

CHAPTER 10
EXPUNGEMENT

1001. EXPUNGEMENT OF RECORDS

Rule 1001 EXPUNGEMENT OF RECORDS

- a. Any person who has been convicted of a criminal offense in the Nation court may petition the court for the expungement of the conviction if two or more years have elapsed since the person: (1) satisfied the sentence imposed; or (2) was discharged from probation, parole, postrelease supervision, conditional release or a suspended sentence.
- b. When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice to the Nation prosecutor. The petition shall state: (1) the defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different from the defendant's current name; (3) the defendant's date of birth; (4) the crime for which the defendant was convicted; and (5) the date of the defendant's conviction. There shall be no filing fee for the petition. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.
- c. At the hearing on the petition, the court shall order petitioner's conviction expunged if the court finds that:
 - (1) the petitioner has not been convicted of a crime in the past two (2) years and no proceeding involving any crime is presently pending or being instituted against the petitioner;
 - (2) the circumstances and behavior of the petitioner warrant the expungement; and
 - (3) expungement is consistent with the public welfare.
- d. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:
 - (1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;
 - (2) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;
 - (3) the conviction may be disclosed in a subsequent prosecution for an offense

which requires as an element of such offense a prior conviction of the type expunged;

- e. Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the conviction.
- f. In any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged under this statute may state that such person has never been convicted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with federal law relating to the use or possession of firearms by persons convicted of a felony.
- g. Whenever the record of any conviction has been expunged under the provisions of this section, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:
 - (1) The person whose record was expunged;
 - (2) a criminal justice agency, private detective agency or a security firm, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or firm by the person whose record has been expunged;
 - (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
 - (4) a person entitled to such information pursuant to the terms of the expungement order;
 - (5) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;