

**In re amendment of SCR 72.01, 72.03, 72.04, 72.05,  
and Wis. Stat. §§ 801.17, 807.06, and 809.15  
relating to record retention and electronically  
or optically stored records.**

**SUPPORTING MEMORANDUM  
PETITION 12-**

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The Director of State Courts, on the recommendation of the Records Management Retention Subcommittee, hereby petitions the court to make amendments to Supreme Court Rules 72.01, 72.03, 72.04, and 72.05 relating to record retention and the destruction of electronically or optically stored documents. Additionally, the Director of State Courts petitions the court to amend Wis. Stat. §§ 801.17, 807.06, and 809.15 relating to electronically scanned documents.

The reasons for requesting the proposed amendments are varied and range from implementing new legislative and case law changes to more adequately upholding an individual's rights on appeal. This supporting memorandum will provide an explanation of the proposed changes by addressing each section of the petition. Where applicable, the petition sections will be addressed together if the justification for the amendment is the same for all sections.

For the reasons provided below, the Supreme Court Rules and Wisconsin Statutes should be amended as follows:

**LIENS**

**SECTION 1. SCR 72.01(6) is amended to read:**

(6) Lien claims. A statutory lien filed for services performed or materials provided: ~~until satisfaction or expiration of the lien or entry of judgment, whichever occurs first~~ 30 years after the date of filing the lien claim with the clerk of circuit court, except as provided in subs. (6a) and (6b).

**SECTION 1. Explanation of proposed change:**

For SCR 72.01(6), the retention period is modified from when the lien is satisfied or expired to 30 years after the lien claim is filed with the clerk of circuit court. This change is recommended to be more consistent with other retention rules that specify an exact number of years that records must be kept. This proposed change was discussed with a lien practitioner that the court regularly consults, who agrees that a 30-year retention period is adequate where no specific expiration period provided in the statutes.

**FIREARMS RESTRICTIONS**

**SECTION 2. SCR 72.01(32) is amended to read:**

(32) Guardianship case files. (a) All papers deposited with the register in probate in adult guardianship proceedings commenced under chs. 54 or 55, stats., or ch. 880, 2003 stats.: 7 years after termination of guardianship-; except 75 years after termination of guardianship if there was a firearm restriction ordered in the case.

(b) All papers in juvenile guardianship proceedings commenced under chs. 48 or 54, stats., or ch. 880, 2003 stats.: 7 years after the juvenile's 18th birthday-; except 75 years after termination of guardianship if there was a firearm restriction ordered in the case.

**SECTION 3. SCR 72.01(33) is amended to read:**

(33) Guardianship court record. (a) A history and index for adult guardianship proceedings commenced under chs. 54 or 55, stats., or ch. 880, 2003 stats.: 7 years after termination of guardianship-; except 75 years after termination of guardianship if there was a firearm restriction ordered in the case.

(b) A history and index for juvenile guardianship proceedings commenced under chs. 48 or 54, stats., or ch. 880, 2003 stats.: 7 years after the juvenile's 18th birthday-; except 75 years after termination of guardianship if there was a firearm restriction ordered in the case.

**SECTION 4. SCR 72.01(34) is amended to read:**

(34) Guardianship minute record. (a) A brief statement of in-court proceedings for adult guardianships commenced under chs. 54 or 55, stats., or ch. 880, 2003 stats., generally maintained in the case file: 7 years after termination of guardianship-; except 75 years after termination of guardianship if there was a firearm restriction ordered in the case.

(b) A brief statement of in-court proceedings for juvenile guardianships commenced under chs. 48 or 54, stats., or ch. 880, 2003 stats.: 7 years after the juvenile's 18th birthday-;

except 75 years after termination of guardianship if there was a firearm restriction ordered in the case.

**SECTION 5. SCR 71.02(38) is amended to read:**

(38) Mental health case files. All papers deposited with the clerk of circuit court or register in probate in proceedings commenced under ch. 51, stats.: 7 years after entry of final order-; except 75 years after termination of commitment if there was a firearm restriction ordered in the case.

**SECTION 6. SCR 72.01(39) is amended to read:**

(39) Mental health court record. A history and index of proceedings commenced under ch. 51, stats.: 7 years after entry of final order-; except 75 years after termination of commitment if there was a firearm restriction ordered in the case.

**SECTION 7. SCR 72.01(40) is amended to read:**

(40) Mental health minute record. A brief statement of in-court proceedings commenced under ch. 51, stats., generally maintained in the case file: 7 years after entry of final order-; except 75 years after termination of commitment if there was a firearm restriction ordered in the case.

