

## Standard 7.11-3 on Motion Practice

### STANDARD 7.11-3 ON MOTION PRACTICE

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*The practitioner should file appropriate motions as part of the litigation strategy.*

#### COMMENTARY

Motion practice is a key ingredient of an overall litigation strategy and can serve a variety of functions. There are procedural and substantive motions. Procedural motions such as motions to compel can be used to gain necessary information in the face of inadequate discovery responses. When appropriate, motions for sanctions can be used to require adversaries to take discovery obligations seriously.

Substantive motions can resolve issues on the merits and can educate the court as to the client's cause of action or defense. Where appropriate, motions can be used to educate the court regarding the factual and legal basis for the case. This can be particularly important if the case involves an area of the law with which the court is unfamiliar or appears unlikely to support the client's position without additional exposure to the legal basis for the client's claim or defense. Motions can also be used to protect the client's interests. For example, a motion to consolidate trial on the merits with a preliminary injunction hearing may be helpful in securing timely relief. Defensive motions, such as motions to dismiss, can protect the client's interests and may end litigation that is filed against the client.

Both substantive and procedural motions can be used to control the pace and direction of litigation and to maintain effective pressure on the adversary. Motions can result in early favorable settlement or in judicial rulings that improve the client's chances for a favorable disposition of the case.

All motions and responses should be well researched and cogently argued. The specific strategic purpose of each motion should be clear. Thought should be given to possible motions by the practitioner and the adversary prior to engaging in discovery so that requests and responses can be drafted with the possible motions in mind. Motions filed for frivolous or insufficient reasons are improper.