



Advanced Arraignment & Bail Practices

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Instructor(s):

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MCLE: 1.0 Professional Practice

This program has been approved for credit in
New York State for all attorneys
including those who are Newly Admitted
(less than 24 months) and administered by
the Onondaga County Bar Association.

Presenters

Joshua S. Shapiro Esq. is the Special Counsel for the Town and Village Courts to the Administrative Judge of the Sixth Judicial District. In that role he primarily works with the District Supervising Judges, providing support and assistance to the 174 Town and Village Courts located within the Sixth District. Prior to that position Joshua spent 11 years as an Assistant District Attorney, beginning his career with the Suffolk County District Attorney and ending with the Broome County District Attorney, where he prosecuted violent felony offenses and homicides. During his career he has tried numerous criminal cases in Village, Town, District, County, and Supreme Courts in both Suffolk and Broome counties, running the gamut from simple misdemeanors up to and including murder cases. Joshua graduated from Binghamton University in 2003 and earned his JD from the University of Richmond School of Law in 2006. Joshua is admitted to practice law in New York State.

Peter DeLucia currently serves as the Principal Court Attorney to the Hon. Joseph F. Cawley, Broome County Court. Previously he served as an Assistant Attorney General at the Binghamton Regional Office of New York State Attorney General Letitia James and as an Assistant District Attorney with the Broome County District Attorney's Office, handling the prosecution of misdemeanor and felony level cases. Mr. DeLucia was also previously employed as a litigation associate with two Binghamton-area law firms. Mr. DeLucia is a 1995 graduate of the University of Notre Dame and a 2001 graduate of Albany Law School of Union University.

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2022 Edition

What is required for an
arraignment?

**Examination of Accusatory
Instrument for Facial
Sufficiency C.P.L. §140.45
(When arrested without a
warrant)**

What is required for an arraignment?

Misdemeanors: CPL 170.10

Felonies: CPL 180.10

What must the court inform the principal?

1. **Of the charges and provide a copy of the accusatory instrument;**
2. **Of the right to an attorney (but note an attorney should already be present for all misdemeanors);**

When may a principal's appearance be waived at arraignment?

1. When all of the charges are traffic infractions, and the principal is charged via Simplified Traffic Information and the principal has entered a plea by mail CPL 170.10(1)(a) ;
2. When all of the charges are misdemeanors or lower, the court in its discretion may, for good cause shown, permit the principal to appear by counsel instead of in person. CPL 170.10(1)(b);
3. Felony complaints require the personal appearance of the principal. CPL 180.10

What about Virtual Arraignments? (CPL 182)

1. Requires consent of the principal. CPL 182.20(1);
2. Permissible only in the following counties:

A. Albany;	M. Queens	Y. Montgomery;
B. Bronx;	N. Richmond	Z. Rensselaer;
C. Broome;	O. Rockland;	A1. Sullivan;
D. Erie;	P. Saratoga;	A2. Warren;
E. Kings;	Q. St. Lawrence;	A3. Westchester;
F. New York;	R. Seneca;	A4. Suffolk;
G. Niagara;	S. Steuben;	A5. Herkimer;
H. Oneida;	T. Tompkins;	A6. Franklin;
I. Onondaga;	U. Chautauqua	A7. Chemung;
J. Ontario;	V. Cattaraugus;	A8. Schuyler;
K. Orange	W. Clinton;	A9. Yates
L. Putnam;	X. Essex	

What about Virtual Arraignments? (CPL 182)

1. **BUT: Office of Indigent Legal Services will not allow grant-funded attorneys to consent to virtual arraignments as a general rule (but will allow consent for emergencies and other exigent circumstances);**

The Right to Counsel at Arraignment

1. Gideon v. Wainwright, 372 U.S. 335 (1963)
2. Strickland v. Washington, 466 U.S. 668 (1984)
3. Hurrell-Harring v. State, 15 N.Y.3d 8 (2010)
 1. Arraignment as a “critical stage” of the proceeding.

Securing Orders

The Court must issue a securing order.
(CPL § § 170.10(7) & 180.10(6))

1. CPL 530.20

1. The Court must release the principal unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court.

Securing Orders

The Court must consider:

1. The principal's activities and history;
2. The charges facing the principal;
3. The principal's criminal conviction record if any;
4. The principal's record of JD adjudications;
5. The principal's flight history to avoid prosecution;
6. The principal's individual financial circumstances;
7. Previous violations of orders of protection;
8. The principal's history and use or possession of a firearm;

Securing Orders

The Court must consider:

9. **Whether the charge is alleged to have caused serious harm to an individual or group of individuals; and**
10. **If the case is on appeal, the merit or lack of merit of the appeal.**

Securing Orders

The Court must remand without bail if the charge is:

1. **An A-1 & A-2 felonies (Court Must Remand Without Bail) CPL 530.20(2)(a)(i);**
2. **A felony and the principal has two or more prior felony convictions CPL 530.20(2)(a)(ii);**
3. **A fugitive from justice complaint CPL 570.36;**