**SECTIONS 2.-7. Explanation of proposed changes:**

Language has been added to SCR 72.01(32)-(34) and (38)-(40) specifying that the retention period is 75 years after termination of the guardianship or commitment if there was a firearm restriction ordered in the case. Because of 2009 Wisconsin Act 258, clerks of circuit court are required to notify the Wisconsin Department of Justice (DOJ) of firearm restrictions in any guardianship or mental health case. As a result, it is necessary for the courts to retain the files for a longer period of time because DOJ will rely on the court records to resolve any discrepancies when conducting firearms checks. This issue was discussed with DOJ and the agency agrees that 75 years would be an adequate retention period.

**SECTION 8. SCR 72.01(42m) is amended to read:**

(42m) Juvenile delinquency, juveniles in need of protection and services and children in need of protection and services case files. Except as provided in sub. (24), all papers deposited with the clerk of circuit court, register in probate, or clerk of court for juvenile matters in proceedings commenced under ch. 48 or 938, stats.: 4 years after the 18th birthday of the

juvenile or child; except 75 years after the adjudication of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a felony if committed by an adult-; except 75 years after the adjudication of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a misdemeanor if committed by an adult and there was (1) a firearm restriction imposed or (2) there was a requirement that the juvenile or child register with the Wisconsin Department of Corrections Sex Offender Registry.

**SECTION 9. SCR 72.01(43) is amended to read:**

(43) Juvenile court record. A history and index of proceedings commenced under ch. 48 or 938, stats.: 4 years after the 18th birthday of the juvenile or child; except 75 years after the adjudication of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a felony if committed by an adult-; except 75 years after the adjudication of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a misdemeanor if committed by an adult and there was (1) a firearm restriction imposed or (2) there was a requirement that the juvenile or child register with the Wisconsin Department of Corrections Sex Offender Registry.

**SECTION 10. SCR 72.01(44) is amended to read:**

(44) Juvenile minute record. A brief statement of in-court proceedings in actions commenced under ch. 48 or 938, stats., generally maintained in the case file: 4 years after the 18th birthday of the juvenile or child; except 75 years after the adjudication of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a felony if committed by an adult-; except 75 years after the adjudication of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a misdemeanor if committed by an adult and there was (1) a firearm restriction imposed or (2) there was a requirement that the juvenile or child register with the Wisconsin Department of Corrections Sex Offender Registry.

**SECTIONS 8.-10. Explanation of proposed changes:**

Language has been added to SCR 72.01(42m)-(44) specifying that the 75-year retention period also applies in cases where the child or juvenile was adjudicated of a misdemeanor if there was a firearm restriction or if there was a requirement to register with the Wisconsin Department of Corrections Sex Offender Registry. The clerk of circuit court is required to report notice of firearm restrictions to the Wisconsin Department of Justice and notice of sex offender registry reporting requirements to the Wisconsin Department of Corrections. Similar to the

explanation provided for Sections 2.-7., these court records may be used to resolve any discrepancies.

## **EXHIBITS**

### **SECTION 11. SCR 72.01(46) is amended to read:**

(46) Criminal and juvenile delinquency case exhibits, paper, and non-paper. ~~One year after the time for appeal has expired,~~ For the length of time that the underlying case is retained pursuant to this rule, or, if shorter, until the sentence or juvenile adjudication is completed, if the clerk can confirm the completion, provided that return of the exhibit has been offered to the proffering party.

### **SECTION 11. Explanation of proposed change:**

For SCR 72.01(46), the retention period has been modified from one year after the time for appeal has expired to the length of time the underlying case is retained. As an alternative, language has been added that would allow the destruction of exhibits if the defendant's sentence is completed and the clerk can confirm the completion. There have been concerns raised about the one-year retention period because not all appeals are initiated within 120 days and it is both possible and common for the Court of Appeals to reinstate the time for filing an appeal if an inmate writes and asks for an appeal any time after the time for appeal has expired. If the appeal time is reinstated, a public defender is usually appointed and may wait months to obtain the transcripts from court reporters. Under the current retention standard, a year after the time for appeal is expired, it is not possible for clerks to know from the entries made into the Consolidated Court Automation Programs (CCAP) case management system whether a defendant's appellate rights have been reinstated. Additionally, there is no time limit for postconviction motions under Wis. Stat. § 974.06, and an appeal may be taken from the denial of such a motion. As a result, to ensure that the file is retained for the potential life of an appeal, the retention period has been extended. This issue was discussed with the Chief Staff Attorney

of the Wisconsin Court of Appeals, who agrees that this proposed retention period is more appropriate to guarantee that exhibits are available for the appellate court to review.

**SECTION 12. A Comment to SCR 72.01(46) is created to read:**

**COMMENT**

“Exhibits,” as referenced in SCR 72.01(45) and (46), refers to exhibits that are submitted to the court during a trial or hearing and are marked with an official exhibit sticker. Under this rule, “exhibits” does not refer to documents that are attached to pleadings or other filings submitted to the court. Documents falling into the latter category are retained pursuant to the retention rule applicable to the court record.

