

A.A., B.B., C.C., D.D., E.E., AND F.F., on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

COLONEL PATRICK J. CALLAHAN, in his official capacity as Superintendent of State Police,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY

DOCKET NO. MERL-L-002001-23

Civil Action

INTERIM CONSENT ORDER

This matter having been opened to the Court by Verified Complaint, in the form of a putative class action, against Colonel Patrick J. Callahan, the Superintendent of the New Jersey State Police, under whose supervision is the New Jersey State Police, Expungement Unit (hereinafter State Police), responsible for processing judicial orders of expungement entered by the Superior Court of New Jersey; and

Whereas, the Complaint raises alleged civil rights violations and seeks injunctive relief addressing both the backlog of filed judicial expungement orders, entered by the Superior Court and awaiting processing by the State Police, as well as the manner in which the State Police handles the processing of such orders; and

Whereas, the parties have been engaged in substantive and ongoing good faith efforts to resolve this matter through mutual agreement, and through mediation with the assistance of Justice Jaynee LaVecchia (ret.); and

Whereas, both parties are desirous of expeditiously reducing the pending backlog of judicial orders of expungement requiring processing by the State Police; and

Whereas, the parties are also desirous of establishing protocols that will minimize the development of backlogged judicial orders of expungement in the future; and

Whereas, the State Police endeavor to perform well and accurately its responsibility to maintain criminal records and respond correctly to criminal record requests, including, as directed by judicial orders of expungement, not to disclose criminal records that have been ordered expunged except as required by law; and

Whereas, with the infusion by the State of additional human resources, technological assistance, and adjusted workflows and protocols, substantial progress has been made in respect to reducing the backlog of certain categories of expungement orders that raised no question for the State Police as to the responsible handling of such judicial orders of expungement; and

Whereas, the number of orders awaiting processing has been reduced substantially from at least 46,000 orders as asserted in the Complaint filed on October 23, 2023; and

Whereas, the State Police has identified certain areas of concern as to which it asserts that there exists a legal impediment to the State Police's processing of a judicial order of expungement; and

Whereas, the Plaintiffs have asserted that the State Police lacks the legal authority to refuse compliance with a judicial order of expungement without seeking recourse from the Superior Court, on notice to the expungement petitioner; and

Whereas, without either party conceding the validity of the other party's legal position, the parties have been engaged in ongoing discussions to address the State Police's areas of concern; and

Whereas, through further discussion, the areas of concern as to whether there exists a legal impediment to the State Police's processing of a final expungement action order have been reduced and the parties wish to submit to writing their mutual understandings at this point to obtain the authorization accompanying a judicially entered Interim Consent Order while the parties continue to discuss the resolution of other matters in the case;

Therefore, be it known that the parties agree that, upon entry of this Interim Consent Order, the State Police will not object to, and will promptly process, judicial orders of expungement filed as Clean Slate, N.J.S.A. 2C:52-5.3, or Recovery Court Orders of Expungement, N.J.S.A. 2C:35-14(m), when those orders contain or involve any of the following directions or circumstances:

a) the Clean Slate expungement order contains direction to expunge a municipal ordinance violation; or

b) the Recovery Court expungement order contains direction to expunge a municipal ordinance violation; or

c) the Clean Slate expungement order, which could have been filed as a regular expungement petition under N.J.S.A. 2C:52-2, was filed and entered by the court as a Clean Slate expungement order; or

d) the Clean Slate expungement order, which could have been filed as two regular expungement petitions under N.J.S.A. 2C:52-2, was filed and entered by the court as a Clean Slate expungement order; or

e) the Clean Slate expungement order addresses multiple convictions, when some of the convictions could have been filed as regular expungement petitions under a different statute but

the remainder only qualified for Clean Slate, was filed and entered by the court as a Clean Slate expungement order for all the convictions; and

Further, be it known that the parties agree that, upon entry of this Interim Consent Order, the State Police will not object to, and will promptly process, judicial orders of expungement in which the biographical information contained therein is incomplete but nonetheless sufficient to confirm the identity of the petitioner and the petitioner's records ordered to be expunged, but in instances where the judicial orders of expungement contain biographical information that is incomplete and insufficient to confirm the identity of the petitioner and the petitioner's records ordered to be expunged, the State Police will not process such an order but instead will provide notice to the county prosecutor's office where the petition was filed as well as to either counsel for the petitioner, or if no counsel exists, to the Office of the Public Defender who will be responsible for obtaining an amended order that has sufficient biographical information, on notice to the county prosecutor's office, as needed for the State Police to identify the individual at issue and process the order; and

Further, and upon recognition that judicial orders of expungement demand the expungement not only of the precise records identified therein but also of all records connected to or issuing from the underlying arrest or criminal event identified in the order, be it known that the parties agree that, upon entry of this Interim Consent Order, the State Police will not object to, and will promptly process, judicial orders of expungement which, although missing information related to the underlying arrest or criminal event that is contained in the State Police's records, do contain sufficient information related to the underlying arrest or criminal event to identify the records ordered to be expunged, and that, in processing such orders, the State Police shall expunge all expungable information related to the underlying arrest or criminal event contained in the State Police's records, regardless of that information's inclusion on the judicial order of expungement; and

Further, be it known that the parties agree that, upon entry of this Interim Consent Order, the State Police will not object to, and will promptly process, judicial orders of expungement in which the State Police is instructed to expunge records that it does not have in its possession, custody or control, such as search engine results or restraining orders issued by the Family Part of the Superior Court, as well as orders in which the State Police is instructed to expunge records that it is not authorized to expunge, such as DNA records, with the understanding that the State Police will expunge only those records within its possession, custody or control which are defined as expungable records pursuant to N.J.S.A. 2C:52-1, and in doing so will fully discharge its duty to faithfully comply with the judicial order of expungement as a matter of law; and

Further, be it known that the parties agree that the State Police's duty to promptly process any judicial order of expungement not captured by one or more of the above-designated categories shall remain the focus of continued discussion between the parties and shall not be affected by the entering of this Interim Consent Order.

It is on this 30th day of April, 2024


ORDERED that:

The above be implemented within 10 days of the entry of this order.

/s/ Douglas H. Hurd
Hon. Douglas H. Hurd, P.J.Cv.

We hereby consent to the form and entry of the within Consent order.

NEW JERSEY OFFICE OF THE PUBLIC DEFENDER



Michael R. Noveck, Deputy Public Defender
Attorney for Plaintiffs

CHIESA, SHAHINIAN & GIANTOMASI PC



Matthew E. Beck, Esq.
Attorney for Defendant, Colonel Patrick J. Callahan