

Lehigh County Law Library Pathfinder

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MOTION FOR RETURN OF EVIDENCE OR PROPERTY

Pa. R. Crim. P. Rule 588 Motion for Return of Property reads:

A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to lawful possession thereof. Such motion shall be filed in the court of common pleas for the judicial district in which the property was seized.

The judge hearing such motion shall receive evidence on any issue of fact necessary to the decision thereon. If the motion is granted, the property shall be restored unless the court determines that such property is contraband, in which case the court may order the property to be forfeited.

A motion to suppress evidence under Rule 581 may be joined with a motion under this rule.

Comment: A motion for the return of property should not be confused with a motion for the suppression of evidence, governed by Rule 581. However, if the time and effect of a motion brought under the instant rule would be, in the view of the judge hearing the motion, substantially the same as a motion for suppression of evidence, the judge may dispose of the motion in accordance with Rule 581.

For more information on filing a motion to have property or evidence returned to you, see:

- 29 Standard Pennsylvania Practice 2d §139:1, et seq. Searches and Seizures
- 11 West's Pennsylvania Practice, Trial Handbook §28:5, Motion to Suppress Evidence Illegally Seized.
- 16A West's Pennsylvania Practice, Criminal Practice §19:1, et seq. Search and Seizure.
- Pa. R. Crim. P. Rule 581 Suppression of Evidence.
- Example of a Defendant's Omnibus Motion to Suppress Evidence and to Return Seized Property at 2006 WL 6042277.

Court of Common Pleas of Sample County Criminal Division

Commonwealth of Pennsylvania

No. 12345678

v.

Defendant's Name

Motion for Return of Property Pursuant to Rule 588

To the Honorable Judges of the Court:

The motion of John Smith Esq., respectfully represents:

1. At the time of the defendant's arrest, certain items of personal property were seized because the arresting officers believed those items were the fruits of various crimes.

2. The items referred to above are:

(a)

(b)

Etc.

3. The above-described items are not contraband nor fruits of any crimes but are, instead, the exclusive property of the defendant.

Wherefore, your applicant requests the honorable court to order the Commonwealth to return said items.

John Smith, Esq.

John Smith

Attorney for Defendant

This sample form can be found at 16A West's Pa. Prac., Criminal Practice § 19:53 Form of Motion for Return of Property.