



POST-TRIAL MOTIONS CHEAT SHEET

After a hearing, there are various types of motions, called post-trial motions, that can be filed to try to change the order that was made. This chart provides some of the rules to some of the basic types of post-trial motions and their effect on the timing of filing an appeal of the original order. This is a quick reference guide, so beware that there are many exceptions to the general rules stated here and more detailed provisions in the statutes. It is recommended to consult with an attorney, if possible, on these motions.

CCP = Code of Civil Procedure
 CRC = California Rules of Court

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<p>Motion for Reconsideration</p> <p>A Motion for Reconsideration asks the judge to modify (change) or revoke (cancel) its prior order.</p>	<p>You can file a Motion for Reconsideration if there are new or different facts, circumstances, or law from when the trial court heard your case.</p> <p>CCP § 1008(a)</p>	<p>A Motion for Reconsideration must be filed within 10 days after you were serviced the written notice of entry of order.</p> <p>To be safe, this might be calculated from the date of the order if it was served on the same day as the order was made.</p> <p>CCP § 1008(a)</p>	<p>A Motion for Reconsideration is not appealable.</p> <p>CCP § 1008(g)</p>	<p>If you file a Motion for Reconsideration it extends the time to appeal the original court order (the underlying appealable order)</p> <p>You will have until whichever of the below happens first to file your appeal:</p> <p>(1) Within 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;</p>

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				<p>(2) 90 days after you filed your first motion to reconsider; or</p> <p>(3) 180 days after the original order you want to appeal was entered.</p> <p>CRC, Rule 8.108 (e)</p>
<p>Motion for New Trial</p> <p>A Motion for New Trial asks the trial court to vacate (cancel or remove) the order and schedule a new hearing.</p>	<p>You can file a Motion for New Trial if any of the below substantially affected or impacted your rights:</p> <p>(1) Irregularity in the proceedings / no fair trial;</p> <p>(2) Misconduct of the jury;</p> <p>(3) Accident or surprise;</p> <p>(4) Newly discovered evidence;</p> <p>(5) Excessive or inadequate damages;</p> <p>(6) Not sufficient evidence to justify the</p>	<p>You must file a Motion for New Trial after the decision is made and before the entry of judgment.</p> <p>OR</p> <p>You will have until whichever of the below happens first:</p> <p>(a) Within 15 days after the clerk mails the notice of entry of judgment to you (“NOEJ”);</p> <p>(b) Within 15 days of being served by any party the written NOEJ (i.e. service of a file-</p>	<p>If your Motion for New Trial is granted, the other party can appeal it.</p> <p>CCP § 904.1(a)(4)</p> <p>If your Motion for New Trial is denied, you cannot appeal the trial court order denying your Motion for New Trial. But the denial of your motion will extend your time to appeal the original court order.</p> <p>CRC, Rule 8.108(b)</p>	<p>If your Motion for New Trial is granted, the other party has the normal time to appeal under CRC, Rule 8.104.</p> <p>If your Motion for New Trial is denied, the time to appeal is extended for all parties to whichever of the below happens first:</p> <p>(A) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;</p> <p>(B) 30 days after denial of the motion by operation of law*; or</p>

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	<p>trial court's decision, or the decision is against the law;</p> <p>(7) Error in the law.</p> <p>CCP § 657</p>	<p>stamped copy of the judgment); or</p> <p>(c) 180 days after entry of judgment.</p> <p>CCP § 659(a)</p>		<p>(C) 180 days after entry of judgment.</p> <p>CRC, Rule 8.108(b)</p> <p>*A motion is considered denied by operation of law if the trial court did not make a decision on the motion within 75 days of whichever of the below happens first:</p> <p>1) mailing of notice of entry of judgment by the court clerk; or</p> <p>2) service on the person who filed the motion for new trial by any party of the written notice of entry of judgment</p> <p>OR</p> <p>If notice was not given, 75 days after the first notice of intention to move for a new trial was filed.</p> <p>CCP § 660(c)</p>
<p>Motion to Vacate</p> <p>A Motion to Vacate asks the trial court to vacate</p>	<p>You can file a Motion to Vacate if</p>	<p>You must file a Motion to Vacate after the decision is made but</p>	<p>Extends time to appeal the original judgment. CRC 8.108(c).</p>	<p>The time to appeal the original judgment is extended to whichever of the below happens first:</p>

