

7.04 | MOTIONS

A motion is a party's oral or written request to the court asking the court to do a particular thing or rule a particular way. You must file each written motion with the court and serve a copy on each other party's lawyer (or, if unrepresented, the party). Before filing a motion with the court, consult the rules regarding filing and serving a motion, paying particular attention to Local Rule 3.01. Violating a rule may cause the court to strike or deny your motion.

There are two types of motions: dispositive and non-dispositive. The Magistrate Judge assigned to an action can rule on a non-dispositive motion, which, if granted, affects the action but does not dispose of it or bring it to a close. Within a certain number of days, any party may request that the District Judge reconsider a Magistrate Judge's ruling on a non-dispositive motion but must show that the Magistrate Judge's ruling is clearly erroneous or contrary to law. A dispositive motion (a motion that can dispose of the action or bring it to a conclusion) is handled differently. A Magistrate Judge does not have the authority to rule on a dispositive motion unless the parties agree to allow their action to proceed entirely with the Magistrate Judge. If the parties do not agree, the Magistrate Judge instead, upon request from the District Judge, prepares a report and recommendation to be submitted to the District Judge who will make the final decision on the dispositive motion. Any party may object to the Magistrate Judge's report and recommendation within 14 days.

The parties can mutually consent to having the Magistrate Judge assigned to the action, as opposed to the District Judge assigned to the action, hear all matters, whether dispositive or non-dispositive. An advantage to consent typically is obtaining a set date (as opposed to a set term) for the trial to begin if the action proceeds to trial.

Usually, the court does not schedule a hearing on a motion. Instead, the court sends a written decision in an order to the parties. If a dispositive motion is submitted and the judge dismisses all claims, the written decision is a judgment. The judgment is final and concludes United States District Court proceedings but may be appealed to the United States Court of Appeals for the Eleventh Circuit within a specified number of days as stated in the Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure. More information about an appeal is below under the heading "Appeal."



To write a motion, it may help to begin with a form or sample that fits your situation. If you cannot find one which fits your situation, you may write your request yourself, including the relevant facts and citations to law as you need them. Motion forms can be found in books in law libraries. Here is the start of a typical motion:

[Name of party filing the motion] asks the court to [statement of the relief requested]. Below is a memorandum of law in support of this request.

A motion has at least three parts but sometimes may include four. In the first part, the movant asks the court to act. If the court does as the party requests, the motion is granted; if the court does not do as the party requests, the motion is denied. A motion may be granted in part and denied in part.

The second part of a motion is a memorandum of law, which is required by the Local Rules. A memorandum of law is the section in which the movant provides the court with authority and argues why the court should allow the request under that authority. Citations to the law are included in a memorandum of law because whatever the party requests must be within the court's authority. If granting the request is not within the court's authority, the court is prohibited from granting it and therefore must deny it. A memorandum of law is part of the motion; not a separate document.

The third part of a motion is a "Rule 3.01(g) certificate." Local Rule 3.01(g) requires almost every motion to include (1) a statement from the moving party that the moving party has made a good-faith effort to confer with the other party to resolve the motion and (2) a statement that the other party either opposes it or does not oppose it. Rule 3.01(g) has additional requirements. Take a moment to read Rule 3.01(g) very carefully. Failing to comply with Rule 3.01(g) is the number one reason motions are denied.

Occasionally, as a fourth part of a motion, a sworn declaration or an affidavit may be included so the court has the facts to rule on the motion. A sworn declaration or an affidavit is not required for all motions.

Common types of motions include requests for compelling discovery, dismissing claims, and extending time.

A copy of motion papers must be sent to each party in the lawsuit to give the party a chance to oppose the motion. Opposing a motion



can be as much work as preparing a motion because the response must state why the court should deny the motion and also include a memorandum of law.

The motion process includes a deadline for a response. Days must be counted in a specific manner. Time periods vary, but a response to a motion is usually due within 14 days of the date stated in the motion's certificate of service. Rule 6 of the Federal Rules of Civil Procedure guides computing time, extending time, and motions.

Under the Local Rules, a party must obtain permission to file a reply to a response. If you file a reply without permission, the court likely will strike it or refuse to consider it.

