

BOSTON MUNICIPAL COURT DEPARTMENT STANDING ORDER NO. 1-09 FOR THE SEALING OF THREE OR MORE DISMISSALS AND NON-CONVICTION CRIMINAL RECORDS

BMC Standing Order on Sealing of Criminal Records Is Revised

Boston Municipal Court Standing Order 1-09, regarding petitions to seal multiple criminal records, has been revised in light of a recent SJC decision.

I. Authority

This permanent Standing Order is promulgated and revised by the Chief Justice of the Boston Municipal Court Department pursuant to G. L. c. 211B, § 10 and G. L. c. 218, § 51A.

II. Purpose and Applicability

In recognition of the hardships faced by individuals of limited economic resources with criminal records, and the burdens they face when seeking to seal their criminal records at the various court divisions in this Department, and in an effort to alleviate these hardships and burdens while promoting judicial economy, this Standing Order was originally promulgated by the Boston Municipal Court Department to allow for the filing of a single petition to seal three or more dismissals and non-conviction criminal records pursuant to the provisions of G. L. c. 276, § 100C. This Standing Order established the procedures to be followed by all court divisions of this Department in those instances when a person seeks to seal three or more criminal records from two or more court divisions within this Department where a dismissal or nolle prosequi or finding of no probable cause has been entered, or the defendant was found not guilty. However, in light of the recent Supreme Judicial Court decision in *Commonwealth v. Pon*, SJC-11542 (August 15, 2014), 469 Mass. ____ (2014), this Standing Order is being revised as of the effective date below to conform to the new legal standard and analysis established by the SJC in *Pon*.

III. Required Protocols and Procedures

A. Petition to Seal Multiple Criminal Records; Venue; Filing. As of the effective date of this revised Standing Order, a person who resides within the territorial jurisdiction of the court divisions of the Boston Municipal Court Department, with three or more dismissals and/or non-conviction criminal records in the court divisions of this Department, may request that these criminal records be sealed in a single petition filed in the court division in whose territory the person resides. If a person with three or more dismissals and/or non-conviction criminal records in the court divisions of this Department does not reside within the territorial jurisdiction of this Department, then these criminal records may be sealed in a single petition filed in the court division of the most recent applicable criminal record. A person seeking to seal multiple criminal records in a single petition pursuant to this amended Standing Order should be sure to list all applicable criminal cases with docket numbers from all court divisions of the Boston Municipal Court

Department. A modified petition form that conforms to the *Pon* decision is available on the Trial Court website.

The Clerk-Magistrate who receives for filing the original petition to seal multiple criminal records shall docket and file the petition in the corresponding criminal case(s) within three (3) business days, and shall provide a copy of the petition with notice of the preliminary hearing to the Probation Department.

B. *Hearing*. In *Pon*, the Supreme Judicial Court determined that a court has the discretion either to conduct a preliminary hearing and then a final hearing, or to conduct a single final hearing.

1. *Preliminary hearing*: Upon the filing of a petition for sealing multiple criminal records, a preliminary hearing may be held to determine whether the petitioner has made out a prima facie case in favor of sealing said records. The new legal standard for the petitioner's prima facie case was established by the SJC in *Commonwealth v. Pon*, SJC-11542 (August 15, 2014), 469 Mass. ____ (2014), and is specifically incorporated by this revised Standing Order. In his discretion, a judge hearing a petition for sealing multiple criminal records may request additional information or document(s) regarding the criminal case(s) listed in the petition from the Clerk-Magistrate and/or the Probation Department.

2. *Final hearing*: If a judge finds that the petitioner has shown a prima facie case for sealing, whether at the preliminary hearing described above or upon review of the petition and/or other papers submitted by the petitioner, a final hearing shall be scheduled for no earlier than thirty (30) days, but no later than forty-five (45) days, from the date of the preliminary hearing or the filing of the petition. The Clerk-Magistrate of the court division ordering a final hearing shall notify the Probation Department of said final hearing.

C. *Public Notice of Final Hearing*. The Clerk-Magistrate of the court division conducting the final hearing shall post for a minimum of seven (7) days public notice of the date, time, and location of the final hearing.

D. *Notice to District Attorney of Final Hearing; Objection to Venue*. The petitioner is required to send a copy of the petition to seal multiple criminal records to the Suffolk County District Attorney's Office at least thirty (30) days before the final hearing so as to permit the District Attorney's Office to notify the victim(s), if any, of the scheduled final hearing. Unless the petitioner has complied with this provision, or said District Attorney's Office has waived the full thirty (30) day notice, no criminal record(s) from other court division(s) shall be sealed at the final hearing.

The victim(s), if any, and/or the Assistant District Attorney(s) of criminal case(s) from other court division(s) shall have the right to object to venue. Upon the receipt or articulation of any such objection, a judge in the court division in which the petition was filed may for good cause decline to hear the petition to seal for those criminal case(s)

from other court division(s), without prejudice to the petitioner's filing of a separate petition to seal in the court division(s) in which those criminal case(s) originated.

E. *Order on Petition to Seal Multiple Criminal Records.* The Clerk-Magistrate of the court division that issues an order on the original petition to seal multiple criminal records shall promptly docket and file said order in the corresponding criminal case(s), shall transmit a copy of said order to the Probation Department, and shall transmit a copy of said order to the Clerk-Magistrate(s) of the other court division(s) with criminal case(s) listed on the petition.

F. *Notice to Office of the Commissioner of Probation.* The Chief Probation Officer of the Probation Department of the court division that enters an order to seal criminal record(s) is responsible for notifying the Office of the Commissioner of Probation of the court's order.

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