

Chapter 13

Motions Practice

13.1 Types and Timing of Pretrial Motions	13-2
A. Timing	
B. Motions and Requests after Appointment of Counsel	
C. Motions before Arraignment	
D. Motions before Trial	
E. Motions not Subject to Time Limits	
F. Motions in Limine	
G. Unavailability of Pretrial Motion to Dismiss for Insufficient Evidence	
13.2 Procedural Requirements in Superior Court	13-14
A. Writing Requirement	
B. Filing and Service	
C. Ex Parte Motions	
D. Required Contents of Motions	
E. Right to Evidentiary Hearing	
F. Conduct of Evidentiary Hearing	
G. Disposition of Motions	
H. Renewing Pretrial Motions	
13.3 Motions Practice in District Court	13-23
A. Misdemeanors	
B. Motions in Felony Cases	
13.4 Miscellaneous Motions	13-27
A. Motion for Continuance	
B. Motion to Dismiss on Double Jeopardy Grounds	
C. Motion to Recuse Trial Judge	
D. Motion to Dismiss for Vindictive or Selective Prosecution	
E. Postconviction Motions	

A motion is a “written or oral application requesting a court to make a specified ruling or order.” BLACK’S LAW DICTIONARY 1216 (11th ed. 2019). While the primary function of a motion is to obtain the requested relief, motions practice also may provide discovery or facilitate plea negotiations by advancing the defendant’s theory or revealing problems in the State’s case. This chapter addresses procedural and timing requirements that apply to pretrial motions. The substantive law governing most of the motions mentioned in this chapter is discussed elsewhere

in this manual. The law underlying certain motions not covered elsewhere is included in this chapter.

Section 13.1 lists types of motions that counsel may consider filing; this section is organized according to the time when the motion should be filed in superior court. Section 13.2 discusses the procedures applicable to pretrial motions in superior court. Section 13.3 summarizes the procedural requirements for motions in district court.

Section 13.4 discusses the law governing certain significant motions not covered elsewhere in this manual, including motions to: (a) continue; (b) dismiss on the grounds of double jeopardy; (c) recuse the trial judge; and (d) dismiss because of vindictive or selective prosecution. It also provides some resources on postconviction motions.

For a further discussion of motions, including deadlines, form requirements, and authority in support, see Phil Dixon, [*Defense Motions and Notices in Superior Court*](#), (UNC School of Government, 2017).