

SCR CHAPTER 72

RETENTION AND MAINTENANCE OF COURT RECORDS

SCR 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:

(1) Civil case files. All papers deposited with the clerk of circuit court in every proceeding commenced under chapter 801 of the statutes: 20 years after entry of final order.

(2) Civil court record. A history and index of proceedings under chapter 801 of the statutes kept in book or card form: 20 years after entry of final order.

(3) Civil minute record. A brief statement of in-court proceedings commenced under chapter 801 of the statutes, generally maintained in the case file: 20 years after entry of final order.

(4) Judgment and order record. A record consisting of copies of all civil and criminal judgments, orders and reports entered, the originals of which are kept in the case file: None; this recordkeeping requirement was repealed by 1983 Wisconsin Act 303.

(5) Judgment docket. A record of all money judgments: 20 years after final docket entry.

(6) Lien claims. A statutory lien filed for services performed or materials provided: until satisfaction, expiration or entry of judgment, whichever occurs first, except as provided in subs. (6ag) and (6b).

(6ag) Construction liens. A statutory lien claim filed with the clerk of circuit court for services performed or materials provided for improvements, as defined in s. 779.01 (2) (a), stats.: 2 years after the date of filing the lien claim with the clerk of court if no action is brought and no summons and complaint are filed.

(6b) Condominium liens. A statement of condominium lien filed with the clerk of circuit court under s. 703.16 (4), stats., for unpaid assessments, including interest and actual costs of collection: 3 years after the date of filing the statement of condominium lien with the clerk of court if no action is brought to foreclose the lien.

(7) Delinquent income tax, unemployment compensation payment warrants and dockets. A record of delinquent tax liens or delinquent unemployment compensation payments that have the effect of a final judgment: 20 years after final docket entry.

(8) Small claims case files. All papers deposited with the clerk of courts in every proceeding commenced under chapter 799 of the statutes: 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.

(9) Small claims court record. A history and index of proceedings kept in book or card form: 20 years after entry of final order for contested cases, stipulated dismissals and default judgments; 1 year from date of filing for dismissed cases.

(10) Small claims minute record. A brief statement of in-court proceedings commenced under chapter 799 of the statutes, generally maintained in the case file: 20 years after entry of final order for contested cases, stipulated dismissals and default judgments; 1 year from date of filing for dismissed cases.

(11) Family case files. All papers deposited with the clerk of courts in every proceeding commenced under ch. 767, stats.: 30 years after entry of judgment of divorce or entry of final order, except that after 30 years, for any case file for which support or maintenance payments are continuing to be made, 7 years after final payment or after order terminating maintenance is filed.

(12) Family court record. A history and index of proceedings kept in books, on cards or in electronic or optical format: 30 years after entry of judgment of divorce or entry of 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 order terminating maintenance is filed.

(13) Family court minute record. A brief statement of in-court proceedings commenced under ch. 767, stats., generally maintained in the case file: 30 years after entry of judgment of divorce or entry of 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 order terminating maintenance is filed.

(14) Family maintenance and support payment records. Record of family maintenance and child support payments received by the clerk of circuit court: 30 years after entry of judgment of divorce 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 order terminating maintenance is filed.

(15) Felony case files. All papers deposited with the clerk of courts in every proceeding commenced under ch. 968, stats., for felony offenses and all papers filed with the clerk of courts for the commitment of an inmate under ch. 980, stats.: 50 years after entry of final judgment; for Class A felonies, 75 years after entry of final judgment.

(16) Felony court record. A history and index of criminal proceedings kept in books, on cards or in electronic or optical format, including court records regarding the commitment of an inmate: 50 years after entry of final judgment; for Class A felonies, 75 years after final judgment.

(17) Felony minute record. A brief statement of in-court proceedings in a felony action, generally maintained in the case file, including minute records regarding the commitment of an inmate: 50 years after entry of final judgment; for Class A felonies, 75 years after final judgment.

(18) Misdemeanor case files. All papers deposited with the clerk of courts in every proceeding commenced under chapter 968 of the statutes for misdemeanor offenses, including criminal traffic offenses: 20 years after entry of final judgment.

(19) Misdemeanor court record. A history and index of proceedings under chapter 968 of the statutes for misdemeanor offenses, including criminal traffic offenses, kept in book or card form: 20 years after entry of final judgment.

(20) Misdemeanor minute record. A brief statement of in-court proceedings in a misdemeanor action, including criminal traffic offenses, generally maintained in the case file: 20 years after entry of final judgment.

(21) (Repealed)

(22) (Repealed)

(23) (Repealed)

(24) Traffic forfeiture, conservation forfeiture and ordinance violation case files. All papers deposited with the clerk of circuit court

in every proceeding commenced under chs. 29, 30, 48, 66, 125, 167, 343, 345, 350 and 938, stats.: 5 years after entry of final judgment.

