

SURVEY OF GREATER BOSTON AREA COURT PROCEDURES FOR CRIMINAL RECORD SEALING

By Marchaun Morrison, Law Student Attorney, Greater Boston Legal Services

The leading cases on criminal record sealing suggest a two-stage “hearing” process for sealing of criminal records under Chapter 276, § 100C. See Commonwealth v. Doe, 420 Mass. 142, 149-150 (1995); Globe Newspaper v. Pokaski, 868 F.2d 497, 507 (1st Cir. 1989). The first stage involves an “informal” or “preliminary hearing” to determine whether the defendant has made out a prima facie case in favor of sealing. Id. If a petitioner succeeds in making a prima facie case, “a more extensive hearing” is held after posting notice of the hearing at the courthouse at least seven days before the hearing. Doe, 420 Mass. at 150.

Several divisions of the Boston Municipal Court and District Court schedule all criminal record sealing petitions for a single, final hearing with public notice posted in advance in the clerk’s office. This practice promotes judicial economy and avoids duplicative hearings while complying with the Pokaski and Doe requirements of public notice before a case is sealed.

A number of courts deny petitions at the preliminary hearing state, but do not hold any kind of a hearing. As a result, some petitioners never have their day in court. Deciding sealing petitions based solely on documents puts litigants who cannot afford attorneys and those with limited English or poor writing abilities at a disadvantage. Low income individuals whose petitions to seal their records are denied without a hearing may contact our program for advice or assistance by calling 617-603-1700.

The chart below represents a survey of local court practices in Boston and some surrounding communities.

	1 or 2 hearings?	Done on the papers without a hearing?
<i>Suffolk County</i>		
Boston Municipal Court		
Brighton	2	No
Central Division	2	No
Charlestown	2	No
Chelsea	2	No
Dorchester	1	No
East Boston	1	No

Roxbury	2	No
South Boston	2	No
West Roxbury	1	No
<i>Essex County</i>		
Lynn	1	No
Peabody	1, if not denied at first stage	Yes, 1 st stage done on the papers
Salem	1	No
<i>Middlesex County</i>		
Ayer	1	No
Cambridge	1, if not denied at first stage	Yes, 1 st stage done on the papers
Concord	1, if not denied at first stage	Yes, 1 st stage done on the papers
Framingham	1, if not denied at first stage	No
Lowell	1, if not denied at first stage	Yes, 1 st stage done on the papers
Malden	1	No
Marlboro	1	No
Natick	2	No
Newton	2	No
Somerville	1	No
Waltham	1	No
Woburn	1, if not denied at first stage	Yes, 1 st stage done on the papers
<i>Norfolk County</i>		
Brookline	1	No

Dedham	1	No
Quincy	1 hearing if not denied at the 1 st stage	Yes, 1 st stage done on the papers
Stoughton	1, if not denied at first stage	Yes, 1 st stage done on the papers
Wrentham	1, if not denied at first stage	Yes, 1 st stage done on the papers

August 16, 2010