

**OFFICE OF THE FEDERAL DEFENDER
EASTERN DISTRICT OF CALIFORNIA**

MOTIONS

WHAT IS A MOTION? A motion is a formal request that a defendant or prosecutor makes to the judge in a case. Most motions are written, and include arguments why the judge should grant the request. Most motions come before the trial, and may determine what the trial will be like. (For example, a defendant might move to have a trial separate from other defendants.) After one party makes a motion, the other side always has the chance to respond to the motion in writing. Sometimes the judge needs to hold a hearing to decide a motion, but sometimes the judge will decide without a hearing, based on the papers that the lawyers have filed.

Your trial judge will decide most motions in the case. Certain types of motions, however, will be heard by the Magistrate Judge. See the Handout called Initial Appearance and Arraignment to learn more about the difference between district judges and Magistrate Judges.

TYPES OF MOTIONS:

Pre-trial: There are many types of motions a defendant or prosecutor can file before trial.

A defendant's **motion to suppress evidence** asks the court to throw out evidence that the police got illegally. In order to decide a motion to suppress, the judge sometimes holds a hearing with witnesses, to decide whether the evidence was obtained legally. If the judge decides that the evidence was gathered illegally, then it cannot be used against the defendant at trial. (Suppressed evidence can, however, be used against the defendant at sentencing if there is a conviction.)

Another common defense motion is a **discovery motion**. This motion asks the court to order the prosecutor to give your attorney more information about the case against you. There are many other kinds of pre-trial motions. Ask your attorney which ones might apply to your case.

In limine motions are brought right before a trial. These are usually motions about what evidence should be allowed in and what evidence should be kept out. If your case goes to trial, your lawyer will discuss these motions with you.

Post-trial motions include motions for a new trial, if something went wrong during the trial. Sentencing motions include motions for "downward departures," to get a lower sentence under the Sentencing Guidelines. Lower sentences are also permitted under a Supreme Court decision, Booker. See the Handout on Sentencing to learn more about this.

REMEMBER: There are many types of motions not described here. It is your attorney's job to decide what motions to bring. Ask your lawyer what motions are appropriate for your case. Your attorney and possibly an investigator may need your help to develop the facts for a motion. Answer all their questions as honestly and completely as possible.