(24a) Traffic forfeiture, conservation forfeiture and ordinance violation court record. A history and index of proceedings kept in books, on cards or in electronic or optical format: 5 years after entry of final judgment.

(24m) Traffic forfeiture, conservation forfeiture and ordinance violation minute record. A brief statement of in-court proceedings in a forfeiture or ordinance violation action, generally maintained in the case file: 5 years after entry of final judgment.

(25) Information and indictment record. A record consisting of copies of all informations and indictments filed, the originals of which are kept in the case file: None; this recordkeeping requirement was repealed by 1983 Wisconsin Act 302.

(26) Records of John Doe proceedings. All papers deposited with the court in every proceeding commenced under section 968.26 of the statutes: 50 years after date of final proceeding; for cases involving the investigation of Class A felonies, 75 years after date of final proceeding.

(27) Search warrants. Except as provided under sub. (27m), orders signed by a judge directing a law enforcement official to conduct searches: 75 years after filing with the court, unless filed with a case file.

(27m) Juvenile court search warrants. Search warrants deposited with the juvenile court in proceedings under chapter 48 of the statutes: 15 years after filing with the court, unless filed with a case file.

(28) Records of grand jury proceedings. All papers deposited with the court in every proceeding commenced under section 756.10 of the statutes: 50 years after date of final proceeding; for cases involving the investigation of Class A felonies, 75 years after date of final proceeding.

(29) Estate case files. All papers deposited with the register in probate in every proceeding commenced under chapter 851 of the statutes: 75 years after entry of final judgment or order discharging personal representative or trustee.

(30) Probate court record. A history and index of probate proceedings kept in book or card form: 75 years after entry of final judgment or order discharging personal representative or trustee.

(31) Probate minute record. A brief statement of in-court

proceedings commenced under chapters 851 to 880 of the statutes, generally maintained in the case file: 75 years after entry of final order or order discharging personal representative or trustee.

(32) Guardianship case files. All papers deposited with the register in probate in every proceeding commenced under chapters 55 and 880 of the statutes: 7 years after termination of guardianship.

(33) Guardianship court record. A history and index of proceedings under chapters 55 and 880 of the statutes kept in book or card form: 7 years after termination of guardianship.

(34) Guardianship minute record. A brief statement of in-court proceedings commenced under chapters 55 and 880 of the statutes, generally maintained in the case file: 7 years after termination of guardianship.

(35) Wills deposited for safekeeping. Will deposited by a testator with the register in probate of the court of the county where the testator resides: 100 years after filing.

(36) Wills not admitted to probate. Wills deposited after the death of a testator where there is no estate to probate: 100 years after filing.

(37) Registry of wills. An index kept by a register in probate of all wills deposited or delivered prior to probate: 100 years after final entry.

(38) Mental health case files. All papers deposited with the clerk of circuit court or register in probate in every proceeding commenced under chapter 51 of the statutes: 10 years after entry of final order of commitment or extension.

(39) Mental health court record. A history and index of proceedings kept in book or card form: 10 years after entry of final order of commitment or extension.

(40) Mental health minute record. A brief statement of in-court proceedings commenced under chapter 51 of the statutes, generally maintained in the case file: 10 years after entry of final order of commitment or extension.

(41) 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 every proceeding commenced under ch. 48 or 938, stats.: 4 years after the 18th birthday of the juvenile or child; 8 years after the 18th birthday

of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a Class A or Class B felony if committed by an adult.

(42) Termination of parental rights and adoption case files. All papers 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 commenced under chapter 48 of the statutes: permanent.

(43) Juvenile court record. A history and index of proceedings under ch. 48 or 938, stats., kept in books, on cards or in electronic or optical format: 4 years after the 18th birthday of the juvenile or child; 8 years after the 18th birthday of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a Class A or Class B felony if committed by an adult.

(44) Juvenile minute record. A brief statement of in-court proceedings commenced under ch. 48 or 938 stats., generally maintained in the case file: 4 years after the 18th birthday of the juvenile or child; 8 years after the 18th birthday of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a Class A or Class B felony if committed by an adult.

(45) Non-criminal case exhibits, paper and non-paper. One year after time for appeal has expired, provided that return of the exhibit has been offered to the proffering party.

(46) Criminal case exhibits, paper and non-paper. One year after time for appeal has expired, provided that return of the exhibit has been offered to the proffering party.

(46m) Criminal case exhibits containing biological material subject to forensic deoxyribonucleic acid testing under s. 974.07, stats. Any criminal case exhibit that is identified by the parties, the clerk, or the court as containing biological material and that remains in the court's custody shall be retained until the later of 50 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, or until the court otherwise orders the disposition of the evidence under s. 757.54 (2) (c) or 974.07, stats.

