



Changing Lawyers FAQ

3 Ways to Change Your Court-Appointed Dependency Lawyer

Who can file one?

- Substitution of counsel motion (Marsden): client files for removal of attorney due to incompetence or animosity.
- Self-representation motion (Faretta): client files to represent self
- Attorney relief motion or court relieves attorney: attorney files to be relieved or Court makes motion on their own to dismiss an attorney

Substitution of Counsel Law– Marsden

Where does the right come from?

- WIC 317(d): Counsel is appointed to represent parent/guardian from the detention hearing and subsequent hearings thru termination proceedings.
- WIC 317.5 (a) All parties are entitled to **competent** counsel.
- Court can dismiss an attorney at its own discretion.
- Court must dismiss the attorney if there is substantial evidence of either of these two grounds and it is clear that defendant's right to counsel (WIC 317(d)) would be substantially impaired:
 - Inadequate representation: Standard: "1) whether trial counsel failed to act in a manner expected of reasonably competent attorneys acting as diligent advocates; and 2) whether such failure deprived the defendant of a potentially meritorious defense, or whether it is reasonably probable that a determination more favorable to the defendant would have resulted but for counsel's failings..." *In re James S. (1991) 227 Cal.App.3d 930*

- Attorney-Client relationship is so broken down that ineffective representation is likely to result Necessary subparts are (a) a complete lack of communication (b) not caused by the voluntary conduct of the client that would (c) prevent an adequate defense. *In re Z.N. (2009) 181 Cal. App.4th 282.*
- Court must listen to complaint and the specific reasons that you believe your attorney is incompetent or that there is such communication issues between that they cannot reasonably perform their job.
- If the court does not grant your motion, it can be appealed. The appellate court will look at:
 - Timeliness of motion (procedure).
 - Adequacy of trial court's inquiry into client's complaint (procedure).
 - Substance of complaint (whether there is very strong evidence of either of the two grounds for dismissing the attorney).
 - Denial of the motion is not an abuse of discretion unless the defendant has shown that a failure to replace the appointed attorney would 'substantially impair' the defendant's right to assistance of counsel. **[Citations.] (People v. Webster (1991) 54 Cal.3d 411, 435 [285 Cal. Rptr. 31, 814 P.2d 1273].)**

Substitution of Counsel Law– Marsden

How do I get a Marsden hearing?

- You tell the court: I am respectfully making a motion for substitution of court-appointed counsel (or have your attorney do this, if they are willing).
 - Most of these motions are oral, meaning people do not write them.
 - However, writing out a motion can be an effective way to organize thoughts,

present evidence, and make a record for appeal if you are turned down. Here is a sample Marsden Motion form: <https://www.modoc.courts.ca.gov/system/files/marsden-motion.pdf>

When should I make the motion?

- Ideally before trial not during.
- When you have evidence you believe fits the definition above.

What happens after I make the motion?

Judge will then start the Marsden hearing by:

1. Clearing the courtroom except court staff, you, and your lawyer. If the judge does not clear the courtroom, you can request this.
2. Going on the record, announcing who is present and the purpose of the hearing.
3. Asking you why you are dissatisfied with the representation you have been receiving.
4. Asking your attorney to describe their experience in dependency, the work they have done on the case, and respond to each claim you have made.
5. Allow you a chance to respond to your attorney's statements.
6. Making a judgment on whether or not your complaints meet the standard for dismissing your attorney.

If the motion is successful, your old attorney must give your new attorney the entire case file. If the motion is not successful, you will keep your current attorney. You can renew the motion later, but you should have new evidence to support a second motion.

How do I win a Marsden Motion?

- Judges are **very** reluctant to grant Marsdens in dependency. You should come with as much evidence as you can feasibly get your hands on.
- Things that are generally not considered enough to qualify as either inadequate or

breakdown of communication:

- Attorney is rude or disrespectful.
- Attorney doesn't return calls, doesn't communicate, didn't talk to client until right before trial or only talks to client in courthouse.

