

# Supreme Court of Florida

**ORIGINAL**

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No. 81,545

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AMENDMENTS TO FLORIDA RULES OF CRIMINAL PROCEDURE  
3.133, 3.692, 3.986, 3.987 AND 3.989

[June 16, 1994]

PER CURIAM.

In our prior opinion in this case, we adopted amendments to Florida Rules of Criminal Procedure 3.133, 3.692, 3.986, 3.987, and 3.989. Amendments to Florida Rules of Criminal Procedure 3.133, 3.692, 3.986, and 3.989, 630 So. 2d 552 (Fla. 1993). We rejected the Criminal Rules Committee's proposed amendments to rules 3.692, Petition to Seal and Expunge, and 3.989, Seal and Expunge Forms, and adopted our own amendments to those rules. These amendments were designed to ensure that the Florida Department of Law Enforcement (FDLE) received sufficient information to enable it to notify the appropriate state attorney of the existence of circumstances that would prohibit expunging or sealing of records. To this end, they provide that 1) a copy

of the petition to expunge or seal be served on the prosecuting attorney, the arresting police agency, and FDLE and 2) the hearing on the petition be delayed thirty days from service of the copies. We postponed the effective date of these amendments until the Rules Committee could review them and file comments for our further consideration. 630 So. 2d at 553. We have jurisdiction. Art. V, § 2(a), Fla. Const.

The Rules Committee offers two suggested changes to rules 3.692 and 3.989 as amended in our prior opinion. The first is a rewording of the sentence in rule 3.692(a) providing for a 30-day delay between the filing of a petition and the hearing. The sentence as reworded takes into consideration the fact that there may be instances in which no hearing is necessary. The second is a stylistic change to rule 3.989 that was inadvertently omitted from the Rules Committee's original petition.

We also have considered comments submitted by other interested parties but adopt only those changes suggested by the Rules Committee. The attached amendments reflect those changes.

Accordingly, rules 3.692 and 3.989 are amended as reflected in the appendix to this opinion. The new language is indicated by underscoring; deletions are indicated by strike-through type. The amendments shall become effective immediately upon the filing of this opinion.

It is so ordered.

SHAW, KOGAN and HARDING, JJ., and McDONALD, Senior Justice, concur.  
OVERTON, J., concurs in part and dissents in part with an opinion.

GRIMES, C.J., dissents with an opinion.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

OVERTON, J., concurring in part and dissenting in part.

I concur and dissent in accordance with my statement in Amendments to Florida Rules of Criminal Procedure 3.133, 3.692, 3.987 and 3.989, 630 So. 2d 552, 553 (Fla. 1993).

GRIMES, C.J., dissenting.

I dissent for the reasons expressed in my dissenting opinion in Amendments to Florida Rules of Criminal Procedure 3.133, 3.692, 3.986, and 3.989, 630 So. 2d 552 (Fla. 1993).

RULE 3.692. PETITION TO SEAL OR EXPUNGE

(a) Requirements of Petition. All relief sought by reason of ~~§sections~~ 943.0585-943.059, Florida Statutes ~~(1981)~~, shall be by petition in writing, filed with the clerk. ~~Such~~The petition shall state the grounds ~~upon~~ which it is based and the official records to which it is directed and shall be supported by an affidavit of the party seeking relief, which affidavit shall state with particularity the statutory grounds and the facts in support of ~~such~~the motion. A copy of the completed petition and affidavit shall be served ~~upon~~ the prosecuting attorney, ~~and upon~~ the arresting authority, and the Florida Department of Law Enforcement. Unless the state indicates that it has no objection to the requested relief, no petition may be granted until at least 30 days after service of the copies of the petition and affidavit. Notice and hearing shall be as provided in Rule 3.590(c).

(b) State's Response; Evidence. The ~~§~~state may traverse or demur to ~~such~~the petition and affidavit. The court may receive evidence on any issue of fact necessary to the decision of the petition.

