

REQUESTING A PRELIMINARY INJUNCTION BY NOTICED MOTION

How to Ask the Court to Prohibit an Action

This Guide includes instructions and sample forms. Links to download the fillable forms are at the end of this Guide. Additional copies of this Guide can be accessed at saclaw.org/prelim-inj-guide.

BACKGROUND

If you believe that someone is likely to take an action that will violate your rights, you can ask a court to issue a *preliminary injunction* prohibiting (“*enjoining*”) the action until the case between the parties is over. It takes more than three weeks to get a preliminary injunction. There are no fill-in-the-blanks forms for an injunction, and there are several steps involved.

Before requesting a preliminary injunction, you must start a lawsuit regarding the underlying problem or conflict, so unless you have already sued the party you want enjoined, the first step is to file a *Complaint* in court. This guide does not go into detail about drafting the initial complaint, since it will need to fit your particular circumstances.

Warning: This is a complicated procedure with several 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—we simply provide the format. You will probably have to go to court and speak in front of the judge, the other side, and an audience. If you cannot or prefer not to do these tasks, you will need to hire an attorney.

STEP-BY-STEP INSTRUCTIONS

Step 1: Research and Write Your Complaint and Accompanying Papers

Skip to Step 2 if you have already started the lawsuit.

Write the Complaint. You need to sue the person or people whose actions threaten to violate your rights. There are a wide variety of possible *causes of action* (legal theories) that might apply in specific cases. You will find a list of resources at the end of this Guide which you can use to research the appropriate causes of action. For information on researching and writing a complaint, see our Guide [“Filing a New Civil Lawsuit”](http://saclaw.org/filing-new-civil-case) on our website at saclaw.org/filing-new-civil-case

When you can't wait

These other Law Library guides may also be helpful:

- [Filing a New Civil Lawsuit](#)
- [Fee Waiver Guide](#)

Disclaimer: This Guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in the Sacramento County Superior Court. Please keep in mind that each court may have different requirements. If you need further assistance consult a lawyer.

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Include one cause of action for an injunction against the party or parties to be enjoined. You can download a [skeletal complaint with cause of action for injunction](#) from our website (saclaw.org/complaint-injunctive-relief).

You will also need to fill out the standard Judicial Council forms [Summons](#) (SUM-100) and [Civil Case Cover Sheet](#) (CM-010). In Sacramento, you must include [Alternative Dispute Resolution Information Package](#) (CV\E-100) and, in unlimited cases, [Stipulation and Order to Mediation - Unlimited Civil](#) (CV-E-179) and [Program Case Notice -Unlimited Civil Case](#) (CV\E-143U).

2: Schedule, Research and Write Your Motion for Preliminary Injunction

The Complaint gets the case started. However, you must also file a Motion with the court to get the injunction. Choose a date for the Motion, then research and write it with enough time to file and serve the papers before the date you chose.

Department and Time Depend on Your Case Number

In Sacramento, “Law and Motion” hearings such as preliminary injunctions are held in Department 53 at 9 a.m. for odd-numbered cases, or Department 54 at 2 p.m. for even-numbered cases.

When you file your Complaint, the clerk assigns you a case number. If you are filing the Complaint at the same time as the Motion, get your case number from the clerk, then write in the hearing department and time on the original and all copies of the Motion before filing them. (If you have already filed the Complaint, you can fill this in before going to court to file.)

2a. Choose a date.

In Sacramento County, the party who files a motion chooses the date for the hearing. There are two things you must get done before the hearing, and you must pick a date that gives you time to do both:

- File the papers sixteen *court days* (business days) before the hearing date.
- Serve the other party(s) sixteen court days before the hearing date, *plus five calendar days if you serve by mail*.

As long as you have time to do both, you can choose any date that works best for you. Remember to make arrangements (child care, time off work, transportation, etc.) to be in court 30 minutes before the hearing.

If you want a *permanent injunction* at the end of the case, you *must* file an *unlimited civil case* even if you are not requesting \$25,000 or more in damages. A judge in a limited civil case can only issue TROs and preliminary injunction, not permanent injunctions. [Cal. Code of Civil Procedure § 86\(a\)\(8\)](#).

If you already filed a limited case, you must amend your complaint if you want a permanent injunction.

Shortcut: 35+ Days

If you choose a date at least thirty-five days after you plan to file the Complaint and Motion, you should have plenty of time.

If you need to have the Motion heard sooner than 35 days, follow the instructions in Section 2a to find the earliest date that gives you time to file and serve the papers.

