

To [unclear] - Here you go [unclear]!

FYI

State of New York



Jonathan Lippman
Chief Administrative Judge

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September 9, 2003

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Roger
Dear Mr. Adler:

I am writing in response to your recent letter to me regarding the sealing of criminal case records. As you know, this topic was the subject of a recent article in the Daily News. I believe the article has created some confusion about the requirements of the law and how those requirements are implemented in the State's criminal courts.

Under the Criminal Procedure Law, when a criminal case is disposed of "in favor of the accused," all records relating to the case, including law enforcement and fingerprint records as well as court records, are sealed. See CPL § 160.50. Accordingly, when a criminal case is dismissed in its entirety or when a defendant is acquitted of all charges, all court records are sealed and no access to those records is permitted except within the very limited exceptions set forth in the statute. See CPL § 160.50(1)(d). A different provision applies when a defendant is charged with a "crime" -- that is, a fingerprintable offense generally defined in the Penal Law as a felony or misdemeanor, PL § 10.00(6) -- but is ultimately convicted of only a "petty" offense. In that situation, CPL § 160.55 requires that law enforcement records and fingerprint records relating to the case be sealed; but unlike cases that are dismissed or that result in acquittal, the court records are not sealed. Cf. CPL § 160.50(1)(c) with CPL § 160.55(1)(c). The Legislature presumably made this distinction because it concluded that sealing of court records is warranted only when defendants are exonerated of the charges, not when they are convicted of an offense, albeit a less serious offense than the one originally charged.

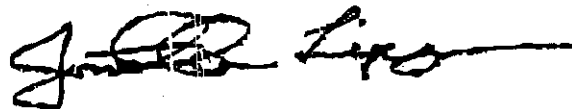
Finally, aside from the provisions of the Criminal Procedure Law, judges have inherent authority to seal court records, including court records in criminal cases, when they

Find appropriate grounds for doing so. When judges exercise this authority, clerks' offices take steps to ensure that the court file is sealed

In sum, in the absence of a judge's order expressly sealing a criminal case file, the courts will seal such a file only in cases that are disposed of favorably to the accused, within the meaning of CPL § 160.50.

I hope that this satisfactorily answers the questions you have raised.

Very truly yours,



MOUTHPIECE

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Volume 16, Number 6 November/December 2003

BEST PRACTICE ALERT

SEALED COURT RECORDS???...NOT!!

If your client's felony or misdemeanor charge was resolved with a conviction of a violation and a court admonition that the record would be sealed, you might reasonably think that, in fact, you client's court records have actually been sealed.... think again.

When a criminal case is dismissed in its entirety or when a defendant is acquitted of all charges, all records of the case including court records, law enforcement records and fingerprint records are sealed and no access to those records is permitted, except within the very limited exceptions set forth in CPL § 160.50(1)(d)'.

A different provision applies when a defendant is charged with a "crime" – that is, a printable offense generally defined in the Penal Law as a felony or a misdemeanor, PL §10.00(6)—but is ultimately convicted of a "non-criminal" offense, that is, a violation. In that situation, CPL § 160.55 requires that law enforcement records and fingerprint records relating to the case be sealed; but unlike cases that are completely dismissed or that result in an acquittal, the court records are not sealed. Cf. CPL 160.50(1)(c) with CPL § 160.55(1)(c). Chief Administrative Judge Jonathan Lippmann has opined in a letter to the New York State Bar Association, that, "the legislature presumably made this distinction because it concluded that sealing of court records is warranted only when defendants are exonerated of the charges, not when they are convicted of an offense, albeit a less serious offense than the one charged.

Judges have the inherent authority to seal court records, including court records in a criminal case when they are provided with appropriate grounds to do so. When ordered to do so by a Judge, the Clerk's offices will take the necessary steps to insure that the Judge's orders are carried out.

The best practice requires that, where a criminal charge has been resolved with a conviction of a violation, the defense attorney make an actual request to have the court records sealed, in addition to law enforcement records and fingerprint records. Failure to make this additional request will result in the court records remaining unsealed and available to the public.

1. The exceptions are:

- 1) The defendant or his/her agent.
- 2) A prosecutor involved in a proceeding involving a marijuana ACD.
- 3) Any law enforcement agency upon an *ex parte* showing that "justice requires" access.
- 4) state or local gun licensing agencies.
- 5) Department of Parole and Probation, under limited circumstances.
- 6) The prospective employer of a would-be police or peace officer.

CLE UPDATE

See page 23 for details of the Mid-Hudson Trainer
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