

**In re amendment of SCR 72.01
regarding record retention**

PETITION

The Director of State Courts, on the recommendation of the Records Management Retention Subcommittee, hereby petitions the court to make amendments to Supreme Court Rule 72.01 regarding record retention, pursuant to the court's rulemaking authority under Wis. Stat. §751.12 and its administrative authority over all courts conferred by Article VII, §3 of the Wisconsin Constitution.

In 2005, the Wisconsin Circuit Court Access (WCCA) Oversight Committee was reconvened to review court policies regarding online access to circuit court records. One of the committee's final recommendations was that a comprehensive review of SCR 72.01 be undertaken. As a result, the Records Management Retention Subcommittee was reconvened in 2007. The Retention Subcommittee included judges, court of appeals staff, clerks of circuit court, registers in probate, a representative from the State Historical Society, and a district court administrator. The subcommittee also consulted with a district attorney and members of the private bar when necessary. The subcommittee undertook a detailed rule-by-rule review of SCR 72.01, carefully weighing whether rule changes were needed. Some of the proposed changes are substantive while others are procedural, making the language of the rules more uniform or conforming to statutory changes that have occurred since the last major review of SCR 72.01 in 1997.

The Director of State Courts petitions for changes to the following rules:

SCR 72.01(1) Civil case files. All papers deposited with the clerk of circuit court in every proceeding commenced under chapters 801 through 847 of the statutes: 20 years after entry of final order.

SCR 72.01(2) Civil court record. A history and index of proceedings under chapters 801 through 847 of the statutes ~~kept in book or card form~~: 20 years after entry of final order.

SCR 72.01(3) Civil minute record. A brief statement of in-court proceedings commenced under chapters 801 through 847 of the statutes, generally maintained in the case file: 20 years after entry of final order.

NOTE: For SCR 72.01(1)-(3), added references to include additional statutory sections and removed language regarding the file format. Civil case files encompass more than just cases commenced under Wisconsin Statutes Chapter 801, for example temporary restraining orders and injunctions, which are commenced under Chapter 813. The current rules do not cover retention for any action given a civil designation (CV) that is not commenced under chapter 801. Adding a reference to Chapters 801-847 covers all types of actions filed as civil actions in circuit court. For removal of language regarding file format in SCR 72.02(2), please see the note at the end of this

petition that references removal of that language from multiple rules throughout SCR 72.01.

DELETE: SCR 71.02(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.~~

NOTE: Deleted SCR 72.01(4). This rule should be deleted as it is no longer necessary. SCR 72.01(4) was repealed by 1983 Wisconsin Act 303. Because this recordkeeping requirement was repealed more than 20 years ago, any documentation left in the clerk's office is now covered by the 20 years after repeal retention period in SCR 72.01(61) for court records no longer created.

SCR 72.01(5) Judgment docket. A record of all money judgments: 20 years after ~~final~~ initial docket entry.

NOTE: For SCR 72.01(5), replaced the word "final with "initial." A civil judgment is valid for 20 years (s. 893.40, stats). A judgment entered on the judgment and lien docket is valid for 10 years from entry onto the judgment and lien docket, with the possibility that a second 10-year docketing period may be granted by the court (s.

806.15(1), stats; s. 806.23, stats). The total time a lien is valid, however, cannot exceed the 20 year limit on judgments. If a party redockets their judgment at year 19, the judgment and the lien are still only valid for one additional year. Using this example, under the current rule, keeping the judgment docket 20 years from that “final” entry would result in the clerk having to keep the judgment docket for that case much longer than necessary. As the judgment is valid 20 years from the date it is granted, there is no reason to keep the judgment docket for longer than 20 years from the “initial” entry on the judgment docket.

SCR 72.01(6) Lien claims. A statutory lien filed for services performed or materials provided: until satisfaction, or expiration of lien or entry of judgment, whichever occurs first, except as provided in subs. (6ag) and (6b).

NOTE: For SCR 72.01(6), added language clarifying the rule. Adding this language makes it clear exactly what is being satisfied or expiring and sets those two options apart from entry of judgment, which is a different option.