(c) Written Order. If the petition is granted the court shall enter its order in writing so stating and further setting

forth the records and agencies or departments to which it is directed.

(d) Copies of Order. ~~Upo~~On the receipt of ~~suchthe~~ order the clerk shall furnish a certified copy thereof to each agency or department named therein excepting the court.

(e) Clerk's Duties. In regard to the official records of the court including the court file of the cause, the clerk shall:

(1) ~~R~~remove from the official records of the court, excepting the court file, all entries and records subject to ~~suchthe~~ order; provided that if it shall not be practical to remove ~~suchthe~~ entries and records, then to make certified copies thereof and thereafter expunge by appropriate ~~names~~means ~~suchthe~~ original entries and records~~;~~;

(2) ~~S~~seal ~~suchthe~~ entries and records, or certified copies thereof, together with the court file and retain the same in a non-public index subject to further order of the court~~.~~  
(~~S~~see Johnson v. State, 336 So.2d 93 (Fla. 1976)~~);~~;

(3) ~~I~~n multi-defendant cases, ~~the clerk shall~~ make a certified copy of the contents of the court file ~~whichthat~~ shall be sealed pursuant to ~~subsections~~subdivision (2). Thereafter all

references to the petitioner shall be expunged from the original court file.

(f) Costs. All costs of certified copies involved herein shall be borne by the movant, unless ~~he be~~ the movant is indigent.

#### Committee Notes

**1984 Amendment.** Substantially the same as the former rule. The statutory reference in (1) was changed to cite the current statute and terminology was changed accordingly. ~~Subsection~~division (f) of the former rule was deleted ~~since~~because it dealt with substantive matters covered by ~~§~~section 943.058, ~~of the~~ Florida Statutes (1981).



RULE 3.989. AFFIDAVIT, PETITION, AND ORDER  
TO EXPUNGE OR SEAL ~~AND AFFIDAVIT~~ FORMS

(a) Affidavit in Support of Petition.

~~IN THE CIRCUIT COURT OF THE~~  
~~\_\_\_\_\_ JUDICIAL CIRCUIT,~~  
~~IN AND FOR \_\_\_\_\_~~  
~~COUNTY, FLORIDA~~

~~CASE NUMBER: \_\_\_\_\_~~

~~DIVISION \_\_\_\_\_~~

~~STATE OF FLORIDA \_\_\_\_\_ )~~

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case No.: \_\_\_\_\_

Division \_\_\_\_\_

State of Florida )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 \_\_\_\_\_ )  
 )  
 Defendant-/Petitioner )  
 \_\_\_\_\_ )

AFFIDAVIT

~~STATE OF FLORIDA~~

~~COUNTY OF~~

State of Florida

County of \_\_\_\_\_

I, \_\_\_\_\_ (name of defendant/petitioner),  
 am the ~~D~~defendant/petitioner in the above-styled cause and I do  
 hereby swear and/or affirm that: ~~I have never been adjudicated~~  
~~guilty of a criminal offense or a comparable ordinance violation~~  
~~and I have frankly discussed this with my counsel in depth and he~~

~~has explained to me the meaning of all of the terms in this Affidavit.~~

1. I fully understand the meaning of all of the terms of this affidavit.

2. I have never been adjudicated guilty of a criminal offense or a comparable ordinance violation.

~~1-3. That~~ I was arrested on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_ (arresting agency), and I have not been adjudicated guilty of the charges stemming from that arrest or the alleged criminal activity surrounding my arrest.

4. I am eligible for the relief requested, to the best of my knowledge and belief, and do not have any other petition to expunge or seal pending before any court.

~~2-5. That~~ I have never secured a prior records expunction or sealing under any law.

~~3-6.~~ (For use in ~~expungement~~expunction Ppetitions only.)  
~~That~~ My record of arrest for this date has been sealed for at least ten (10) years; or an indictment or information was not filed against me for the above criminal transaction; or an

indictment or information filed against me was dismissed by the  
prosecutor or the court.

