
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)

**SUPPORTING
MEMORANDUM
PETITION 20-____**

For the reasons set forth in this 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.

SUPREME COURT SUPERINTENDING AUTHORITY

The subject matter of the proposed rules changes falls within the constitutional responsibility of the Wisconsin Supreme Court to exercise superintending and administrative authority over all courts. The recommended changes do not abridge the substantive rights of any participant in the Wisconsin legal system.

INTRODUCTION and BRIEF HISTORY

The Director of State Courts' Records Management Retention Subcommittee (Subcommittee) meets on an as-needed basis to review periodically the record maintenance and retention rules, Supreme Court Rules 72.01 through 72.06 (the Rules), and to ensure consistency with best practices. The Subcommittee is mindful of the need to preserve the legal and historical record and to ensure that the Rules incorporate technological changes to record management.

In November 2014, the Subcommittee reached consensus on modifying the Rules to retain criminal and juvenile delinquency case records according to how each case was disposed, to streamline and clarify the retention periods for family cases, to eliminate permanent retention for termination of parental rights and adoption case records, to eliminate ambiguity and promote consistency in the Rules relating to exhibits, and to clarify and promote consistency in the Rules relating to retaining a record or exhibit that has been electronically or optically stored.

The Subcommittee was cognizant of the fact that the Wisconsin Circuit Court Access (WCCA) Oversight Committee would be meeting to discuss display periods on the WCCA website and that its recommendations may include retaining and/or displaying case records on the WCCA website according to the disposition of a case. The Committee decided to refrain from submitting a Petition that might conflict with a recommendation from the WCCA Oversight Committee. Additionally, the Subcommittee wanted to ensure, before submitting a Petition to the Court, that the Consolidated Court Automation Programs (CCAP) would be able to program its retention protocol to identify a case's disposition as well as its charging.

In 2017, the WCCA Oversight Committee endorsed the Subcommittee's determination that the Supreme Court Rule should be amended to retain criminal cases according to how the most serious charge in the case is disposed, not how it is charged. The Subcommittee was assured that CCAP could program its case management programs to determine the most serious disposition in each criminal case.

In anticipation of filing this Petition, the Subcommittee reconvened to review its recommendations. The Subcommittee decided, in addition to the recommended changes agreed upon earlier, to include in its Petition a request to amend the Rule regarding the verbatim record in order to make it consistent with other Supreme Court Rules and to update language in the Rule to reflect technological changes to the ways documents are filed with, and retained by, the courts.

This Memorandum sets forth each proposal in the Subcommittee's Petition, followed by a discussion of the current Rule and an explanation of what each proposed change would do and the Subcommittee's reasons for each proposal. Unlike the Petition, which lists the Rules that each section seeks to amend, in numerical order, this Memorandum groups each proposal into a subject area and discusses several sections of the Petition under each grouping. For the purpose of this Memorandum, a "case record" includes all documents deposited with the clerk of circuit court in every proceeding in a case, a history and index of proceedings in a case, and minute record in a case, which is a brief statement of in-court proceedings, generally maintained in the case file.

For the reasons set forth in this Memorandum, the Director of State Courts and the Subcommittee recommend the Court amend, renumber, or create parts of Supreme Court Rules 72.01 and 72.03 in order to promote consistency and fairness in record retention.

DISCUSSION OF PROPOSALS

I. Recommended changes to retention periods for case records relating to the disposition of a case (Sections 8., 9., 10., 12., 13., 14., 16., 17., and 18. of the Petition)

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, the a-documents record 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 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 ~~record~~ 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 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.

Discussion. Under the current Rules, criminal and civil forfeiture cases are retained for varying periods depending on the severity of the most serious charge in the case. For example, if a criminal case includes a felony charge, the case record is retained for 50 years, except that if the case includes a Class A felony charge, the case record is retained for 75 years. Case records for a case that includes, as its most serious charge, a misdemeanor charge are retained for 20 years, and case records for forfeitures, including traffic and conservation forfeitures and ordinance violations, are retained for 5 years. Currently, the retention period remains the same if the person was convicted of a lesser offense, if the person was acquitted of all charges, or if the entire case was dismissed.