Choosing a Hearing Date in Sacramento County Superior Court

Calculating Your Filing Deadline: The Motion must be filed with the court at least sixteen court days prior to the motion date ([CCP § 1005](#)). Court days are Monday through Friday, excluding court holidays. To determine whether a particular filing date will meet this deadline, start with your desired hearing date and count backward ([CCP § 12c](#)) sixteen court days. Day one is the court day prior to the hearing. The sixteenth court day prior to the hearing is the last possible date that the Motion can be filed with the court.

For example, suppose you wanted to have your Motion heard on June 18, 2012. You would start counting backward using June 15, 2012 as day one. Do not count weekends or court holidays (there is one court holiday in this example, which is Memorial Day, May 28). Your sixteenth court day before the hearing would be May 24, 2012, which would be the last day that the Motion could be filed.

| MAY | | | | | | | JUNE | | | | | | |
|-------------|---------------|--------------|---|----------------------------------|---------------------------------|-------------|------|--------------------|-------------|-------------|-------------|-------------|-----|
| Sun | Mon | Tue | Wed | Thu | Fri | Sat | Sun | Mon | Tue | Wed | Thu | Fri | Sat |
| | | 1 | 2 | 3 | 4 | 5 | | | | | | 1 Day 11 | 2 |
| 6 | 7 | 8 | Day 5 falls on a weekend, so the last day for service by mail rolls over to the previous court day. | | | 12 | 3 | 4 Day 10 | 5 Day 9 | 6 Day 8 | 7 Day 7 | 8 Day 6 | 9 |
| 13 | 14 | 15 | 16 | 17 | 18 Last day to serve by mail | 19 Day 5 | 10 | 11 Day 5 | 12 Day 4 | 13 Day 3 | 14 Day 2 | 15 Day 1 | 16 |
| 20 Day 4 | 21 Day 3 | 22 Day 2 | 23 Day 1 | 24 Day 16 Last day to file | 25 Day 15 | 26 | 17 | 18 Hearing Date | 19 | 20 | 21 | 22 | 23 |
| 27 | 28 Holiday | 29 Day 14 | 30 Day 13 | 31 Day 12 | | | 24 | 25 | 26 | 27 | 28 | 29 | 30 |

Calculating Your Service Deadline: All attorneys or self-represented parties in a case must be served with a copy of the Motion. This means that someone over the age of 18 who is not a party in the case must either personally deliver a copy of the Motion and related documents to the attorney or self-represented party or mail a copy of the Motion and related documents to the party(s) by first class mail, then sign a *Proof of Service* form.

Personal Service: 16 court days. If the Motion is personally served, the service must be at least sixteen court days prior to the date of the Motion, the same as the minimum filing deadline. If you are filing the Motion at the same time as the underlying Complaint, you will probably have the Complaint personally served, so you may as well have the Motion personally served along with it.

Service by mail: 16 court + 5 calendar days. If the Motion is served by first-class mail, additional *calendar days* are added before the sixteen court days—an additional five calendar days if mailed within California, ten if mailed to an address in another state, and twenty if mailed to another country. ([CCP § 1005](#)). Calendar days include weekends and holidays, but if the final day lands on a weekend or holiday, it is rolled over to the previous court day. So, if June 18, 2012 was the hearing date, the sixteenth court day before would be May 24, 2012, but counting back five more calendar days results in Saturday, May 19, 2012. Because the fifth day fell on a weekend (or holiday), the deadline for service rolls back to May 18, 2012, the last court day before the mailing deadline.

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2b. Write the Motion.

The Motion consists of several required parts. You can download a customizable template from the link at the end of this Guide, and a sample is attached at the end of this Guide.

- **Notice of Motion and Motion for Preliminary Injunction.** In this part, you set the hearing date, explain briefly what you are requesting (the injunction), and include a required paragraph about Sacramento's tentative ruling system.
- **Memorandum of Points and Authorities.** In this part, you explain the laws that cover injunctions and the facts which entitle you to an injunction in your particular case. This portion will likely require you to do legal research and demonstrate how your situation fits in with existing law.
- **Declaration.** A *Declaration* is a sworn statement about the facts, which the judge considers as evidence in your case. It should state all of the facts necessary for the court to rule in your favor. Attach all of the exhibits (photos, documents, and other evidence) that you wish the court to consider. Depending on the circumstances of your case, your *Declaration* may be short or long. Regardless of length, it must be sufficient to establish to the court's satisfaction that the injunction is necessary. Your declaration must contain only facts you personally know to be true. If someone else knows the facts you need to prove your argument, have them fill out and sign their own *Declaration*.
- **[Proposed] Order.** Along with your Motion, you will need to submit a *[Proposed] Order* granting your preliminary injunction, so that the Judge can sign off on it easily.

