

EXPUNCTIONS


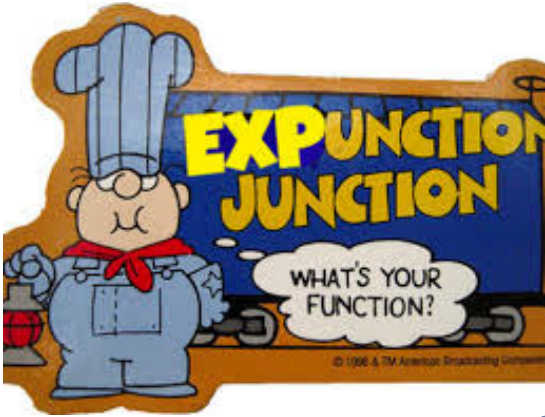
2017 A&D CONFERENCE

AUGUST 2017



INTRODUCTION

- This class is intended to be a basic guide for Clerks of Superior Court about the processes for expunction of records of the clerk.
- Expunctions are pursuant to N.C.G.S. Article 5, Chapter 15A.



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EXPUNCTIONS IN GENERAL

- Rule 9.5 of the Rules of Recordkeeping.

US LEAVE

for FY 2018 is
HR-Payroll
Bills and FAQs.

RE


QUICK LINKS

Employee Resources External Sites

- Assistant & Deputy Clerks Directory
- Bills of Interest
- COOP Resources
- Directory of Court Officials
- eCourts
- Judicial Branch Branding Templates
- Judicial Branch Budget Facts
- Juno Help
- Rules of Recordkeeping for CSCs
- Records Retention Schedules for CSCs
- Financial Procedures Manual
- Microfilm Request Form
- N.C. Judicial Center
- Writing Resources

- Procedures in the Office of the Clerk of Superior Court
- Amended Procedures for Requests of Reports of Prior Conditional

Rules of Recordkeeping
I. Records Management in General
II. Scanning Procedures (formerly Microfilm in General)
III. Civil District & Civil Superior
IV. Small Claims Cases Assigned to Magistrates
V. Civil Revocations (10 day revocation under the Safe Road Act)
VI. Estates
VII. Special Proceedings
VIII. Special Proceedings Confidential
IX. Criminal District & Criminal Superior
X. Infractions



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EXPUNCTIONS IN GENERAL

- Rule 9.5 of the Rules of Recordkeeping.

Rules of Recordkeeping

IX. Criminal District and Criminal Superior

Rule 9.5 - EXPUNCTIONS: The clerk shall forward a certified copy of the order to the Administrative Office of the Courts (NCAOC), NC Department of Motor Vehicles (NC DMV), and NC Department of Public Safety (NC DPS) at the respective addresses listed on the expunction order; and the sheriff, chief of police, or any other arresting agency listed on the petition for expunction.

The clerk shall then remove all reference of the defendant relevant to that case from the ACIS system. Where the case was recorded on the 3x5 card file "Index to Criminal Actions", the clerk shall remove the card from the file and place it in the case shuck or folder holding the case materials. The shuck or folder and all of its contents shall then be destroyed by any approved method of destruction.

The clerk shall ensure that all reference to an expunged case name is removed from the FMS system. To accomplish this, the criminal clerk is to forward a copy of the expunged order to the head bookkeeper on those cases where some activity was recorded in the FMS system. It is important that this be done in a secure manner. The criminal clerk shall record sending the order to the bookkeeper in a tickler file showing when it was sent.

■ Procedures in the Office of the Clerk of Superior Court

■ Amended Procedures for Requests of Reports of Prior Conditional

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EFFECT OF EXPUNCTION

- When a case is expunged, it is as if the case (or the portion expunged) never existed.
- The clerks office should not acknowledge that there was ever any such record.
- Effective December 1, 2017, any requests for verification of prior expunction should be referred to the expunction team at NCAOC.





