



Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS
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MADISON, WISCONSIN 53703

A. John Voelker
Director of State Courts

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Chief Justice

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September 4, 2012

FILED

VIA EMAIL

SEP 05 2012

Clerk of Supreme Court
Attn: Carrie Janto, Deputy Clerk
P.O. Box 1688
Madison, WI 53701-1688

CLERK OF SUPREME COURT
OF WISCONSIN

Re: Rule Petition 12-05, Petition to amend SCRs 72.01, 72.03, 72.04, and 72.05, and Wis. Stat. §§ 801.17, 807.06, and 809.15 relating to record retention and electronically or optically stored records

Dear Ms. Janto,

I am writing in response to the letter dated August 7, 2012 from Julie Rich regarding Rule Petition 12-05. In response to the court's request for additional information, the Records Management Retention Subcommittee revisited the issue of criminal case exhibit retention. We unanimously move to amend Section 11 of Rule Petition 12-15 to the following:

SCR 72.01(46) Criminal and juvenile delinquency case exhibits, paper, and non-paper. One year after the time for appeal has expired, Twenty years after entry of final judgment or until every person in custody as a result of the action or proceeding has reached his or her discharge date, provided that return of the exhibit has been offered to the proffering party.

The original amendment to SCR 72.01(46) proposed that criminal case exhibits be retained for the length of the underlying case pursuant to SCR 72.01 (20 years for misdemeanors, 50 years for felonies, 75 years for Class A felonies). As explained in the Supporting Memorandum to Rule Petition 12-05, this proposal was made to protect a defendant's appellate rights by ensuring that exhibits will be retained for the potential life of an appeal. However, there were concerns raised that finding adequate storage space to retain non-paper exhibits for up to 75 years would be unduly burdensome and costly for courts.

After reconsidering the balance between a defendant's appellate rights and the storage limitations on courts, the subcommittee agreed to reduce the retention period of criminal exhibits to 20 years. One of the determinative factors in this decision was that if the criminal exhibit contains

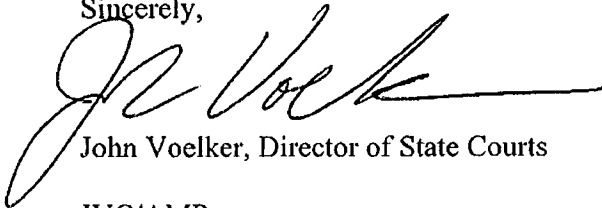
biological material, then it must automatically be retained for the later of 50 years after entry of final judgment or until every person in custody is discharged, pursuant to SCR 72.01(46m). Given the exception for exhibits containing biological material, the subcommittee feels that this 20 year time period better strikes the balance between appellate rights and storage limitations. The interests represented on the subcommittee consisted of clerks, judges, a district court administrator, and the Chief Staff Attorney at the Court of Appeals. Additionally, the Milwaukee County Circuit Court Staff Attorney that specializes in post-conviction motions also agreed that the 20 year criminal exhibit retention rule is sufficient.

In its August 7, 2012 letter, the court also asked whether the definition of exhibits is sufficiently broad. In Section 12 of Rule Petition 12-05, the subcommittee proposed adding a comment to SCR 72.01 clarifying that "exhibits" refers to documents submitted to the court during a trial or hearing and does not refer to documents that are attached to pleadings and other filings submitted to the court. The subcommittee feels that this definition of exhibits is sufficiently broad for purposes of retention. If there is concern that "exhibits" does not refer to those documents that are attached to pleadings and other filings submitted to the court, those documents will be retained pursuant to the applicable retention rule for that court record, as clarified in the proposed comment. Because those documents will have to be retained for the life of the case, there is no danger of early destruction.

Finally, the court also asked whether the amendments will have retroactive application. The answer is yes, all proposed amendments in Rule Petition 12-05 will be applied retroactively. Since SCR 72 was created in 1986, it has been amended multiple times to reflect changes in case law and statutes. To ensure that clerks of court are acting in compliance with the most recent laws, they have always been instructed to apply the retention rules in place at the time of file destruction and not apply the retention rules in place when the case is filed. As a result, a retroactive application will be consistent with current clerk of court practice.

Please do not hesitate to contact me should you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Voelker", with a long horizontal flourish extending to the right.

John Voelker, Director of State Courts

JVC/AMP

Cc: Hon James Kieffer, Chair
Records Management Retention Subcommittee