

# CHAPTER 9

## LEGAL WRITING: MOTIONS. NOTICES. BRIEFS.

### Chapter Outline

#### VOLUME 2, CHAPTER 9

- § 9.1 Motions
- § 9.2 Notices
- § 9.3 Briefs
- § 9.4 Combined Motion, Notice, and Brief
- § 9.5 The Separate Motion
- § 9.6 The Separate Notice
- § 9.7 The Separate Brief
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- § 9.9 Artificial Intelligence for Legal Analysis
- § 9.10 Example of a Trial Brief
- § 9.11 Social Media
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#### CHAPTER 9 ASSIGNMENTS

- Assignment § 9.9**  
Prepare a Motion, Notice, and Trial Brief

### Chapter 9 Introduction

#### PROCEDURE V. ADVOCACY IN LEGAL WRITING

##### Procedure

Rules of Court establish the actions that are required or prohibited to proceed in litigation. For example, “How many questions are allowed in a set of Interrogatories?” The Motion asks a court to do something, such as require another party to respond to some request, ask for more time to respond to a subpoena, or even ask the court to dismiss the case. While court rules, cases, statutes, and other authority may be cited in the motion, the writing does not argue how the law applies. “Based on F.R.C.P. 27, Defendant requests a 3-day enlargement of time in which to respond to Plaintiff’s motion.” Do not argue. Request.

##### Advocacy

The Trial Brief is where argument occurs. Argument is subjective analysis. In an interoffice memorandum, your analysis was objective. In an external document filed with the court, argument is used. The analytical steps are the same (IRAC) but focus on your client’s view. “Despite Plaintiff’s objection, F.R.C.P. 27 is clearly intended to be applied liberally. To refuse a simple 3-day extension in this case would be to deny fair process.”

#### IN THIS CHAPTER . . .

**DRAFTING  
A NOTICE**

**DRAFTING  
A MOTION**

**DRAFTING A  
TRIAL BRIEF**

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**§ 9.1****Motions***A Request That the Court Take Action*

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**THE DIFFERENCE BETWEEN MOTIONS AND PLEADINGS**

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*Motions and pleadings* are often collected within the same part of the client file, usually in the *Pleadings Panel*. In fact, many paralegals (and some attorneys) would have a tough time defining the difference between the two. But there is a difference.

Pleadings (complaint, answer, counterclaim, etc.) are the initial documents filed during litigation that set forth each party's position as to the matter being litigated.

Motions are part of the procedure of the ongoing litigation. A motion requests that the court issue an order. It can be oral, such as when an attorney *moves* to strike a part of a witness's testimony during the trial. But most motions are written and occur during the pretrial stage. Motions request that the court take some action and are typically not long. The motion itself does not argue.

Think of the motion as the request by itself. The brief is a separate document. It is the *reasoning* for the request being made in the motion. The brief is a separate document from the motion. It is sometimes called *Points and Authorities*.

A motion asks the court to do something, to take some sort of action. In the list below, pay attention to what action the court is being asked to take.

**EXAMPLES OF COMMON MOTIONS**

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*Motion to Dismiss*

Asking the court to end the litigation without going to trial. If successful, most dismissals are without prejudice, meaning the case can be re-filed. If the matter is dismissed with prejudice, the case may not be filed again.

*Motion to Change Venue*

A request that the court move the trial to another physical location. The motion is usually based on the argument that the current jurisdiction is somehow prejudicial to one of the parties.

*Motion in Limine*

A motion, usually made at the start of a trial, requesting that the judge rule that certain evidence may not be introduced. This is most common in criminal trials. It may also be used to limit issues or delay a final ruling on an issue.

*Motion to Suppress*

Request that the court not allow certain evidence to be introduced at trial.

*Motion to Compel*

Asks the court to make someone do something. The most common of these documents, the motion to compel discovery, is used to force a party to respond to certain discovery requests more fully or accurately. Also common is a motion to compel appearance of a witness.

*Motion to Continue*

This motion asks that a trial or hearing be postponed until a later point. It may also be used to request more time to respond to a motion, similar to a motion to extend (see below).

*Motion to Extend*

Sometimes called a *motion for enlargement of time*, this is a request asking the court to allow more time to respond to a motion or discovery.

*Motion for Summary Judgment*

Submitted during the *pretrial stage*, this motion asks the court to determine the outcome of a case without the jury's consideration since there are no facts in dispute. If there are no material facts in dispute, only the law needs to be applied, which is the duty of the court; thus, a trial is not necessary. While it may be filed at any point prior to trial, the Motion for Summary Judgment is often the last motion filed before trial.

*Motion for Directed Verdict*

A *trial stage* motion similar in effect to a summary judgment, this motion is filed during the trial after one party has presented his or her case. The opposing party submits the motion arguing that a *prima facie* case has not been established by the plaintiff; therefore, the case should be ended in favor of the defendant.

*Motion for Judgment NOV*

A *post-trial* motion arguing that the jury made a mistake and asking the court to set aside the jury's decision, instead applying its own determination upon the matter.

*Motion for a New Trial*

Motion made after the trial asking the court to invalidate the results of the trial due to a specified procedural error. In many jurisdictions, this motion is required to appeal at some later date. On appeal, the appellant is required to have used all possible avenues for relief. This is referred to as an "exhaustion of remedies." The Motion for a New Trial is an important part of establishing that, on appeal, a party has exhausted all available remedies.

Most of the motions mentioned above will require that a hearing be set, but some motions do not call for a hearing.