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REQUESTS FOR VERIFICATION OF EXPUNCTION

- Pursuant to N.C.G.S. 15A-151(a) the NCAOC cannot acknowledge a prior expunged case except:
 1. Judge – hearing a new petition for expunction;
 2. Petitioner – AOC-G-260 ¹;
 3. Subpoena or court order ¹;
 4. State and local law enforcement for employment purposes ²;

STATE OF NORTH CAROLINA
County

In The General Court Of Justice

STATE VERSUS

Full Name And Address Of Applicant (Type Or Print)

Drivers License No. State Date Of Birth Race Sex Full Social Security No. G.S. 15A-152

NOTE: If your name, drivers license information, or social security number were different at the time of the prior expunction or the charge leading to the expunction, fill the prior information in the fields below.

Former Name (Last, First, Middle) Former Drivers License No. State Full Former Social Security No.

STOP

Any false statement on this application could subject you to prosecution for perjury. Before completing this application, read carefully the instructions on Side Two of this form. By signing this application and sending it to the Administrative Office of the Courts (AOC), you are making statements under oath or affirmation, including a statement that you have read and understand the instructions on Side Two.

APPLICATION FOR VERIFICATION OF EXPUNCTION

I request verification of the expunction of the case(s) listed in this application, and in support of that request state the following:

1. I am the person identified by the information at the top of this application.
2. I was named as the defendant in the case(s) listed below, for which the court ordered the record(s) expunged.

County	File Number	County	File Number	County	File Number	County	File Number

1. NCGS 15A-152
2. NCGS 15A-145.4, 15A-145.5 and 15A-145.6



REQUESTS FOR VERIFICATION OF EXPUNCTION

- Pursuant to G.S. 15A-151(a) the NCAOC cannot acknowledge a prior expunged case except:
 5. NC Criminal Justice Education & Training Standards Commission for certification only ²; and
 6. NC Sheriffs Education and Training Standards Commission for certification purposes only ².




1. NCGS 15A-152
2. NCGS 15A-145.4, 15A-145.5 and 15A-145.6



EXPUNCTION OF CRIMINAL RECORDS

Filing Fees:

- If required, the filing fee must be paid at the time the petition is filed.³
- Indigent petitioners – no fee.



3. See Table 1, Section 1.4, pg. 8 of the Expunction Guide; See also table on Quick Reference Guide.

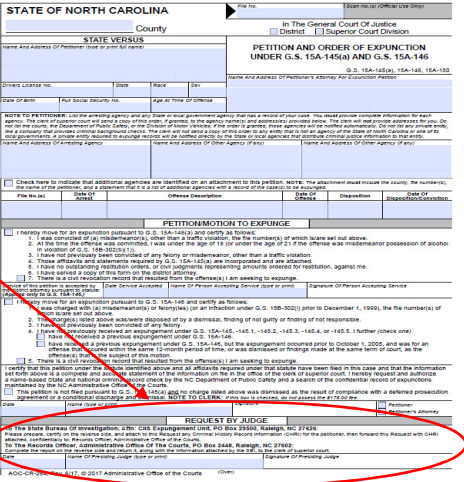


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EXPUNCTION OF CRIMINAL RECORDS

Criminal Background Checks:

- A judges signature on the expunction petition is required prior to transmitting to the SBI and NCAOC⁴.
- NOTE: Eff. December 1, 2017, the clerk is required to send petitions to the SBI.
 - Petitioner/attorney no longer allowed to submit.
- SBI and NCAOC reports attached to the returned petition are confidential.



4. See Table 4, Section 2.1.6, pg. 11 of the Expunction Guide; see also table on Quick Reference Guide



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EXPUNCTION OF CRIMINAL RECORDS

Accepting new expunction petitions for filing:

Effective December 1, 2017 the clerks office is required to submit all petitions for expunction to the SBI.

1. Attorney/petitioner shall file new petitions with clerk;

2. Use of an AOC form is required;


3. Verify petition is complete;

if incomplete, return to filer for completion.