"The number of times one sees [her] attorney, and the way in which one relates with [her] attorney, does not sufficiently establish incompetence." *In re M.P.* (2013) 217 Cal. App.4th 441

- Attorney not fighting for client.
- Attorney wants client to take a deal.
- Attorney & client disagree about which witnesses to call, motions to file, or other trial tactics.
- Client refuses to cooperate with lawyer.
- Having multiple attorneys.
- Lawyer believes client is guilty (or client believes that lawyer believes this).
- Client is not confident about performance of lawyer.
- Client belief that lawyer is lying to them without corroborating evidence o Dislikes client a lot or argues a lot with client.

"A defendant may not effectively veto an appointment of counsel by claiming a lack of trust in, or inability to get along with, the appointed attorney. (*People v. Berryman* (1993) 6 Cal.4th 1048, 1070[25 Cal.Rptr.2d 867, 864 P.2d 40].) Moreover, the trial court need not conclude that an irreconcilable conflict exists if the defendant has not tried to work out any disagreements with counsel and has not given counsel a fair opportunity to demonstrate trustworthiness." *In re M.P.* (2013) 217 Cal. App.4th 441

- What might be enough:
 - Attorney is forcing/intensely pressuring you to not go to trial, not respecting your right to force the County Counsel to prove your guilt.

- Failure of attorney to use language interpreter.
- Attorney's action or inaction in the case has no satisfactory explanation as being in client's interest and is prejudicial to the case (meaning, it's causing a worse outcome for the client and you can prove that).
- You should present all of this information with as little emotion as possible and especially without being angry (see below).

Can doing a Marsden motion and hearing hurt me?

- If you do not have concrete evidence of incompetence or serious miscommunication or if you are only presenting general dissatisfaction with the attorney, a Marsden hearing can make you seem like the person who is difficult to work with in the case, which can be a much bigger problem in dependency than in criminal court because:
 - In dependency, clients being angry or difficult to work with is often viewed as a problem that could affect their parenting or denial by the parent of the issues that brought the case in, both of which are common reasons the Agency recommends against returning the child at a Status Review Hearing. If a parent is seen by the judge as difficult and angry—and especially prone to blaming other people and not themselves for the issues that led to the opening of their case—this can affect the way the Judge reads information from the Agency about the parent's attitude or level of insight. It is especially dangerous for a parent to appear angry or difficult in cases where the primary issue is domestic violence or mental health. When a parent is perceived as lacking the ability or willingness to take accountability for their own role in the case, the Agency and Judge may assume that the parent is

likely to repeat the same behaviors that they believe caused or could have caused harm to the children.

- Dependency cases are for a large part about compliance and doing what professionals say you should do. A Marsden hearing is the opposite of this.
- Dependency courts often involve attorneys appearing in front of one judge for their entire career. This attorney is an officer of the court, and everyone in the room during a parent's Marsden Motion usually knows the attorney very well and often has a cordial, friendly relationship with them. Whereas, all they know about the parent is what the parent has been accused of doing to their children.
- There is a general perception that many people who bring Marsden motions have mental health issues. This is another reason that it is important to make sure you are calm and professional in the meeting and have concrete examples.
- In dependency, there is a concern when you are doing anything not focused on your kids.

Is there anything else you can do if your attorney is not doing their job?

- Make a complaint to the presiding judge of the dependency court in your jurisdiction that attorney has acted "improperly" or "contrary to the rules or policies of the court"
 - Go to: <https://tinyurl.com/kxb2dpwx>
 - The Advokids website has a letter template, here: <https://tinyurl.com/27kevyfk>
- Make a complaint to the State Bar Chief Trial Counsel about unethical professional conduct: <https://tinyurl.com/mu59y8z>

The State Bar of California's Chief Trial Counsel also receives and investigates complaints regarding unethical professional conduct by attorneys practicing in California. It is important to note that