

# **Criminal Expungement Guide for VLN Pro Bono Attorneys**

Thank you for taking a Criminal Expungement case through VLN! Your pro bono work makes a dramatic difference in our clients' lives. It is our goal to make working with us a rewarding and hassle-free experience. Please review the information below to ensure your case goes as smoothly as possible.

## **Topics Covered**

- QuickStart Guide
- Additional Details on Case Procedures
  - Malpractice Insurance
  - Contacting the Client
  - Providing Remote Services
  - Representation Agreement
  - Income Eligibility
  - Using VLN's Address and Telephone Number
  - Interpreters
  - Closing Your Case with VLN
- Help: Contacts and Legal Guides

## **QuickStart Guide**

- Contact your client within two weeks of getting the case placement.
- Sign VLN (or your firm's) representation agreement and review it with the client.
- Criminal Expungement Statute: Minn. Stat. 609A.01—609A.04
- The relevant records are attached to the case placement email. You may access most court records at: <http://www.mncourts.gov/Access-Case-Records.aspx>.
- A Criminal Expungement petition includes the following forms:
  - Notice of Hearing and Petition for Expungement
  - Proposed Order
  - Proof of Service
  - Certificate of Representation
  - In Forma Pauperis (IFP-fee waiver)
- All forms are all available at: <http://www.mncourts.gov/forms>.
  - 1, 2, and 3—you will find these forms by clicking on the “criminal expungement” link
  - 4—you can find this form by clicking on the “civil” link

- 5—you can find this form by clicking on the “fee waiver/in forma pauperis” link

**HotDocs (Recommended):** Online tool that will generate all required pleadings mentioned above.

- Create an account: <http://www.projusticemn.org/>.
- Go to “Library,” “Criminal Law,” “Criminal Expungement,” “Criminal Expungement Automated Pleadings Tool,” click on "LINK".
  - A window from LawHelp Interactive should open up.
    - While you can proceed without signing up for an account, I highly recommend signing up for one—this will allow you to save your work and go back as needed.
- Once you have created an account at ProJusticeMN, you will be able to access a training on how to use HotDocs:
  - Go to “Library,” “Criminal Law,” “Criminal Expungement,” “CLE: Using HotDocs to Prepare...”

#### **Fee Waivers and Income Eligibility:**

- Ensure the case requires a fee.
- The case placement email includes your client’s income Federal Poverty Guidelines (“FPG”) percentage, which will determine who is paying any court fees.
  - If the income is 0%-125% FPG the client qualifies for fee waiver(s) with the court.
  - If the income is 125%-300% FPG, the client must pay for their own case(s). If your client is in this bracket you **MUST** have a trust account with the court. If not, contact the case placement coordinator.
- See “Representation Agreement” and “Income Eligibility” under “Additional Details on Case Procedures” for more information.

#### **Complete/ Send VLN the following:**

- All attorneys must sign a VLN (or firm) representation agreement with the client and send it to [katherine.johnson@vlmn.org](mailto:katherine.johnson@vlmn.org). A blank agreement is attached to the case placement email.
  - Clients **MUST** sign citizenship attestation at the bottom of the representation agreement.
- Send a copy of court order(s) to [katherine.johnson@vlmn.org](mailto:katherine.johnson@vlmn.org).
- Complete the closing form at: <https://www.vlmn.org/closing/>.

#### **VLN Contacts:**

- Resource Attorney/Program Manager: Elizabeth Fowlds: 612-752-6654 or [elizabeth.fowlds@vlnmn.org](mailto:elizabeth.fowlds@vlnmn.org).
- Case Coordinator: Katherine Johnson: 612-752-6605 or [katherine.johnson@vlnmn.org](mailto:katherine.johnson@vlnmn.org).

## **Additional Details on Case Procedures**

### **Malpractice Insurance:**

- VLN malpractice insurance covers volunteer attorneys providing services to VLN clients. This includes full representation, clinic, and phone advice cases. This coverage does not extend to your employer.

### **Contacting the Client:**

- Please contact your client within two weeks of receiving the case placement email and set up an initial meeting. It is not uncommon for our clients to move on short notice, have telephones disconnected, or get new phone numbers. Some are very tech savvy, while others do not have email addresses. At your initial meeting, it is a good idea to ask the client how they prefer to communicate and for backup contact information. If you cannot reach a client, consider sending a letter asking for new contact information. If your client does not respond to your outreach attempts, please contact Katherine or Elizabeth.

### **Providing Remote Services:**

- As mentioned in “Contacting the Client,” the way you communicate with each client will depend on what works for both of you. Some clients have the internet bandwidth to use zoom. Others may prefer to talk on the phone. You may have to get creative when asking clients to sign documents. When you or a client signs a form electronically either through e-signing software or typing, you will need to put “/s/” before the signature line. Some suggestions:
  - Use your firm’s e-signing system. Any client with email can use this system, but you may have to walk them through how to use it.
  - Have the client type their name in onto the document and email it back to you.
  - Have the client print the document out, sign it, and either scan it back to your email using a scanner or a free scanning app on their phone. They can also take a photo of it and send it to your email.
  - If the client doesn’t have email or access to a computer, you will either need to mail them the documents to sign with a return envelope and postage or meet them in person and have them sign the documents.