Securing Orders

The Court may set bail if:

1. **The offense is a qualifying offense (see comprehensive list in materials);**
2. **The crime caused the death of another person. CPL 510.10(4)(j);**
3. **The crime is a felony while the defendant is on probation or on post-release supervision; CPL 510.10(4)(r);**

Securing Orders

The Court may set bail if:

4. **Any felony or class 'A' misdemeanor involving harm to a person or property, or criminal possession of a firearm, while the principal is released on another such offense. CPL 510.10(4)(t)**
 4. **Note: The People must establish reasonable cause to believe that the principal committed both offenses.**

Securing Orders

FORMS OF BAIL

- \$ _____ Cash, or
- \$ _____ Credit Card or similar device, or
- \$ _____ Insurance Company Bail Bond, or
- \$ _____ Secured Appearance Bond (Form CRC 3292), or
- \$ _____ Partially Secured Appearance Bond with a _____% deposit (Form CRC 3293), or
- \$ _____ Unsecured Appearance Bond (Form CRC 3294), or
- \$ _____ Secured Surety Bond (Form CRC 3292), or
- \$ _____ Partially Secured Surety Bond with a _____% deposit (Form CRC 3293), or
- \$ _____ Unsecured Surety Bond (Form CRC 3294).

NOTE: A partially secured and/or unsecured surety bond must be selected.

NOTE: Surety or appearance bonds must be submitted to the court using the applicable form as indicated above and require approval by the court before the defendant may be released from custody.

The image shows a screenshot of a legal form titled "Securing Orders" with a "FORMS OF BAIL" section. The form includes several input fields and checkboxes. At the top, there are fields for "Case No.", "County", and "Defendant Name". Below these, there are fields for "Type of Bail" and "Amount of Bail". A table with columns "Type of Bail" and "Amount of Bail" is present. There are checkboxes for "I am a defendant" and "I am a surety". A section titled "I am a defendant" contains a checkbox for "I am a defendant" and a checkbox for "I am a surety". Below this, there are fields for "Name of Surety" and "Address of Surety". The form also includes a "Signature" field and a "Date" field. At the bottom, there is a "Notes" section with a text area and a "Print" button.

Bail on Non-Qualifying Offenses

The court may revoke a release order if

CPL 530.60(2):

1. The principal is charged with a felony and the court finds reasonable cause to believe the principal has committed a class 'A', or violent felony offense, or has intimidated a witness in violation of P.L. Sections 215.15, 215.16, or 215.17;

2. The court has found by clear and convincing evidence that:

- 1. The principal willfully failed to appear in court;**
- 2. The principal has violated an order of protection;**
- 3. The principal stands charged with a misdemeanor and has intimidated or tampered with a witness; or**
- 4. The principal is charged with a felony and commits a new felony while at liberty;**

Bail on Non-Qualifying Offenses

The Revocation Hearing CPL 530.60(2)(c)

1. Before revoking an order of recognizance or bail, the court must hold a hearing and shall receive any relevant, admissible evidence not legally privileged.
2. The principal may cross-examine witnesses and may present relevant, admissible evidence on his own behalf.
3. The hearing may be consolidated with a preliminary hearing under CPL 180.80.
4. A transcript of grand jury testimony is admissible.
5. The standard is “clear and convincing evidence.”

What about the principal who fails to appear at the failure to appear hearing?

Scenario: Principal fails to appear in court on a non-qualifying offense. The court issues a bench warrant. The principal is arraigned on the bench warrant, released because it is a non-qualifying offense, and the matter is scheduled for a “failure to appear” hearing. The principal fails to appear at the “failure to appear” hearing, so the court issues a bench warrant. The principal is arraigned and released because it is a non-qualifying offense. The principal fails to appear. The court issues a bench warrant. The principal is arraigned and released. The principal fails to appear. The court issues a bench warrant. The principal is arraigned and released. The court issues a bench warrant.

Two Options

1. The court may have inherent authority to hold the principal on bail pending the hearing; or
2. Parker Warnings

Two Options

Parker Warnings

1. Principals have the right to be present at a trial. N.Y. Const. Art I; CPL 260.20;
2. The right to be present at trial extends to “all material stages of trial” and “whenever the defendant’s presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge.” Clark v. Stinson, 214 F.3d 315, 322 (2d Cir. 2000);
3. The right exists for both trial and pretrial proceedings, excluding only minor ministerial matters. People v. Buxton, 192 A.D.2d 289 (2d Dept. 1993);

Two Options

Parker Warnings

1. Parker warnings allow a proceeding to go forward in the absence of the principal, provided the principal was informed of his/her right to be present at the trial or proceeding as well as the consequences that might ensue if he/she fails to appear. See People v. Parker, 57 N.Y.2d 136, 138 (1982)

Parker Warnings

Parker Warnings Should Be:

1. In Writing;
2. On the Record;
3. Inform the principal of the consequences of failing to appear;
4. Inform the principal of the specific date, time and location of the proceeding;

Clerk of Superior Court
 THE JUDGES OF THE STATE OF NEW YORK PARKER (ADMONITION/WARNING)

Against

Defendant

To read and respond to a decision to appear at any and all events which are part of the ongoing criminal justice proceedings assigned to your case.

