This guide is not a substitute for your own legal research