

## REQUESTING AN EX PARTE ORDER (CIVIL CASE)

# Ask the Court for an Order as Quickly as Possible

**Note:** This Guide covers generic *ex parte* (emergency) requests in civil cases. If you need a temporary restraining order, see our guide [TROs: Applying for a Temporary Restraining Order in a Civil Case](#). Family, probate, and criminal courts handle the process differently.

## BACKGROUND

“*Ex parte*” is a Latin legal term for “from (by or for) one party.” An *Ex Parte Application* is used by one party to ask the court for an order, such as an order changing a hearing date or deadline, without the usual notice to the other parties to give them time to prepare an opposition. *Ex parte* applications are used in emergency situations when there is not enough time for a standard motion, which typically take about four weeks (16 court days minimum).

**Related Guides:** [Filing a New Civil Case](#)   [Fee Waiver Guide](#)   [Motions in Civil Cases](#)  
[TROs: Applying for a Temporary Restraining Order in a Civil Case](#)

### Use only when truly necessary

Because the notice requirement of motions are designed to ensure the fairness of the procedure, *ex parte* applications, which by their nature circumvent this process, are highly disfavored, and granted only if absolutely necessary. If a matter could have been handled by a noticed motion or stipulation, the judge will deny your application and set for a hearing at a later date

Therefore, before filing an *ex parte* application, ask the other party(s) if they will agree to your request. If they do, file a stipulation instead.

### Some types of requests are never handled *ex parte*

Courts in different counties may have different local rules or practices on what matters can be handled via *ex parte* hearings. For example, in Sacramento, the court will reject all *ex parte* applications to continue a trial. However, you may apply for an *ex parte* “order shortening time,” to permit you to file and serve a motion to continue trial with less than 16 days’ notice.

### Some requests are always handled *ex parte*

Some requests are so routine and noncontroversial that the Judicial Council or local courts have created forms for them. For instance, in Sacramento, you can use a [local form](#) (see list at [www.saccourt.ca.gov/forms/forms.aspx](http://www.saccourt.ca.gov/forms/forms.aspx)) to substitute newly-discovered defendants for your Doe defendants, extend the time for arbitration, and to extend the time to select a trial date. Judicial

**Warning:** This is a complicated procedure with many steps, and you will be expected to follow all the same rules as a lawyer would. You will need to do extensive research and writing, go to court, and speak in front of the judge. If you cannot or prefer not to do these tasks, you should hire an attorney.

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Council form CM-020 is an *ex parte* application to extend time to serve pleadings and other orders ([www.courts.ca.gov/documents/cm020.pdf](http://www.courts.ca.gov/documents/cm020.pdf)). However, there are no pre-printed forms for most civil *ex parte* situations.

### Researching and writing the papers

You will need to research and write (1) an “Ex Parte Application,” stating what you are requesting and when the hearing will be; (2) a “Memorandum of Points and Authorities,” explaining the relevant laws and how they apply to your facts; (3) a “Declaration” under penalty of perjury explaining of the facts of the case, and why the matter is so urgent it should be heard *ex parte*; and (4) a “Declaration re Notice” explaining if and how you give notice to the other parties. (Sometimes this is combined with the Declaration of the facts of the case.) You must also write a “Proposed Order” for the judge to sign if s/he agrees.

The Law Library has several books with samples and instructions of all these papers, which you can customize for your situation. See the “Secondary Sources and Forms” section, below, for specific recommendations.

### Scheduling the hearing and notifying other parties

The applicant must schedule the *ex parte* hearing ahead of time with the court department. You must also file your paperwork prior to 10 a.m. the day before the hearing.

In Sacramento, different departments hear different types of motions, including *ex parte* applications on those matters:

- **The Presiding Judge** (Dept. 47) hears all motions for consolidation, coordination, severance, bifurcation, intervention, pretrial conference, change of venue, or to advance or continue trial.
- **Case Management Program\* (CMP) judges** (Depts. 30 and 36) hear all CMP motions, including matters regarding judicial arbitration, redesignation of a case, for extension of time to answer a complaint, for relief from CMP rules, or certification for short cause.
- **Law and Motion:** Department 53 (odd-numbered cases) or Department 54 (even-numbered cases) hear most other types of motions.
- **If a judge has been assigned to a case for all purposes**, that judge hears all motions for the case.

