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IF YOU GOT A SUMMONS: WHAT TO EXPECT AT YOUR FIRST COURT APPEARANCE

In New York City, a criminal summons is issued by a police officer for minor criminal matters. A summons requires you to appear in court at the date and time listed for your arraignment. If you fail to appear, a bench warrant will be issued for your arrest. If you cannot make the date, then you should consult an attorney for guidance: there are ways to avoid a warrant being issued, but you must consult an attorney.

Your summons requires you to appear at the criminal part at 346 Broadway in Manhattan, also known as the “SAP Part”. When you arrive, you should look for the National Lawyers Guild attorneys helping you with your case in the lobby on the first floor.

To enter the building, you have to use the ground floor side entrance on Leonard Street and will be required to go through security and a metal detector. Leave your weapons and drugs at home!

Your Criminal Charges

Most of you have been charged with a subsection of the disorderly conduct statute.* This is a violation and not a crime – the equivalent of getting a traffic ticket. The maximum penalties for violations are up to \$250 in fines and 15 days jail, but in practice the penalties are generally not this severe. The disorderly conduct statute is regularly used as a charge against demonstrators and serves as a catch-all for conduct the police generally deem inappropriate.

Appearing in Front of the Judge

When your case is called, you will be asked to step up to the judge with your attorney and will probably be offered one of these choices:

- plead guilty to what you are charged with and pay a fine and/or surcharge of \$120
- win a dismissal of the charges because of some procedural defect in the summons
- take an ACD – adjournment in contemplation of dismissal (see more on this below)
- plead not guilty and ask for a trial, which will require you to return to court on a subsequent day

Understanding An ACD (Adjournment Contemplating Dismissal)

An ACD is not an admission of guilt, nor is it an affirmation of innocence. It means essentially that if you do not get arrested for 6 months, the charges will be dismissed and the case record will then be sealed. Bear in mind, however, that while a sealed record is supposed to stay sealed, in certain instances courts have re-opened them anyway.

* **Disorderly conduct** –New York Penal Law section 240.20 – you can find the language by going to public.leginfo.state.ny.us and by clicking on the “Laws of New York” link and then scrolling to the “Penal” code section.

Also important: if you get arrested again within 6 months, the case may be re-opened and the charges may come back. Though this is unlikely in practice, you should take into consideration your ability to avoid another arrest for the duration of the adjournment period.

Here are some other things to consider:

Benefits of taking an ACD

- If you take an ACD at arraignment, you will not need to make any further court appearances. If you live out of state or have a particularly demanding schedule making it difficult to return for the possible hearing and trial, it may be in your best interest to accept the ACD.
- You are not pleading guilty. After you complete your six-month adjournment period, the case is dismissed, your arrest and prosecution will be deemed a nullity and you will be in the same exact position you were in before your arrest and prosecution.

Potential problems with accepting an ACD

- For many people, rejecting the ACD and pleading not guilty so they may fight the charges against them is an important part of standing up to the police. Should you choose to take an ACD, your case is finished and you will give up your right to contest the charges against you.
- Taking an ACD may limit your options in terms of affirmative litigation against the city. For example, if you want to sue the city for “malicious prosecution”, you cannot do so if you take an ACD. It does not affect a “false arrest” claim.
- Importantly, an ACD may have consequences for your immigration status. If you have or anticipate having such issues, you should consult with an attorney.
- If you are arrested again in the future, accepting an ACD now may affect your ability to secure a favorable plea bargain in a future case.
- If you are currently on parole or probation, taking an ACD may trigger adverse collateral consequences.

A Warning: Exercising Your Right to Remain Silent

It sounds clichéd, but you should take full advantage of your right to remain silent until your criminal case is resolved.

In particular, any comments you make to the press can potentially be used against you in your criminal case should they be discovered by the District Attorney. This is also true of any videos posted on YouTube, or comments made on social network sites such as Twitter and Facebook. Police are notoriously good at using these social media sites against criminal defendants. You may be well intentioned, but you may not realize that you are implicating yourself in the crime charged.

You also should exercise caution in dealing with the Civilian Complaint Review Board (CCRB)- New York City’s civilian police oversight. While it is common for those unjustly arrested to want discipline for the officers involved, it is best to wait until the conclusion of your criminal proceedings before you file a complaint. A complaint filed with the CCRB may be used against you in your criminal case and may encourage the officers involved in the complaint to be extra diligent in their attempt to secure your conviction. It may also affect your civil case by providing a possibly contradictory version of the events which led to your arrest.

Conclusion

Your first court appearance is a critical phase of the criminal process. You should be prepared to make decisions on what is best for you and your future. Carefully weigh all of your options, work with your attorney and make a choice that you will be happy with individually.

While some people want to resolve their criminal case with as minimal impact on their life as possible, others want to use the medium to voice the same concerns they were protesting in the first place. Others simply want to be declared innocent of any wrongdoing.

No matter your choice, make sure it is the appropriate one for you.