
In the matter of AMENDING Supreme Court Rule 72.01 (intro), (1), (8), (11), (12,) (13), (14), (15), (16), (17), (17g), (18), (19), (20), (20g), (24), (24a), (24m), (26), (26m), (29), (32), (38), (42), (42m), (47) and 72.03 (4), RENUMBERING Supreme Court Rule 72.01 (46)(a) and 72.03 (3), and CREATING Supreme Court Rule 72.01 (46)(b), (46)(c), and 72.03 (3)(b)

PETITION 20-____

For the reasons set forth in the accompanying supporting memorandum, the Director of State Courts' Records Management Retention Subcommittee respectfully petitions the Supreme Court to amend, renumber, or create parts of Supreme Court Rules 72.01 and 72.03 pertaining to the retention of circuit court case files, court records, minute records, and exhibits.

PETITION

The Director of State Courts' Records Management Retention Subcommittee respectfully requests that the Supreme Court adopt the following:

Section 1. SCR 72.01 (intro) is amended to read:

72.01 Retention of original record.

Except as provided in SCR 72.03 to 72.05, the original ~~paper~~ records of any court shall be retained in the custody of the court for the following minimum time periods:

Section 2. SCR 72.01 (1) is amended to read:

72.01 (1) Civil case files. All ~~papers~~ documents deposited with the clerk of circuit court in every proceeding commenced under chs. 801 to 847, stats.: 20 years after entry of final order.

Section 3. SCR 72.01 (8) is amended to read:

72.01 (8) Small claims case files. All ~~papers~~ documents deposited with the clerk of circuit court in every proceeding commenced under ch. 799, stats.: 20 years after entry of final order or judgment for all cases, including contested cases, stipulated dismissals and default judgments; except 2 years from date of entry of judgment for cases dismissed because issue was not joined and the case was not disposed of by judgment or stipulation within 6 months from the original return date.

Section 4. SCR 72.01 (11) is amended to read:

72.01 (11) Family case files. All ~~papers~~ documents deposited with the clerk of circuit court in every proceeding commenced under ch. 767, stats.:

(a) ~~30~~ 40 years after entry of judgment of divorce, legal separation, annulment, or paternity, or entry of a final order, ~~except that after 30 years, for any case file for which related support or maintenance payments are continuing to be made, 7 years after final payment or after an order terminating maintenance is filed.~~

(b) ~~5~~ 2 years after entry of judgment or entry of a final order for dismissed divorces, legal separations, ~~and~~ annulments, and paternity cases.

Section 5. SCR 72.01 (12) is amended to read:

72.01 (12) Family court record. A history and index of proceedings:

(a) ~~30~~ 40 years after entry of judgment of divorce, legal separation, annulment, or paternity, or entry of a final order, ~~except that after 30 years, for any court record for which related support or maintenance payments are continuing to be made, 7 years after final payment or after an order terminating maintenance is filed.~~

(b) ~~5~~ 2 years after entry of judgment or entry of a final order for dismissed divorces, legal separations, ~~and~~ annulments, and paternity cases.

Section 6. SCR 72.01 (13) is amended to read:

72.01 (13) Family court minute record. A brief statement of in-court proceedings commenced under ch. 767, stats., generally maintained in the case file:

(a) ~~30~~ 40 years after entry of judgment of divorce, legal separation, annulment, or paternity, or entry of a final order, ~~except that after 30 years, for any court minutes for which related support or maintenance payments are continuing to be made, 7 years after final payment or after an order terminating maintenance is filed.~~

(b) ~~5~~ 2 years after entry of judgment or entry of a final order for dismissed divorces, legal separations, ~~and~~ annulments, and paternity cases.

Section 7. SCR 72.01 (14) is amended to read:

72.01 (14) Maintenance and support payment records. Records of maintenance and support payments received by the clerk of circuit court: ~~30~~ 40 years after entry of judgment of divorce, legal separation, annulment, or paternity, or entry of final order, ~~except that after 30 years, for any payment records for which related support or maintenance payments are continuing to be made, 7 years after final payment or after an order terminating maintenance is filed.~~

Section 8. SCR 72.01 (15) is amended to read:

72.01 (15) Felony case files. All ~~papers~~ documents deposited with the clerk of circuit court in proceedings ~~commenced~~ disposed as felonies: 50 years after entry of final judgment; for Class A felonies, 75 years after entry of final judgment. If the proceeding results in a dismissal or acquittal of all charges, documents ~~papers~~ retained under this section shall be retained as if the proceeding was disposed as a felony.