4. Collect fees, if required; and

5. Clerk will acquire judges signature (if required) and send to SBI for background checks.

**Best Practice: Retain a copy with the judges signature in the case file.



EXPUNCTION OF CRIMINAL RECORDS


Scheduling Hearings:

1. The petition has been returned to your office from NCAOC⁵.

2. Fees collected.


3. DA and petitioner served with notice of hearing date⁶.

• Expunctions filed under N.C.G.S. 15A-147, 15A-148 and 15A-149 do NOT require hearings⁶



5. Only for those petitions where the NCGS requires background checks from SBI and NCAOC; see Section 2.1.6, pg. 11, Table 4 Expunction Guide; see also table on Quick Reference guide.

6. For notification requirements see Section 2.2, pg. 12 Expunction Guide; see also table on Quick Reference guide



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EXPUNCTION OF CRIMINAL RECORDS

Petition Granted:

- Expunge all instances of the case from the courts records.
- Send certified copies to provide notification of expunction:
 - Petitioner or their attorney.
 - State and local agencies.

STATE OF NORTH CAROLINA
In the General Court of Justice
STATE VERSUS
MICKY MOUSE
123 Main Street
DISNEYWORLD, FL 12345
PETITION AND ORDER OF EXPUNCTION
UNDER G.S. 15A-145(a) AND G.S. 15A-146

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EXPUNCTION OF CRIMINAL RECORDS

Petition Granted:

- Expunge all instances of the case from the courts records.
- Send certified copies to provide notification of expunction:
 - Petitioner or their attorney
 - State and local agencies

CRIMINAL HISTORY RECORD INFORMATION
REPORT BY ADMINISTRATIVE OFFICE OF THE COURTS
FINDINGS OF FACT
ORDER

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EXPUNCTION OF CRIMINAL RECORDS

Petition Denied:

1. Retain order and all attachments until appeal period has passed, then:
 1. Remove all attachments from order and destroy;
 2. Place original order of denial in case file;
 - If the case type requires scanning then the order should be scanned via Active Method.
 - Only if the case has previously been destroyed, may the order denying expunction also be destroyed after scanning, if required.
 - NOTE: If a partial expunction is ordered the clerks office is responsible for rescanning any retained portion of that case to the current disc.



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EXPUNCTION OF JUVENILE RECORDS

- N.C.G.S. 7B-3200
- Rule 12.6, Rules of Recordkeeping
- No filing fees
- No appointed counsel
- No SBI background check/NCAOC search
- Hearings always required and must be recorded.⁷



7. See Section 3.0, pg. 20 of Expunction Guide; see also table on Quick Reference Guide



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EXPUNCTION OF JUVENILE RECORDS

Petition Granted:

- Expunge records from case paper file and electronic record (JWISE).
- Notify ONLY arresting agency and NCAOC with certified copy of order.

Petition Denied:

- Same as process for denied criminal expunctions.⁷


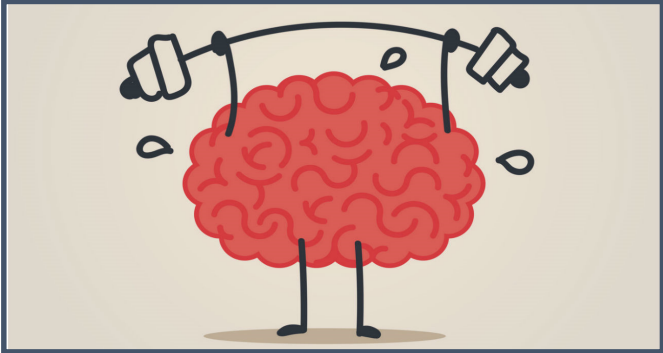


7. See Section 3.0, pg. 20 of Expunction Guide; see table on Quick Reference Guide

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EXPUNCTION OF MENTAL HEALTH COMMITMENT RECORDS OF MINORS

- N.C.G.S. 122C-54(e)
- No AOC forms
- No filing fees
- Venue – district court
- Hearing – consult chief district court judge for guidance, no statutory provision
- Orders granted –
 - Destroy all records
 - Do NOT notify NCAOC or any other agencies
- Orders denied – File in existing SPC file for minor



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CONDITIONAL DISCHARGES

- When a charge(s) is dismissed at the end of a conditional discharge, the clerk must notify the NCAOC of the dismissal by sending certified copies of:⁸
 - The order placing the defendant on the conditional discharge⁹; and
 - The final order discharging the defendant and dismissing the charge⁸.