SCR 72.01(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 6 years after the date of filing the lien claim with the clerk of circuit court, ~~if no action is brought and no summons and complaint are filed.~~

NOTE: For SCR 72.01(6ag), extended the retention period, added clarifying language and removed reference to a separate civil action. Changed the reference from “clerk of courts” to “clerk of circuit court” to make the rule language consistent with the other rules in SCR 72.01. In terms of extending the retention period, the two year limit in this section was based on Wis. Stat. 799.06(1), which states that a construction lien is only valid for 2 years from the date of filing with the circuit court, unless a civil action is brought to foreclose on the lien. This retention period has proven completely unworkable for clerks of circuit court, as the action to foreclose on the lien is a separate civil action and the pleadings do not always clearly cross-reference the construction lien case number. As such, clerks of circuit court have no knowledge when this retention period has been met and have not been able to destroy construction lien filings. Concerns were raised by practitioners in this area that if a litigant did file an action to foreclose on the lien the litigant needed time to return to circuit court and request documentation that the construction lien was properly filed. Extending the retention period for construction liens to 6 years gives the litigant the 2-year time period to bring an action to foreclose on the lien, plus an additional 4 years for that litigant to request any necessary documentation from the circuit court lien case.

SCR 72.01(6b) Condominium liens. A statement of condominium lien filed with the clerk of circuit court under s. ~~703.16(4)~~ 703.165(3), stats., for unpaid

assessments, including interest and actual costs of collection: 3 7 years after the date of filing the statement of condominium lien with the clerk of circuit court. ~~if no action is brought to foreclose the lien.~~

NOTE: For SCR 72.01(6b), changed the statutory reference, added clarifying language, extended the retention period and removed reference to a separate civil action.

Section 703.16(4) was renumbered to 703.165(3) by 2003 Wisconsin Act 283. The retention rule was never modified to reflect that change. Changed the reference from “clerk of courts” to “clerk of circuit court” to make the rule language consistent with the other rules in SCR 72.01.

In terms of extending the retention period, the three year limit in this section was based on Wis. Stat. 703.165(7), which states that an action to foreclose on a condominium lien can only be brought within 3 years of the lien filing. This retention period has proven completely unworkable for clerks of circuit court as the action to foreclose on the lien is a separate civil action and the pleadings do not always clearly cross-reference the condominium lien case number. As such, clerks of circuit court have no knowledge when this retention period has been met and have not been able to destroy condominium lien filings. Concerns were raised by practitioners in this area that if a litigant did file an action to foreclose on the lien the

litigant needed time to return to circuit court and request documentation that the condominium lien was properly filed. Extending the retention period for condominium liens to 7 years gives the litigant the 3-year time period to bring an action to foreclose on the lien, plus an additional 4 years for that litigant to request any necessary documentation from the circuit court lien case.

SCR 72.01(7) Unemployment compensation, public assistance and workers compensation payment warrants and dockets. A record of delinquent unemployment compensation, public assistance, or workers compensation payments that have the effect of a final judgment: 20 years after ~~final~~ initial docket entry.

NOTE: For SCR 72.01(7), removed references to income and franchise tax warrants, added references to public assistance and workers compensation warrants/liens, and changed the filing time to begin running from the initial docket entry. A separate rule for income and franchise tax warrants has been created. Public assistance and workers compensation cases were case liens not previously included in this rule, but which have the effect of a final judgment and therefore would be covered by the 20-year statute of limitations on civil judgments. The period was changed to run from the date the warrant is initially entered into the judgment and lien docket. There is only one entry into the judgment and lien docket for these cases and it is the initial entry.

CREATE: SCR 72.01(7a) – Delinquent income or franchise tax warrants and docket. A record of delinquent income or franchise tax warrants/liens: 10 years from the date of filing with the clerk of circuit court for warrants/liens filed before Aug. 1, 1981; permanent from the date of filing with the clerk of circuit court for warrants/liens filed on August 1, 1981, through April 30, 2004; 20 years from the date of filing with the clerk of circuit court for warrants/liens filed on or after May 1, 2004, unless renewed. If renewed, a new 20-year retention period begins from the date the renewal is filed with the clerk of circuit court.

NOTE: Created SCR 72.01(7a). This section arose as a result of the Department of Revenue (DOR) notifying the court that the current retention rule did not comply with Wisconsin Statutes. The statutes governing the effectiveness of delinquent income and franchise tax warrants/liens filed with the clerk of circuit court have changed three times. After discussion with legal counsel at DOR it was determined that these legislative changes have created three different time periods for which these warrants are considered valid and enforceable by DOR. As such, a retention rule outlining these three different periods was needed. The most recent version of the statute, Wis. Stat. sec. 71.91(4), directs that warrants/liens filed on or after May 1, 2004 may be renewed as a lien with the court every 20 years until paid.

