

# Opposing a Motion

## Research Guide

**Last Updated:** January 2013

### Scope

This guide offers a general outline of procedures you may use to oppose a motion which has been submitted by the other party. This guide is **not** intended to serve as a comprehensive resource on opposing motions. You are strongly advised to study the resources listed below. Finally, the decision to oppose a motion must be made by you. Nothing in this guide should be taken as a recommendation for or against opposing a motion. Here are some of the factors to weigh when making that decision:

- Whether the motion raises an issue which could be resolved by agreement between the parties prior to the hearing date.
- Whether you have good grounds for opposing the motion or whether opposing it might be regarded as a delaying tactic, resulting in sanctions against you by the court.
- Whether failing to oppose the motion might be regarded as admitting that the other party's position is correct, resulting in an adverse decision by the court if you do not oppose it. For example, if you fail to oppose a Motion for Summary Judgment, the court may dismiss one or all of your claims and/or grant final judgment to the other party. If you fail to oppose a Motion for Default Judgment, the court may grant final judgment to the other party.

### Time Limit for Opposing a Motion

Papers opposing a motion must be filed with the court and served on the other parties at least nine (9) court days before the hearing date. The papers must be served on the other parties by personal delivery, fax, express mail, or other means consistent with the rules and "reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time" the opposing or reply papers are filed with the court (*see California Code of Civil Procedure* §1005(b), (c)). For information on how to serve papers, see our guide entitled "Service of Notice and Other Papers."

### Grounds for Opposing a Motion

This is an incomplete list of possible grounds for opposing a motion. *There may be other grounds which are not mentioned here.*

- Do the facts and the law justify granting the motion? This will require some research into the law your opponent has cited in his or her motion.
- Was the motion brought at the appropriate time? Some motions may be brought only at particular times in a case. See *California Civil Procedure Before Trial*, by CEB, vol. 1, Chapter 12, §12.84, (KFC 995.C34).

- Was the motion served and filed in a timely and proper fashion? See our guide entitled “Service of Notice and Other Papers” for information on when and how motions must be served. See *Id.*
- Is there a Memorandum of Points and Authorities in support of the motion? Failure to file a memorandum of points and authorities may be construed by the court as an admission that the motion is not meritorious, and cause it to be denied (see *California Rule of Court* §3.1113(a)). See *California Rule of Court* §3.1114 for motions not requiring a memorandum. See *Id.*
- Do the rules governing the particular motion require that the motion be supported with an affidavit or declaration, and if yes, was such an affidavit or declaration filed with the motion? Was it signed under penalty of perjury, as is required? See *California Code of Civil Procedure* § 2015.5.
- If there is an affidavit or declaration, is it based on the personal knowledge of the person signing it? Under *California Evidence Code* §702, “[T]he testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter.” Does it state facts, or merely unsupported opinions and conclusions? See *California Evidence Code* §702(a).
- If the motion is based upon particular documents, are copies of them included with the motion? Under *California Evidence Code* §1523(a), “Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.” Review this rule for any exceptions which may apply to your case.

### **Basic Procedure:**

To oppose a motion, prepare the following papers, file them with the court and serve them on the other parties in the case. File a Proof of Service with the court after you serve the other parties. See *judicial council forms* at <http://www.courts.ca.gov/forms.htm?filter=POS>. Choose the appropriate proof of service form for your case.

### **Memorandum of Points and Authorities**

This is a summary of the facts and law supporting your position. To write this, it is helpful to review any statutes or cases which the moving party cites in his or her own Memorandum of Points and Authorities, making sure that the laws are still valid, they actually support your opponent’s position, and also review the section discussing the particular grounds for the motion in *California Points and Authorities* (M. Bender) (KFC 1010 .B4).

### **Declaration Opposing the Motion**

This is necessary if you wish to dispute facts presented in the moving party’s papers or present additional facts of your own. It must either be typed on pleading paper or written or typed on Judicial Council Form MC-030 which can be found at <http://www.courts.ca.gov/documents/mc030.pdf>, present facts within your (or some other declarant’s) personal knowledge and be signed by you (or the other declarant) under penalty of

perjury. See CEB's *Civil Procedure Before Trial*, Chap. 12, Form #12.148 for an example. (KFC 995 .C34 2006). You may submit declarations from more than one person.

### **Exhibits**

If your Memorandum of Points and Authorities and/or Declaration(s) refer to exhibits, these should be attached with dividers in front of each that have tabs sticking out on the bottom identifying them (e.g., as "Exhibit A") (*California Rule of Court* 3.1110(f)). If you are opposing a motion for summary judgment and your exhibits are more than 25 pages long, then they must be submitted in a separately bound volume with a table of contents (*California Rule of Court* 3.1350 (g)). See <http://www.courts.ca.gov/rules.htm> for California Rules of Court online.

### **Proposed Order**

The proposed order should identify the motion and state that it was heard by the court on the date and time it was heard. The proposed order should also state that the motion is denied, and have a place for the date and for the judge's signature. See CEB's *Civil Procedure Before Trial*, Chap. 12, §12.107 for sample language. (KFC 995 .C34).

### **Resources to Start Your Research**

California Civil Practice: Procedure (Bancroft-Whitney)	KFC 995 .C3
California Civil Procedure Before Trial (CEB)	KFC 995 .C34
California Forms of Pleading & Practice (Matthew Bender)	KFC 1010 .A65 C3
California Practice Guide: Civil Procedure Before Trial (Rutter)	KFC 995 .W4
California Pretrial Procedure (Matthew Bender)	KFC 995 .M384
Younger on California Motions	KFC 1012 .Y68

### **Online Resources**

<http://www.courts.ca.gov/forms.htm?filter=POS>  
<http://www.courts.ca.gov/documents/mc030.pdf>  
<http://www.courts.ca.gov/rules.htm>