**SECTION 12. Explanation of proposed change:**

This Comment was created to clarify the definition of “exhibits” under SCR 72.01(45) and (46). The Director of State Courts Office of Court Operations often receives questions from clerks about what documents constitute an exhibit under the rules. The petitioner understands that the court does not adopt comments to rules, but requests this comment be published in order to provide guidance to clerks in applying this rule.

**SECTION 13. SCR 72.01(46r) is created to read:**

(46r) Criminal case exhibits for sexually violent person commitments under ch. 980, stats. For the length of time that the underlying case is retained pursuant to this rule.

**SECTION 13. Explanation of proposed change:**

SCR 72.01(46r) was created in keeping with the Wisconsin Supreme Court’s decision in *State v. Arends*, 2010 WI 46, 325 Wis. 2d 1, 784 N.W.2d 513. A person who has been committed as a sexually violent person may petition the court for a discharge under Chapter 980. Wis. Stat. § 980.09. In deciding whether to hold a fact-finding hearing on the petition, the court in *Arends* held that a circuit court must review the complete file when determining whether any facts exist that would lead a reasonable trier of fact to conclude that the petitioner does not meet the criteria for commitment as a sexually violent person. *Id.*, ¶¶ 38 and 43. To ensure this

standard can be met, it is necessary that any exhibits submitted to the court be retained for the life of the underlying case. The State Public Defender's Office has raised concerns about Chapter 980 exhibits being prematurely discarded under the current rule in light of the decision in *Arends*. Modifying the retention period would resolve these concerns.

### **MUNICIPAL JUDGE OATHS**

#### **SECTION 14. SCR 72.01(58) is amended to read:**

(58) Oaths of office. Oaths of office required to be filed with the clerk of circuit court by county officials ~~and municipal judges~~: 7 years after expiration of term.

#### **SECTION 14. Explanation of proposed change:**

For SCR 72.01(58), language has been removed that required municipal judge oaths to be filed with the clerk of circuit court. Removing this requirement makes SCR 72.01(58) consistent with 2009 Wisconsin Act 402, which eliminated the clerk of circuit court's responsibility for processing or filing municipal judges' oaths and bonds under Wis. Stat. § 755.03.

### **STATE HISTORICAL SOCIETY OF WISCONSIN**

#### **SECTION 15. SCR 72.01(60) is amended to read:**

(60) Naturalization records. Records of applications for U.S. citizenship and proceedings to grant U.S. citizenship: Transfer custody to the ~~Wisconsin~~ State Historical Society of Wisconsin.

#### **SECTIONS 15.-16. and 18.-19. Explanation of proposed changes:**

For SCR 72.01(60), 72.03(3), 72.04, and 72.05(3) (set out in the next section of this petition), all references to the State Historical Society of Wisconsin were made consistent by using the same title for the organization in all sections. This is the title that the State Historical Society of Wisconsin wanted used in the rule.

## **SCANNED RECORDS**

### **SECTION 16. SCR 72.03(3) is amended to read:**

(3) Any record of a court that has been electronically or optically stored and preserved in accordance with SCR 72.05 may be destroyed in accordance with SCR 72.02(1) and (2) ~~one year after entry of a final order in the action for which the record is maintained or one year after filing for records not specifically related to court actions.~~ 48 hours after the record has been electronically or optically stored. A clerk of circuit court is not required to provide notice of destruction to the State Historical Society of Wisconsin when the record has been electronically or optically stored. Notice of destruction to the State Historical Society of Wisconsin is required when the electronically or optically stored record will be destroyed once the retention period under SCR 72.01 has expired.

### **SECTION 17. SCR 72.03(4) is created to read:**

(4) Provided that they have been offered to the proffering party, exhibits, as defined in SCR 72.01(45) and (46), of a documentary nature that are electronically or optically stored may be destroyed 180 days after entry of a final order or judgment, unless the time for appeal has been extended under ss. 809.107, 809.30, or 809.32, stats. In the event of an extension, electronically or optically stored exhibits may be destroyed 30 days after the post-termination or post-conviction deadline has expired.

### **SECTIONS 16.-17. Explanation of proposed changes:**

For SCR 72.03(3), the recommended retention period for electronically or optically stored documents has been modified from one year to 48 hours after storing. The current one-year retention period is problematic in cases where there are numerous post judgment orders that qualify as “final orders,” such as in family cases. Under the current rule, clerks are unable to scan the case file and dispose of the paper because there is always the possibility that new orders will be filed that require the one-year retention period. No practical purpose is served by requiring the clerk to keep paper documents one year after the paper has been scanned and saved. Under the proposed rule, if the case is appealed, the record will be printed from the electronically or optically stored documents. Consolidated Court Automation Programs (CCAP) has assured us that there will be multiple backups of the records within 48 hours after they are electronically



stored. Language was also added to clarify that, upon scanning, electronically or optically stored records do not have to be offered to the State Historical Society of Wisconsin under SCR 72.04.

