

Tips and Tricks From a Former Research Attorney

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GENERAL LAW AND MOTION TIPS

- Begin and end the process of drafting a motion with the notice of motion. You cannot get different relief, or relief on different grounds, than that which is stated in the notice of motion. Be precise, cite any statutory authority you rely upon and, if you seek alternative relief, make sure you include it in your notice.
- Don't hold something back for the reply.
- Don't spend a lot of time or space in your brief on procedural objections unless you plan to stand on them.
- Don't use all of the pages allotted if you don't need them.
- Tab all exhibits (including for courtesy copies) and make sure your exhibits are legible.
- If you are facing a demurrer and plan to amend, or if you have resolved a discovery dispute, let the department know ASAP.
- Look for local rules in state court too. Particularly complex departments have local rules, standing orders and model protective orders.
- Familiarize yourself with the requirements for filing documents under seal (CRC 2.550, 2.551).
- Never blame a member of your staff for missing a deadline or miscalendaring a hearing.

TIPS FOR DEMURRERS

- Always state in your demurrer that you are demurring to each cause of action separately. If your demurrer states that it is to the entire complaint it may be overruled if the complaint states one good cause of action.
- Do not organize your brief by tracking the causes of action as numbered in the complaint; start with your best argument.
- Demurrers are sustained and overruled, not granted and denied.

TIPS FOR DISCOVERY MOTIONS

- Don't file prematurely. Make sure that you are at a true impasse before filing a motion to compel further responses or motion for a protective order.
- Don't refuse requests for reasonable extensions of time to respond or extensions of time to file a discovery motion.
- "Good cause" for compelling further responses to document requests must be supported by an attorney declaration; argument in the motion or separate statement is not a substitute for the necessary facts.
- Group your separate statement by the subject matter of the request.
- Conduct yourself at deposition as if the court will be reading the transcript.
- If you are seeking sanctions make sure you state, in the notice of motion, whether you are seeking sanctions against the opposing party or attorney or both. See CCP § 2023.040 "A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought."

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TIPS FOR SUMMARY JUDGMENT MOTIONS

- If there have been a lot of filings in your case, attach a copy of the complaint to the request for judicial notice because otherwise the research attorney has to go down to the file room to find it.
- If you are moving for summary adjudication, make sure the “issue” is one that can be summarily adjudicated and copy the issue from the notice of motion “verbatim” on the separate statement.
- The response separate statement should say “disputed” or “undisputed.” The significance of any admission should be argued in your brief not in your separate statement.
- Always file a reply separate statement. It should explain why the facts your opponent says are disputed are not in fact disputed. If your opponent’s separate statement lists additional facts, never write that they are disputed! Always explain why they are immaterial.

If you are making dozens of evidentiary objections but only a few are truly critical, call the critical ones out in your briefs.