SCR 72.01(8) Small claims case files. All papers deposited with the clerk of circuit 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.

NOTE: For SCR 72.01(8), added the word “circuit.” Changed the reference from “clerk of courts” to “clerk of circuit court” to make the rule language consistent with the other rules in SCR 72.01.

SCR 72.01(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.~~ 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.

SCR 72.01(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.~~ 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.

NOTE: For changes to SCR 72.01(9)-(10), added language to mirror SCR 72.01(8) and removed language regarding the file format. This change reflects the same change the Court made to SCR 72.01(8) in 2006. Those changes were never applied to the identical language of SCR 72.01(9)-(10). For removal of language regarding file format in SCR 72.01(9), please see the note at the end of this petition that references removal of that language from multiple rules throughout SCR 72.01.

SCR 72.01(11) Family case files. All papers deposited with the clerk of circuit courts in every proceeding commenced under ch. 767, stats.: 30 years after entry of judgment of divorce, legal separation or annulment, or entry of 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 order terminating maintenance is filed; 5 years after entry of judgment or entry of final order for dismissed divorces, legal separations and annulments.

SCR 72.01(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, legal separation or annulment, 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- ; 5 years after entry of judgment or entry of final order for dismissed divorces, legal separations and annulments.

SCR 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: 30 years after entry of judgment of divorce, legal separation or annulment, 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- ; 5 years after entry of judgment or entry of final order for dismissed divorces, legal separations and annulments.

NOTE: For SCR 72.01(11)-(13), clarified purpose of retention period, added clarifying language, added reference to separate retention period for dismissed divorces, legal separations and annulments, added word “related”, and removed language regarding the file format. Changed the reference from “clerk of courts” to “clerk of circuit court” to make the rule language consistent with the other rules in SCR 72.01. A reference to entry of judgment of legal separation and annulment was added to clarify that the retention rule applied to those types of final judgments as well and to mirror the language added for dismissed family cases of those types. Shortened the retention period for certain dismissed family cases as the Committee

felt that retaining dismissed cases for the full 30-year retention period was not necessary, similar to the way dismissed small claims cases are kept for a shorter retention period. There is no great public interest, safety issue, or legal reason for retaining this type of dismissed case for the full 30-year retention period. In SCR 72.01(11), added the word “related” to make the language consistent with SCR 72.01(12)-(13). For removal of language regarding file format in SCR 72.01(12), please see the note at the end of this petition that references removal of that language from multiple rules throughout SCR 72.01.

SCR 72.01(14) ~~Family m~~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, legal separation or annulment, 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.

NOTE: For SCR 72.01(14), removed the words “family” “child” for greater clarity of the rule and added reference to legal separation and annulment. A reference to entry of judgment of legal separation and annulment was added to clarify that the retention rule applied to those types of final judgments as well. Removed the words “family” and “child” to clarify that this rule applies to all types of maintenance and

support in family actions. Maintenance is referred to only as “maintenance” not family maintenance and is referred to later in this same rule only as maintenance. Support could include either child or family, so the current rule’s reference to child support is not inclusive of all types of support. There is no separate retention rule for family support. Additionally, later in the rule the reference is to “support” not “child support.”

SCR 72.01(15) Felony case files. All papers deposited with the clerk of circuit courts in ~~every~~ proceedings commenced as felonies ~~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.

NOTE: For SCR 72.01(15), removed specific statutory reference, added clarifying language, and removed reference to commitment of inmate cases. Changed the reference from “clerk of courts” to “clerk of circuit court” to make the rule language consistent with the other rules in SCR 72.01. The specific reference to Chapter 968 was removed to guard against future inaccuracies in the rule that result from statute renumbering. This prevents a petition from having to be filed with the Court to correct inaccurate statutory references that could result from legislative changes. Also removed the reference to commitment of inmate cases because a separate

retention period for Chapter 980 cases is proposed in this petition.

SCR 72.01(16) Felony court record. A history and index of ~~criminal~~ proceedings commenced as felonies ~~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 entry of final judgment.

SCR 72.01(17) Felony minute record. A brief statement of in-court proceedings ~~in~~ ~~a felony action~~ commenced as felonies, 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 entry of final judgment.

NOTE: For SCR 72.01(16),(17), added corrective language, removed reference to commitment of inmate cases, and removed language regarding the file format. Added clarifying language and language to make the rules more consistent with the language of other rules in SCR 72.01. Also removed the reference to commitment of inmate cases because a separate retention period for Chapter 980 case is proposed in this petition. For removal of language regarding file format in SCR 72.01(16), please see the note at the end of this petition that references removal of that language from multiple rules throughout SCR 72.01.

