



**SAMPLE AFFIDAVIT IN SUPPORT OF CONDITION SEALING:
TREATMENT AS A CONDITION OF PROBATION**

**COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA**

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

vs.

**Affirmation in Support of
Motion for Conditional
Sealing Pursuant to
CPL ' 160.58**

VINCENT DOE,

Defendant.

AFFIRMATION

IMA ZEALOUS LAWYER ESQ., affirms the following under penalty of perjury:

1. I am an attorney duly admitted to practice law before the Courts of the State of New York, and I represent Mr. Vincent Doe on this motion pursuant to Criminal Procedure Law (CPL) §160.58 to conditionally seal his October 10, 1989 conviction for Grand Larceny in the Fourth Degree.

2. I base this affirmation upon personal knowledge and information and belief. The sources of my information and belief are my review of Mr. Doe's official criminal history record, my review of court records regarding this case, my conversations with Mr. Doe and with individuals currently employed by the Onondaga County Department of Probation, and my review of the recently enacted conditional sealing statute.

3. Mr. Doe's October 10, 1989 conviction, which resulted in a community-based sentence with substance abuse treatment rather than incarceration, represents his sole contact with the criminal justice system. Unfortunately, this sole conviction has prevented Mr. Doe from achieving his career goals and full community membership.

A. Factual Background

4. On March 8, 1989, Mr. Doe was arrested in the Town of Clay for Grand Larceny in the Fourth Degree for stealing money by using a check cashing card. Mr. Doe was using this money to support his drug addiction.

5. He was arraigned on March 16, 1989, and on November 8, 1989, the case was transferred to Onondaga County Court.

6. On October 10, 1989, Mr. Doe pleaded guilty to Grand Larceny in the Fourth Degree pursuant to Penal Law (PL) §155.30(1). Although he could have been sentenced to a term of imprisonment, he was instead sentenced to five years Probation and ordered to pay restitution.

7. On September 4, 1990, Mr. Doe was again arrested, this time for violating the conditions of his Probation by testing positive on a drug test.

8. Pursuant to PL § 65.00(2), the Court could have revoked Mr. Doe's sentence of Probation and imposed a sentence of imprisonment.

9. However, while Mr. Doe's Probation violation was pending before the Court, he began participating in the Probation Day Reporting Program and was admitted to the Rescue Mission's Alternative to Incarceration Residence Program (A.T.I.P.). Together, these programs constituted a year long program consisting of 6 months of residential substance abuse treatment

followed up by an additional six months of enhanced supervision with after care, including required attendance at Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) meetings. As part of this program, Mr. Doe also began a Day Treatment Program at Crouse Irving Memorial Alcohol and Substance Abuse Services.

10. On December 17, 1990, Mr. Doe's Probation Office wrote the Court a letter explaining that Mr. Doe was participating in the programs mentioned above, that all staff involved reported that he was cooperative, and that he had not had any positive urinalysis tests since. The Probation Officer recommended that Mr. Doe be restored to Probation and that his Probation conditions be amended to include required continued participation in substance abuse treatment. See Letter from Onondaga County Probation (attached as Exhibit B).

11. The Court accepted this recommendation, diverting Mr. Doe from a period of incarceration and instead reinstating him to Probation with the condition that he continue to participate in the recommended Alternative to Incarceration Residence Program and Probation's Day Reporting Program. See Order and Conditions of Probation, signed by Onondaga County Court Judge (attached as Exhibit C).

12. Mr. Doe did as required and over the next four years, successfully completed all conditions of Probation, including the required substance abuse programs. For him, this treatment regimen proved to be life altering, and to this day he proudly cites October 16, 1990, the day he began participating in these programs, as his "clean date." He has refrained from alcohol and drugs since this date.

13. Mr. Doe successfully completed his sentence of Probation without any other violations, paid his restitution, and was discharged from Probation supervision on September 8,

1995. See Exhibit A.

14. Though he has worked steadily, Mr. Doe has lost work opportunities because of his conviction. He has been passed over several times for a promotion because of his conviction history. In addition, in 1999, he was denied the opportunity to work for the United States Census Bureau because of his conviction. After applying and passing the written test, he was informed, via letter, that he could not be hired because he had a conviction.

15. Employment is not the only manner in which Mr. Doe has endured the stigma of his criminal conviction. Approximately six years ago, Mr. Doe received notification regarding juror duty from Onondaga County Commissioner of Jurors. He completed and returned the short questionnaire sent to him, and subsequently received a written response stating that his criminal conviction barred him from serving as a juror. Mr. Doe was denied the opportunity to engage in an activity which has long been considered an important measure of full community membership.

**B. Mr. Doe Meets the Eligibility Requirements for
Conditional Sealing Pursuant to CPL § 160.58.**

16. Pursuant to newly enacted Criminal Procedure Law (CPL) §160.58, an individual is eligible for conditional sealing as long as the individual: 1) has been convicted of “any offense in article two hundred twenty or two hundred twenty-one of the penal law or a specified offense defined in subdivision five of section 410.91 of” the CPL; 2) has successfully completed the sentence imposed for the offense; and 3) has successfully completed a CPL Article 216 judicial diversion program or “one of the programs heretofore known as drug treatment alternative to prison or another judicially sanctioned drug treatment program of similar duration, requirements, and level of supervision.” See CPL § 160.58(1).