Additionally, a new subsection (4) was created to clarify the retention period for exhibits that are electronically or optically stored. Unlike other court documents that can be discarded 48 hours after they are electronically or optically stored, exhibits should be retained for a longer period of time to make certain that the originals are available for the appellate court in the event of an appeal. The Chief Staff Attorney at the Court of Appeals believes that the time periods provided in (4) will be adequate to ensure that the original exhibits are available for an appeal.

**SECTION 18. SCR 72.04 is amended to read:**

SCR 72.04 Offer of title to ~~historical society~~ State Historical Society of Wisconsin. The custodian of the court record, prior to its destruction under this chapter, shall give at least 60 days' notice of such destruction in writing to the ~~historical society~~ State Historical Society of Wisconsin, which may preserve any records it determines to be of historical interest. Notice is not required for any records for which destruction has previously been approved by the ~~historical society~~ State Historical Society of Wisconsin or in which the ~~historical society~~ State Historical Society of Wisconsin has indicated, by blanket waiver, that it has no interest for historical purposes.

**SECTION 19. SCR 72.05(3) is amended to read:**

(3) Electronically or optically stored records with historical or research value beyond the retention periods specified in SCR 72.01 shall be protected from destruction or media deterioration and transferred to the ~~s~~State ~~h~~Historical ~~s~~Society of Wisconsin in a computer-industry-accepted standard universal format, together with technical documentation.

**SECTION 20. 801.17(9)(c) of the statutes is amended to read:**

801.17(9)(c) The clerk of court may maintain the official court record in electronic format or in a combination of electronic and nonelectronic formats. Documents filed by traditional methods shall be electronically scanned and made part of the official record. The clerk of court may discard the paper copy ~~immediately, notwithstanding SCR 72.03 (3)~~ pursuant to SCR 72.03(3). If a document submitted by traditional methods is not of sufficient graphical quality to be legible when electronically scanned into the electronic filing system, the clerk shall maintain the document in paper format.

**SECTION 21. Comment, 2008, paragraph 6 to 801.17 of the statutes is amended to read:**

SCR 72.03 (3) provides that even when the clerk of court has electronically stored a court file, the clerk may not destroy the paper file until ~~one year after entry of a final order in the case~~ the time specified in SCR 72.03(3) has expired. ~~In contrast, the electronic filing rule anticipates that there may not even be a paper file for the case, so the clerk should be allowed to discard the paper copy as soon as it is electronically scanned and the clerk has confirmed that the electronic copy is legible, complete, and properly saved to the file.~~

**SECTION 22. 807.06 of the statutes is renumbered 807.06 (intro.):**

807.06 (intro.) Copy of paper may be used, when.

**SECTION 23. 807.06 of the statutes is renumbered 807.06(1):**

807.06(1) If any original paper or pleading be lost or withheld by any person the court may authorize a copy thereof to be filed and used instead of the original.

**SECTION 24. 807.06(2) of the statutes is created to read:**

807.06(2) The clerk of circuit court may electronically scan any paper or pleading, as permitted by SCR 72.05, and may discard the original paper or pleading pursuant to SCR 72.03(3). If the original is discarded, the electronically scanned document constitutes the official court record.

**SECTION 25. 809.15(1)(b) of the statutes is amended to read:**

809.15(1)(b) The clerk of the ~~trial~~ circuit court may request by letter permission of the court to substitute a photocopy for the actual paper or exhibit filed in the ~~trial~~ circuit court. A photocopy does not include a document that the clerk of the circuit court has electronically scanned into the court record as permitted under SCR 72.05.

**SECTION 26. 809.15(1)(c) of the statutes is created to read:**

809.15(1)(c) For purposes of preparing the record on appeal, if the original record has been discarded, as permitted by SCR 72.03(3), the electronically scanned document constitutes the official court record. The clerk of circuit court shall assemble a paper record pursuant to sub. (2).

**SECTIONS 20.-26. Explanation of proposed changes:**

Wisconsin Statutes §§ 801.17(9)(c), 807.06, and 809.15(1)(b) and (c) have been modified to remain consistent with the proposed Supreme Court Rule changes and to recognize electronically scanned documents as the official court record. Even if scanned documents are the

official court record, in the event of an appeal, the clerk of circuit court will continue to assemble a paper record for the court of appeals, pursuant to Wis. Stat. § 809.15(2). These modifications were discussed with and approved of by the Chief Staff Attorney of the Wisconsin Court of Appeals.

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2012.

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A. John Voelker  
Director of State Courts