COMMENT

Deoxyribonucleic acid (DNA) technology is increasingly vital to ensuring accuracy and

fairness in the criminal justice system. Section 974.07, stats., does not define the term "biological material." The development of new techniques and scientific breakthroughs in all areas of the forensic sciences will influence determinations of criminal case exhibits to be retained pursuant to SCR 72.01 (46m).

(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 years after the hearing.

(48) Receipts. A receipt for money received by the clerk of court or register in probate: 7 years after issuance.

(49) Bank transactions. Deposit slips, bank statements and canceled checks: 7 years after transaction.

(50) Trust account ledgers. Records of trust accounts maintained by a clerk of court or register in probate: the retention period for case file from which the trust account emanates; when the trust account is closed, the record may be filed with the related trust account file.

(51) Certificates of payment. A certificate or voucher authorized for payment by the court: 7 years after filing.

(52) Jury payroll. A record of jury fees paid: 7 years after filing.

(53) Juror questionnaires. A form sent to determine eligibility of prospective jurors: 4 years after panel service.

(54) Jury array. A list of qualified persons selected to serve as jurors: 4 years after panel service.

(55) Record of jurors. A record of jurors summoned to serve on juries: 4 years after panel service.

(56) Ministers' credentials. A certification that a person is a member of the clergy, licentiate or appointee that permits officiating at marriages: 20 years after date of filing.

(57) Notary public appointments. An oath filed with the clerk of court by a notary public: Upon expiration of term.

(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.

(59) Register of officials. A listing of the names and terms of appointment for court commissioners, deputy sheriffs, notaries public and municipal judges: 2 years after expiration of term.

(60) Naturalization records. Records of applications for U.S. citizenship and proceedings to grant U.S. citizenship: Permanent.

(61) Court records no longer created. Records no longer created, utilized or maintained by the court for legal purposes: 20 years after

repeal, modification, supersession or amendment.

(62) Court records in book form. Court records kept in book form may contain various case and record types; depending upon the case and record type, one of the following shall be used to determine the longest minimum retention period as specified under this rule:

(a) Beginning with the date of final entry for the most recently disposed case.

(b) Beginning with the date of final entry for felony cases when maintained in books with other case types.

(c) Beginning with the date of the 18th birthday of the youngest juvenile covered in the book when pertaining to proceedings commenced under chapter 48 of the statutes.

(63) Inquest records. Records of an inquest under s. 979.08, stats., including testimony, evidence, written instructions and findings of probable cause or verdict: No retention; record is delivered to the coroner or medical examiner for safekeeping.

(64) Incarcerated person records. Files containing prisoner litigation correspondence, pleadings and other documents; usually a writ of habeas corpus or certiorari; that are kept in group files until they are reviewed by a judge to determine if the action can be filed without the payment of filing fees and court costs: 5 years after date of submission. If the action meets the filing criteria as a civil action, it becomes a civil case and is retained in accordance with sub. (1).

SCR 72.02 Procedure for disposal of court records.

(1) A clerk of court, register in probate or other court records custodian may destroy records in his or her custody after minimum retention periods under SCR 72.01 have expired and after compliance with SCR 72.04.

(2) Records defined as confidential by rule or statute shall be destroyed in accordance with sub. (1) by burning, shredding or other means that will obliterate the records.

SCR 72.03 Destruction of original court record after microfilming or electronically or optically storing.

(1) In this rule, "suitably microfilmed or microphotographed" means being microfilmed or microphotographed, to the extent practicable, in accordance with the minimum standards for microfilming and microphotographing as established by the American National Standards Institute.

(2) Notwithstanding the provisions of SCR 72.01, any record of

a court that has been suitably microfilmed may be destroyed in accordance with SCR 72.02(1) or (2) 2 years after entry of final order in the action for which the record is maintained or 2 years after filing for records not specifically related to court actions.

(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.

SCR 72.04 Offer of title to historical society.

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, 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 or in which the historical society has indicated, by blanket waiver, that it has no interest for historical purposes.

SCR 72.05 Retention of court records maintained as official or original information on electronic or optical storage systems.

(1) In this rule:

(a) "Accessible" means arranged, identified, indexed and maintained in a manner that permits the location and retrieval of the information in a readable format within a reasonable time by use of the proper hardware and software.

(b) "Accurately reproduce" means that, when displayed on a retrieval device or reproduced on paper, all information exhibits a high degree of legibility and readability.

(c) "Authenticity" means actually and reliably what is claimed and implies the ability to substantiate what is claimed.

(d) "Legible" means that, when displayed on a retrieval device or reproduced on paper, the quality of the letters, numbers or symbols enables the user to identify them positively and quickly to the exclusion of all other letters, numbers or symbols.