CENTER FOR COMMUNITY ALTERNATIVES
115 E. JEFFERSON STREET, SUITE 300, SYRACUSE, NY 13202
39 W. 19TH STREET, 10TH FLOOR, NEW YORK, NY 10011
25 CHAPEL STREET, 7TH FLOOR, BROOKLYN, NY 11201

17. Mr. Doe was convicted of grand larceny in the fourth degree pursuant to Penal Law § 155.30(1), which is one of the offenses enumerated in CPL § 410.91(5), a specified offense under CPL § 160.58(1). Thus, he meets the first of the eligibility criteria set forth above.

18. Mr. Doe also meets the second criteria: more than fourteen years ago, in 1995, he completed the sentence of probation imposed for his conviction. See Exhibit A.

19. Finally, Mr. Doe meets the third requirement in that he completed a judicially sanctioned drug treatment program similar to other well-known drug treatment alternatives to prison.

20. In Onondaga County, there are currently two well-recognized drug treatment alternatives to prison -- Syracuse Community Treatment Court (“Drug Court”), which was implemented in 1997, and the District Attorney’s Project P.R.O.U.D., which was implemented in 1992. Both these alternatives are designed to deliver substance abuse treatment under judicial or law enforcement supervision.

21. Neither of these alternatives was available in 1989, when Mr. Doe was arrested and convicted. Instead, at that time Probation collaborated with the Rescue Mission to accomplish the same level of treatment and supervision. The Day Reporting Program and Alternative to Incarceration Residence Program Mr. Doe completed involved 6 months of residential substance abuse treatment and work therapy through the Rescue Mission and Crouse. While at the Rescue Mission, Mr. Doe lived in a special dorm set aside for program participants and along with these other program participants, he was required to engage in daily outpatient treatment at Crouse as well as weekly group therapy sessions and individual counseling at the Rescue Mission.

22. After successfully completing this phase of the program, Mr. Doe was discharged from the Rescue Mission and placed on Probation supervision, which included regular contact with his Probation Officer and drug testing. He was also required to participate in NA and AA meetings as an aftercare component of his treatment.

23. This program shares all of the key components of Onondaga County's Drug Court and Project P.R.O.U.D. – accredited substance abuse treatment with aftercare and ongoing supervision. Thus, Mr. Doe completed a program that was, at that time, well-known for diverting people from prison to treatment and community supervision, and constitutes “another judicially sanctioned drug treatment program of similar duration, requirements, and level of supervision” as other drug treatment alternatives to prison, such as today's Drug Court and Project P.R.O.U.D.

24. Because he meets all three of the eligibility criteria set forth in CPL § 160.58(1), Mr. Doe is eligible for conditional sealing. As discussed more below, there is compelling reason to grant his application.

**C. Sealing Mr. Doe's Criminal Conviction Will Enhance
Public Safety by Allowing Him to Pursue His Career
Goals and Fully Reintegrate into the Community**

25. Section § 160.58(3) of the CPL calls upon the Court to consider the following four factors in deciding a motion to conditionally seal a conviction: 1) the circumstances and seriousness of the offense; 2) the individual's character, including completion of judicially sanctioned treatment; 3) the individual's criminal history; and 4) the impact sealing will have on the individual's rehabilitation and his “successful and productive reentry and reintegration into society, and on public safety.” All four of these factors weigh strongly in favor of granting Mr.

Doe=s request for conditional sealing.

26. Mr. Doe’s history consists of a single arrest for a criminal offense -- an arrest that resulted in his grand larceny conviction. This arrest involved Mr. Doe improperly using a check cashing card to obtain money from non-existent accounts, which he then used to support his drug habit. Had he not been driven by his addiction, it would have been obvious to him that it was just a matter of time before he would be caught. His actions were reckless, desperate and pathetic, but they were not violent or intentionally hurtful.

27. Though he continued to struggle with his addiction during his first year of Probation, his arrest for violating the conditions of Probation forced Mr. Doe to recognize that he had to take responsibility for his actions and his life by actively engaging in his rehabilitation and recovery. Today, Mr. Doe is exemplifies personal responsibility and the power of change and redemption.

28. He is a valued employee, having remained with this current employer for over 16 years. (See letter from his employer, attached as Exhibit D).

29. He is a loving son, who helps to care for his 87 year old mother who lives in Syracuse, and until his grandfather’s death last October, 2008 at the age of 109 years, helped to care for him. (See letter from Mr. Doe’s sister, attached as Exhibit E).

30. He is an active and involved member if the Syracuse community. He continues to regularly participate in NA and over the years has sponsored many people in their recovery from drugs and alcohol. (See letter from co-participant at NA, attached as Exhibit F). He also volunteers as a mentor to work with at-risk youth. (See letter from mentoring organization, attached as Exhibit G).

31. Mr. Doe has repeatedly demonstrated in word and deed his commitment to living a law-abiding, productive life. As a community, we have failed to acknowledge this commitment and have instead allowed his criminal conviction to continue to stigmatize him.

32. By enacting CPL § 160.58, New York's legislature has acknowledged the wisdom of lifting the stigma of a criminal conviction where an individual has objectively demonstrated his or her commitment to living a law-abiding life by completing a judicially-sanctioned substance abuse treatment program, complying with supervision, and successfully completing any imposed sentence. Because Mr. Doe has exceeded these requirements, I request that this Court conditionally seal his conviction and alleviate him of the stigma that has haunted him for the past nineteen years.

WHEREFORE, on behalf of Mr. Doe, I request an order pursuant to CPL § 160.58 conditionally sealing his October 10, 1989, conviction for grand larceny in the fourth degree and any further relief as the Court may deem just and proper.

Affirmed under penalty of perjury, this the ____ day of _____, 2010.