## **Representation Agreement:**

- VLN requires a representation agreement for all full representation cases. You should complete the VLN representation agreement (or your firm's) at your initial client meeting. Please send a copy of the agreement to Katherine Johnson after your initial client meeting. You can send this by mail, e-mail ([katherine.johnson@vlmn.org](mailto:katherine.johnson@vlmn.org)) or fax to 612-752-6656.
- The representation agreement asks you to identify any costs that the client might have to pay. For criminal expungement cases, the costs usually include photocopying and mailing costs for at least 10 copies of each petition and proposed order. If your firm or company is not able to donate these costs, please make sure that the client knows the client will be expected to pay them. VLN does not have the funds to supply copying and mailing for every client. In the event that the IFP (fee waiver request) is denied, the client is responsible for paying the filing fee for each case. Filing fees vary by county, but in general, there is a cost of about \$325 per case.

## **Income Eligibility:**

- No Filing Fee: There is no filing fee in cases where clients received an acquittal or a dismissal. This includes cases continued for dismissal, continued without a plea, or some continued for diversion cases. This also includes arrest-only records that do not qualify for return/destruction under Minn. Stat. § 299C.11 but otherwise meet the requirements.
- Qualifying for a Fee Waiver: It costs about \$325 to file one criminal expungement case (costs vary in each county). All VLN clients make 300% FPG or under, so filing fees can become extremely expensive for them. Clients with an income of 0%-125% FPG should receive a fee waiver (aka In Forma Pauperis or "IFP") from the court. This means they will not have to pay the filing fee for any cases. Your client's FPG will be listed in the case placement email.
- Income above Fee Waiver Cut-Off: If a client's income is over 125% FPG, we always confirm with them that they would still like to proceed even if they have to pay the court fees.
  - When income is right above 125% FPG: These clients could still qualify for a fee waiver. Talk to the client about their actual income and expenses to see if they do in fact qualify for a fee waiver by income. If they truly do not qualify, use the IFP to explain to the court why the client does not have the income to pay for court fees. You can also include a list of their expenses to show that these costs add up so they have no extra income to pay the fees. For an expense list template, please contact Elizabeth. Use your judgement on whether you think it is worth filing an IFP for a client or not in these cases.
  - Public Benefits and Unemployment: If anyone in the client's household is receiving state benefits like SNAP, Medical Assistance, Section 8, etc., fill out an

IFP regardless of income. Do the same for those receiving unemployment payments.

- When income clearly does not qualify for a fee waiver: Clients who don't qualify for a fee waiver but do qualify for VLN services (125%-300% FPG) will have to pay their own court fees (taking into consideration the above bullet points). These clients must give court fee payments to the volunteer attorney with the trust account, who can then e-file the case and pay for it using their trust account.
- Trust Accounts: The only way for a client to pay court fees when being fully represented by an attorney is through a Minnesota courts trust account. Generally, attorneys who work at law firms where they e-file cases on behalf of clients have them. Corporate attorneys, solo practitioners and those just out of law school usually do not. Taking on these clients means VLN can serve all clients 300% FPG and under. If your client doesn't qualify for a fee waiver and you don't have a trust account, please contact Elizabeth or Katherine.
- Income over VLN income limits: VLN clients are screened for financial eligibility when they first call in for service and when their case is sent to a volunteer attorney. During the course of your representation your client's income could change, or you could discover income or assets higher than the client originally represented. We encourage you to call us if you have any questions about a client's ongoing financial eligibility for VLN services.

#### **Using VLN's Address and Telephone Number:**

- Volunteers may use our phone number and mailing address to receive calls and correspondence. When we receive a phone call, we will send you an e-mail with the message left for you. If you use our mailing address, we will send any mail we receive on your behalf to the address we have on file for you at VLN.

#### **Interpreters:**

- VLN has telephone interpreters available to assist on your case. Please contact Katherine or Elizabeth to request an interpreter if needed. Be sure to let the court know if an interpreter is needed when you schedule a hearing.

#### **Closing Your Case With VLN:**

- VLN's funding depends on getting information back from our volunteers about their cases. This also helps us verify your service when you claim CLE credit for your pro bono work. At the end of each case, please complete a case closing form and send a copy of the final order or other result in your case to VLN. You can find the case closing form at: <https://www.vlnmn.org/closing/>.

## **Help**

- [Training PowerPoint](#) explains the entire expungement process with details on how to write and fill out the petition, do service, and prepare for a hearing.
- [VLN's Pro Se Step-by-Step Criminal Expungement Guide](#) has photos of the petition and shows where exactly to put information. It was created for pro se petitioners but is still helpful.
- If you have questions, the VLN Criminal Expungement Program Manager and Resource Attorney, Elizabeth Fowlds, is available to answer your questions at 612-752-6654. You can also contact the Case Coordinator, Katherine Johnson, at 612-752-6605 or [katherine.johnson@vlmn.org](mailto:katherine.johnson@vlmn.org).