**R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**

**R722-350. Certificate of Eligibility.**

**R722-350-1. Purpose.**

The purpose of this rule is to establish procedures by which a petitioner may seek a certificate of eligibility pursuant to Title 77 Chapter 40a, Expungement of Criminal Records.

**R722-350-2. Authority.**

This rule is authorized under Section 77-40a-104.

**R722-350-3. Definitions.**

Terms used in this rule are defined in Section 77-40a-101.

**R722-350-4. Application for a Certificate of Eligibility.**

(1)(a) An application for a certificate of eligibility must be made in writing to the bureau by filling out the application form established by the bureau.

(b) An application form must be accompanied by a payment of the application fee established by the bureau in the form of cash, check, money order, or credit card.

(c) If the petitioner believes the court will find them to be indigent, to request a fee waiver, the petitioner shall:

(i) state on the application form that they are indigent; and

(ii) submit with the application form, the first two pages of the completed court form entitled Motion to Waive Fees for Expungement -- Criminal.

(d) If the petitioner has any pending agency actions with the bureau, including outstanding payments for past certificates, the new application will be denied until any such agency actions are fully resolved.

(2)(a) Upon receipt of a completed application form and payment of the application fee, the bureau shall review each criminal episode contained on the petitioner's criminal history, in its entirety, to determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40a-105 and 77-40a-303.

(b) In making its determination, the bureau shall also review any federal, state and local criminal records, to which it has access.

(3) If the bureau has insufficient information to determine if the petitioner meets the requirements for a certificate of eligibility, the bureau may request that the petitioner submit additional information.

(4) If the bureau cannot obtain disposition information regarding the petitioner's criminal history or cannot determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40a-105 and 77-40a-303, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner may obtain a special certificate for each criminal episode upon the payment of the issuance fee established by the bureau, per special certificate.

(a) If the petitioner requests a fee waiver as described in Subsection R722-350-4(1)(c), the bureau will not charge an issuance fee for the special certificate.

(b) If the court does not find a petitioner to be indigent after a petitioner requests a fee waiver as described in Subsection R722-350-4(1)(c), the petitioner will be required to pay each issuance fee before the bureau will process an expungement order.

(5) If the bureau determines that the petitioner meets the requirements for the issuance of a certificate of eligibility found in Section 77-40a-105, the bureau shall send the certificate of eligibility to the petitioner, at the address or email indicated on the application form, unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

(6) If the bureau determines that the petitioner meets the requirements for the issuance of a certificate of eligibility under any other circumstances, the bureau shall send a letter to the petitioner, at the address or email indicated on the application form, indicating that the petitioner must pay the issuance fee established by the bureau for each certificate of eligibility.

(a) If the petitioner requests a fee waiver as described in Subsection R722-350-4(1)(c), the bureau will not charge an issuance fee for a certificate of eligibility.

(b) If the court does not find a petitioner to be indigent after a petitioner requests a fee waiver as described in Subsection R722-350-4(1)(c), the petitioner will be required to pay an issuance fee for each certificate of eligibility before the bureau will process an expungement order.

(7) The bureau may not issue a certificate of eligibility for an offense that does not require a certificate of eligibility for expungement unless petitioner makes a specific request for a certificate of eligibility for the offense.

(8) If the bureau determines that the petitioner does not meet the criteria for the issuance of a certificate of eligibility, the bureau shall send a letter to the petitioner, at the address or email indicated on the application form, which describes the reasons why the petitioner's application was denied and notifies the petitioner that the petitioner may seek agency review of the bureau's decision by following the procedures outlined in Section R722-350-5.

**R722-350-5. Agency Review of a Decision to Deny an Application for a Certificate of Eligibility.**

(1) A petitioner may seek review of the denial of an application for a certificate of eligibility, as provided by Section 63G-4-301, by mailing or emailing a written request for review to the bureau within 30 days from the date the denial letter is issued.

(2) The request for review must:

(a) be signed by the petitioner or the corresponding third party;

(b) state the specific grounds upon which relief is requested;

(c) state the date upon which it was mailed; and

(d) include documentation which supports the petitioner's request for review.

(3) An employee of the bureau shall be designated to review the petitioner's written request, any accompanying documents supplied by the petitioner, and the materials contained in the application file to determine whether the petitioner meets the requirements for the issuance of a certificate found in Sections 77-40a-105 and 77-40a-303.

(4) Within a reasonable time after receiving the request for review, the bureau shall issue a final written order on review, which shall be mailed to the petitioner at the address or email indicated on the application.

(5) If upon further review the bureau cannot determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40a-105 and 77-40a-303, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner may obtain a special certificate for each criminal episode upon the payment of the issuance fee established by the bureau, per special certificate.

(a) If the petitioner requests a fee waiver as described in Subsection R722-350-4(1)(c), the bureau will not charge an issuance fee for the special certificate.

(b) If the court does not find a petitioner to be indigent after a petitioner requests a fee waiver as described in Subsection R722-350-4(1)(c), the petitioner will be required to pay each issuance fee before the bureau will process an expungement order.

(6) If further review indicates that the petitioner meets the requirements for the issuance of a certificate of eligibility found in Section 77-40a-105, the bureau shall send a certificate of eligibility to the petitioner, unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

(7) If further review indicates that the petitioner meets the requirements for the issuance of a certificate of eligibility under any other circumstances, the order shall state that the petitioner must pay the issuance fee established by the bureau for each certificate of eligibility.

(a) If the petitioner requests a fee waiver as described in Subsection R722-350-4(1)(c), the bureau will not charge an issuance fee for a certificate of eligibility.

(b) If the court does not find a petitioner to be indigent after a petitioner requests a fee waiver as described in Subsection R722-350-4(1)(c), the petitioner will be required to pay an issuance fee for each certificate of eligibility before the bureau will process an expungement order.

(8) If further review indicates that the petitioner does not meet the requirements for the issuance of a certificate, the order shall describe the reasons why the bureau's decision was upheld and notify the petitioner that the petitioner's opportunity to review the bureau's decision is limited to review by the district court as described in Section R722-350-6.

**R722-350-6. Judicial Review.**

A petitioner may seek judicial review of the bureau's final written order on review denying an application for a certificate of eligibility, as provided by Section 63G-4-402, by filing a complaint in the district court within 30 days from the date that the bureau's final written order is issued.

**KEY: expungement, certificate of eligibility**

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