Declaration Tips

Your Declaration should be consistent with the facts set forth in your Complaint, but is typically written in the first person, since it is the statement of the person signing the Declaration. Unlike the Complaint, which may contain facts for several causes of action, the Declaration supporting the Motion should focus on the specific facts that the court must consider in deciding whether to grant an injunction. You will sign it under penalty of perjury. Each separate fact should be explained in a numbered paragraph, so that you can easily refer to that fact in other documents.

The Declaration is the most important part of the Motion. The judge generally makes a decision on the Motion the day before the hearing date, based only on the paperwork, so the Declaration(s) and exhibits must contain everything needed justify the injunction.

It is possible to have more than one supporting Declaration. If your Motion relies on statements by someone other than you, you should obtain a Declaration from the person who made those statements to avoid problems with "hearsay." Chapter 16 of Nolo's book *Represent Yourself in Court*, which is listed as a resource at the end of this Guide, has a good, plain-English description of the evidence rules regarding hearsay. If obtaining a Declaration from the person who made the statements is not possible, you will need to research whether there is an exception to the hearsay rule that will allow the court to consider your evidence.

Attaching Exhibits

Documents and photos can be attached to a Declaration as exhibits. In the Declaration, identify the document with language such as:

I am the registered owner of a 2002 Toyota Corolla, license plate number 3TXS596, Vehicle Identification Number (VIN) 7842084092307 ("the Vehicle"). A true and correct copy of the registration certificate is attached as Exhibit "A."

Photocopy the registration and write "Exhibit A" on the bottom of the first page. If an exhibit is longer than one page, number each page. If you have other documents to submit, use the same "true and correct" language to attach them as Exhibits B, C, and so forth. A number of rules of evidence govern whether the court may consider a document, typically requiring the declarant to set up a sufficient "foundation" for it to be considered within the declaration. Chapter 15 of *Represent Yourself in Court*, on exhibits, has a good explanation of what is necessary to establish to allow the court to consider different types of evidence.

Important: Sacramento County Superior Court requires each of the *Exhibits* in one of your sets of copies be separated by a rigid sheet of card stock with a tab identifying the letter of the exhibit on the bottom. Exhibits for the original and other copies should be separated by a blank piece of pleading paper with their exhibit letter or number (for instance, "Exhibit A") typed or written on the bottom of the page.

Note: The Law Library sells card stock with tabs at the Circulation Desk.



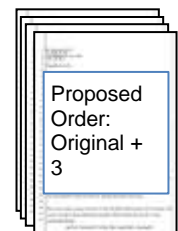
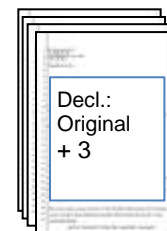
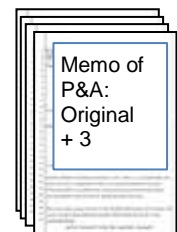
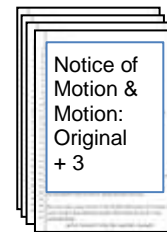
Step 3: File the Lawsuit (if Needed) and Motion, and Pay the Filing Fee

Make three copies of your Motion and all related papers. Staple each of the copies, but leave the original unstapled for ease of scanning. Include exhibit tabs in one of the stapled copies.

If you are also filing a Summons, Complaint, and Civil Case Cover Sheet, make two copies of each. Staple the copies, but leave the original unstapled for ease of scanning

The Sacramento Superior Court requires documents to be filed in a very specific way. For each document, they want the original and copies in a stack.

For this Motion, you will hand the clerk four stacks: a stack of your original "Motion" and three copies, a stack of your original "Declaration" and three copies, a stack of your original "Memorandum of Points and



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Authorities” and three copies, and a stack of your original “[Proposed] Order” and three copies.

If you are also filing the Complaint, Summons, and Civil Case Cover Sheet, you will hand the clerk three stacks of original plus two copies: a stack of your “Complaint,” a stack of your “Summons,” and a stack of your “Civil Case Cover Sheet.”

Remember, if any document has exhibits, then one of the copies (*not the original*) needs the exhibit tabs from Step 2.

Take them to the Law and Motion courthouse, 813 Sixth St. (Hall of Justice) in downtown Sacramento, and file them in Room 212. Pay the filing fee. As of the date of this document, the filing fee for an unlimited civil case is \$435; the fee for a limited civil case varies based on how much you are requesting in damages. The fee for filing a Motion is \$60, but if you file your Motion along with the Complaint, this fee will be waived. Follow this link for [current Sacramento County filing fees](#).