You fail to appear, without a valid legal explanation to the Court, the proceedings might go on without you. **THIS COULD BE A HEARING OR TRIAL.** Furthermore, if you are convicted, being either present or absent, will affect your ability to receive the maximum benefit from your defense team. The maximum benefit of your defense team, your bail program and/or collateral may be forfeited.

Though your attorney would do his or her best to be instructed by the Court to grant you a continuance, a continuance is not guaranteed.

you must come to court when notified to do so by the Court or your Counsel!

This matter has been scheduled for a hearing on _____ at _____ in the _____ Court. The Court House is located at _____.

The purpose of this hearing is to determine whether you are willing and able to voluntarily attend court after being given notice of scheduled appearances in this case before the court. If you fail to appear at this hearing, the hearing will be held in your absence, and your current release or bail status may be reviewed, and you could be committed to custody pending disposition of this matter.

By signing this document, along with that of your attorney, as a defendant to the Court of Sessions, that with the aid of your attorney, you fully understand the advice given, and agree to be bound by it.

I have read and understand the above and agree to be bound by it as a condition of my being released on bail, on pre-trial release, or on my own recognizance, and have consulted with my attorney prior to signing this document.

DATE _____ Defendant _____

BY _____ Counsel for Defendant _____

Parker Warnings

Parker Warnings

1. If the principal was validly warned, fails to appear, and no excuse is proffered for the non-appearance, then the hearing may be conducted in his or her absence.

Bail Scenarios

May cash bail be set in town and village code violations?

1. **Answer: No, monetary bail cannot be initially set for T&V code violations because such violations are not “qualifying offenses” under the bail reform law. CPL 510.10(4) & 530.20(1)**

Bail Scenarios

Can the bail reform statute’s requirement to set, as one of the three required bail forms, an “unsecured or partially secured surety bond” be met by setting an insurance company bail bond?

1. **Answer: No, because these are separately specified and defined bail forms under the Criminal Procedure Law. CPL 520.10 & 500.10**

Bail Scenarios

Must a judge have a separate bail & fine account?

1. Answer: No, 22 NYCRR 214.9 requires a separate bank account in each judge's name, but they can share a bail account.

Bail Scenarios

May a judge remand a principal for a 730 exam on a non-qualifying offense?

1. Answer: Maybe...

Fugitive from Justice Arraignments

CPL 570.34: The arrest of a person in this state may be lawfully made also by any police officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year; but when so arrested the accused must be taken before a local criminal court with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and, thereafter, his answers shall be heard as if he had been arrested on a warrant.

Fugitives from Justice

C.P.L. §570.34 – Arrest of accused without a warrant within NY State

1. May be taken to any local criminal court judge (including CAP & VAP Judges);
2. Must be charged via Fugitive Complaint;
3. Judge is acting as his/her own court (generally), and Fugitive Complaint should stay with him/her until it transfers to County Court;

Fugitive from Justice Arraignments

- You cannot arraign on a Governor's Warrant;
- You cannot accept a waiver of extradition;
- You cannot hold a hearing on the merits of the extradition application;

Intoxicated or Impaired Principals

So Intoxicated or Impaired that a principal is incapable of understanding the proceedings or assisting in his/her own defense.

1. Discuss with counsel;
2. Adjourn arraignment if necessary;
3. Mere intoxication is not enough, principal must be so impaired so as to be unable to understand the proceedings;

Mentally Incapacitated Principals

C.P.L. §730.30 – Order of Examination

1. Any time after [arraignment] the court [must] issue an order of examination when it is of the opinion that the defendant may be an incapacitated person.

Motions to Dismiss at Arraignment

C.P.L. §§ 170.45 & 210.45. A motion to dismiss must be:

1. In writing; and
2. Upon reasonable notice to the people; Unless
3. The People waive that requirement.

People v. Jennings, 69 N.Y.2d 103 (1986);

People v. Lawrence, 64 N.Y.2d 200 (1984);

Accusatory Instruments at Arraignment

You must have an accusatory instrument
to arraign on a:

1. Summary Arrest (without a warrant);
2. Arrest Warrant;
3. Fugitive from Justice;
4. Violation of Probation Warrant (C.P.L. §§ 410.40 & 120.90(5))

Accusatory Instruments at Arraignment

You do not need to have an accusatory
instrument to arraign on a:

1. Bench Warrant;
2. Family Court Warrant;

Thank You.