

INSTRUCTIONS FOR FILING A MOTION FOR RETURN OF PROPERTY

The information contained in this document is critical to a successful filing of your motion and establishing a hearing date. Please read this as soon as possible.

Included in this packet is: a) a motion for return of property, b) a court order for return of property, and c) a certificate of service. The motion for return of property should be filled out as completely as possible before filing. However, since we helped you in drafting the motion, there should be no further information you need to provide. Ideally, the motion should be signed in blue ink, so the original can be identified. You also want to attach copies of relevant documents to the motion and court order. You should copy your doctor's recommendation, your patient ID card (if you possess one), and the receipt for your confiscated property (if you possess one). These copies along with the certificate of service should be stapled to the last page of the motion (after the court order).

You should make three copies of *all* the documents (in addition to the original) and take these four sets of documents to the clerk of the *criminal* court for the county in which the property was seized or charges were filed. [Note: It is important, but not absolutely essential, that you do your best to locate the court actually having possession of the property. The first step is to call the records room and give them the property receipt number. If there is no property receipt, use the case number on the police report or your name and date of the seizure.]

The clerk may be resistant to filing the motion, and giving you a date, time, and place for the hearing. This resistance can be for any number of reasons. The clerk may think that this is a civil action, rather than a criminal one, or the clerk may be confused about how to file where there is no criminal case pending. Your response should be that a motion for return of property is a **criminal "special proceeding,"** which should be filed as a **"miscellaneous action"** in **criminal court**, regardless whether any criminal charges were filed or are pending.

Your right to file this motion is authorized by Colorado law under Colorado Constitution, Art. XVIII, § 14(2)(e) (medical marijuana and equipment to be immediately returned following decision not to prosecute); Colorado Constitution, Art. II, § 15 (Taking of Private Property for Public Use); and Colo. R. Crim. P. 41(e). Attached is a letter explaining this in greater detail, which you can hand to the clerk if they remain resistant to filing the motion. If resistance by the clerk continues, you should ask to speak with a supervisor and again provide the legal authority allowing you to file. If this fails, request that the clerk to document or stamp the denial on the motion.

When filing the motion, the clerk will assign you a case number, as well as the time, date and place for a hearing. The clerk will likely write this in on the cover page of the original and ask that you do the same with the remaining copies. You should file-stamp, or have the clerk file-stamp the other copies before or when you are done filling in this information. The clerk will take the original and, sometimes one other copy. This other copy is for the department (or courtroom) where the matter will be heard. Sometimes the clerk will deliver this chambers copy to the department for you; other times, you must drop it off in a drop-box outside the department. Just ask the clerk where the chambers copy goes. The other two copies are for you and for the district attorney. Simply mail (or hand deliver) the district attorney's copy to the address listed on the certificate of service and retain the final copy for yourself. You will need to bring your copy of the motion and court order for return of property, as well as any other information you have about the seizure and your medical marijuana status to the hearing.

Separate instructions on presenting the motion at your hearing are also included in this mailing.