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

CREATE: SCR 72.01(17b) Sexually violent person commitment court record. A history and index of proceedings for the commitment of an inmate: 75 years after entry of final judgment.

CREATE: SCR 72.01(17c) Sexually violent person commitment minute record. A brief statement of in-court proceedings for the commitment of an inmate, generally maintained in the case file: 75 years after entry of final judgment.

NOTE: When commitment of an inmate under Wisconsin Statutes Chapter 980 began, the circuit courts gave them a felony case designation, CF, and therefore included those cases in the felony retention rules under SCR 72.01(15)-(17). Since that time, a separate case type has been created for these cases, the CI case type. As commitment of inmate cases now have their own case type, they should be given a separate retention rule instead of remaining combined with the felony retention rules under SCR 72.01(15)-(17). Because of the serious nature of these cases and the fact the underlying criminal case is likely being retained for 50 or 75 years under SCR 72.01(15), the 75 year retention period is appropriate. Creation of a separate

retention rule and the 75-year retention period was also specifically recommended by the WCCA Oversight Committee.

SCR 72.01(18) Misdemeanor case files. All papers deposited with the clerk of circuit courts in every proceedings commenced as misdemeanors ~~under chapter 968 of the statutes for misdemeanor offenses~~, including criminal traffic offenses: 20 years after entry of final judgment.

SCR 72.01(19) Misdemeanor court record. A history and index of proceedings commenced as misdemeanors ~~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.

SCR 72.01(20) Misdemeanor minute record. A brief statement of in-court proceedings commenced as misdemeanors ~~in a misdemeanor action~~, including criminal traffic offenses, generally maintained in the case file: 20 years after entry of final judgment.

NOTE: For SCR 72.01(18)-(20), added clarifying language, removed statutory reference, and removed language regarding the file format. The language added to the rule makes these rules consistent with the language of other rules in SCR 72. Removed the reference to Chapter 968 to guard against future inaccuracies in the

rule that could result from statute renumbering. This prevents a petition from having to be filed with the Court to correct inaccurate statutory references that result from legislative changes. For removal of language regarding file format in SCR 72.01(19), please see the note at the end of this petition that references removal of that language from multiple rules throughout SCR 72.01.

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

CREATE: SCR 72.01(20b) Complex forfeiture court record. A history and index of proceedings commenced as complex forfeitures: 20 years after entry of final judgment.

CREATE: SCR 72.01(20c) Complex forfeiture minute record. A brief statement of in-court proceedings commenced as complex forfeitures, generally maintained in the case file: 20 years after entry of final judgment.

NOTE: Created new rules SCR 72.01(20a), (20b) and (20c). Complex forfeitures are actions that are technically forfeitures, but because of their complex nature are classified and handled differently at the circuit court level than other basic forfeiture

actions. The CX case type was created at the circuit court level for these cases and the Director of State Courts Office has worked extensively with the Department of Justice (DOJ) to ensure the circuit courts are handling these cases properly. These cases typically involve major environmental or consumer protection violations brought by DOJ and involve very large forfeiture amounts that can range into the hundreds of thousands of dollars. Similar to criminal traffic cases referenced in the misdemeanor retention rules (SCR 72.01(18)-(20)), the term “complex forfeiture” is not a statutory designation, but a special case designation created for orderly and accurate circuit court case management. Complex forfeitures statutorily are often settled with agreements to let defendants complete restitution or other payments for far more than 5 years and therefore retaining them according to the 5-year forfeiture retention period under SCR 72.01(24) is not appropriate. Because the litigation surrounding these cases can be extensive and complicated, the Committee felt that retaining complex forfeitures according to the misdemeanor and civil retention period of 20 years was appropriate.

SCR 72.01(24) Traffic forfeiture, conservation forfeiture and ordinance violation case files. All papers deposited with the clerk of circuit court in ~~every~~ proceedings commenced as traffic forfeitures, conservation forfeitures or ordinance violations, including juvenile ordinance violations: under chs. 29, 30, 48, 66, 125, 167, 343, 345, 350 and 938, stats.: 5 years after entry of final judgment.

SCR 72.01(24a) Traffic forfeiture, conservation forfeiture and ordinance violation court record. A history and index of proceedings commenced as traffic forfeitures, conservation forfeitures or ordinance violations, including juvenile ordinance violations ~~kept in books, on cards or in electronic or optical format~~: 5 years after entry of final judgment.