Fee Waivers

If you qualify for a fee waiver, you may file a request with the court at the same time. For more information, see our [Fee Waiver guide](#).

Do not use the drop box. The Motion should be presented at the filing window along with the Summons and Complaint, if any. If you are also filing the Complaint, the clerk will give you a case number, which determines at what department and time of day your motion will be heard. Motions in odd-numbered cases are heard in Department 53 at 2:00 p.m., and motions in even-numbered cases are heard in Department 54 at 9:00 a.m. Before you file the Motion, write the department and time on the original and all copies.

Step 4: Have the Motion and Related Papers Served on All Parties

Someone over the age of 18—**NOT YOU**—needs to serve (personally deliver or by mail) copies of the following documents to the defendant(s) in the case:

- *Motion for Preliminary Injunction*
- *Memorandum of Points and Authorities*
- *Declaration*
- *[Proposed] Order*

In addition,

- The Summons and Complaint and related papers must be served personally (if they have not yet been served).

The person who is serving the papers for you must complete a proof of service form, typically, either a [Proof of Personal Service \(POS-020\)](#) or a [Proof of Service by First Class Mail \(POS-030\)](#). For more information on these Proofs of Service, see our Guides on [Personal Service](#) and [Service by Mail](#). If they are also serving the Summons and Complaint, use [Proof of Service of Summons \(POS-010\)](#).

The server then signs the Proof(s) of Service. You or the server must then file the Proof(s) in court.

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Step 5: Review Any Opposition to the Preliminary Injunction

The other party(ies) have the opportunity to oppose the Preliminary Injunction. Their deadline is nine court days before the hearing (plus 5 calendar days if they serve you by mail). If you receive any opposition, read it carefully to understand their arguments.

You are entitled to file a reply if you choose (deadline: five court days before hearing), but you are not required to do so. If you choose to do so, use the same format as the original motion, but leave out the “Notice of Motion” portion. The title of your reply will be something like “REPLY TO OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION: MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF [YOUR NAME].”

Step 6: Review the Tentative Ruling the Court Day before the Hearing; Request Argument by 4 p.m. if Necessary

Pursuant to [Local Rule 1.06](#), the judge in most departments, including 53 and 54, will post a tentative ruling online by 2:00 p.m. the court day **before the hearing**. **You then have two hours to request oral argument**, if you choose to do so.

[You may read the tentative ruling online](#) or call the assigned department to hear it. For more information, visit the Tentative Rulings Information page on the Sacramento County Superior Court’s website (www.saccourt.ca.gov/civil/motions-hearings-tentative.aspx).

Closely review the tentative ruling. Since you are making the Motion, you are looking for your Motion to be “GRANTED.” Sometimes the judge needs more information to decide, and will specifically order the parties to appear. Be sure to read the tentative ruling very carefully to make sure you understand each part of it.

If you are not happy with the tentative ruling, and wish to present oral argument in front of the judge, you must call all parties (or if they have an attorney, their attorney) and the clerk for Department 53 (916-874-7858) or Department 54 (916- 874-7848) no later than 4:00 p.m. the court day before your hearing and state that you are requesting oral argument on the Motion.

If you are happy with the tentative ruling, you **do not** need to do anything. You don’t have to go to court unless the tentative ruling orders you to appear, or the other side calls before 4:00 p.m. If either of those happen, you should go to the court hearing and be prepared to explain your argument.

If neither party requests oral argument by 4:00 p.m., the court will simply make the tentative ruling official, and no oral argument will be permitted. If a party requests oral argument, the court will make its ruling after the oral argument, either in court or by mail a few days later.

WARNING!

Your hearing will be canceled

If neither you nor the other party calls the court, the hearing will be canceled and you will not be permitted to talk to the judge.

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Step 7: Attend the Hearing, if Necessary

If you or the other party request oral argument, arrive early. There will probably be other cases scheduled at the same time; there is usually a list posted on the wall outside the courtroom showing the order in which cases will be heard. Go into the courtroom and check in with the bailiff or clerk.

Department 53 and 54, where most Law and Motion cases are heard, are not in the main courthouse; they are now in the Hall of Justice building, 813 6th St. (6th and H).

When your name is called, be ready to speak and to answer any questions the judge has. You will only have a few minutes. After both sides speak, the judge may make a decision right away, or may “take it under consideration” and mail out the decision in a few days.