Under the proposed Rule, criminal and forfeiture case records will no longer be retained according to how the case is charged, but instead will be retained according to how the charges in the case are disposed. The case record retention period will follow the highest level of disposition of any charge in the case.

For example: A case includes charges of one Class C felony and two Class B misdemeanors. The defendant in the case ultimately enters a guilty plea on one count of a Class B misdemeanor and the remaining charges are dismissed. Under the current Rule, the case record is retained for 50 years; under the proposed Rule, the case record is retained for 20 years, because the most serious disposition in the case is a misdemeanor.

Similarly, if all charges in a felony or a misdemeanor case are disposed of as ordinance violations, under the proposed Rule the case record is retained for five years, the retention period for civil forfeitures.

The Subcommittee believes that it is fair and logical to retain cases according to their disposition, not their charging, because the disposition of the case represents the final determination of whether a defendant committed a crime or other violation and, if so, of the seriousness of the crime or other violation. The retention periods for forfeitures, misdemeanors, and felonies increase in proportion to the seriousness of the offense; the committee believes that the seriousness of the offense is more accurately determined at disposition, not necessarily at charging.

Additionally, the Subcommittee is cognizant of the impact that having one's case viewable on the Wisconsin Circuit Court Access website (WCCA) can have on a person's reputation and on his or her ability to secure housing and employment. With a few exceptions discussed in the next paragraph, a case displays on WCCA for its entire retention period. Thus, a person charged with a felony but convicted of a misdemeanor would have his or her case information viewable on WCCA for at least 50 years under the current Rule; that is 30 years longer than under the proposed Rule. The Subcommittee believes that the retention Rules and the display on WCCA more appropriately reflect the seriousness of an infraction when the case record is retained according to how the case is disposed.

There are a few exceptions to the rule that a case record is displayed on WCCA for as long as it is retained. Cases that are confidential or sealed by court order are not displayed on WCCA, even while retained by the court. Recently, the Director of State Courts, acting on a recommendation from the WCCA Oversight Committee, determined that, for criminal cases, if every charge in the case is disposed as either an acquittal or a dismissal, the case record will display on WCCA for only two years. The WCCA Oversight Committee concluded, and the Director of State Courts agreed, that a shorter period of display is appropriate for persons who were never convicted of a crime or violation in a particular criminal case. The retention period remains the same for these cases.

In this Petition, the Subcommittee proposes that, for criminal cases in which every charge is disposed as an acquittal or a dismissal, the case record of the case be retained as if at least one charge in the case was disposed as the most serious count charged in the case. This may seem counterintuitive, but the Subcommittee recognizes that if each charge in the case is either dismissed or results in an acquittal, then the charge is not *disposed of* as a felony, misdemeanor, or forfeiture. Without a Rule explicitly directing how these cases should be retained, clerks of court would not be able to determine whether the case should be retained as a felony, a misdemeanor, or a forfeiture.

Therefore, the Subcommittee proposes retaining those cases as if they were disposed in the same severity as they were charged. The Subcommittee is aware that this will mean, for example, that a person who was charged with a felony but had all charges dismissed will have his or her case retained for a longer period than a person charged and convicted of a misdemeanor. However, the impact of this longer retention period is significantly mitigated by the fact that the first case will only display on WCCA for two years.

The Subcommittee determined that there was no more appropriate or logical means of determining an appropriate retention period for cases in which all charges are disposed of as acquittals or dismissals and determined that the clearest and most straight forward treatment is to retain the case records as if the highest crime charge matched the highest crime disposed.

II. Recommended changes to the retention period for case records relating to divorces, legal separations, annulments, or paternity actions (Sections 4., 5., 6., and 7. of the Petition)

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.~~

Discussion. Under the current Rule, case records in family cases (divorce, legal separation, annulment, and paternity actions) and maintenance and support payment records in family and in paternity cases are retained for 30 years after entry of judgment or final order. However, if

support or maintenance payments are still being made after 30 years, payment records are retained for seven years after final payment or after an order terminating maintenance is filed. Also under the current Rule, case records for dismissed family cases are retained for five years after entry of judgment or final order.