SCR 72.01(24m) Traffic forfeiture, conservation forfeiture and ordinance violation minute record. A brief statement of in-court proceedings in actions commenced as traffic forfeitures, conservation forfeitures or ordinance violations, including juvenile ordinance violations ~~a forfeiture or ordinance violation action~~, generally maintained in the case file: 5 years after entry of final judgment.

NOTE: For SCR 72.01(24)-(24m), added clarifying language, removed statutory references, and removed language regarding the file format. The clarifying language makes these rules more consistent with the language of other rules in SCR 72 and with each other. Also added clarifying language to indicate that this rule includes juvenile ordinance violations. Removed statutory references in SCR 72.01(24) to guard against future inaccuracies in the rule that could result from statute renumbering and to mirror SCR 72.01(24a) and (24m). For removal of language regarding file format in SCR 72.01(24a), please see the note at the end of this petition that references removal of that language from multiple rules throughout SCR 72.01.

DELETE: ~~SCR 72.01(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.~~

NOTE: Delete SCR 72.01(25). Because this recordkeeping requirement was repealed in 1983, which was more than 20 years ago, the Committee felt it was no longer necessary to maintain this retention rule. Any records still retained under this rule are now covered by the 20 year after repeal retention period in SCR 72.01(61) for court records no longer created.

SCR 72.01(26) Records of John Doe proceedings. All papers deposited with the clerk of circuit court in ~~every~~ proceedings commenced as John Doe actions ~~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.~~

NOTE: For SCR 72.01(26), removed statutory references, removed 50 year retention period and reference to statute severity and added clarifying language. John Doe cases are not classified according to statute severity at the circuit court level. Therefore, there is no reason for separate retention rules according to charge

severity. The Committee chose one retention period for retaining records of John Doe proceedings, the longer of the two periods in the current rule. Removed statutory references to guard against future inaccuracies in the rule that could result from statute renumbering. Added reference to “clerk of circuit” to clarify that these cases are filed with the clerk of circuit court, which is common practice throughout the state, and to match the language in the other rules in SCR 72.01.

CREATE: SCR 72.01(26m) Records of proceedings commenced under 968.02(3). All papers deposited with the clerk of circuit court in proceedings commenced under section 968.02(3) of the statutes: 75 years after date of final proceeding.

NOTE: Created SCR 72.01(26m). The circuit courts have seen an increasing number of cases filed under Wis. Stat. 968.02(3), which allows the judge to determine whether a criminal complaint should be issued in situations where the district attorney refuses or is unavailable to issue a complaint. A new class code has been created for these cases in the circuit court and the Committee therefore felt a separate retention rule was necessary. Because these cases are procedurally similar to John Doe cases, the Committee felt a similar retention rule was appropriate.

SCR 72.01(27m) Juvenile court search warrants. Search warrants deposited with the juvenile court in proceedings under chapter 48 and chapter 938 of the statutes: 15 years after filing with the court, unless filed with a case file.

NOTE: For SCR 72.01(27m), added statutory chapter. Added missing reference to search warrants filed under the Juvenile Justice Code, Chapter 938.

SCR 72.01(28) Records of grand jury proceedings. All papers deposited with the clerk of circuit court in ~~every~~ proceedings commenced under section 968.40 ~~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.

NOTE: For SCR 72.01(28), changed statutory reference, added clarifying language, removed 50 year retention period and reference to statute severity. The clarifying language added to this rule makes the rules more consistent with the language of other rules in SCR 72.01 and clarifies that these cases are filed with the clerk of circuit court. Changed the statutory reference as a result of a change to the statute number for grand jury proceedings following the original creation of this rule. Grand jury proceedings are not classified according to statute severity at the circuit court level. Therefore, there is no reason for separate retention rules according to charge severity. The Committee chose one retention period for retaining records of grand jury proceedings, the longer of the two periods in the current rule.

SCR 72.01(29) Estate Probate case files. All papers deposited with the register in probate in every proceedings commenced under chapters 851 through 879 of the statutes: 75 years after entry of final judgment or order discharging personal representative or trustee.

NOTE: For SCR 72.01(29), changed title, added statutory reference and clarifying language. The title of the rule and addition of statutory sections and clarifying language were changed to mimic the language in SCR 72.01(30)-(31) and to make this rule more consistent with the language of other rules in SCR 72.01. These additions also clarify that this rule applies to all cases in probate not otherwise covered in the retention rules, not just estate cases. The sections of the Wisconsin Statutes covering probate matters are Chapters 851-879.

