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Arraignment in New York Criminal Courts

By Susan Chana Lask, Esq.

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by: **Susan Chana Lask, Esq.**

The "arraignment" process involves: Being brought before a Judge in the courtroom Receiving the " criminal complaint" with the crimes charged and the factual basis to each charge The District Attorney requesting bail or releasing you on your own recognizance (called "ROR") Pleading guilty or not guilty

The process starts when the court officer brings you from the cell in the back of the courtroom and into the courtroom before the Judge.

If you were unable to contact your family, friends or an attorney when you were arrested then most likely the court will have a Legal Aid attorney appear for you. Legal Aid attorneys are in the courtroom at all times to defend the poor, and most times to appear for the unrepresented.

Usually there will be about three attorneys from the District Attorney's office in the courtroom. One of them will read the charges against you and request the court to impose bail at a certain amount or no bail. If no bail is demanded by the District Attorney then you will hear the word "ROR", which means "return on your own recognizance".

Bail is determined according to the crime and your personal information. At arraignment the District Attorney will have your personal information obtained from their computer searches on you. They call this your " rap sheet". It will include information about you, such as: Any Prior convictions Any arrests at anytime Any pleas to prior arrests Parole Probation

If your rap sheet is clear of any crimes and this is your first arrest, chances are good that there will be no bail set against you. But even if your rap sheet is clear, if the crime you're charged with is serious (such as involving a large amount of stolen money or violence), bail can be set against you. There are different factors affecting the setting of bail against you, and all are considered by the judge in a matter of minutes.

Arraignment in New York Criminal Courts

If the District Attorney requests bail, your attorney should argue that: You're not a flight risk You have family, friends and a job in the state or locally The charges against you are improper in some way.

Your attorney may even get the whole case dismissed if the District Attorney's criminal complaint against you is not properly drafted or signed by a proper party.

Getting The Complaint Dismissed At Arraignment

The District Attorney drafts the criminal complaint against you from information received from the arresting officer and the victim of the crime. While you're being processed through the Precinct and Central Booking, the arresting officer will fax his paperwork and information regarding your arrest and charges to the District Attorney's office. Someone in the District Attorney's office will then call the victim and get more information so they can properly draft the complaint.

The complaint needs to be signed under oath by the arresting officer or the victim. If it is not signed by anyone when you appear at your arraignment then it is not "corroborated" and must be dismissed. So check out who signed the complaint: if it was a person other than the arresting officer or the victim then the complaint should be dismissed.

Lastly, if the facts of the complaint do not establish each legal element of the crime charged, or the complaint is poorly drafted then it should be dismissed however, the court usually will give the District Attorney a few weeks to file a properly drafted complaint.

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Susan Chana Lask is a New York attorney with law offices in New York City. She has over 20 years experience and practices in State, Federal and Appellate Courts nationwide, handling civil, criminal and commercial litigation and appeals. She represents high profile cases and appears on all major television, print and radio news media, earning the title "High-Powered" New York attorney. She can be reached at

Pleas & Court Appearances in New York Criminal Courts

By Susan Chana Lask, Esq.

At arraignment, the District Attorney may offer a plea to a lesser charge than what you were arrested for originally. Pleas are offered to unburden an extremely congested criminal court calendar, as well as to get rid of lesser criminal cases so the District Attorney can rightfully concentrate on the more serious

Arraignment in New York Criminal Courts

crimes.

If you were arrested for misdemeanor shoplifting and you arrive at the arraignment with no prior arrests, most likely the District Attorney will offer you the option of pleading guilty to a lesser violation and a few days of community service with a fine. You have the option to end the process by accepting the lower charge of a violation, which is not a crime but will appear on your record in the future.

If you accept the plea then you will actually plead guilty to a lesser offense on the record and the court will most likely impose a fine and community service or counseling, depending upon what you and the District Attorney agreed to.

If you don't accept the plea, you will simply plead "not guilty" and continue your criminal court appearances. Your attorney will file various motions and hold hearings to discover what evidence the District Attorney has against you or to get the charges dismissed. An example of such a hearing would be called a "Huntley Hearing". In that hearing your attorney's objective is to get any incriminating statements you made suppressed, meaning they can not be used against you. The point of that hearing is that the police obtained statements from you involuntarily. At the hearing your attorney will cross-examine the police involved in your arrest by asking them detailed questions. If your attorney can prove your statements were coerced or obtained from you in some way involuntarily then you have just eliminated a crucial piece of evidence against you, making your case of innocence stronger.

As you proceed further through the criminal court process, the plea to a lesser charge may or may not be offered again. Whether or not you accept a plea is something only you and your attorney can decide, based upon your circumstances. Just remember that the plea will always be on your record as opposed to fighting the charges if you're innocent and getting the whole criminal case dismissed, clearing your name.

Your Criminal Court Appearances

If you plead not guilty and are released "ROR" (meaning without bail and on your own recognizance) or on bail, you'll be given the next date to appear before the court. At that time the court will set deadlines for your attorney to complete certain work on your behalf.

The District Attorney has a limited period of time to complete his investigation and state on the record he is ready for trial. The time limits are mandatory to protect your constitutional right to a speedy trial. So you should be prepared to quickly prove your innocence. Being accused of a crime is a stigma, and the reality is that you are actually presumed guilty until you prove your innocence (contrary to the belief that "you are presumed innocent until proven guilty").

If you miss a court appearance, a warrant for your arrest is issued

Your Right To A Speedy Trial

The time for you to get a speedy trial starts running from the date the criminal complaint is filed against you. A trial for a violation must be held within 30 days. A misdemeanor trial must occur within 90 days.

Arraignment in New York Criminal Courts

A felony trial must take place within six months.

The time periods for a speedy trial are "tolled" (stopped) because of certain motions made by your attorney or certain hearings. They are not tolled if the District Attorney requests adjournments without your consent. They are also not tolled if the District Attorney is not ready for certain appearance dates. This is called "excludable time" for the purposes of determining when a trial must be held.

Making A Record

At each court date, there will be a stenographer typing every word of the proceeding to make a record of it. Your attorney must make sure the record is clear that you do not consent to an adjournment or that the District Attorney was not ready. Being clear is important, because the court is overwhelmed with hundreds of cases a day. Sometimes the judge will not keep a good record or his notes on your file will be unreadable and the judge later can't recall what happened.

To be clear and to protect your rights, state on the record that "defendant does not consent to the adjournment and time should be charged to the People" or state that "The District Attorney is not ready and time should be charged to the People." Make sure the stenographer hears what you say because you may later have to order those records from the stenographer to prove what happened at the hearing. If the stenographer did not hear you or your attorney then you will not have a record that will benefit you. Make sure you both speak loud and clear at each court date to protect your record.

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