

1 **Research Guide: Motion for Early Termination of Probation**
2 **Law Library for San Bernardino County**

3 Research Guide, www.sblawlibrary.org, (909) 885-3020.

4 **Disclaimer**

5 The information in this research guide is intended to assist patrons with their legal research and is in
6 no way intended to replace the counsel of an Attorney. Any decisions about how to proceed must be
7 determined by the patron. The library staff can recommend and refer you to print and web-based
8 resources that will help you find answers to your law-related questions. The staff at the Law Library
9 for San Bernardino County cannot explain or interpret the law itself and we are not permitted to give
10 legal advice.

11 **I want to terminate my probation early. Do I have any options?**

12 According to California [Penal Code § 1203.3](#), the court has authority at any time during the
13 probation period to revoke, modify, change or terminate the period of probation.

14 [Penal Code § 1203.3](#)

15 (a) The court shall have authority at any time during the term of probation to revoke,
16 modify, or change its order of suspension of imposition or execution of sentence. The
17 court may at any time when the ends of justice will be subserved thereby, and when the
18 good conduct and reform of the person so held on probation shall warrant it, terminate the
19 period of probation, and discharge the person so held.

20 The full text of the code can reviewed at the law library or online at
21 <http://leginfo.legislature.ca.gov/faces/codes.xhtml> .

22 **Is there a form for this procedure?**

23 The Judicial Council has not provided a form for mandatory or optional use for this procedure.

24 **There is no form available, now what?**

25 When there is no Judicial Council Form available this usually means that you have to draft your
26 own form. The Judicial Council has created an information guide to help you understand the
27 [Basics of Court Forms](#) at <http://www.courts.ca.gov/selfhelp-forms.htm>.

28 **How do I draft my own form?**

First you need to do some research to see what the law says you can and cannot do. Based on the
law you can decide if the courts have provided a remedy for your legal situation. Usually this
means drafting a motion with all of the necessary parts.

For more information about motions see
http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/sbell_what_is_a_motion.pdf

1 For information on how to draft your own pleading form see our guide on [Forms](#) at
2 http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/sbcell_forms.pdf.

3 **So how do I draft a Motion for Early Termination of Probation?**

4 A sample of what a Motion might look like is provided below. But you will have to decide
5 whether the sample is the correct form for your situation. You may need to modify the forms for
6 your specific case. Blank Pleading paper is available at <http://www.sblawlibrary.org/forms.html>.

7 **What are the different parts of the motion?**

- 8 ➤ Generally, the **Notice of Motion** tells the court what you want to do. In other words, it
9 notifies the court of the action you want the court to take.
- 10 ➤ The **Memorandum of Points and Authorities** tells the court the law or authority you are
11 relying on for your motion request.
- 12 ➤ In the **Declaration** you should tell the court how you have fulfilled the terms of the law.
13 Provide your statement of the facts and how they relate to your motion.
- 14 ➤ The **Proposed Order** is for the judge to sign. Generally, the order is the document that
15 allows your probation to be terminated.

16 **What do I do after I draft my forms?**

17 Once you have drafted the forms to your specifications you can file them with the court.
18 Typically, the clerk will assign a hearing date for your motion. You will need to serve the
19 District Attorney and the Probation Department and file a **Proof of Service**. Some courts will
20 serve the papers for you.

21 For information about service of papers and proof of service, please refer to one of the following
22 research guides:

- 23 ➤ *Personal Service of Court Papers*, published by the Sacramento County Public Law
24 Library, <http://www.saclaw.org/Uploads/files/Step-by-Step/PersonalService.pdf>
 - 25 ➤ Local San Bernardino County Proof of Service Form:
26 <http://www.saclaw.org/Uploads/files/Step-by-Step/PersonalService.pdf>
 - 27 ➤ Judicial Council Proof of Service Forms: <http://courts.ca.gov/forms.htm?filter=POS>
- 28

1 **Additional Resources for Reference**

2 *California Criminal, Practice, Motions, Jury Instructions and Sentencing*, 3rd edition, volume 5,
3 chapter 58 on Probation.

4 *Cleaning Up Your Record*, <http://courts.ca.gov/1070.htm>, published by the Judicial Council.

5 *Motion to Terminate Probation Early*, <http://www.saclaw.org/Uploads/files/Step-by-Step/MotionTerminateProbation.pdf>, published by the Sacramento County Law Library.

7 **Tips and Tricks on Filling out the Form:**

8 **For the Blank Lines at the top of the Notice of Motion and the Order:**

9 You need to fill in your Name and Address on the lines that are provided.
10

11 **What does Defendant in Pro Per mean?**

12 It means the person filing the motion is representing himself/herself without the help of an
13 attorney.

14 **Who is the Defendant?**

15 For this particular motion the person asking for the motion is the defendant.

16 Fill in your name on any lines that require the name of the defendant.

17 **What is the Date, Time, and Department?**

18 Your motion will be assign a date, time and a department. The date, time, and department will be
19 assigned when you file the papers with the Court Clerk. You may fill in the information at that
20 time.