Section 9. SCR 72.01 (16) is amended to read:

72.01 (16) Felony court record. A history and index of proceedings ~~commenced~~ disposed as felonies: 50 years after entry of final judgment; except for Class A felonies, 75 years after entry of final judgment. If the proceeding results in a dismissal or acquittal of all charges, the history and index retained under this section shall be retained as if the proceeding was disposed as a felony.

Section 10. SCR 72.01 (17) is amended to read:

72.01 (17) Felony minute record. A brief statement of in-court proceedings ~~commenced~~ disposed as felonies, generally maintained in the case file: 50 years after entry of final judgment; except for Class A felonies, 75 years after entry of final judgment. If the proceeding results in a dismissal or acquittal of all charges, the record retained under this section shall be retained as if the proceeding was disposed as a felony.

Section 11. SCR 72.01 (17g) is amended to read:

72.01 (17g) Sexually violent person commitments. All ~~papers~~ documents deposited with the clerk of circuit court for the commitment of an inmate under ch. 980, stats.: 75 years after entry of final judgment.

Section 12. SCR 72.01 (18) is amended to read:

72.01 (18) Misdemeanor case files. All ~~papers~~ documents deposited with the clerk of circuit court in proceedings ~~commenced~~ disposed as misdemeanors, including criminal traffic offenses: 20 years after entry of final judgment. If the proceeding results in a dismissal or acquittal of all charges, the documents ~~papers~~ retained under this section shall be retained as if the proceeding was disposed as a misdemeanor.

Section 13. SCR 72.01 (19) is amended to read:

72.01 (19) Misdemeanor court record. A history and index of proceedings ~~commenced~~ disposed as misdemeanors, including criminal traffic offenses: 20 years after entry of final judgment. If

the proceeding results in a dismissal or acquittal of all charges, the history and index retained under this section shall be retained as if the proceeding was disposed as a misdemeanor.

Section 14. SCR 72.01 (20) is amended to read:

72.01 (20) Misdemeanor minute record. A brief statement of in-court proceedings ~~commenced~~ disposed as misdemeanors, including criminal traffic offenses, generally maintained in the case file: 20 years after entry of final judgment. If the proceeding results in a dismissal or acquittal of all charges, the record retained under this section shall be retained as if the proceeding was disposed as a misdemeanor.

Section 15. SCR 72.01 (20g) is amended to read:

72.01 (20g) Complex forfeitures. All ~~papers~~ documents deposited with the clerk of circuit court in proceedings commenced as complex forfeitures: 20 years after entry of final judgment.

Section 16. SCR 72.01 (24) is amended to read:

72.01 (24) Traffic forfeiture, conservation forfeiture and ordinance violation case files. All ~~papers~~ documents deposited with the clerk of circuit court in proceedings ~~commenced~~ disposed as traffic forfeitures, conservation forfeitures, or ordinance violations, including juvenile ordinance violations: 5 years after entry of final judgment. If the proceeding results in a dismissal or acquittal of all charges, the documents ~~record~~ retained under this section shall be retained as if the proceeding was disposed as a traffic forfeiture, conservation forfeiture, or ordinance violation.

Section 17. SCR 72.01 (24a) is amended to read:

72.01 (24a) Traffic forfeiture, conservation forfeiture, and ordinance violation court record. A history and index of proceedings ~~commenced~~ disposed as traffic forfeitures, conservation forfeitures, or ordinance violations, including juvenile ordinance violations: 5 years after entry of final judgment. If the proceeding results in a dismissal or acquittal of all charges, the record retained under this section shall be retained as if the proceeding was disposed as a traffic forfeiture, conservation forfeiture, or ordinance violation.

Section 18. SCR 72.01 (24m) is amended to read:

72.01 (24m) Traffic forfeiture, conservation forfeiture, and ordinance violation minute record. A brief statement of in-court proceedings in actions ~~commenced~~ disposed as traffic forfeitures, conservation forfeitures, or ordinance violations, including juvenile ordinance violations, generally maintained in the case file: 5 years after entry of final judgment. If the proceeding results in a dismissal or acquittal of all charges, the record retained under this section shall be

retained as if the proceeding was disposed as a traffic forfeiture, conservation forfeiture, or ordinance violation.

Section 19. SCR 72.01 (26) is amended to read:

72.01 (26) Records of John Doe proceedings. All ~~papers~~ documents deposited with the clerk of circuit court in proceedings commenced as John Doe actions: 75 years after date of final proceeding.

