

DeSignore Law

# GUIDE TO WHAT TO EXPECT

AT A CLERK MAGISTRATE HEARING

What you need to know about your  
Massachusetts clerk magistrate hearing.

Authored by

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And

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# About the Book

Clerk magistrate hearings are common in a variety of criminal complaints so it is important to understand that you are not alone in this process.

This book was created to assist individuals who are facing a clerk magistrate hearing and will offer you an overview of what to expect.

# About the Authors

Michael DeSignore is a Massachusetts criminal defense attorney. He has dedicated his law practice to defending those charged with criminal offenses in Massachusetts. Attorney DeSignore is an experienced criminal trial attorney and is an esteemed member of the National College of DUI Defense and National Association of Criminal Defense Lawyers.

Julie Gaudreau studied criminal justice during her undergraduate studies and attended law school at Suffolk Law in Boston, Massachusetts, focusing on criminal law and trial advocacy. While attending law school she interned at the Plymouth District Attorney's Office.

*If you have any questions or concerns, contact Michael or Julie at DeSignore Law's office: 781-686-5924. DeSignore Law has several offices throughout Massachusetts.*

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## **INTRODUCTION**

Attorney Michael DelSignore is a Native and Resident of the State of Massachusetts. He is a Juris Doctor Graduate of the 'University of Connecticut: School of Law' and a practicing criminal trial attorney in Massachusetts. Attorney DelSignore's expertise is as a criminal trial attorney covering charges relating to: Drug Offenses, Drunk Driving, OUI/DUI, Clerk Magistrate Hearings, Domestic Assaults and Batteries as well as Violations of Restraining Orders, Theft Offenses and Motor Vehicle Offenses. Attorney DelSignore is also active in handling criminal appeals and argues regularly before the Massachusetts Court of Appeals. His aggressive, vigorous and knowledge-based defense is founded upon his keen, practical and academic understanding of criminal defense as it relates to the State of Massachusetts and is evidenced by his local upbringing, academic pursuits and professional growth in his field of study and in the Commonwealth of Massachusetts.

Attorney DelSignore is a highly experienced criminal defense lawyer. He is a respected member of the National College of DUI Defense and National Association of Criminal Defense Lawyers. He has a wealth of experience and practical knowledge in defending clients against felony and misdemeanor charges throughout the State of Massachusetts. Attorney DelSignore is experienced in and has experienced practicing criminal defense in courts throughout Massachusetts. He has been quoted in numerous attorney publications such as: "Lawyers USA

Super Lawyer Magazine”. Attorney Delsignore is a highly respected, recognized and closely followed criminal defense attorney and is cited in many legal publications nationally and locally.

Attorney Julie Gaudreau is an associate attorney at DelSignore Law. Her practice areas include OUI Defense, criminal defense, including domestic assault and battery matters, drug crimes and handling clerk magistrate hearings as well as matters before the RMV and Board of Appeals. She has valuable experience with prior work experience in the Plymouth County District Attorneys Office.

Additionally, Attorney Julie Gaudreau is a graduate of Suffolk University Law School where she received the award for Distinguished Oral Advocate and was on the Dean’s List each semester. Attorney Gaudreau is a member of the National College of DUI Defense and recently attended the Summer Session of the DUI College.

Since graduating law school she has volunteered with The Volunteer Lawyer’s Project of Boston and South Coastal legal Services where she has been exposed to a wide range of legal issues.

## **CHAPTER ONE: WHAT IS A CLERK MAGISTRATE HEARING?**

Most people assume the only way to be charged with a crime is when you are handcuffed and arrested. In Massachusetts however, a clerk magistrate hearing or a show cause hearing can be scheduled in lieu of a formal arrest. A clerk magistrate hearing is a hearing given when an individual attempts to take out a private criminal complaint against another person or when the police officer does not witness the criminal conduct that gives rise to the charge. Common criminal charges in Massachusetts where clerk magistrate hearings are allowed include:

- Assault and battery;
- Negligent operation of a motor vehicle
- Leaving the Scene of property damage
- Shoplifting and Larceny
- OUI charge involving an accident where the motorist is taken to the hospital.

In most cases, a person will receive a notice via regular mail from the Clerk's office of a Massachusetts District Court, in which he or she is asked to appear at a scheduled Magistrate/Show-Cause hearing at that court

## **CHAPTER TWO: WHAT HAPPENS AT A CLERK MAGISTRATE HEARING?**

The hearing itself is held before a clerk of the court. The hearings are often held in an office and are informal. The party that has accused you of committing a crime, either the independent party who filed the claim or a representative from the police department who is requesting the complaint issue, will appear to describe their version of the incident.

