

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 12-05

In the matter of the amendment to Supreme Court Rules 72.01, 72.03, 72.04, 72.05, and Wis. Stat. § 801.17, 807.06, and 809.15 relating to record retention and electronically or optically stored records.

FILED**NOV 1, 2012**

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On May 3, 2012, A. John Voelker, Director of State Courts, filed a petition on the recommendation of the Records Management Retention Subcommittee requesting the court amend Supreme Court Rules (SCRs) 72.01, 72.03, 72.04, and 72.05 relating to record retention and the destruction of electronically or optically stored documents. The petition also requests changes to Wis. Stat. §§ 801.17, 807.06, and 809.15 relating to electronically scanned documents. On September 5, 2012, the petitioner filed an amendment to the petition in response to the court's inquiry dated August 7, 2012. On September 12, 2012, the petitioner filed another amendment to the petition in response to comments received from several registers in probate regarding the 75-year retention period in mental health and guardianship case files.

On September 19, 2012, the court held a public hearing on the petition. Judge James R. Kieffer presented the petition to the court. David Callender, on behalf of the Wisconsin Counties

Association, also appeared. As noted above, the court also received and considered written comments from Sally Mohr Lunde, Register in Probate for Waukesha County, and seven other registers in probate, as well as the Wisconsin Department of Justice and the Wisconsin Counties Association. At its ensuing open administrative conference, the court approved the petition and adopted the proposed rule with minor technical revisions.

IT IS ORDERED that, effective January 1, 2013, the Supreme Court Rules and the Wisconsin Statutes are amended as follows:

SECTION 1. 72.01 (6) of the Supreme Court Rules is amended to read:

(6) Lien claims. A statutory lien filed for services performed or materials provided: ~~until satisfaction or expiration of the lien or entry of judgment, whichever occurs first~~ 30 years after the date of filing the lien claim with the clerk of circuit court, except as provided in subs. (6ag) and (6b).

SECTION 2. 72.01 (32) of the Supreme Court Rules 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; and except 7 years after death of the ward if there was a firearm restriction 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; and except 7 years after death of the ward if there was a firearm restriction ordered.

SECTION 3. 72.01 (33) of the Supreme Court Rules 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; and except 7 years after death of the ward if there was a firearm restriction 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; and except 7 years after death of the ward if there was a firearm restriction ordered.

SECTION 4. 72.01 (34) of the Supreme Court Rules 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; and except 7 years after death of the ward if there was a firearm restriction 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; and except 7 years after death of the ward if there was a firearm restriction ordered.

SECTION 5. 72.01 (38) of the Supreme Court Rules is amended to read:

(38) Mental health case files. All papers 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 6. 72.01 (39) of the Supreme Court Rules is amended to read:

(39) Mental health court record. A history and index of 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 7. 72.01 (40) of the Supreme Court Rules is amended to read:

(40) Mental health minute record. A brief statement of in-court proceedings commenced under ch. 51, stats., generally maintained in the case file: 7 years after entry of final order; except 75 years after termination of commitment if there was a firearm restriction ordered.

SECTION 8. 72.01 (42m) of the Supreme Court Rules is amended to read:

(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 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; and 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.

SECTION 9. 72.01 (43) of the Supreme Court Rules is amended to read:

(43) Juvenile court record. A history and index of 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; and 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.

SECTION 10. 72.01 (44) of the Supreme Court Rules is amended to read:

(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; 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; and 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.

SECTION 11. 72.01 (46) of the Supreme Court Rules is amended to read:

(46) Criminal and juvenile delinquency case exhibits, paper, and non-paper. ~~One year after the time for appeal has expired,~~ 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 12. Comment to 72.01 (46) of the Supreme Court Rules is created to read:

COMMENT

"Exhibits," as referenced in SCR 72.01(45) and (46), refers to exhibits that are submitted to the court during a trial or hearing and are marked with an official exhibit sticker. Under this rule, "exhibits" does not refer to documents that are attached to pleadings or other filings submitted to the court. Documents falling into the latter category are retained pursuant to the retention rule applicable to the court record.

SECTION 13. 72.01 (46r) of the Supreme Court Rules is created to read:

(46r) Civil case exhibits for sexually violent person commitments under ch. 980, stats. For the length of time that the underlying case is retained pursuant to this rule.

SECTION 14. 72.01 (58) of the Supreme Court Rules is amended to read:

(58) Oaths of office. Oaths of office required to be filed with the clerk of circuit court by county officials ~~and municipal judges:~~ 7 years after expiration of term.