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<p>(cancel or remove) its order and enter another or different order.</p>	<p>(1) there is an incorrect or erroneous legal basis for the decision, not consistent with or not supported by the facts. (2) A judgment or decree not consistent with or not supported by the special verdict. CCP § 663</p>	<p>before the entry of judgment. OR Whichever of the below happens first (a) Within 15 days of the date the clerk mails the NOEJ; (b) Within 15 days of being served by any party the written NOEJ; or (c) within 180 days after entry of judgment. CCP § 663a</p>		<p>(1) 30 days after the superior court clerk or a party serves an order denying the motion to vacate or a notice of entry of that order; (2) 90 days after the first notice of intention to move or motion-to vacate is filed; or (3) 180 days after entry of judgment. CRC, Rule 8.108(c)</p>
<p>Motion to Set Aside under CCP § 473(b)</p> <p>A Motion to Set Aside asks the court to “set aside” or relieve a party from a judgement or order. This relief is discretionary, meaning the judge can but does not have to provide any relief.</p>	<p>You can file a Motion to Set Aside if a judgement or order was entered against you because of you or your attorney’s mistake, inadvertence, surprise or excusable neglect. CCP § 473(b)</p>	<p>A Motion to Set Aside must be filed within a reasonable time. A “reasonable time” is usually when the motion is filed before six months has passed since the judgment, dismissal, order, or other proceeding happened. You cannot file a Motion to Set Aside if</p>	<p>Generally, these motions are not appealable. EXCEPTION: If the underlying order is appealable as a final judgment (under CCP § 904.1(a)(1)), then the motion to set aside would be appealable under CCP § 904.1(a)(2) as an order made after a final judgment.</p>	<p>The time to appeal the original judgment is whichever of the below happens first: (1) 30 days after the superior court clerk or a party serves an order denying the motion to set aside or a notice of entry of that order; (2) 90 days after the first notice of intention to move-</p>

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		<p>the judgment or order was entered 6 or more months ago.</p> <p>CCP § 473(b)</p>		<p>or motion-to set aside is filed;</p> <p>(3) 180 days after entry of judgment.</p> <p>CRC, Rule 8.108(c) (see Advisory Committee Comment, subdivision (c).)</p>
<p>Motion to Correct Clerical Error</p> <p>A Motion to Correct Clerical Errors asks the court to correct or fix any clerical mistakes made in an order.</p>	<p>You can file a Motion to Correct a Clerical error if:</p> <p>1) a judgment or order has a clerical mistake or</p> <p>2) a judgement or order is void (has no legal effect) so it should be set aside.</p> <p>CCP § 473(d).</p>	<p>A Motion to Correct Clerical Error may be filed at any time, regardless of when the mistake was made.</p>	<p>Generally, a Motion to Correct Clerical Error is not appealable.</p> <p>EXCEPTION: If the underlying order is appealable as a final judgment (under CCP § 904.1(a)(1)), then the motion to correct clerical error would be appealable under CCP § 904.1(a)(2) as an order made after a final judgment.</p>	<p>The time to appeal from the original judgment is whichever of the below happens first:</p> <p>(1) 30 days after the superior court clerk or a party serves an order denying the motion to set aside or a notice of entry of that order;</p> <p>(2) 90 days after the first notice of intention to move- or motion-to set aside is filed;</p> <p>(3) 180 days after entry of judgment.</p> <p>See 8.108(c) [time is extended if "any party serves and files a valid motion to vacate the judgment"]; and <i>Shisler v.</i></p>

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				<i>Sanfer Sports Cars, Inc.</i> (2008) 167 Cal.App.4th 1, 5 [motion brought under 473(d) subject to 8.108(c) extension of time]

Please contact FVAP at info@fvaplaw.org or (510) 380-6243 with questions.

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