



Supreme Court of Wisconsin

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MADISON, WISCONSIN 53703

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September 12, 2012

VIA EMAIL

Ms. Susan Gray
Office of the Director of State Courts
P.O. Box 1688
Madison, WI 53701-1688

Re: Rule Petition 12-05, Petition to amend SCRs 72.01, 72.03, 72.04, and 72.05, and Wis. Stat. §§ 801.17, 807.06, and 809.15 relating to record retention and electronically or optically stored records

Dear Ms. Gray,

I am writing in response to Sally Lunde's letter dated August 29, 2012 regarding Rule Petition 12-05. Ms. Lunde's letter raised concerns regarding the proposed 75-year records retention period for guardianship and mental health case files.

The Records Management Retention Subcommittee stands by its current recommendation that a 75-year retention period is appropriate for guardianship and mental health case files. The Wisconsin Department of Justice Crime Information Bureau staff (CIB) advised the Director of State Courts Office to adopt this retention period. CIB is responsible for performing background checks and ensuring that only eligible individuals possess firearms. If there is any question about a person's eligibility, CIB relies on the court's case files to determine if a person meets the legal eligibility requirements to possess firearms. Given that individuals could make a request to possess firearms many years after a guardianship is terminated or a mental health commitment expires, it is necessary that the file be retained so CIB can verify eligibility.

Additionally, the 75-year retention period is consistent with how long juvenile cases are retained under SCR 72.01(42m) where a juvenile was adjudicated delinquent for committing an act that would be punishable as a felony if committed by an adult. This retention period was amended by the Wisconsin Supreme Court from 8 years to 75 years in 2010. The reason provided for that change was that 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. As a result, the original 8-year retention period was deemed inadequate and the 75-year retention period was chosen to match

the longer of the felony retention periods for adult criminal cases. The same reasoning applies to guardianship and mental health cases. Because the firearms restrictions are not automatically lifted once the guardianship terminates or the mental health commitment expires, the current 7-year retention period is inadequate and the proposed 75-year retention period is consistent with how long juvenile and felony cases are retained.

For these reasons, the subcommittee stands by its 75-year retention recommendation for guardianship and mental health case files. This proposed 75-year retention period was previously approved by the Records Management Retention Subcommittee which had two registers in probate representatives, one of which was Ms. Lunde.

As an alternative to shortening the proposed 75-year retention period, Ms. Lunde proposes adding an exception to the rule that would allow for an earlier destruction date in the event that the individual subject to the guardianship or mental health case dies.

After considering this request, the subcommittee would like to amend the guardianship retention period to provide an exception for early destruction if the ward dies. Unlike other case types where the court is not usually notified when a party dies, in guardianship cases, guardians are required to submit annual reports to the court on the condition of the ward and/or the ward's finances. If the ward dies, the clerk of court or register in probate will be notified by the report. Additionally, many times guardianships occur later in a person's life, so there is a much greater likelihood that the ward will not live beyond the 75-year retention period. As a result, the subcommittee would like to amend Sections 2 – 4 of Rule Petition 12-05 to the following:

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

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

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

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

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

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

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

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

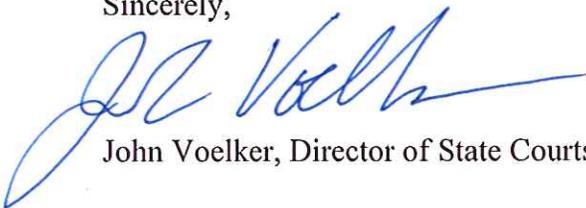
(b) A brief statement of in-court proceedings for juvenile guardianships commenced under chs. 48 or 54, stats., or ch. 880, 2003 stats.: 7 years after the juvenile's 18th birthday; except 75 years after termination of guardianship if there was a firearm restriction ordered in the case, except 7 years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

The subcommittee does not wish to extend this exception for early destruction due to death in mental health cases. Unlike in guardianship cases where the court is notified by a reliable source of the death of the ward, there is no similar notification required in mental health cases. As a result, it is unlikely that the clerk of court or register in probate would even know that the individual has died. There is also a concern about what type of proof of death would be required in a mental health case to trigger an early destruction. Moreover, besides guardianship cases which are unique in that the court is notified of the party's death by a reliable source, there are no other case types that have an exception for early destruction because of death.

Finally, in response to Ms. Lunde's concerns about using scanning to retain guardianship and mental health case files, many counties have successfully incorporated scanning case files into their daily workflow process and have found it an efficient and effective way to store closed cases for long-term storage. According to Consolidated Court Automation Programs (CCAP), almost all courts in Wisconsin currently use scanning technology in some way. The large number of counties using scanning demonstrates that it is possible to incorporate scanning into regular use despite limitations on staff and resources.

Please do not hesitate to contact me should you have any further questions.

Sincerely,



John Voelker, Director of State Courts

AJV/AMP

Cc: Hon James Kieffer, Chair Records Management Retention Subcommittee
Amy Franzen, President of WRIPA
Sally Lunde, Register in Probate, Waukesha County
Jenell Anderson, Register in Probate, Polk County
Joshua Blakely, Register in Probate, Racine County
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