Under the Petition, case records in family cases and maintenance and support payment records in family and in paternity cases will be retained for 40 years after entry of judgment or final order. Additionally, under the Petition, case records for dismissed family cases will be retained for two years.

The Subcommittee proposes a 40-year retention period for family cases and for maintenance and support payment records because it is clearer to apply than the current Rule and it ensures adequate retention for family cases, even including extended maintenance or support payments. The Subcommittee noted that clerks may not necessarily know when payments are being made in individual cases, or the date that the last payment was made, which makes it difficult to determine when the retention period expires.

The Subcommittee determined that, under s. 893.415(2), Wis. Stats., 40 years would capture the longest period of time in which an action could be taken to collect child support. Under that statute, an action to collect child or family support must be commenced within 20 years after the youngest child for whom the support was ordered reaches the age of 18 or of 19, depending on whether the child is enrolled in high school or its equivalent.

The Subcommittee also proposes reducing the retention period, from five years to two years, for case records for dismissed family cases. The Subcommittee found that retaining the case records for two years would allow a party or another interested person to review the record for an adequate period of time. After two years, motion and appeal time limits will have expired, leaving little value to retaining the case records for the longer period. Additionally, this change makes the Rule consistent with the retention Rule for dismissed small claims cases, which under SCR 72.01 (8) to (10) are retained for two years after dismissal.

III. Recommended changes to retention periods for case records relating to termination of parental rights and adoption (Section 24 of the Petition)

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.

Discussion. Under the current Rule, all documents relating to a termination of parental rights and adoption proceeding are retained permanently. The Subcommittee proposes that these documents be retained for 150 years. Additionally, the Subcommittee proposes amending the word “papers” in this section to “documents,” in recognition of the fact that many filings are either retained or filed electronically and not in paper form. A fuller discussion of this point is in Section VII of this Memorandum.

The Subcommittee determined that a retention period of 150 years is adequate to protect the interests of those involved in parental termination and adoption matters. The Subcommittee further noted that, except for warrants or liens associated with delinquent income of franchise taxes filed between August 1, 1981 and April 30, 2004 inclusive, no other case records are retained permanently. The retention period for tax warrants or liens filed after April 30, 2004 is 20 years, unless renewed. The Subcommittee believes that the general disfavor for permanent retention should apply to case records related to termination of parental rights and adoption.

IV. Recommended changes to the retention period for the verbatim record (Section 29 of the Petition)

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: The verbatim record, created as authorized under SCR 71.01(3): 10 years after the hearing.

Discussion. Under the current Rule, verbatim stenographic, shorthand, audio or video notes produced by a court reporter are retained for ten years. In its Petition, the Subcommittee recommends amending the Rule to reflect language changes recently adopted in another rule.

Recently, the Court amended SCR 71.01(3) to indicate that the verbatim record may be made by stenographic reporting, voice reporting, monitored digital audio recording, or other means approved by the director of state courts. The proposed Rule cross-references SCR 71.01(3) to ensure that a verbatim record created by any means approved by Rule is included in the retention Rule.

V. Recommended changes to retention periods for exhibits (Sections 26., 27., 28., and 32. of the Petition).

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.

Discussion. Under the current Rule, exhibits, both paper and non-paper, are retained for 20 years after entry of final judgment in a criminal or juvenile delinquency case, or until every person in custody in connection with the case has reached his or her discharge date. The current Rule does not specify whether the retention period applies to the earlier or the later of those dates.

Under the Petition, exhibits in felony cases are retained for the later of twenty years after entry of final judgment or until every person in custody has reached his or her discharge date. The Subcommittee recognizes the need for clarity as to whether exhibits are to be retained for the longer or shorter period, and opted to require retention for the longer period.

The Subcommittee recognizes that, in cases where a person is acquitted of a felony charge or is sentenced to a relatively short period of imprisonment, the exhibit will be retained under the proposed Rule for a significant period after the person is released from custody. However, the Subcommittee believes that if a person remains in custody for longer than 20 years, the exhibit should be preserved for as long as the person remains in custody. The Subcommittee believes that the potential harm for destroying an exhibit after 20 years, when a person remains incarcerated or otherwise in custody and may have a need for access to the exhibit outweighs any harm associated with retaining an exhibit after the person is released from custody.