SCR 72.01(30) Probate court record. A history and index of probate proceedings commenced under chapters 851 through 879 of the statutes ~~kept in book or card form~~: 75 years after entry of final judgment or order discharging personal representative or trustee.

NOTE: For SCR 72.01(30), added statutory references, clarifying language and removed language regarding the file format. The addition of statutory sections and clarifying language mimics the language in SCR 72.01(29) and (31) and makes this

rule more consistent with the language of other rules in SCR 72.01. The sections of the Wisconsin Statutes covering probate matters are Chapters 851-879. These additions also clarify that this rule applies to all cases in probate not otherwise covered in the retention rules. For removal of language regarding file format in SCR 72.01(30), please see the note at the end of this petition that references removal of that language from multiple rules throughout SCR 72.01.

SCR 72.01(31) Probate minute record. A brief statement of in-court proceedings commenced under chapters 851 through 879 ~~to 880~~ of the statutes, generally maintained in the case file: 75 years after entry of final judgment or order, or order discharging personal representative or trustee.

NOTE: For SCR 72.01(31), changed statutory reference and added reference to judgment. Chapter 880 no longer exists in the Wisconsin Statutes and therefore needed to be eliminated. The sections of the Wisconsin Statutes covering probate matters are now Chapters 851-879. Added a reference to final judgment because some final dispositions in probate cases are also judgments, not just final orders.

SCR 72.01(32) Guardianship case files. All papers deposited with the register in probate in ~~every~~ adult guardianship proceedings commenced under chapters 54 and 55 ~~and 880~~ of the statutes: 7 years after termination of guardianship. For juvenile

guardianships under chapters 48 and 54 of the statutes: 7 years after the juvenile's 18th birthday.

SCR 72.01(33) Guardianship court record. A history and index for adult guardianship of proceedings commenced under chapters 54 and 55 and 880 of the statutes ~~kept in book or card form~~: 7 years after termination of guardianship. For juvenile guardianships under chapters 48 and 54 of the statutes: 7 years after the juvenile's 18th birthday.

SCR 72.01(34) Guardianship minute record. A brief statement of in-court proceedings for adult guardianships commenced under chapters 54 and 55 and 880 of the statutes, generally maintained in the case file: 7 years after termination of guardianship. For juvenile guardianships under chapters 48 and 54 of the statutes: 7 years after the juvenile's 18th birthday.

NOTE: For SCR 72.01(32),(33), and (34), removed the reference to Chapter 880 of the Wisconsin Statutes, added clarifying language, added references to juvenile guardianships, and removed language regarding the file format. 2005 Wis. Acts 264, 387 and 388 eliminated Chapter 880 of the Wisconsin Statutes and created/renumbered the provisions in Chapter 880 to Chapters 54 and 55. The clarifying language added makes these rules more consistent with the language of other rules in SCR 72.01 and with each other. Also, added clarification that the

seven year retention rule for guardianships should be applied differently to adult and juvenile guardianships. Because issues can arise with a juvenile guardianship until the juvenile turns 18, even if the guardianship has terminated earlier, it was decided that the most complete retention period was to retain juvenile guardianships for 7 years past the juvenile's 18th birthday. For removal of language regarding file format in SCR 72.01(33), please see the note at the end of this petition that references removal of that language from multiple rules throughout SCR 72.01.

SCR 71.02(38) Mental health case files. All papers deposited with the clerk of circuit court or register in probate in ~~every~~ proceedings commenced under chapter 51 of the statutes: ~~10~~ 7 years after entry of final order, ~~of commitment or extension.~~

SCR 72.01(39) Mental health court record. A history and index of proceedings commenced under chapter 51 of the statutes ~~kept in book or card form~~: ~~10~~ 7 years after entry of final order, ~~of commitment or extension.~~

SCR 72.01(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~~ 7 years after entry of final order, ~~of commitment or extension.~~

NOTE: For SCR 72.01(38)-(40), shortened the retention period, added some clarifying language and removed other language to clarify the rule, and removed

language regarding the file format. Added language to SCR 72.01(39) to make the language of that rule more consistent with the language in SCR 71.02(38) and (40) and the other SCR 72.01 retention rules. The retention period in this rule was shortened as the Committee felt there was no need to retain mental health records for longer than 7 years after the final order in this case. This time period more than covers any court need for this file. To make it clear that these rules apply to any final order in a mental health case, the reference to commitment or extension was also removed, as those two dispositions are not the only dispositions available in a mental health case. For example, the case can also result in a dismissal. For removal of language regarding file format in SCR 72.01(39), please see the note at the end of this petition that references removal of that language from multiple rules throughout SCR 72.01.

