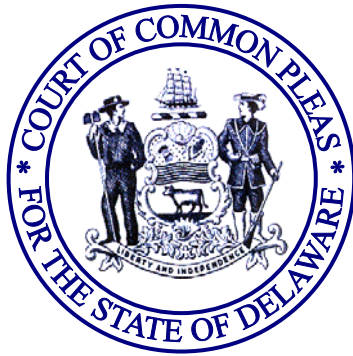


COURT OF COMMON PLEAS

for the State Of Delaware



HOW TO PREPARE A CRIMINAL MOTION

<http://courts.state.de.us/commonpleas/>

COURT OF COMMON PLEAS

HOW TO PREPARE A CRIMINAL MOTION

A motion is a petition for some type of relief, or some action, you ask the Court to grant you; it also may be a request for the Court to take notice of certain facts. A sample motion is attached.

There are several documents that you **must** prepare when filing a motion. They are:

1) Notice of Motion

The notice advises the state of Delaware (“State”) that a motion will be filed, what it will be about, what facts will be offered, and when it will be presented to the Court. This gives the State the opportunity to prepare a response. It also advises the Court and the other party of the date and time the motion will be heard.

2) The Motion

The actual body of the motion states your request and explains the reasons for making the request. You may wish to refer to the Court of Common Pleas Criminal Rules found in the Delaware Code Annotated, which is available at any law library or public library.

3) Order

The order is a document signed by the judge granting the request made in the motion. You must prepare it in advance so the judge can sign it, if the motion is granted.

4) Certificate of Service

This is a notarized document; it states that you did notify the other party of your intent to file a motion and that you did provide the other party with copies of all the documents you are filing.

As Needed/Optional:

5) Exhibits

Exhibits may be any item of evidence that supports your position. These may be letters, photographs, receipts, etc.

To file a motion, you will need to file one original set and one copy of all the required documents listed above. In addition, you must provide two copies of all the documents to the State. Keep a copy for your file.

- You must arrange to copy all these documents, as the Court is unable to make copies for you.
- The Court is unable to provide you with legal advice. If you require further clarification to prepare your motion, you may wish to contact the Public Defender’s Office.
- Dispositive motions (motions, that if granted, would conclude the case) must be filed with the Court at least 13 days before the hearing is scheduled to be heard.
- Non-dispositive motions (motions, that if granted, would not conclude the case) must be filed with the Court at least six days before the hearing is scheduled to be heard.

CAPTION INFORMATION

The following is the Caption portion of any motion presented to the Court. Therefore, for any motion pertaining to an ongoing case, always use the same caption for the motion itself and each of its required components (Notice, the Motion, Order and Certificate of Service.)

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR (New Castle, Kent, Sussex) COUNTY

State of Delaware,

v.

Name(s) of Defendant

Defendant.

)
)
)
)
)
)
)
)
)
)
)

Case No.: _____

THE TITLE OF THE MOTION

(See attached sample)

SAMPLE MOTION

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR (New Castle, Kent, Sussex) COUNTY

State of Delaware,

)
)
)
)
)
)
)
)
)
)

v.

Case No.: _____

Defendant.

NOTICE OF MOTION

TO:

Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801

PLEASE TAKE NOTICE that the attached Motion will be presented to the Court by (*your Name*) at the convenience of the Court.

Your Signature

Print Your Name

Print Your Address

Your Daytime Telephone

Dated: _____

* Please contact the Criminal Division of the Court to request a date and time for your motion to be heard.

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR (New Castle, Kent, Sussex) COUNTY

State of Delaware,)

v.)

_____,)

Defendant.)

C.A. No. _____

Date of Birth: _____

TITLE OF THE MOTION

COMES NOW the (*Defendant*), acting on (*his/her*) own behalf, hereby moves this Honorable Court to enter an Order to _____ and offers in support the following:

1. On (*date*), *briefly describe the background of the case leading to your motion.*
2. *Briefly state other facts that help describe the situation using short, numbered paragraphs. This sample has three numbered paragraphs, you may use more or fewer.*
3. *Additional statements of fact, reasons, or rules why the judge should agree with your motion.**

WHEREFORE, (*Plaintiff/Defendant*) respectfully requests the Court enter an Order granting _____ in favor of (*Plaintiff/Defendant*).

Your Signature _____

Print Your Name _____

Print Your Address _____

Your Daytime Telephone _____

Dated: _____

*You may support your request by referring to the Court of Common Pleas Criminal Rules, which may be found in the Delaware Code Annotated. The Delaware Code Annotated and other resources to research legal decisions are available in any law library or public library.

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR (New Castle, Kent, Sussex) COUNTY

_____,)
)
Plaintiff,)
)
v.) C.A. No. _____
)
_____,)
)
Defendant.)

ORDER

NOW TO WIT, this ____ day of _____, 20____, (*Defendant's*) motion for (*explain the relief you are requesting from the Court*) is hereby granted.

IT IS SO ORDERED.

J.

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR (New Castle, Kent, Sussex) COUNTY

State of Delaware,)
)
)
 v.) C.A. No. _____
)
 _____,)
)
 Defendant.)

CERTIFICATE OF SERVICE

I, *(your name)*, do hereby certify that two (2) copies of the attached Notice of Motion, Motion and Order were *(hand-delivered/mailed)* to the Department of Justice, this _____ day of _____, 20__.

(Notary signature and seal) *

Your Signature
Print Your Name
Print Your Address
Your Daytime Telephone

Dated: _____

* Individuals are required to sign the Certificate of Service in front of a Notary Public and have the Certificate notarized. Some Notaries Public are listed in the telephone book; certain officers of banks are Notaries and will witness your signature at no charge; also, many companies have someone in their business offices who is a Notary.

CRIMINAL MOTIONS FREQUENTLY FILED WITH THE COURT

Motion to Compel Discovery – A defense party’s motion for the Court to set a deadline for the State to respond to the party’s discovery request. Discovery in a lawsuit is a way to learn more about your opponent’s case.

Motion to Suppress Evidence – A motion by the defense for the Court to prevent the State from presenting evidence at trial, such as the police officer did not have probable cause to stop or arrest the defendant.

Motion to Dismiss – A party’s request that the Court dismiss a case because the wrong person was arrested or the State failed to timely prosecute the case.

Motion to Modify Conditions of Bail – A defense request that the Court change the defendant’s bail or bail conditions.

Motion to Withdraw As Counsel – A request filed by the defense attorney to be relieved as the attorney of record for the defendant.

Motion to Review or Modify – A defense request for the Court to change the defendant’s sentence.

Motion to Quash – A request by the State or the defense for the Court to deny certain parties from being subpoenaed.