These assignments change from time to time, so check the “[Quick Motion Checklist](#)” at [www.saccourt.ca.gov/civil/docs/motion-quick-reference-list.pdf](http://www.saccourt.ca.gov/civil/docs/motion-quick-reference-list.pdf) for a current list of which department hears which types of motions.

You must give the other party(s) notice before 10 a.m. the day before the hearing, unless you can prove “exceptional circumstances that justify a shorter time for notice.” *Ex parte* hearings have unique notice procedures. You personally should phone the other party(s) (or their lawyer, if they have one)

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\* The Case Management Program mostly applies to unlimited civil cases.

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to tell them what you are asking the court and when the hearing will be, and ask them if they plan to attend. California Rule of Court (“CRC”) 3.1204. If you do not reach them, leave a detailed message with a reliable call-back number.

After you do this, you must write the “Declaration re Notice” stating whether the opposing party is represented by counsel, whether that party has been contacted and has agreed to the requested order, or why the order should be issued without such notice. This Declaration must be submitted to the department before 10 a.m. the day before the hearing. You must also pay the filing fee (usually \$60 in Sacramento) unless you have a fee waiver in the case.

### **Attending the hearing**

Be sure to arrive at the appropriate department early. Bring a copy of all paperwork to the hearing with you. Pay the fee if you haven’t yet, and bring the receipt to the hearing.

In Sacramento, the judge will typically consider the matter in chambers (the judge’s office), based on the papers you have turned in, and may just notify you of the decision while you wait. If the judge has additional questions, he or she may ask you to come in to chambers to answer questions.

If your evidence is sufficient, the judge will sign your *Proposed Order*. The judge may also deny the *Ex Parte Application*, but set the matter for hearing later.

The applicant should serve any signed orders on the other parties and file the original order and proof of service at court.

## **FOR MORE INFORMATION**

### **Court procedures (Sacramento County):**

“*Ex Parte* Motions: Law and Motion Departments”  
Sacramento County Superior Court  
[www.saccourt.ca.gov/civil/motions-hearings-exparte.aspx](http://www.saccourt.ca.gov/civil/motions-hearings-exparte.aspx)

### **Secondary sources and forms**

There are no pre-printed forms or self-help resources for most temporary restraining orders. The Law Library recommends the following practice guides, which contain sample forms you can adapt for your situation. Most of these books also have more details about the legal standards and procedures that apply to requests for temporary restraining orders.

[California Forms of Pleading and Practice](#) KFC 1010 .A65 C3 (Ready Reference) (Matthew Bender). Chapter 372, “Motions and Orders,” has in-depth information on *ex parte* procedures, including customizable samples of the *ex parte* application, declarations, and proposed orders. There are also dozens of chapters on specific topics, from “Adjoining Landowners” to “Zoning,” with sample paperwork for those situations.

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Sample memos of points and authorities can be found in the companion book [California Points and Authorities](#) (KFC1010 .B4 (Ready Reference)), Chapter 417.

**Electronic access:** On the Law Library's computers, using *Lexis Advance*.

**California Law and Motion Model Forms** KFC 1012.A65 P37 (General Collection) (Rutter Group). Various chapters include sample *ex parte* applications for extensions of time, including extension of time to plead, for an order shortening time, and other situations, with all required elements, and a proposed order. This book includes a sample memorandum of points and authorities, unlike most others. It has less background information and primarily offers the customizable form to copy or download.

**Electronic access:** On the Law Library's computers, using *Westlaw*.

**California Pretrial Practice & Forms** KFC1020 .A65 K86 (General Collection) (James Publishing, Inc.). Chapter 14, sections 14:490-498, contain a succinct description of the requirements for *ex parte* applications, as well as sample forms. A useful discussion of the types of evidence that can be used to support motions and applications can be found at 14:80-122.