21 **Supporting Memorandum of Points and Authorities on page 2:**

22 The points and authorities on page 2 has already been listed, you do not need to add anything to
23 this page.

24 You may however want to visit the law library and review the code and the case law in its
25 entirety for your own research on the subject.

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1 **The Declaration, page 3:**

2 Write your name so that you are the one making the declaration. I, write your name, declare:.

3
4 The declaration is your opportunity to explain why your probation should be terminated. It is
5 important to explain how you fulfilled the terms of your probation, e.g. paid any fines and
6 fulfilled any special conditions.

7 The declaration is also your opportunity to provide information about anything you believe is
8 relevant for the Judge to decide in your favor.

9 Executed on, enter today's date, at enter the city _____, California.

10 Date and sign at the bottom.

11 **The Order:**

12 Fill in the information required for the order. Insert your name on the blank line for "Name of the
13 Defendant".

14 Leave the Date line and the line for the Judge to sign blank. The Judge will sign and date the
15 order.

16 **Filing with the Court and Serving Interested Parties:**

17 Once you have filled out the form you can file it with the Court Clerk at the appropriate court
18 house.

19 You may be required to pay a filing fee. You can inquire at the Courthouse about court filing
20 fees.

21 Make a minimum of three (3) copies of your documents. One of these copies is to be served on
22 the District Attorney, one of the copies is to be served on the Probation Department, one copy
23 will be kept for your own records, and the original will be for the court.

24 The Court will certify the copies to be served to the other parties. Once you have served the other
25 parties with the motion you will have to provide a proof of service to the court. See "*What do I
26 do after I draft my forms?*" section above.

27 Local San Bernardino County Proof of Service Form: [http://www.saclaw.org/Uploads/files/Step-
28 by-Step/PersonalService.pdf](http://www.saclaw.org/Uploads/files/Step-by-Step/PersonalService.pdf)

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Defendant in Pro Per

IN THE SAN BERNARDINO SUPERIOR COURT
STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

_____,
Defendant.

) Case No.: _____
)
) NOTICE OF MOTION TO TERMINATE
) PROBATION PURSUANT TO PENAL
) CODE 1203.3. SUPPORTING
) MEMORANDUM OF POINTS AND
) AUTHORITIES AND SUPPORTING
) DECLARATION
)
) Date: _____
) Time: _____
) Dept: _____

NOTICE OF MOTION

TO THE ABOVE ENTITLED COURT AND TO THE DISTRICT ATTORNEY OF
SAN BERNARDINO COUNTY: NOTICE IS HEREBY GIVEN that on (Date) _____,
at the hour of (Time) _____ in the above entitled Court, Defendant (Name),
_____, will move this court for an order declaring a termination of
probation.

This motion is made on the grounds that Defendant has fulfilled all the terms of
probation, has paid all required fines and fees, and has no subsequent criminal record.

Dated: _____.

Respectfully Submitted,
By: _____

1 **SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES FOR MOTION TO**
2 **TERMINATE PROBATION PURSUANT TO PENAL CODE 1203.3**

3 Defendant submits the following points and authorities in support of the motion to terminate
4 probation:
5

6 **I. THE COURT HAS AUTHORITY TO MODIFY PROBATION AT ANY TIME**
7 **DURING THE PROBATIONARY TERM**

8 Penal Code § 1203.3 provides in part:
9

10 (a) The court shall have authority at any time during the term of probation to revoke,
11 modify, or change its order of suspension of imposition or execution of sentence.

12 The court may at any time when the ends of justice will be subserved thereby, and when
13 the good conduct and reform of the person so held on probation shall warrant it, terminate
14 the period of probation, and discharge the person so held. The court shall also have the
15 authority at any time during the term of mandatory supervision pursuant to subparagraph
16 (B) of paragraph (5) of subdivision (h) of Section 1170 to revoke, modify, or change the
17 conditions of the court's order suspending the execution of the concluding portion of the
18 supervised person's term.
19

20 The trial court is therefore authorized, during the time of probation, upon proper showing, to
21 modify probation. People v. Cookson, 54 Cal. 3d 1091, 1098-1099 (1991); People v. Marin, 147
22 Cal. App. 2d 625, 627 (1957).
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1 **DECLARATION IN SUPPORT OF MOTION TO TERMINATE PROBATION**

2 I, _____, declare:

3 I am the defendant in the above-entitled case. Since my conviction, the following facts have
4 arisen to justify my application for termination of probation:
5

6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
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15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____

23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed on _____, at _____, California.

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26 Dated: _____

Respectfully Submitted,

27 By: _____

28 Defendant

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Defendant in Pro Per

**IN THE SAN BERNARDINO SUPERIOR COURT
STATE OF CALIFORNIA**

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.

Defendant.

) Case No.: _____
)
) **ORDER TO TERMINATE PROBATION**
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ORDER TO TERMINATE PROBATION

It appearing to the court from the foregoing motion and from records in this case, that the defendant herein is eligible for the relief provided in Penal Code § 1203.3.

IT IS HEREBY ORDERED that the probation term for _____
[Name of the Defendant] be terminated.

Dated: _____.

Judge of the Superior Court