

# Pre-Trial Motions – Tips and A Checklist of Motions to Consider Filing

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## **I. General Tips on Motions**

Filing pretrial motions is critical to successfully defending many clients. You may be able to have a case dismissed or place significant restrictions on the prosecutor's ability to try the case by filing applicable motions. Also, if your client is ultimately unsuccessful at trial, you will have preserved issues that your client may decide to raise on appeal.

1. The rules for motions are in MCR 2.119.
2. Pursuant to MCR 6.001, these rules apply to criminal cases unless a court rule or statute indicates otherwise.
3. A motion that presents an issue of law must be accompanied by a brief. MCR 2.119(A)(2).
4. The combined page limit for a motion and brief may not exceed 20 pages unless the court approves a higher number of pages. In this time of decreasing judicial resources and overloaded dockets, remember that the length of a motion has nothing to do with its value and effectiveness. Do not sacrifice quality, but make your point in the fewest number of pages possible.
5. Don't be lulled by a prosecutor's statement that "we'll be able to work something out." File your motions.
6. Remember that your client may need to appeal if he is convicted at trial, so raise all applicable grounds for your motion. This means to consider constitutional grounds and do not forget to "federalize" your issues by including any grounds based on the U.S. Constitution.
7. Don't forget to draft orders for the court – one for a grant and one for a denial. Include some blank lines in case the court wants to add any language.

## II. A Checklist of Some Pretrial Motions to Consider

- Adjourn and reschedule/ends of justice continuance
- Bill of particulars
- Bond reduction/conditions
- Competency
- Complainant in the courtroom while others are testifying
- Confessions/admissions
  - Voluntariness
  - *Miranda* rights given and followed
  - Denial of right to counsel
  - Post-arrest, post-*Miranda* silence
- Constitutional issues involving statute
  - Lack of notice/vagueness
  - Due process violation
  - Ambiguity
- Courtroom layout
- Discovery – This is ongoing and may be needed before or after the preliminary examination.
- Disqualify judge
- Double jeopardy
- Entrapment
- Fees for expert witness/investigator/clothing for client
  - Remember to file this ex parte.
- Forensic science issues – fingerprints, DNA, ballistics, blood spatter, etc.
- Identifications
  - Line-up
  - On-scene identification
  - Pretrial identification
- Illegal arrest/delay in arrest

- Improper bindover
- Jury instructions
- Jury view of the alleged crime scene
- Precluding the mention of or admission of certain evidence or statements
- Produce res gestae witnesses
- Referring to the complainant as the “victim”
- Search warrants
  - Affidavit insufficient
  - Information is stale
- Searches with no warrant
  - Exigent circumstances
  - Consent
  - Community caretaking
  - Don’t forget to address the issue of standing if necessary.
- Security in courtroom
- Seizure
  - Was there a seizure?
  - Was there reasonable suspicion/probable cause for the stop?
  - Did the seizure last longer than necessary?
- Sever/join charges or trials
- Speedy trial
- Statute of limitations has expired
- Stay of proceeding
- Venue change because of media coverage/bias
- View the evidence
  - Viewing the evidence is critical in many cases, but especially in medical marijuana cases because the definition of “useable marijuana” may preclude what the government is claiming to be marijuana.