**Electronic access:** Forms, but not text, available on the companion CD-ROM, available at the Circulation Desk upon request.

In addition, all of the following practice guides have forms for the *ex parte* application, declaration, declaration re notice, and/or proposed order:

- **California Civil Practice: Procedure**, Chapter 14. KFC 995.A65 B3 (Bancroft-Whitney). General Collection and Westlaw
- **California Practice Guide: Civil Procedure before Trial**, Chapter 9. KFC995. W45 (Rutter Group) General collection and Westlaw
- **California Pretrial Civil Procedure**, Chapter 26. KFC 995 .M38 (Matthew Bender) General Collection and Lexis Advance
- **California Civil Procedure before Trial**, Chapter 14. KFC 995 .C34 (CEB) General Collection and OnLaw

## Statutes, court rules, and judicial opinions (case law)

### Local Court Rules

*Ex parte* applications are usually partially governed by each county court's local rules. For most counties, you can find the local rules on the court website. To find your court's website, check "Find My Court" at the Judicial Council website ([www.courts.ca.gov/find-my-court.htm](http://www.courts.ca.gov/find-my-court.htm)).

The Sacramento County local rules can be found at [www.saccourt.ca.gov/local-rules/local-rules.aspx](http://www.saccourt.ca.gov/local-rules/local-rules.aspx).

### California Statutes

The rules for *ex parte* applications in California are set out in California Rule of Court ("CRC") 3.1150 and 3.1200–3.1207. California statutes you may need to research are available in the California Code. The California Rules of Court and California Code are available at the Law Library in several

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annotated (includes summaries of cases interpreting the laws) print versions and on the Internet at the California State Legislature's website in unannotated form.

**Deering's California Code Annotated** [KFC 30.5 .D4 P76](#) (Compact)

**West's Annotated California Codes** [KFC 30 .W48 P76](#)

**Electronic Access:** On the Law Library's computers, using *WestlawNext*.

### **California Law Code Search: Free Online Statutes**

The California State Legislature provides this free online source for California statutes. To access the Code of Civil Procedure, click "Code of Civil Procedure - CCP Code" in the list of codes to browse or select "CCP" from the drop-down menu at the top right to find a specific section.

**Electronic Access:** Via the Internet at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml)

### **California Rules of Court Online**

The Judicial Council of California has posted the California Rules of Court online for free.

**Electronic Access:** Via the Internet at [www.courts.ca.gov/rules.htm](http://www.courts.ca.gov/rules.htm).

### **California Judicial Opinions**

California courts interpret the statutes and rules and are an important source of authority and clarification. California Court of Appeal and California Supreme Court opinions are published in the standard California reporters:

*California Supreme Court:*

**California Reports (Cal.)**, series 1-current [KFC 45 .A21](#) (Compact)

**West's California Reporter (Cal.Rptr.)**, series 1-current [KFC 51 .W48](#) (Compact)

**Electronic Access:** On the Law Library's computers, using *WestlawNext*.

*California Appellate courts:*

**California Appellate Reports (Cal. App.)**, series 1-current [KFC 48 .A212](#) (Compact)

**West's California Reporter (Cal.Rptr.)**, series 1-current (ongoing) [KFC 51 .W48](#) (Compact)

**Electronic Access:** On the Law Library's computers, using *WestlawNext*.

### **California Case Law: Free Online Cases**

There are several websites offering free access to California case law. Perhaps the best combination of coverage, function, and ease of use is Google Scholar, which provides a dedicated search engine for California cases (1950-present). Other options include California Official Reports Public Access page ([www.lexisnexis.com/clients/CACourts/](http://www.lexisnexis.com/clients/CACourts/)) and Findlaw's California case search ([www.findlaw.com/cacases/#dirsearch2](http://www.findlaw.com/cacases/#dirsearch2)).

**Electronic Access:** Via the Internet at [bit.ly/Scholar-Cal-Case-Search](http://bit.ly/Scholar-Cal-Case-Search).

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OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.