

FROM: CLERK OF THE SUPREME COURT OF LOUISIANA

On the 24th day of September, 2004, the following action was taken by the Supreme Court of Louisiana in the case(s) listed below:

**REHEARING APPLICATION GRANTED FOR CLARIFICATION; OTHERWISE DENIED; SEE PER CURIAM;
AND REHEARING APPLICATION DENIED:**

2003-KA-1940 STATE OF LOUISIANA v. EXPUNGED RECORD #249,044 (Parish of Rapides)
TWO APPLICATIONS
Application on behalf Rapides Parish District Attorney James C. Downs
and Rapides Parish Sheriff William Earl Hilton granted for
clarification, otherwise denied, SEE PER CURIAM.

Application on behalf of Expunged Record No. 249,044 DENIED.

JOHNSON, J., dissents and assigns reasons in the rehearing
application of Rapides Parish District Attorney James C. Downs and
Rapides Parish Sheriff William Earl Hilton and joins in the denial of
the rehearing application of Expunged Record No. 249,044.

SUPREME COURT OF LOUISIANA

No. 03-KA-1940

STATE OF LOUISIANA

versus

EXPUNGED RECORD NO. 249,044

ON APPEAL FROM THE NINTH JUDICIAL DISTRICT COURT,
FOR THE PARISH OF RAPIDES
HONORABLE GEORGE C. METOYER, JR. JUDGE

ON REHEARING

PER CURIAM

Rehearing is granted for the sole purpose of clarifying one statement contained in this court's original opinion. In our original opinion, we stated the following:

We concede that expunged, but undestroyed, arrest records can impact a citizen in significant areas, i.e. credit applications, licenses, job opportunities, perhaps admission to a college or university and eligibility for educational loans or grants.

Slip op. at p. 13. In its application for rehearing, the State contends this statement is at odds with the provisions of the Public Records Act and La. R.S. 44:9(I). While the above statement is dicta, we recognize that it may be impacted by the application of La. R.S. 44:9(I), which provides:

I. Except to those agencies listed in Subsection G of this Section, no person whose record of arrest and conviction has been expunged pursuant to the provisions of this Section shall be required to disclose that he was arrested or convicted for the subject offense or that the record of the arrest and conviction has been expunged,

unless otherwise provided in this Section.

Accordingly, we issue this clarification to recognize the potential applicability of La. R.S. 44:9(I) to some of the instances mentioned in the sentence at issue in our original opinion.

In all other respects, rehearing is denied.

SUPREME COURT OF LOUISIANA

No. 03-KA-1940

STATE OF LOUISIANA

versus

EXPUNGED RECORD NO. 249, 044

**ON APPEAL FROM THE NINTH JUDICIAL DISTRICT COURT FOR THE
PARISH OF RAPIDES
HONORABLE GEORGE C. METOYER, JR. JUDGE**

ON REHEARING

JOHNSON, J. would deny rehearing application of Rapides Parish District Attorney James C. Downs and Rapides Parish Sheriff William Earl Hilton and assigns reasons.

Because La.R.S. 44:9(G) is so general, it is unclear how wide access to expunged records truly is. La.R.S. 44:9(G) provides,

An expunged record is confidential, but remains available for use by law enforcement agencies, criminal justice agencies, the Louisiana Board of Medical Examiners, the Louisiana State Board of Nursing, the Louisiana State Board of Dentistry or the Louisiana State Board of Examiners of Psychologists.

The medical agencies are specific, but “law enforcement agencies” and “criminal justice agencies” could be broadly construed.

Additionally, the scope of disclosure required by the statute is an issue.

La.R.S. 44:9(I) provides,

Except to those agencies listed in Subsection G of this Section, no person whose record of arrest and conviction has been expunged pursuant to the provisions of this Section shall be required to disclose that he was arrested or convicted for the subject offense or that the record of

the arrest and conviction has been expunged, unless otherwise provided in this Section.

However, we know from our own experience that there are agencies other than those listed in La.R.S. 44:9(G) that require disclosure of **arrests** and **convictions** despite expungement. For instance, the Louisiana Committee on Bar Admissions requires full disclosure of expungement. Question #22 on the Character and Fitness Information application states the following:

22. Have you ever been cited, arrested, charged, or convicted for any violation of any law other than as a juvenile? (Omit traffic violations.)

NOTE: This should include matters that have been expunged or been subject to a diversion program.

The applicant who fails to make full disclosure of an expunged record is deemed lacking in the required moral character, and can be denied admission to the practice of law in Louisiana.

Without doing an exhaustive search of all employers, educational institutions, lenders, etc., I remain of the opinion that an individual once accused of a criminal offense, can be negatively impacted over the course of his lifetime.