

MARSDEN MOTIONS FAQ & RESEARCH GUIDE

WHAT IS A MARSDEN MOTION?

A Marsden motion is a criminal defense motion made by a Defendant in a criminal case to discharge his/her court appointed attorney (public defender or private defender panel attorney), and substitute new counsel. This is applicable only if the defendant's right to counsel would be substantially impaired by continuing with the original attorney. *People v. Marsden* (1970) 2 C3d 118, 123.

A defendant can make a Marsden motion by an oral motion before the trial judge; although a formal motion is not required, the defendant must clearly indicate that he/she wants a substitution of attorney.

DO I QUALIFY TO MAKE A MARSDEN MOTION?

You must currently have a court appointed attorney to qualify. Marsden motions do not apply to privately retained counsel. Retained counsel may be discharged at any time, with or without cause as long as the move was not made with the intent to delay. *People v. Lara* (2001) 86 CA 4th 139.

CAN SOMEONE ELSE MAKE THE REQUEST FOR ME?

No. The right to counsel is personal to the defendant, and the court is not required to conduct a Marsden hearing when a third party complains about the representation received by a defendant. *People v Martinez* (2009) 47 C4th 399, 418.

WHEN CAN I MAKE A MARSDEN MOTION?

A Marsden motion may be made at any stage in the proceedings, including presentation of a motion for a new trial (*People v Meija* (2008) 159 CA4th 1081), or on a motion to withdraw a plea (*People v Sanchez* (2011) 53 CA4th 80)

HOW DO I MAKE A MARSDEN MOTION?

Generally, the defendant initiates a request for a substitution of counsel by making an oral motion in open court. Although a formal motion is not required, the defendant must clearly indicate that he/she wants a different attorney. *People v Sanchez* (2011) 53 C4th 80, 89-90, 133 CR3d 56.

Once the defendant has made the motion, the court must hold a hearing to allow the defendant the opportunity to explain the grounds for the motion and to relate specific instances of his or her attorney's inadequate performance. After the defendant has stated his/her claims, the court will ask additional questions to determine the merits of defendant's motion. A full hearing is not required when the basis of the defendant's dissatisfaction with counsel is set forth in a letter or handwritten motion of sufficient detail. *People v Terrill* (1979) CA3d 291, 298, 159 CR 360.

WILL THERE BE A HEARING?

The trial judge must conduct a hearing on a Marsden request and allow the defendant to state specific reasons for the requested dismissal of counsel. *People v Cole* (2004) 33 C4th 1158, 1190; *People v Fierro* (1991) 1 C4th 173, 204.

The court must question both the defendant and usually the current attorney in order to rule on the motion. A ruling cannot be based on the judge's personal confidence in the attorney, observations of the attorney's previous courtroom conduct, or ex-parte communications with other participants. *People v Hill* (1983) 148 CA3RD 744, 753.

WILL THE DEPUTY DISTRICT ATTORNEY BE PRESENT AT THE MARSDEN HEARING?

To protect confidentiality, the defense attorney should move to exclude the prosecuting attorney from the Marsden hearing, although the court is not required to, it should use its discretion as long as the request is timely *People v Madrid* (1985) 168 CA3d 14, 19. Under the California Rules of Court Section 8.328(b), which provides for a confidential transcript of the Marsden hearing, assumes that prosecutors are being excluded from Marsden hearings.

Under Penal Code Section 1054.6 neither defense counsel nor the prosecuting attorney is required to disclose any work product or privileged information to each other. The subject matter of a Marsden hearing would likely disclose such material which makes a prosecutor's exclusion at a Marsden hearing reasonable.

WILL I HAVE AN ATTORNEY TO HELP ME MAKE THE MOTION?

The court is not required to appoint independent counsel to assist the defendant in making the Marsden motion, however the court has discretion to appoint counsel. *People v Hines* (1997) 15 C4th 997, 1024-1025, 64 CR2d 594.

DOES THE COURT HAVE TO GRANT MY MOTION?

No. The trial court does have discretion to deny a Marsden motion "in the absence of a sufficient showing that a defendant's right to counsel would otherwise be substantially impaired." *People v Walker* (1976) 18 C3d 232, 238. The defendant has the burden of proving substantial impairment (*People v Young* (1981) 118 CA3d 959) by demonstrating that counsel is inadequate (*People v Marsden* (1970) 2 C3d 118). If the defendant fails to specify reasons for the substitution of counsel, the court may properly deny the request.

WHAT ARE SOME TYPICAL REASONS FOR A TRIAL JUDGE TO DENY A MARSDEN MOTION?

- Defendant did not think that counsel had the client's best interest at heart (*People v Silva* (1988) 45 C3d 604);
- Counsel would not make certain motions the defendant wanted brought (*People v Silva* (1988) 45 C3d 604)
- Defendant did not relate well with defense counsel (*People v Berryman* (1993) 6 C4th 1048, overruled on other grounds in *People v Hill* (1998) 17 C4th 800, 823 n1)

Guide created by and provided courtesy of the San Mateo County Law Library

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number and Address): ATTORNEY FOR (Name):	COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ <i>Address</i> <i>City State Zip:</i>	
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff _____, Defendant	
MARSDEN MOTION	Case Number:

Matter is set for hearing on:

Date: _____ Time: _____

Defendant moves for an Order relieving (Attorney's Name) _____

from further representation of the Defendant in this matter. The Defendant also asks for an Order appointing alternate counsel. The Motion is made pursuant to People vs. Marsden, and is supported by the attached declaration of the Defendant.

Date: _____

 Defendant



2. The following things have not been done that should have been done:

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____
_____ Defendant