

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 2: Prevention of Public Offenses

§ 60.10. Expungement of Victim Protective Orders

Cite as: 22 CNCA § 60.10

A. Persons authorized to file a motion for expungement of victim protective orders (VPOs) issued pursuant to the Protection from Domestic Abuse Act in the District Court must be within one of the following categories:

1. An ex parte order was issued to the plaintiff but later terminated due to dismissal of the petition before the full hearing, or denial of the petition upon full hearing, or failure of the plaintiff to appear for full hearing, and at least ninety (90) days have passed since the date set for full hearing;
2. The plaintiff filed an application for a victim protective order and failed to appear for the full hearing and at least ninety (90) days have passed since the date last set by the court for the full hearing, including the last date set for any continuance, postponement or rescheduling of the hearing;
3. The plaintiff or defendant has had the order vacated and three (3) years have passed since the order to vacate was entered; or
4. The plaintiff or defendant is deceased.

B. For purposes of this section:

1. "Expungement" means the sealing of victim protective order (VPO) court records from public inspection, but not from law enforcement agencies, the court or the Office of the Attorney General;
2. "Plaintiff" means the person or persons who sought the original victim protective order (VPO) for cause; and
3. "Defendant" means the person or persons to whom the victim protective order (VPO) was directed.

C. 1. Any person qualified under subsection A of this section may petition the District Court for the expungement and sealing of the court records from public inspection. The face of the petition shall state whether the defendant in the protective order has been convicted of any violation of the protective order and whether any prosecution or complaint is pending in this state or any other state for a violation or alleged violation of the protective order that is sought to be expunged. The petition shall further state the authority pursuant to

subsection A of this section for eligibility for requesting the expungement. The other party to the protective order shall be mailed a copy of the petition by regular mail within ten (10) days of filing the petition. A written answer or objection may be filed within thirty (30) days of receiving the notice and petition.

2. Upon the filing of a petition, the court shall set a date for a hearing and shall provide at least a thirty-day notice of the hearing to all parties to the protective order, the Office of Attorney General and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of the victim protective order (VPO) court record.

3. Without objection from the other party to the victim protective order (VPO) or upon a finding that the harm to the privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public and safety interests of the parties to the protective order in retaining the records, the court may order the court record, or any part thereof to be sealed from public inspection. Any order entered pursuant to this section shall not limit or restrict any law enforcement agency, the Office of the Attorney General or the court from accessing said records without the necessity of a court order. Any order entered pursuant to this subsection may be appealed by any party to the protective order or by the Office of the Attorney General to the Supreme Court in accordance with the rules of the Supreme Court.

4. Upon the entry of an order to expunge and seal from public inspection a victim protective order (VPO) court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the persons in interest and the public may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the persons.

5. Inspection of the protective order court records included in the expungement order issued pursuant to this section may thereafter be permitted only upon petition by the persons in interest who are the subjects of the records. or without petition by the district attorney or a law enforcement agency in the due course of investigation of a crime.

6. Employers, educational institutions, state and local government agencies, officials, and employees shall not require, in any application or interview or otherwise, an applicant to disclose any information contained in sealed protective order court records. An applicant need not, in answer to any question concerning the records, provide information that has been sealed, including any reference to or information concerning the sealed information and may state that no such action has ever occurred. The application may not be denied solely because of the refusal of the applicant to disclose protective order court records information that has been sealed.

7. The provisions of this section shall apply to all protective order court records existing in the District Court on, before and after the effective date of this section.

8. Nothing in this section shall be construed to authorize the physical destruction of any court records, except as otherwise provided by law for records no longer required to be maintained by the court.

9. For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

10. For the purposes of this act, district court index reference of sealed material shall be destroyed, removed or obliterated.

11. Any record ordered to be sealed pursuant to this section may be obliterated or destroyed at the end of the ten-year period.

12. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to the Cherokee Nation Rules of Civil Procedure.

Historical Data

LA 31-22, eff. September 22, 2022.