The Subcommittee notes, too, that this proposal applies only to exhibits in felony cases, where the potential incarceration period may exceed the retention period under the current Rule. For exhibits in misdemeanor and juvenile delinquency cases, the Subcommittee proposes, respectively, a retention period of 10 years and a retention period that correlates to the juvenile's 18th birthday.

For exhibits in misdemeanor cases, the Subcommittee believes that a retention period of ten years is sufficient to protect the interests of the courts, the defendants, and the public. The proposed retention period is shorter than under the current Rule, and eliminates any ambiguity about when the retention period begins to run. The Subcommittee believes that the proposed Rule correctly distinguishes the appropriate retention period for misdemeanor cases from that for felony cases.

Similarly, the Subcommittee believes that the current Rule, which applies a 20 year retention period for exhibits in felony, misdemeanor, and juvenile delinquency cases alike, is unwarranted for juvenile delinquency cases. The proposed Rule would retain exhibits in juvenile delinquency cases for 4 years after the juvenile reaches the age of 18. This proposal would make the retention rule for exhibits consistent with the Rule relating to case records for juvenile delinquency cases under SCR 72.01(42) to (44), which states those records are retained for four years after the juvenile's 18th birthday. The Subcommittee proposes this change in order to promote consistency with other Rules relating to juvenile proceedings and to separate juvenile matters from the blanket retention period for all criminal matters established under the current Rule.

VI. Recommended changes relating to electronic or optical storage and destruction of a case record or exhibit (Sections 30., 31., and 32. of the Petition)

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 and 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.

Discussion. The current Rule allows a record of a court that has been properly stored electronically or optically to be destroyed 48 hours after the electronic or optic storage. The current Rule applies the same 48-hour rule for documentary exhibits in non-criminal cases, criminal cases, and juvenile delinquency proceedings.

The proposed Rule clarifies that the Rule allowing destruction of a filing after the filing has been optically or electronically stored does not apply to original wills that are deposited with a court for safekeeping or deposited with the court where there is no estate to probate. Under the proposed Rule, an original will may be optically or electronically stored, but the original must

also be retained until the 100-year retention period established by SCR 72.01(35) and (36) expires. It also clarifies that wills that are admitted to probate may be optically or electronically stored, but may not be destroyed until 2 years after the case is closed.

The Subcommittee proposes this change to allow clerks who wish to scan in original wills to do so, but to ensure that the original will is preserved for the retention period prescribed elsewhere in the Rule.

Additionally, the Subcommittee proposes amending the current Rule to apply the same 48-hour rule for documentary exhibits in civil commitment cases involving sexually violent persons under ch. 980, Wis. Stats. The Subcommittee believes that the current Rule retains documentary exhibits appropriately in electronic or optical format and that the same Rule should apply to all documentary exhibits.

VII. Recommended amendments to language relating only to technological changes in records management (Sections 1., 2., 3., 11., 15., 19., 20., 21., 22., 23., and 25. of the Petition)

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 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 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 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 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.

Discussion. The current Rule refers to the “paper” record and sets forth retention periods for all “papers” deposited with the circuit court for each case type. The Subcommittee requests the Court amend these sections to eliminate references to “paper” documents where appropriate.

The Subcommittee’s recommendation reflects its desire to ensure that the Rule reflects the current use of technology in both how cases are filed and retained. Although the majority of cases are electronically filed with the court, the Subcommittee recognizes that paper documents are still sometimes filed by pro se parties. Documents that are filed in paper are scanned into the electronic recordkeeping system and, pursuant to SCR 72.03, discarded 48 hours after scanning. Accordingly, the Subcommittee proposes amending the Rule to reflect that the case records are retained in electronic form regardless of how they are filed. The suggested change from “papers” to “documents” encompasses both paper and electronic case records.

CONCLUSION

For the reasons set forth in this Memorandum, the Director of State Courts’ Records Management Retention Subcommittee respectfully requests that the Supreme Court grant this petition to ensure that the Rules governing record maintenance and retention are fair, logical, consistent, and incorporate technological innovations embraced by the courts.

Respectfully submitted this ____ day of _____, 2020.

Hon. Kevin Martens