



## Motion to Modify Probation

*Last updated: February 2011*

### ABOUT THIS PACKET

This packet provides a general example of what your motion should look like when it is complete. The motion is only a sample; you need to edit it. Delete the generic information written in **bold** and replace it with information specific to your unique circumstances.

**Disclaimer:** We cannot guarantee that these models will meet your needs because laws and procedures frequently change, and because some skill is needed to adapt the forms to fit your case. To obtain legal advice, or for help in adapting the forms to your situation, consult an attorney.

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# Instructions for Filing a Motion to Modify Probation

## PREPARING THE MOTION

1. Prepare your motion to modify or terminate probation using the attached samples as a guide. The motion is made up of four documents: (1) Notice of Motion; (2) Declaration in Support of Motion; (3) Points and Authorities in Support of Motion; and (4) Order. You will also need to file a proof of service with the court (see instructions 8-14 below).
2. From the sample motion, you will need to delete the portions in **bold** and replace them with information unique to your circumstances.

You do not need to fill-in the information about the time, place, and date of the hearing until you file the papers at the courthouse. Leave a blank for those areas so you can write or type it in after the court clerk gives you a reservation date for the hearing.

3. Do not change the format of the motion. We have formatted the sample motion on pleading paper (the paper with the numbers down the side) and in compliance with other formatting requirements of [California Rules of Court](#), rules 2.100, *et. seq.*
4. After you have completed all four parts of the motion, sign and date each page that requires your signature. Use a pen with blue ink to sign the original. Then make two copies of the original. You will have a total of three copies: an original and two duplicates.

## FILING THE MOTION

5. Take all three copies to the court's business office. (There are multiple branches of the San Diego Superior Court. Go to the same courthouse where your case was initially heard.) Hand all three copies of your motion to the court clerk. Tell the clerk you are filing a motion and would like to request a court date. Ask for a date about 20 days away. (According to Local Rule 3.2.1, you have to give at least 15 court days notice to the other party and allow an additional 5 days for the papers to reach the prosecutor by mail.) The clerk will assign you a date, time and court department for the hearing on your motion. Write this information on all three sets of documents.
6. The court clerk will file stamp all three copies of your motion. The clerk will then hand you back two copies. The clerk will keep one copy (usually the original) and put it in the court's file.
7. Keep one of the file-stamped copies for yourself. The other copy must be delivered (or "served") to the agency that prosecuted you. This is done so that the prosecutor has a

chance to respond to your motion. The judge cannot rule on your motion unless the other side has been served with a copy.

### SERVING THE MOTION

8. First, you will need to determine which prosecuting agency to serve. In San Diego, it will be either the City Attorney or the District Attorney. If you are unsure, look at your court documents, they should list the prosecuting agency. Generally speaking, the following table outlines which prosecuting agency to serve, but there are exceptions.

<b>Class of Offense</b> <i>Which type of offense did you commit?</i>	<b>Location Where the Offense was Committed</b> <i>Where did you commit the offense?</i>	<b>Prosecuting Agency</b>
Misdemeanor	City of San Diego	City Attorney
Misdemeanor	In San Diego County, but outside of the City of San Diego. (For example: Chula Vista, El Cajon, Oceanside, etc.)	District Attorney
Felony	Anywhere in San Diego County	District Attorney

The addresses for the prosecuting agencies in San Diego are:

**Office of the City Attorney**  
Criminal Division  
1200 Third Avenue, Suite 700  
San Diego, CA 92101

**Office of the District Attorney**  
330 W. Broadway  
San Diego, CA 92101

9. Service can be done by mail or by personally delivering a copy of your motion to the prosecutor's office; *but, you cannot serve the documents yourself*. Your motion must be served by someone over 18 years old who is not a party to the case. This means that you need a friend, family member, neighbor, or co-worker to serve the motion for you.
10. Whoever serves your motion must sign a proof of service form. You can fill out the form, but it must be signed by the person who serves the motion.

Use form [POS-040](#) which allows the person who will be serving your motion to check a box for either personal service or service by mail.

11. The proof of service form has directions that explain how to fill out the form. You need to fill-in your name and contact information, the court's address, the parties to your case, your case number, which documents are being served, etc.
12. After you have filled out the proof of service form, have a friend/family member, 18 years of age or older, either personally deliver or mail a copy of your motion and proof of service form to the prosecutor's office. Then have your friend/family member sign the proof of service form.  
**Make sure the prosecutor gets a copy of the proof of service form and all four parts of your motion.**
13. Next you need to file the signed proof of service form with the court. You must file the proof of service at least five calendar days before the hearing on your motion. Check San Diego Local Rule 3.2.1 for details. Before going to the courthouse, make a copy of the signed proof of service form. Take both copies to the court's business office. Tell the clerk you would like to file the proof of service. The clerk will file stamp both copies. The clerk will keep one copy for the court's file and give one copy back to you. Keep your file-stamped copy of the proof of service with your copy of the motion.
14. Go to the hearing. Bring your motion and proof of service to the hearing.