Frequently the police are seeking the complaint. If a police officer is seeking the complaint a representative from the police department will read from the police report at the hearing. After the officer reads the report or the independent party gives their version of events, you will have the right and opportunity to testify. However, depending on the background circumstances of the incident, your attorney may or may not advise against this.

Your attorney will likely want to make an argument on your behalf. The Clerk may then ask you or your attorney questions about the incident. Your attorney will determine how these specific questions are responded to. Unlike normal courtroom proceedings before a judge, the content and testimony of this hearing are usually not recorded, and the normal rules of evidence are suspended which means hearsay is allowed at this hearing.

After the Clerk-Magistrate has heard testimony from both parties he or she will determine if probable cause exists to support the issuing the complaint. If he or she determines that probable cause exists, the complaint

formal criminal charges will be filed against you.

### **What is the standard at the Clerk Magistrate Hearing**

The clerk magistrate decide to issue the complaint if they determine there is probable cause based on the evidence presented that you committed the offense. Probable cause is a very low standard of proof. In most cases, technically the clerk will have enough evidence to issue the complaint. However, some clerks may be willing to take a more practical approach, meaning that they may resolve the case without the formally issuing the complaint. The clerk magistrate has a lot of discretion in making that decision. Some alternatives a clerk magistrate may consider are highlighted in the box below

- A clerk magistrate may allow the case to be held open or continue a case for a certain period of time with the understanding that you stay out of trouble for that period of time.
- The clerk magistrate may also order drug testing
- The clerk magistrate may order you to attend an alcohol or drug treatment program.
- If at the end of the allotted time period you have completed the ordered conditions the complaint will not issue and you will not have any criminal record of the charge.



## **Example Clerk Magistrate Hearing Handled by DelSignore Law**

Recently DelSignore Law represented a young man who was charged with possession with intent to distribute which is a fairly serious offense with severe penalties. At the Clerk Magistrate hearing DelSignore Law was able to make an argument on behalf of their client and his case was continued for 6 months with the condition that he have 3 drug tests within that time period and complete a drug program. At the end of the end of the 6-month period he had completed all his conditions and the case was dismissed. The case was never arraigned so his criminal record is still preserved. There is no formal record to indicate that he ever faced these charges.

## **CHAPTER THREE: MOTOR VEHICLE HEARINGS HEARD AT THE CLERK MAGISTRATE HEARING**

A significant portion of cases heard before the clerk magistrate are criminal motor vehicle offenses. These charges arise out of incidents where an accident has occurred or the offense is a misdemeanor not committed in the presence of a police officer. These types of cases include Operating under the influence where the driver is brought to the hospital making an arrest at the time impracticable, leaving the scene of property damage or negligent or reckless operation.

### **OUI Clerk Magistrate Hearings**

In certain OUI cases a clerk magistrate hearing will be scheduled. This usually occurs when you are involved in an accident and are taken to the hospital. It would be impracticable or impossible for the officer to arrest you at the scene, however you may receive a citation and you will receive a summons to a clerk magistrate hearing in the mail. You must mail in the summons to the court within four days so that a clerk magistrate hearing will be scheduled. If it is beyond the four days, it is still in your best interest to send the summons in because the clerk will likely still assign the matter for a hearing even without your response. There is a strong likelihood that an OUI complaint at the clerk magistrate hearing will be issued, meaning that the magistrate will likely find that probable cause exists to

this hearing to ensure that you are advised of your rights and to assess the evidence that may be presented at the hearing.

### **Leaving the Scene**

Cases involving leaving the scene of property damage are routinely scheduled for clerk magistrate hearings. These incidents do not typically occur in the presence of a police officer. They usually occur when you are involved in an accident and the other driver takes down your license plate number and gives it to the police. These cases are often defensible at a clerk magistrate hearing. Sometimes witnesses do not appear or evidence is lacking. Your attorney may also be able to argue that you should complete a driving program or pay damages rather than have the complaint issue.

### **Negligent Operation**

Negligent operation cases may also be scheduled for clerk magistrate hearings. These types of charges when not charged in connection with an OUI can arise out of accidents where alcohol or drugs are not an issue but perhaps speed or other driving infractions are involved. These cases are also defensible based on lack of evidence as well as arguments that a driver retraining program or Brains at Risk program is more appropriate than issuing formal criminal charges. The Brains at Risk program Brains At Risk is a Massachusetts awareness and prevention program that was developed by the Brain Injury Association of Massachusetts. Programs are offered throughout Massachusetts.