NEXT STEPS

The defendant(s) must file a response to the Complaint within 30 days of being served. If they do not, you can request a default judgment (see our guides on “[Request a Default Judgment by Clerk](#)” and “[Request a Default Judgment by Court](#)”). If they do, the parties can begin discovery, the process by which you gather information to prove your case. [Visit our Discovery Law 101 page for a series of videos and guides on discovery.](#)

FOR HELP

Sacramento County Public Law Library Civil Self Help Center

609 9th Street, Sacramento 95814

saclaw.org/self-help/civil-self-help-center/

Services Provided: The Sacramento County Public Law Library Civil Self Help Center provides general information and basic assistance to self-represented litigants on a variety of civil legal issues. The Self-Help Center cannot assist with injunctions, but they may be able to assist with the underlying case between you and the defendant.

Appointments are Monday-Friday beginning at 8:30 a.m. Patrons who are present at 8:30 a.m. will be entered into a random drawing to determine the order their case will be evaluated. If an appointment is appropriate, it will be made for later in the day. You are encouraged to arrive by 8:25 a.m. to participate in the appointment-setting drawing.

Eligibility: Must be a Sacramento County resident or have a [qualifying](#) case in the Sacramento County Superior Court.

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FOR MORE INFORMATION

On the Web

Sacramento County Superior Court

“Filing Instructions and Procedures: New Complaint, Petition, or Appeal of the Labor Commissioner”

www.saccourt.ca.gov/civil/filing-instructions.aspx#complaint

This page explains filing procedures for various types of papers, including new complaints.

“Motions and Hearings”

www.saccourt.ca.gov/civil/motions-hearings.aspx

This page contains information on motions in Sacramento.

At the Law Library

California Forms of Pleading and Practice [KFC 1010 .A65 C3](#)

Chapter 303, “Injunctions,” has in-depth information on temporary restraining orders and injunctions. Other chapters have sample complaints for various causes of action which you may use to write your Complaint (Step 1).

Electronic Access: On the Law Library’s computers, using the *Matthew Bender CD* or *LexisAdvance*.

Win Your Lawsuit [KFC 968 .D86](#)

This book does not cover restraining orders, but it can help you draft the underlying complaint. It contains sample filled-out forms for breach of contract, personal injury, and related causes of action.

Electronic Access: From any computer (Library or home) via the Legal Information Reference Center. Instructions are available on our website at saclaw.org/nolo-ebooks.

Represent Yourself in Court [KF 8841 .B47](#)

This book contains information on preparing for and conducting hearings. Chapter 16 has a good, plain-English description of the evidence rules, including hearsay.

Electronic Access: From any computer (Library or home) via the Legal Information Reference Center. Instructions are available on our website at saclaw.org/nolo-ebooks.

California Causes of Action [KFC 1003 .C35](#)

This book describes many of the common causes of action. It comes with a CD-ROM with sample complaints that you can download and customize.

IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN

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ATTACHMENTS: FORMS AND INSTRUCTIONS

FORMS

There is no Judicial Council form for this procedure. Instead, the relevant documents must be typed on 28-line pleading paper. Customizable templates may be downloaded from these links:

- *Notice of Motion and Motion for Preliminary Injunction*
saclaw.org/sbs-preliminary-injunction-motion
- *Memorandum of Points and Authorities*
saclaw.org/preliminary-injunction-memo
- *Declaration*
saclaw.org/sbs-preliminary-injunction-declaration
- *[Proposed] Order*
saclaw.org/sbs-preliminary-injunction-order

Download the blank forms from these links.

Sample filled-in forms with instructions are available at the end of this Guide.

In addition, if you are filing a complaint at the same time, you will need the following forms:

- *Complaint for Injunction*
saclaw.org/complaint-injunctive-relief
- *Summons* (SUM-100)
www.courts.ca.gov/documents/sum100.pdf
- *Civil Case Cover Sheet* (CM-010)
www.courts.ca.gov/documents/cm010.pdf

If you are filing a complaint at the same time, and if the case is in Sacramento, include (but do not fill out):

- *Alternative Dispute Resolution Information Package* (CV-E-100)
www.saccourt.ca.gov/forms/docs/cv-adr-information-package.pdf
- Unlimited cases only:
 - *Stipulation and Order to Mediation - Unlimited Civil* (CV-E-179)
www.saccourt.ca.gov/forms/docs/cv-179.pdf
 - *Program Case Notice for Unlimited* (CV-E-143U)
www.saccourt.ca.gov/forms/docs/cv-143u.pdf

See our Guide on [Filing a New Civil Case](http://saclaw.org/filing-new-civil-case) (saclaw.org/filing-new-civil-case) for more information.