\_\_\_\_\_  
~~Defendant~~/Petitioner

Sworn to and subscribed before me this \_\_\_\_\_ day of

\_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, or other person  
authorized to administer an oath

Printed, typed, or stamped  
commissioned name of Notary Public

Personally known \_\_\_\_\_ or produced identification \_\_\_\_\_

Type of identification produced \_\_\_\_\_

My ~~C~~ommission ~~E~~xpires:

(b) Order to Expunge.

~~IN THE CIRCUIT COURT OF THE~~  
~~\_\_\_\_\_ JUDICIAL CIRCUIT,~~  
~~IN AND FOR \_\_\_\_\_~~  
~~COUNTY, FLORIDA~~

CASE NUMBER: \_\_\_\_\_

DIVISION \_\_\_\_\_

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case Number: \_\_\_\_\_

Division \_\_\_\_\_

State of Florida, \_\_\_\_\_ )  
\_\_\_\_\_ )  
Plaintiff, \_\_\_\_\_ )  
\_\_\_\_\_ )  
v. \_\_\_\_\_ )  
\_\_\_\_\_ )

\_\_\_\_\_) )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
Defendant/Petitioner ) )  
\_\_\_\_\_) )

ORDER TO EXPUNGE PURSUANT TO  
~~FLORIDA STATUTE~~SECTION 943.0585, FLORIDA STATUTES  
AND ~~FRCP~~FLORIDA RULE OF CRIMINAL PROCEDURE 3.692

THIS CAUSE having come on to be heard before me this date upon ~~the Defendant's~~a Ppetition to ~~E~~expunge certain records of the ~~Defendant's~~petitioner's arrest on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_ (arresting agency), for \_\_\_\_\_ (charges), and the ~~C~~court having heard argument of counsel and being otherwise fully advised in the premises, the court hereby finds the following:

1. ~~That t~~The Defendantpetitioner has never previously been adjudicated guilty of a criminal offense or a comparable ordinance violation.

2. ~~That t~~The Defendantpetitioner was not adjudicated guilty of charges stemming from the arrest or criminal activity to which this expunction ~~P~~petition pertains.

3. ~~That~~ The Defendant petitioner has not secured a prior records expunction or sealing.

4. ~~That~~ This record has either been sealed for at least ten ~~(10)~~ years; or no indictment or information was ever filed in this case against the Defendant petitioner; or an indictment or information filed against the defendant was dismissed by the prosecutor or the court. ~~Whereupon it is thereby~~

ORDERED AND ADJUDGED that ~~said~~ the Ppetition to Eexpunge is hereby granted. All Ccourt records pertaining to the above-styled case shall be ~~expunged~~ sealed in accordance with the procedures set forth in ~~Florida Statute 943.058 and FRCP~~ Florida Rule of Criminal Procedure 3.692; and it is further

ORDERED AND ADJUDGED that the Clerk of this Ccourt shall forward a certified copy of this Oorder to the ~~State Attorney~~ (check one) state attorney, special prosecutor, statewide prosecutor, \_\_\_\_\_ (arresting agency), and the Sheriff of \_\_\_\_\_ County, who will comply with the procedures set forth in ~~Florida Statute~~ section 943.0585, Florida Statutes, and appropriate regulations of the Department of Law Enforcement, and who will further forward a copy of this Oorder to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that \_\_\_\_\_ (arresting agency) shall expunge all information concerning indicia of arrest or criminal history record information ~~reference~~regarding this ~~Defendant~~petitioner in accordance with the procedures set forth in ~~Florida Statutes~~section 943.0585, Florida Statutes, and ~~FRC~~Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the ~~Petitioner~~\_\_\_\_\_.

DONE AND ORDERED in Chambers at \_\_\_\_\_ County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Circuit Court Judge



(c) Order to Seal.

