

Law Library for San Bernardino County

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Research Guide – Early Termination of Probation

Last Updated: January 15, 2019

Disclaimer

The information in this research guide is intended to assist patrons with their legal research and is in no way intended to replace the counsel of an attorney. This resource is not comprehensive; you may need to do additional research and all references should be checked for accuracy reflecting changes to the law since this creation of this guide. Any decisions about how to proceed must be determined by the patron. The library staff can recommend and refer you to online and print resources that will help you find answers to your law-related questions. The staff at the Law Library for San Bernardino County cannot explain or interpret the law itself and we are not permitted to give legal advice.

Can My Term of Probation Be Modified?

Yes. According to California Penal Code § 1203.3, the court has authority at any time during the probation period to revoke, modify, change or terminate the period of probation.

Penal Code § 1203.3

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

(The full text of the code can reviewed at the law library or online at www.leginfo.ca.gov)

Is There a Form For This Procedure?

No. The Judicial Council has not provided a form for mandatory or optional use for this procedure. When there is no Judicial Council Form available, this means you have to draft your own form.

How Do I Draft My Own Motion?

There are four different parts to the motion:

1. The **Notice of Motion**, which tells the court what you want to do. In other words, it notifies the court of the action you want the court to take.
2. The **Memorandum of Points and Authorities** tells the court the law or authority you are relying on for your motion request.
3. The **Declaration**, in which you should tell the court how you have fulfilled the terms of the law. Provide your statement of the facts and how they relate to your motion.

4. The **Proposed Order**, which is for the judge to sign. Generally, the Order is the document that allows your probation to be terminated.

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

What Do I Do After I Draft My Motion?

1. Make 3 copies of the original motion.
2. Bring the original, the 3 copies, and two **Proof of Service** forms with you to the courthouse.
3. Serve one copy of the motion on the District Attorney and ask for a “received” stamp on the original.
4. Serve a second copy on the Probation Department and ask for a “received” stamp on the original.
5. Complete the two proof of service forms; one that proves you served the District Attorney, and another which proves you served the Department of Probation.
6. File the original motion, along with the Proof of Service forms, with the clerk.
7. The last copy is yours to keep for your records.
8. Attend your court hearing, if required.

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

- *Personal Service of Court Papers*, published by the Sacramento County Public Law Library, <http://www.saclaw.org/Uploads/files/Step-by-Step/PersonalService.pdf>
- *Proof of Service by Mail*, published by the Sacramento County Public Law Library, <http://www.saclaw.org/pages/pos-mail.aspx>
- *Service of Notice and Other Papers*, published by the San Diego County Public Law Library, https://sandiegolawlibrary.org/wp-content/uploads/wpmc-trash/2013/04/Service_of_Notice_and_Other_Papers.pdf
- Proof of Service Forms, <http://courts.ca.gov/forms.htm?filter=POS>

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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 _____, at the hour of _____ in the above entitled Court, Defendant, _____, 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 **I. THE COURT HAS AUTHORITY TO MODIFY PROBATION AT ANY TIME**
6 **DURING THE PROBATIONARY TERM**

7 Penal Code § 1203.3 provides in part:

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

11 The trial court is therefore authorized, during the time of probation, upon proper showing, to
12 modify probation. People v. Cookson, 54 Cal. 3d 1091, 1098-1099 (1991); People v. Marin, 147
13 Cal. App. 2d 625, 627 (1957).

1 **DECLARATION IN SUPPORT OF MOTION TO TERMINATE PROBATION**

2 I, _____, declare:

3 I am the defendant in the above-entitled case.

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____

21 _____

22 _____

23 _____

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

25 Executed on _____, at _____, California.

26 Dated: _____

Respectfully Submitted,

27 By: _____

28 Defendant

