

RULE 9.300 | MOTIONS

(a) Contents of Motion; Response. Unless otherwise prescribed by these rules, an application for an order or other relief available under these rules shall be made by filing a motion therefor. The motion shall state the grounds on which it is based, the relief sought, argument in support thereof, and appropriate citations of authority. A motion for an extension of time shall, and other motions if appropriate may, contain a certificate that the movant's counsel has consulted opposing counsel and that the movant's counsel is authorized to represent that opposing counsel either has no objection or will promptly file an objection. A motion may be accompanied by an appendix, which may include affidavits and other appropriate supporting documents not contained in the record. With the exception of motions filed pursuant to rule 9.410(b), a party may serve 1 response to a motion within 15 days of service of the motion. The court may shorten or extend the time for response to a motion.

(b) Effect on Proceedings. Except as prescribed by subdivision (d) of this rule, service of a motion shall toll the time schedule of any proceeding in the court until disposition of the motion. An order granting an extension of time for any act shall automatically extend the time for all other acts that bear a time relation to it. An order granting an extension of time for preparation of the record, or the index to the record, or for filing of the transcript of proceedings, shall extend automatically, for a like period, the time for service of the next brief due in the proceedings. A conformed copy of an order extending time shall be transmitted forthwith to the clerk of the lower tribunal until the record has been transmitted to the court.

(c) Emergency Relief; Notice. A party seeking emergency relief shall, if practicable, give reasonable notice to all parties.

(d) Motions Not Tolling Time.

- (1) Motions for post-trial release, rule 9.140(g).
- (2) Motions for stay pending appeal, rule 9.310.
- (3) Motions relating to oral argument, rule 9.320.



- (4) Motions relating to joinder and substitution of parties, rule 9.360.
- (5) Motions relating to amicus curiae, rule 9.370.
- (6) Motions relating to attorneys' fees on appeal, rule 9.400.
- (7) Motions relating to service, rule 9.420.
- (8) Motions relating to admission or withdrawal of attorneys, rule 9.440.
- (9) Motions relating to sanctions, rule 9.410.
- (10) Motions relating to expediting the appeal.
- (11) Motions relating to appeal proceedings to review a final order dismissing a petition for judicial waiver of parental notice and consent or consent only to termination of pregnancy, rule 9.147.
- (12) Motions for mediation filed more than 30 days after the notice of appeal, rule 9.700(d).

Committee Notes

1977 Amendment. This rule replaces former rule 3.9.

Subdivision (a) is new, except to the extent it replaces former rule 3.9(g), and is intended to outline matters required to be included in motions. These provisions are necessary because it is anticipated that oral argument will only rarely be permitted. Any matters that formerly would have been included in a brief on a motion should be included in the motion. Although affidavits and other documents not appearing in the record may be included in the appendix, it is to be emphasized that such materials are limited to matter germane to the motion, and are not to include matters related to the merits of the case. The advisory committee was of the view that briefs on motions are cumbersome and unnecessary. The advisory committee anticipates that the motion document will become simple and unified, with unnecessary technical language eliminated. Routine motions usually require only limited argument. Provision is made for a response by the opposing party. No further responses by either party are permitted, however, without an order of the court entered on the court's own motion or the motion of a party. To ensure cooperation and communication between opposing counsel, and conservation of judicial resources, a party moving for an extension of time is required to certify that opposing counsel has been consulted, and either has no objection or intends to serve an objection promptly. The certificate may also be used for other motions if appropriate. Only the motions listed in subdivision (d) do not toll the time for performance of the next act. Subdivision (d)(9) codifies current practice in the supreme court, where motions do not toll time unless the court approves a specific request, for good cause shown, to toll time for the performance of the next act. Very few motions filed in that court warrant a delay in further procedural steps to be taken in a case.



The advisory committee considered and rejected as unwise a proposal to allow at least 15 days to perform the next act after a motion tolling time was disposed.

Subdivision (b) replaces former rule 3.9(f).

Subdivision (c) is new and has been included at the request of members of the judiciary. It is intended to require that counsel make a reasonable effort to give actual notice to opposing counsel when emergency relief is sought from a court.

Specific reference to motions to quash or dismiss appeals contained in former rules 3.9(b) and (c) has been eliminated as unnecessary. It is not intended that such motions be abolished. Courts have the inherent power to quash frivolous appeals, and subdivision (a) guarantees to any party the right to file a motion. Although no special time limitations are placed on such motions, delay in presenting any motion may influence the relief granted or sanctions imposed under rule 9.410.

As was the case under former rule 3.8, a motion may be filed in either the lower tribunal or the court, in accordance with rule 9.600.

1980 Amendment. Subdivision (b) was amended to require the clerk of either court to notify the other clerk when an extension of time has been granted, up to the time that the record on appeal has been transmitted to the court, so that the clerk of the lower tribunal will be able to properly compute the time for transmitting the record on appeal, and that both courts may properly compute the time for performing subsequent acts.

1992 Amendment. Subdivision (b) was amended to clarify an uncertainty over time deadlines. The existing rule provided that an extension of time for performing an act automatically extended for a comparable period any other act that had a time relation thereto. The briefing schedule, however, is related by time only to the filing of the notice of appeal. Accordingly, this amendment provides that orders extending the time for preparation of the record, the index to the record, or a transcript, automatically extends for the same period the time for service of the initial brief. Subdivision (b) also was amended to correlate with rule 9.600(a), which provides that only an appellate court may grant an extension of time.

