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Special Issues in Providing Access to Court Records

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Special Issues in Providing Access to Court Records

Reference Number: CTAS-1160

Court records can be a little different from most of the records in other county offices in that they are created by parties of the case who need access to the records on an on-going basis during litigation. The evidence and discovery materials in the cases are not created by the clerk, but merely held for use by the parties. For this reason, though case files are technically public records, special provisions may apply. The United States Supreme Court has stated that “every court has supervisory power over its own records and files.”^[1] In Tennessee, the Court of Criminal Appeals has similarly ruled that “a trial court has the inherent authority to determine the custody and control of evidence held in the clerk’s office.”^[2] These case files, while in the court clerk’s office, will usually be open to the public.^[3] This public right of access is rooted in the First Amendment and in the common law, but is a qualified right.^[4] Since this right is qualified and not absolute, it is subject to the court’s discretion on a particular matter.^[5] Therefore, unless there is a statute making a record confidential or a clear court directive sealing records or prohibiting public access to the records, the public may access case files. If the court seals a record, it becomes confidential and free from public scrutiny.^[6] This power is not unlimited. The records may only be sealed when “interests of privacy outweigh the public’s right to know.”^[7] If parties to litigation approach a clerk with concerns about public access to materials included in case files, the clerk should direct the parties to petition the judge to order such records sealed from public access. Additionally, as parties to litigation may need extended access to and use of case records, courts may also adopt rules to authorize that pleadings and exhibits may be withdrawn by parties to the case or their legal representatives.^[8]

^[1] *Nixon v. Warner Communications*, 435 U.S. 589, 98 S.Ct. 1306 (1978).

^[2] *Ray v. State*, 984 S.W.2d 236, 238 (Tenn. Crim. App. 1997).

^[3] *Smith v. Securities and Exchange Commission*, 129 F.3d 356, 359 (6th Cir. 1997). See also Op. Tenn. Att’y Gen. No. 02-075 (June 12, 2002).

^[4] *Ballard v. Herzke*, 924 S.W.2d 652, 661-662 (Tenn. 1996).

^[5] *Ray v. State*, at 238.

^[6] *Knoxville News-Sentinel v. Huskey*, 982 S.W.2d 359, 362 (Tenn. Crim. App. 1998)

^[7] *In re Knoxville News-Sentinel*, 723 F.2d 470, at 474 (6th Cir. 1983).

^[8] Op. Tenn. Att’y Gen. No. 02-075 (June 12, 2002).

Expunging Court Records

Reference Number: CTAS-1161

Several statutes in Tennessee law provide for parties to have records of judicial proceedings involving them expunged from the records of the court and certain other offices.

The basic statute for expunction of criminal offense records is found in T.C.A. § 40-32-101. This statute allows individuals to have their records expunged if they are not convicted of any crime. The statute also allows for expungements of charged offenses if the individual was not convicted of the charged offense, even if they are convicted of another offense, so long as the only offense the individual was convicted of was a traffic offense. Additionally, subsection (j) allows an individual to apply for expungement of records from electronic databases relating to the person’s arrest, indictment, charging instrument, or disposition for any charges other than the offense for which the person was convicted. Finally, subsection (g) allows for the expungement of certain less serious convictions under certain circumstances if the individual pays the required statutory fees.

The law provides that the record to be expunged “does not include arrest histories, investigative reports, intelligence information of law enforcement agencies, or files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public and shall also not include records of the department of children’s services or department of

human services that are confidential under state or federal law and that are required to be maintained by state or federal law for audit or other purposes." Court cases have also determined that physical evidence is not addressed by the expungement statutes; and therefore, cannot be expunged. *State v. Powell*, 1999 WL 512072 (Tenn. Ct. App. July 21, 1999, permission to appeal denied January 24, 2000).

In cases of judicial diversion, there is separate statutory authority for expunging records. T.C.A. § 40-35-313. In those circumstances, a person who had charges dismissed through judicial diversion may apply to the court to expunge all official records other than certain non-public records that are kept solely to determine whether the person is eligible for diversion in the future. The application for expungement shall contain a notation by the clerk evidencing that all court costs are paid in full, prior to the entry of an order of expungement. If the court determines, after hearing, that the charges against such person were dismissed and the proceedings discharged, it shall enter such order. The effect of such order is to restore the person, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information.

Other statutes authorize expunction in cases that were dismissed through pre-trial diversion under a memoranda of understanding, T.C.A. § 40-15-105, or in cases where the governor declares the defendant exonerated. T.C.A. § 40-27-109.

In cases where the criminal record is expunged, certain information must be reported to the Tennessee Bureau of Investigation (TBI) to be maintained in its expunged criminal offender and pretrial diversion database. T.C.A. § 38-6-118.

In addition to courts with criminal jurisdiction, the primary statute on expunging criminal offenses explicitly states that it applies to juvenile courts. T.C.A. § 40-32-101(a)(4). Additionally, Juveniles who have their driving record suspended can apply to have that record expunged once they reach 18 years of age and have their license reinstated. T.C.A. § 55-10-711.

Outside of the criminal setting, parties to any divorce proceeding, who have reconciled and dismissed their cause of action, may file an agreed sworn petition signed by both parties and notarized, requesting expungement of their divorce records. T.C.A. § 36-4-127. Upon the filing of such petition, the judge shall issue an order directing the clerk to expunge all records pertaining to such divorce proceedings, once all court costs have been paid. The clerk shall receive a fee of \$50 for performing such clerk's duties under this section.

Other less commonly used statutory provisions allow for the expunction of affidavits of heirship from the register of deeds office, T.C.A. § 30-2-712, and records of proceedings related to the appointment of a fiduciary where none was appointed. T.C.A. § 34-1-124. Also, records of military discharge may be expunged by registers of deeds from their records upon application by proper parties T.C.A. § 10-7-513.

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