~~IN THE CIRCUIT COURT OF THE~~  
~~\_\_\_\_\_ JUDICIAL CIRCUIT,~~  
~~IN AND FOR \_\_\_\_\_~~  
~~COUNTY, FLORIDA~~

~~CASE NUMBER: \_\_\_\_\_~~  
~~DIVISION \_\_\_\_\_~~  
In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case No.: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, \_\_\_\_\_ )  
\_\_\_\_\_ )  
Plaintiff, \_\_\_\_\_ )  
\_\_\_\_\_ )  
v. \_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )

Defendant/Petitioner )

\_\_\_\_\_ )

ORDER TO SEAL RECORDS PURSUANT TO  
~~FLORIDA STATUTE~~SECTION 943.059, FLORIDA STATUTES,  
AND ~~FRCP~~FLORIDA RULE OF CRIMINAL PROCEDURE 3.692

THIS CAUSE having come on to be heard before me this date upon ~~Defendant's~~petitioner's ~~P~~petition to ~~S~~seal ~~R~~records concerning the petitioner's arrest on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by the \_\_\_\_\_ (arresting agency), and the ~~C~~court having heard argument of counsel and being otherwise advised in the premises, the court hereby finds:

1. ~~That~~The Defendantpetitioner has never been previously adjudicated guilty of a criminal offense or comparable ordinance violation.
2. ~~That~~The Defendantpetitioner was not adjudicated guilty of charges stemming from the arrest or criminal activity to which the instant ~~P~~petition pertains.
3. ~~That~~The Defendantpetitioner has not secured a prior records expunction or sealing; whereupon it is ~~thereby~~

ORDERED AND ADJUDGED that the ~~P~~petition to ~~S~~seal ~~R~~records be and the same hereby is granted. All ~~E~~court records pertaining to the above-styled case shall be sealed in accordance with the procedures set forth in ~~Florida Statute 943.058~~, and ~~FRCPF~~Florida Rule of Criminal Procedure 3.692; and it is further

ORDERED AND ADJUDGED that the ~~C~~lerk of this ~~E~~court shall forward a certified copy of this ~~O~~rder to the ~~State Attorney~~ (check one) state attorney, special prosecutor, statewide prosecutor, \_\_\_\_\_ (arresting agency), and the Sheriff of \_\_\_\_\_ County, who will comply with the procedures set forth in ~~Florida Statute~~section 943.0589, Florida Statutes, and appropriate regulations of the Department of Law Enforcement, and who will further forward a copy of this ~~O~~rder to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that \_\_\_\_\_ (arresting agency) shall seal all information concerning indicia of arrest or criminal history record information ~~reference~~regarding this ~~Defendant~~petitioner in accordance with the procedures set forth in ~~Florida Statute~~section 943.0589, Florida Statutes, and ~~FRCPF~~Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the ~~P~~etitioner \_\_\_\_\_.

DONE AND ORDERED in Chambers at \_\_\_\_\_ County, Florida,  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Circuit Court Judge

(d) Petition to Expunge or Seal.

~~IN THE CIRCUIT COURT OF THE~~  
~~\_\_\_\_\_ JUDICIAL CIRCUIT,~~  
~~IN AND FOR \_\_\_\_\_~~  
~~COUNTY, FLORIDA~~

~~CASE NUMBER: \_\_\_\_\_~~  
~~DIVISION \_\_\_\_\_~~

~~STATE OF FLORIDA, \_\_\_\_\_ )~~

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida  
Case Number: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, \_\_\_\_\_ )

Plaintiff, )

vs. )

\_\_\_\_\_, )  
 )  
Defendant-Petitioner )  
\_\_\_\_\_ )

PETITION TO EXPUNGE OR SEAL

~~COMES NOW~~ ~~the~~ Defendant petitioner, \_\_\_\_\_, by and through ~~his~~ the undersigned attorney, ~~and~~ petitions this ~~H~~ honorable ~~C~~ court, pursuant to Florida Rule of Criminal Procedure 3.692, and ~~Florida Statute~~ section \_\_\_\_\_ 943.0585, or section 943.59 Florida Statutes, to \_\_\_\_\_ expunge/seal \_\_\_\_\_ all criminal history record information in the custody of any criminal justice agency and the official records of the court concerning ~~his~~ the petitioner's arrest on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_ (arresting agency), for \_\_\_\_\_ (charges), and as grounds therefor ~~would~~ shows:

1. ~~That~~ ~~o~~ On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the Defendant petitioner, \_\_\_\_\_, a \_\_\_\_\_ (race/sex), whose date of birth is \_\_\_\_\_ (date of birth), was arrested by \_\_\_\_\_ (arresting agency), and charged with \_\_\_\_\_ (charges).

2. ~~That the Defendant~~petitioner has not been adjudicated guilty of any of the charges stemming from this arrest or alleged criminal activity.

3. The petitioner has not been previously adjudicated guilty of a criminal offense or a comparable ordinance violation.

~~3.4. That the Defendant~~petitioner has not secured a prior records expunction or sealing under ~~this~~ §section 943.0585, or 943.059, Florida Statutes, former section 943.058, Florida Statutes, former §section 893.14, Florida Statutes, or former §section 901.33, Florida Statutes, or any other law, rule, or authority.

~~4.5.~~ (To be used only when requesting expunction.) Such record has been sealed under ~~this~~ §section 943.059, Florida Statutes, former section 943.058, Florida Statutes, former §section 893.14, Florida Statutes, or former §section 901.33, Florida Statutes, for at least ~~ten~~ (10) years; or there has not been an indictment or information filed against the ~~Defendant~~petitioner who is the subject of this criminal history record information; or an indictment or information filed against the petitioner who is the subject of this criminal history information was dismissed by the prosecutor or the court.

WHEREFORE, the ~~Defendant~~ petitioner, \_\_\_\_\_, moves ~~this~~  
~~Honorable Court~~ to \_\_\_\_\_ expunge/seal \_\_\_\_\_ any criminal history  
record information and any official court records  
~~reference~~ regarding his/her arrest by \_\_\_\_\_ (arresting agency),  
for \_\_\_\_\_ (charges), on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

I HEREBY CERTIFY that a true and correct copy of the  
foregoing pleading has been served upon \_\_\_\_\_ (name of  
prosecuting authority), (check one) \_\_\_\_\_ State Attorney for the  
\_\_\_\_\_ Judicial Circuit, in and for \_\_\_\_\_ County, \_\_\_\_\_ Special  
Prosecutor, \_\_\_\_\_ Statewide Prosecutor); \_\_\_\_\_ (arresting  
agency); ~~and~~ \_\_\_\_\_ (Sheriff of \_\_\_\_\_ County where ~~D~~ defendant  
was arrested, if different); and the Florida Department of Law  
Enforcement, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Name:

Address:

City/State:

Telephone Number:

Fla. Bar No.:

**Committee Notes**



1984 Adoption. In order to have uniformity throughout the State, the committee proposes these forms for Petition to Expunge or Seal, Order to Seal, and Order to Expunge and Affidavit. These also should be a great asset to counsel and an invaluable asset to the clerks and FDLE, etc., who will be receiving Orders in the future. The subcommittee working on these proposed forms has contacted law enforcement agencies, clerks, etc., for their input as to these proposed forms.

Original Proceeding - Florida Rules of Criminal Procedure

John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida; and William Pierce White, III, Chair, Criminal Procedure Rules Committee, Jacksonville, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, and James W. Rogers, Chief, Tallahassee Bureau of Criminal Appeals, Tallahassee, Florida; Michael P. Spellman of Douglass and Powell, and William Paul Huey of Roberts & Egan, P.A., Tallahassee, Florida; James T. Moore, Executive Director, Michael Ramage, General Counsel and John P. Booth, Assistant General Counsel, Florida Department of Law Enforcement, Tallahassee, Florida; and Arthur I. Jacobs, Florida Prosecuting Attorneys Association, Fernandina Beach, Florida,

Other Interested Parties