RENUMBER: SCR 72.01(42) to SCR 72.01(41) 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.

NOTE: In SCR 72.01(42), renumbered the rule to SCR 72.01(41) and removed reference to Chapter 48. Renumbered this rule to SCR 72.01(41) so that the subsequent three retention rules on juvenile retention are grouped together, similar to

the other rules of a particular subject area in SCR 72.01, instead of being separated by this rule, which refers to a different subject area. The specific reference to Chapter 48 was removed to guard against future inaccuracies in the rule that result from statute renumbering. This prevents a petition from having to be filed with the Court to correct inaccurate statutory references that could result from legislative changes. Additionally, this rule references adoptions, which for children are under Chapter 48, but for adults are under Chapter 882. The retention of adult adoption files is not currently covered under any other retention rule. The removal of the reference to Chapter 48 clarifies that this retention rule applies to both adoptions of children and adults.

RENUMBER: SCR 72.01(41) to SCR 72.01(42) 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~~ proceedings commenced under ch. 48 or 938, stats.: 4 years after the 18th birthday of the juvenile or child; 75 8 years after the adjudication ~~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.

SCR 72.01(43) Juvenile court record. A history and index of proceedings commenced under ch. 48 or 938, stats., ~~kept in books, or on cards or in electronic or~~

~~optical format~~: 4 years after the 18th birthday of the juvenile or child; 75 & years after the adjudication ~~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.

SCR 72.01(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; 75 & years after the adjudication ~~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.

NOTE: For SCR 72.01(41) and (43)-(44), added clarifying language, changed the retention period to 75 years for juvenile offenses adjudicated as felonies, and removed language regarding the file format. For SCR 72.01(41), renumbered the rule to SCR 72.01(42). Renumbered SCR 72.01(41) to (42) so that the three retention rules on juvenile retention are grouped together, similar to the other rules of a particular subject area in SCR 72.01, instead of being separated by the current SCR 72.01(42), which refers to a different subject area. The clarifying language added to all three rules makes these rules more consistent with the language of other rules in SCR 72.01 and with each other. In terms of lengthening the retention period, certain juvenile adjudications for acts that would be felonies if committed by an adult carry

a lifetime sex offender registration requirement. Additionally, juvenile adjudications for any felony carry an automatic firearms restriction. The firearms restriction is not automatically lifted at the end of the juvenile's adjudication, but continues unless the juvenile petitions the court for the restriction to be lifted. If the juvenile never petitions the court, the firearms restriction continues. Because of the firearms restrictions and sex offender registry requirements, retaining juvenile felony adjudications for only 8 years past the 18th birthday is not a long enough retention period. The 75-year period was chosen to match the longer of the felony retention periods for adult criminal cases. For removal of language regarding file format in SCR 72.01(43), please see the note at the end of this petition that references removal of that language from multiple rules throughout SCR 72.01.

SCR 72.01(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 or unless all parties have stipulated to an earlier return of exhibits.

NOTE: For SCR 72.01(45), added language indicating parties can stipulate to an early return for exhibits in non-criminal cases. Adding this language clarifies this rule and correctly reflects longstanding circuit court practice. This retention rule is

both administrative and procedural. In addition to the circuit court procedure stated in this rule of offering the exhibit back to the proffering party at the end of the retention period, for years the procedure in circuit court for all non-criminal cases has also included allowing the parties to stipulate to an earlier return of exhibits, typically immediately after trial. This procedure has long been reflected on the Model Recordkeeping Form GF-102 and in the Model Recordkeeping Procedures. While this procedure has been in place for many years with no problems, it is not reflected in the retention rule.

SCR 72.01(46) Criminal and juvenile delinquency 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.

NOTE: For SCR 72.01(46), added reference to juvenile delinquency cases. Exhibits in juvenile delinquency cases are currently not clearly covered under any retention rule. Juvenile delinquency cases are akin to criminal proceedings and the exhibits in those cases should therefore be retained similarly to criminal case exhibits. The procedure for non-criminal case exhibits under SCR 72.01(45) being returned earlier through a stipulation process cannot be applied to criminal cases under this rule because of chain of custody concerns.

SCR 72.01(48) Receipts. A receipt for money received by the clerk of circuit court or register in probate: 7 years after issuance.