NOTE: Do NOT send copies of deferred prosecution orders to NCAOC, only conditional discharge orders.

8. N.C.G.S. 15A-150(a); AOC-CR-622


9. AOC-CR-619, AOC-CR-621, AOC-CR-627 or AOC-CR-628



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CONDITIONAL DISCHARGE VS. DEFERRED PROSECUTION

<u>Conditional Discharge</u>	<u>Deferred Prosecution</u>
<ul style="list-style-type: none">Order for conditional discharge signed by judge or designated magistrate.	<ul style="list-style-type: none">Agreement between the prosecutor and defendant to defer dismissal until after completion of agreed upon terms; no judge involved.
<ul style="list-style-type: none">Order for discharge and dismissal of defendant signed by a judge or designated magistrate.	<ul style="list-style-type: none">Order for dismissal after completion of probation signed by prosecutor.
<ul style="list-style-type: none">Copy of Order for discharge and dismissal sent to NCAOC.	<ul style="list-style-type: none">Order for dismissal NOT reported to NCAOC.



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CONDITIONAL DISCHARGE VS. DEFERRED PROSECUTION

Requests for Reports of Prior Conditional Discharge¹⁰:

- Request by district or superior court judge.
- Regular requests:
 - Mailed back to clerk
 - Processed within 1 business day
- Expedited requests:
 - Faxed back to clerk
 - Priority over regular requests
 - Court date must be within 3 weeks
 - Processed within 30 minutes

10. AOC-CR-237

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LEGISLATIVE CHANGES TO EXPUNCTIONS EFFECTIVE DECEMBER 1, 2017

WHAT'S NEW?

- Number of expunctions allowed increased from one to multiple under several different dismissal statutes.¹¹
- Post conviction wait time for expunction reduced from 15 years to:¹²
 - non-violent felony, 10 yrs.
 - non-violent misdemeanor, 5 yrs.
- Clerk required to mail petition to SBI
 - after verifying completeness; and
 - obtaining judges signature (if required)
 - no more local practice for submission to SBI
- Mandatory use of AOC forms
 - this includes the requirement to list all charges being requested on the form
 - no attachments or screenshots¹³

11. See table on quick reference guide; NCGS 15A-145(a), 15A-145.2(a) & (b), 15A-145.3(a) & (b), and 15A-146

12. NCGS 15A-145.5

13. See table on Quick Reference Guide

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CONTACTS AND REFERENCES

- Cheryl Stone
 - Court Services Admin Officer and Expunction Manager
- P: (919) 890-1337 or (919) 890-1400
- F: (919) 890-1991
- Expunction Guide on JUNO:

RELATED LINKS

- Records Retention and Disposition Schedule
- Expunction Guide for Clerks (Effective 10/2015 - Present)
- Procedures in the Office of the Clerk of Superior Court
- Amended Procedures for Requests of Reports of Prior Conditional Discharges (11/15/2012)
- Offenses Involving Impaired Driving (G.S. 20-4.01(24A)) as of December 1, 2014
- (Retired Related Links for RRK / Retention)

- Directory of Court Officials
- eCourts
- Judicial Branch Branding Templates
- Judicial Branch Budget Facts
- Juno Help
- Rules of Recordkeeping for CSCs
- Records Retention Schedules for CSCs
- Financial Procedures Manual
- Microfilm Request Form
- N.C. Judicial Center
- Writing Resources



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THANK YOU

Court Services Division