(e) "Readable" means that the quality of a group of letters, numbers or symbols is recognized as words, complete numbers or distinct symbols.

(2) Court records specified in SCR 72.01 and maintained as official or original information on electronic or optical storage systems shall be retained in the custody of the court for the minimum

time periods specified in SCR 72.01. The system maintaining the court records shall meet all of the following requirements:

(a) The information retained shall be in a legible and accessible format capable of accurately reproducing the original, or of sustaining readability, for the time periods specified in SCR 72.01.

(b) Operational and technical system procedures shall protect the authenticity, confidentiality, accuracy and reliability of the information captured and provide the appropriate level of security to safeguard the integrity of the electronic or optically imaged information.

(c) The legibility and readability of a statistically significant sampling of electronic or optically imaged records shall be verified to ensure, to a 99.5% degree of confidence, that the information or images are legible and readable. Original optical images that are not legible or readable shall be flagged and rescanned for optimum image enhancement. Illegible images shall contain the scanned notation "best possible image".

(d) A suitable technical level of security shall be provided to protect electronic or optically imaged records that are required to be sealed, impounded or confidential and procedures shall be implemented to restrict access to only those persons authorized by statute or court order to access those records.

(e) Suitable hardware and software shall be provided to retrieve, read and timely reproduce on paper any record retained on electronic or optical storage systems.

(f) Procedures shall be in place and timely implemented for the backup, recovery and storage of electronically or optically stored records to protect those records against media destruction or deterioration and information loss.

(g) For disaster recovery purposes, at least one electronically or optically stored backup copy of all automated or optically imaged records shall be maintained using accepted computer backup procedures; backup copies shall be stored in a separate location under appropriate environmental storage conditions; and a schedule to regularly update or supplement backup copies as a normal part of operations shall be implemented.

(h) At least one set of documentation for the electronic or optical systems that produced the automated or optically imaged records shall be maintained for the retention period of those records,

and documentation shall be regularly updated or supplemented when revisions are made.

(i) Inspection of a statistically significant sampling of electronic or optically imaged records shall be conducted at least once every 3 years to verify, to a 99.5% degree of confidence, that there has been no degradation of the electronic medium or of the image quality.

(j) A media retention and conversion review schedule shall be established to ensure that electronically or optically stored information is reviewed for data conversion or recertification at least once every 3 years or more frequently when necessary to prevent the physical loss of data or technological obsolescence of the medium.

(k) Off-line electronic data or records stored on optical disk shall be transferred to new media or new optical disk and verified prior to the expiration of one-half of the useful life of the original media or disk as determined by the manufacturer's certified disk playback stability measured in years.

(L) Court records electronically or optically stored, including records stored off-line and on backup media, that are expunged by court order under ss. 938.355 (4m) and 973.015, stats., shall be expunged by sealing or removing the record, obliterating the index to the record, or otherwise restricting access to the record.

(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 state historical society of Wisconsin in a computer-industry-accepted standard universal format, together with technical documentation.

(4) Records electronically or optically stored that have reached the minimum retention period specified in SCR 72.01 and that do not have historical or research value may be destroyed. For the circuit court automation program or other electronic court data systems and for write-once-read-many-times optical disk systems, records should be organized and formatted to permit the off-line disk or optical disk as a whole to be destroyed. For write-once-read-many-times disks, the destruction or sealing of the specific index reference to the obsolete record is sufficient.

(5) A written plan shall be provided to the director of state courts for prior approval to ensure compliance with this rule before a new electronic or optical imaging system is implemented and before

an existing system is enhanced. The plan shall indicate all of the following:

(a) That a feasibility study was conducted and an analysis made of the system's cost and conversion costs compared to ongoing current costs.

(b) That a data migration plan has been developed for the retention period of electronically or optically stored records.

(c) If the system is an optical imaging system, that the custodian of the record has executed a statement of intent and purpose indicating all of the following:

1. The case type of record and years to be reproduced or transferred.

2. The subsection of SCR 72.01 that pertains to the type of court record being imaged.

3. The physical disposition of the original paper records.

4. If the system is a county system, the county resolution or ordinance authorizing optical imaging.

5. The certification of the records as received or created and transferred to optical disk format in the normal course of business.

(d) That the statement of intent and purpose was provided to the office of the director of state courts.

SCR 72.06 Expunction.

When required by statute or court order to expunge a court record, the clerk of the court shall do all of the following:

(1) Remove any paper index and nonfinancial court record and place them in the case file.

(2) Electronically remove any automated nonfinancial record, except the case number.

(3) Seal the entire case file.

(4) Destroy expunged court records in accordance with the provisions of this chapter.

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