SCR 72.01(50) Trust account ledgers. Records of trust accounts maintained by a clerk of circuit 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.

NOTE: For SCR 72.01(48) and (50), added the word “circuit.” Changed the reference from “clerk of court” to “clerk of circuit court” to make the rule language consistent with the other rules in SCR 72.01.

DELETE: SCR 72.01(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.~~

NOTE: Deleted SCR 72.01(56). This rule should be deleted as it is both unnecessary and creates confusion. Ministers have not been statutorily required to file credentials with the clerk since 1979. Because these documents are no longer required by statute to be filed with the clerk, any documentation left in the clerk’s office is now covered by the 20 years after repeal retention period in SCR 72.01(61) for court records no longer created. Additionally, because ministers are no longer required to

file with the clerk, this rule has created confusion in the public and among clerks, as some ministers and court staff read this rule and believe ministers are still required to file their credentials with the clerk of circuit court.

DELETE: SCR 72.01(57) Notary public appointments. ~~An oath filed with the clerk of court by a notary public: Upon expiration of term.~~

NOTE: Deleted SCR 72.01(57). Since September 2001 notaries have been required to file oaths only with the Secretary of State and not with the clerk of circuit court. This retention rule was originally created because attorneys who had permanent commissions had the option of filing a copy of their permanent notary certification with the clerk. But, the attorney's original certification was on file with the Secretary of State. The Secretary of State reports that they have all attorney permanent commissions on file beginning with the late 1950s. Because these documents are no longer required by statute to be filed with the clerk, any documentation left in the clerk's office is now covered by the 20 years after repeal retention period in SCR 72.01(61) for court records no longer created.

SCR 72.01(60) Naturalization records. Records of applications for U.S. citizenship and proceedings to grant U.S. citizenship: ~~Permanent.~~ Transfer custody to the Wisconsin State Historical Society.

NOTE: For SCR 72.01(60), changed the retention period to transfer the records to the State Historical Society. The clerks of court have not accepted citizenship documents since the mid-1990s and in some courts earlier. The Wisconsin State Historical Society has advised the Director of State Courts Office that the United States National Archives and United States Immigration and Naturalization Service have advised that any copies of naturalization records still with the circuit court are valuable historical documents and the Library Archives Division of the State Historical Society is the appropriate depository for them. The change to this rule reflects that advice and ensures that these valuable historical documents are maintained in the appropriate location.

SCR 72.01(61) Court records no longer created, utilized or maintained. Records no longer created, utilized or maintained by the court for legal purposes: 20 years after repeal, modification, supersession or amendment.

NOTE: For SCR 72.01(61), added language to title. This language was added to the title to make the title consistent with the rule language.

SCR 72.01(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).~~

NOTE: For SCR 72.01(64), added language to clarify this rule. SCR 72.01(64) was created in response to the prisoner litigation act, which became effective in September 1998. Because the new legislation was somewhat confusing, this retention rule was originally created at that time with more detail and reference to procedure than other retention rules. Since 1998, however, circuit court procedure surrounding prisoner litigation has been well established and the need for this additional detail is no longer necessary and has made this retention rule confusing. A separate case type has also been created for these cases, IP, and thus the reference to retaining these actions in group files is inaccurate.

NOTE: For changes to SCR 72.01(2),(9),(12),(16),(19),(24a),(30),(33),(39) and (43) removing language regarding the file format. In order to maintain consistency with the other rules in SCR 72.01 and to alleviate confusion as to what format the SCR 72.01 retention rules apply to, removed the language from these rules that specifies the type of file format. The entirety of the SCR 72.01 retention rules apply to all circuit court records, regardless of the format in which they exist, be it paper or electronic. This is made clear through the reference to electronic records in SCR 72.03 and that rule's reference back to SCR 72.02, and the reference to electronic records in SCR 72.05(2). The addition of a reference to electronic records in some

SCR 72.01 retention rules was made in a prior petition to the Wisconsin Supreme Court, but there was no explanation included in that petition as to why the language referencing electronic records was made only to some rules and not others. At this time, by virtue of the scanning functionality available through CCAP, all pieces of all circuit court records can be made electronic. Therefore, the reference to electronic records in some SCR 72.01 rules and not others has created confusion. Removing any reference to the record format clarifies that the SCR 72.01 retention rules apply to all court records, regardless of format.

Respectfully submitted this ____ day of _____, 2009.

A. John Voelker
Director of State Courts