It is important to have an attorney represent you at a clerk magistrate hearing when you are facing motor vehicle charges. If the complaint is issued you could be facing significant penalties including license loss. These charges may be resolved at the clerk magistrate hearing but it is important that you have an attorney represent you who is familiar with these types of charges and alternative programs that a clerk magistrate may be willing to accept in lieu of issuing the complaint.

## **CHAPTER FOUR: WHAT HAPPENS IF THE COMPLAINT IS ISSUED**

After hearing the evidence the clerk will decide whether or not to issue the complaint against you. If the complaint is issued your case will be forwarded to the District Attorney's Office. This chapter will explain the process for when a complaint is issued.

After the clerk magistrate issues the complaint you will receive a summons to appear for arraignment. This notice may take a month or two to arrive. You will be scheduled to appear in the district court where your clerk magistrate hearing was held. However, when you are arraigned your case will be heard in a formal courtroom.

On the day of your arraignment you will need to check in with probation prior to being called in the court. You should try to appear early on that date so you have time to meet with probation. When your name is called in the courtroom you will stand before the judge and you will be informed of the charges against you. You will also be given the opportunity to enter a plea. If you are not represented by an attorney the court will enter a plea of not guilty on your behalf.

Depending on the charges you are facing the judge may ask you if you are willing to waive your right to an attorney to speak with a district attorney to resolve your case. It is important to remember that the district attorney is not your attorney and can not advise you legally. This is why it is very important to have an

attorney with you and to discuss your rights and options.

If the district attorney is unwilling to offer you a plea or you decide to hire an attorney you will be scheduled a pretrial date to return to court. On that next date you may receive some evidence or discovery such as a booking video. It is important to have an attorney represent you to help you determine which motions should be filed. An attorney can argue on your behalf and explain the process as well as your options and defenses. Once the complaint has been issued you are facing penalties that will be reflected on your criminal record.

## **CHAPTER FIVE: WHY YOU NEED TO HIRE AN EXPERIENCED CRIMINAL DEFENSE ATTORNEY**

If your case is scheduled for a magistrate hearing, you should hire an experienced Massachusetts criminal defense lawyer immediately. An experienced criminal defense attorney can have the case dismissed before you are formally charged and before it appears on your criminal record.

Often, a magistrate hearing is an opportunity for a practical solution with the magistrate and the prosecuting police department. The district attorney's office is not involved at this early stage.

In some cases, there may be an attorney that can help you secure an agreement to continue the matter for a period of time with the understanding that if the individual incurs no further difficulty with the law, the case will be dismissed.

Some cases may get dismissed on completing a program, such as the Brains At Risk Program, that addresses the concerns that triggered the charges being brought before the clerk of the court. An experienced criminal defense attorney knows the type of programs and alternative dispositions that a clerk may accept. Your attorney will advocate for these programs rather than the issuance of the complaint.

This clerk magistrate has considerable authority in deciding whether or not to issue the complaint. Accordingly you should always treat these court appearances as if you were appearing before a judge, as a magistrate has many of the same powers as a judge. If the complaint issues you will have a criminal record. That is why it is so important to make sure you have a criminal defense attorney who is familiar with the hearing process.



## **THINGS TO REMEMBER**

Although a clerk magistrate hearing is informal in nature, it is vital that you understand all the information given to you in this book so that you can make the best out of this opportunity and hopefully prevent the complaint from going fourth. Encounters with the law are understandably intimidating for most and all the legal jargon can become overwhelming. Before closing this book, make sure to take the following pointers with you so that you can approach your hearing with more confidence:

- Due to its inherently informal nature, the clerk's hearing usually takes place in an office space in the court rather than an actual courtroom, such as the conference room.
- The hearing is your chance to prevent and avoid criminal charges from being filed against you.
- Negotiations are commonly made at hearings and more practical solutions, versus a criminal complaint, can be made in order to reach a compromise between both parties. For example, a defendant may be required to fulfill a public safety program in exchange for the charges to not be filed.

- Any statement you make can be used against you. A transcript of the hearing is noted so prosecutors will have the ability to use your statements against you.

You should always discuss your case with an experienced criminal defense attorney. An attorney will be able to guide you through the process, explain your rights and argue on your behalf. The clerk magistrate hearing is a unique opportunity to avoid a criminal record. Make sure that you speak with an attorney who can preserve your record.