Section 20. SCR 72.01 (26m) is amended to read:

72.01 (26m) Records of proceedings commenced under s. 968.02(3), stats. All ~~papers~~ documents deposited with the clerk of circuit court in proceedings commenced under s. 968.02(3), stats.: 75 years after date of final proceeding.

Section 21. SCR 72.01 (29) is amended to read:

72.01 (29) Probate case files. All ~~papers~~ documents deposited with the register in probate in proceedings commenced under chs. 851 to 879, stats.: 75 years after entry of final judgment or order or an order discharging the personal representative or trustee.

Section 22. SCR 72.01 (32) is amended to read:

72.01 (32) Guardianship case files. (a) All ~~papers~~ documents 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; and except 7 years after death of the ward if there was a firearm restriction ordered.

(b) All ~~papers~~ documents 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; and except 7 years after death of the ward if there was a firearm restriction ordered.

Section 23. SCR 72.01 (38) is amended to read:

72.01 (38) Mental health case files. All ~~papers~~ documents 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.

Section 24. SCR 72.01 (42) is amended to read:

72.01 (42) Termination of parental rights and adoption case files. All ~~papers~~ documents deposited with the clerk of circuit court, register in probate or clerk of court for juvenile matters in every termination of parental rights and adoption proceeding: ~~permanent, 150 years.~~

Section 25. SCR 72.01 (42m) is amended to read:

72.01 (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~~ documents 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 a firearm restriction ordered or there was a requirement that the juvenile or child register with the Wisconsin Department of Corrections Sex Offender Registry.

Section 26. SCR 72.01 (46) is renumbered SCR 72.01 (46) (a) and amended to read:

72.01 (46) (a) ~~Criminal and juvenile delinquency~~ Felony case exhibits, paper, and non-paper. ~~Twenty~~ The later of 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.

Section 27. SCR 72.01 (46) (b) is created to read:

72.01 (46) (b) Misdemeanor case exhibits, paper, and non-paper. Ten years after entry of final judgment, provided that return of the exhibit has been offered to the proffering party.

Section 28. SCR 72.01 (46) (c) is created to read:

72.01 (46) (c) Juvenile delinquency case exhibits, paper, and non-paper. Four years after the 18th birthday of the juvenile or child, provided that return of the exhibit has been offered to the proffering party.

Section 29. SCR 72.01 (47) is amended to read:

72.01 (47) ~~Court reporter notes. Verbatim stenographic, shorthand, audio or video notes produced by a court reporter or any other verbatim~~ record of in-court proceedings: ~~10 .~~ The verbatim record, created as authorized under SCR 71.01(3): 10 years after the hearing.

Section 30. SCR 72.03 (3) is renumbered SCR 72.03 (3) (a) and amended to read:

72.03 (3) (a) ~~Any~~ Except as provided in par. (b) or in sub. (4), 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) 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 31. SCR 72.03 (3) (b) is created to read:

72.03 (3) (b) An original will deposited by a testator with the register in probate of the court of the county where the testator resides, pursuant to Wis. Stat. 856.03, may be electronically or optically stored after notice of the testator's death is received and such will is opened by court, but may not be destroyed until the expiration of the applicable retention period established in SCR 72.01 (35). An original will deposited after the death of a testator, pursuant to Wis. Stat. 856.05, where there is no estate to probate may also be electronically or optically stored but may not be destroyed until the expiration of the applicable retention period established in SCR 72.01 (36). An original will deposited with the register in probate and admitted to probate, pursuant to s. 856.19, may be electronically or optically stored. Such will may be destroyed two years after case closure, provided it is electronically or optically stored.

Section 32. SCR 72.03 (4) is amended to read:

72.03 (4) Exhibits specified in SCR 72.01(45) ~~and (46), and (46r)~~ of a documentary nature that are electronically or optically stored may be destroyed after 48 hours if the exhibit submitted to the court is a copy and not the original document. If the exhibit the court has received is an original document, the exhibit may be destroyed 180 days after entry of a final order or judgment, provided that it has been offered to the proffering party, unless the time for appeal has been extended under ss. 809.107, 809.30, or 809.32, stats. In the event of an extension, the exhibit may be destroyed 30 days after the post-termination or post-conviction deadline has expired.

Respectfully submitted this ____ day of _____, 2020.

Hon. Kevin Martens
Records Management Retention Subcommittee