SECTION 15. 72.01 (60) of the Supreme Court Rules is amended to read:

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

SECTION 16. 72.03 (3) of the Supreme Court Rules is amended to read:

(3) Any record of a court that has been electronically or optically stored and preserved in accordance with SCR 72.05 may be

destroyed in accordance with SCR 72.02(1) and (2) ~~one year after entry of a final order in the action for which the record is maintained or one year after filing for records not specifically related to court actions.~~ 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 17. 72.03 (4) of the Supreme Court Rules is created to read:

(4) Provided that they have been offered to the proffering party, exhibits, as defined in SCR 72.01(45) and (46), of a documentary nature that are electronically or optically stored may be destroyed 180 days after entry of a final order or judgment, unless the time for appeal has been extended under ss. 809.107, 809.30, or 809.32, stats. In the event of an extension, electronically or optically stored exhibits may be destroyed 30 days after the post-termination or post-conviction deadline has expired.

SECTION 18. 72.04 of the Supreme Court Rules is amended to read:

72.04 **Offer of title to ~~historical society~~ State Historical Society of Wisconsin.**

The custodian of the court record, prior to its destruction under this chapter, shall give at least 60 days' notice of such destruction in writing to the ~~historical society~~ State Historical

Society of Wisconsin, which may preserve any records it determines to be of historical interest. Notice is not required for any records for which destruction has previously been approved by the ~~historical society~~ State Historical Society of Wisconsin or in which the ~~historical society~~ State Historical Society of Wisconsin has indicated, by blanket waiver, that it has no interest for historical purposes.

SECTION 19. 72.05 (3) of the Supreme Court Rules is amended to read:

(3) Electronically or optically stored records with historical or research value beyond the retention periods specified in SCR 72.01 shall be protected from destruction or media deterioration and transferred to the ~~state historical society~~ State Historical Society of Wisconsin in a computer-industry-accepted standard universal format, together with technical documentation.

SECTION 20. 801.17 (9) (c) of the statutes is amended to read:

801.17 (9) (c) The clerk of court may maintain the official court record in electronic format or in a combination of electronic and nonelectronic formats. Documents filed by traditional methods shall be electronically scanned and made part of the official record. The clerk of court may discard the paper copy ~~immediately,~~ notwithstanding pursuant to SCR 72.03 (3). If a document submitted by traditional methods is not of sufficient graphical quality to be legible when electronically scanned into the electronic filing system, the clerk shall maintain the document in paper format.

SECTION 21. Comment, 2008, paragraph 6, to 801.17 of the statutes is amended to read:

SCR 72.03 (3) provides that even when the clerk of court has electronically stored a court file, the clerk may not destroy the paper file until ~~one year after entry of a final order in the case.~~ In contrast, ~~the electronic filing rule anticipates that there may not even be a paper file for the case, so the clerk should be allowed to discard the paper copy as soon as it is electronically scanned and the clerk has confirmed that the electronic copy is legible, complete, and properly saved to the file~~ the time specified under SCR 72.03 (3) has expired.

SECTION 22. 807.06 of the statutes is renumbered 807.06 (1):

SECTION 23. 807.06 (2) of the statutes is created to read:

807.06 (2) The clerk of circuit court may electronically scan any paper or pleading, as permitted under SCR 72.05, and may discard the original paper or pleading pursuant to SCR 72.03 (3). If the original is discarded, the electronically scanned document constitutes the official court record.

SECTION 24. 809.15 (1) (b) of the statutes is amended to read:

809.15 (1) (b) The clerk of the ~~trial~~ circuit court may request by letter permission of the court to substitute a photocopy for the actual paper or exhibit filed in the ~~trial~~ circuit court. A photocopy does not include a document that the clerk of the circuit court has electronically scanned into the court record as permitted under SCR 72.05.

SECTION 25. 809.15 (1) (c) of the statutes is created to read:

809.15 (1) (c) For purposes of preparing the record on appeal, if the original record has been discarded as permitted under SCR 72.03 (3), the electronically scanned document constitutes the

official court record. The clerk of circuit court shall assemble a paper record under sub. (2).

IT IS FURTHER ORDERED that the Comment to SCR 72.01 (46) is not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.

IT IS FURTHER ORDERED that the amendments adopted pursuant to this order shall apply to all records maintained by the court system as of the effective date of this order.

IT IS FURTHER ORDERED that notice of these amendments to the Supreme Court Rules and the Wisconsin Statutes be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, by the state bar of Wisconsin, and on the Wisconsin court system's web site.

Dated at Madison, Wisconsin, this 1st day of November, 2012.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

