

STATE OF WISCONSIN  
SUPREME COURT

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IN THE MATTER OF:

THE PETITION OF THE STATE BAR OF WISCONSIN  
TO MODIFY CHAPTER 72 OF  
THE SUPREME COURT RULES (PETITION 09-07)

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**AMENDED PETITION TO MODIFY CHAPTER 72 OF THE WISCONSIN  
SUPREME COURT RULES**

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TO: The Honorable Justices of the Supreme Court

On June 26, 2009, the Board of Governors of the State Bar of Wisconsin, acting pursuant to the recommendation of the Criminal Law Section and the Individual Rights and Responsibilities Section, voted unanimously to petition this Court for an order revising Chapter 72 of the Wisconsin Supreme Court Rules. The reasons for this petition and a description of the proposed change are described in the attached memorandum supporting this petition.

**Proposed Change to SCR Chapter 72**

The State Bar of Wisconsin seeks this change in order to codify the

inherent authority of Wisconsin courts to manage their own files and determine when they ought be made public. The proposed change would clarify the language in Wis. SCR § 72.06 to provide clearer direction to circuit court judges. The State Bar of Wisconsin includes judges, prosecutors, criminal defense attorneys and civil rights attorneys among its members.

It is proposed that Chapter 72 of the Supreme Court Rules be modified to read as follows:

## SCR CHAPTER 72

### RETENTION AND MAINTENANCE OF COURT RECORDS

#### SCR 72.01 Retention of original record.

[unchanged]

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#### SCR 72.015 Retention of original felony, misdemeanor, forfeiture and ordinance records.

The time periods for retention of case files, court records and minute records referred to in rule SCR 72.01 concerning felony, misdemeanor, forfeiture and ordinance cases apply to the type of case at the time of the final disposition of the case, rather than the type of case when the file was opened. For any felony, misdemeanor, forfeiture and ordinance cases with multiple counts, the longest retention period of any one count after final disposition applies to all counts in that case.

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**SCR 72.06 Expunction.**

(1) A court may order a court record expunged under any of the following circumstances:

(a) When authorized or required to do so by statute.

(b) On the motion of any party to a case at or after the expiration of the minimum retention period as found under §72.01 for the type of case represented by the final disposition of the matter.

(c) Upon dismissal of the case, or in the event of a judgment of acquittal, if a court believes expunction is necessary and appropriate:

1. In the interest of justice; and

2. The court finds, either at the time of the dismissal of the case or within a reasonable period of time thereafter, that a party to the case would benefit and society would not be harmed by expunction, either at the time of the dismissal of the case or within a reasonable period of time thereafter.

~~(2) When required by statute or court order to expunge~~ expunging a court record, the clerk of the court shall do all of the following:

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

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

~~(c)~~ (c) Seal the entire case file.

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

(e) Notify the Department of Justice of the expunction of the court record pursuant to Wis. Stats., §165.83(2)(A).

**Conclusion.**

As further explained in the attached memorandum, the State Bar of Wisconsin seeks the proposed changes in order to clarify the authority of the trial court to exercise its “supervisory power over its own records and files” (*Nixon*, 425 U.S. at 597) in the manner described in the proposed revised Wis. SCR § 72.06.

Respectfully submitted, October 27, 2009.

*On Behalf of the State Bar of Wisconsin*

A handwritten signature in black ink, appearing to read "Douglas W. Kammer". The signature is fluid and cursive, written over a horizontal line.

Atty. Douglas W. Kammer

President, State Bar of Wisconsin