

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. 20-08

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)

FILED**APR 13, 2021**

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

On December 10, 2020, the Honorable Kevin Martens, on behalf of the Director of State Courts' Records Management Retention Subcommittee (Committee), filed this rule petition, asking the court to amend sections of Supreme Court Rule (SCR) 72.01 and SCR 72.03 to alter certain retention periods for various types of records.

Consistent with standard practice, the court voted to solicit written comments and schedule a public hearing. Letters were sent to interested persons on February 1, 2021. The court received comments from Kathleen A. Brost, President, State Bar of Wisconsin, advising the court that the State Bar Board of Governors voted unanimously to support the petition. The court also received a written comment from Legal Action of Wisconsin, Inc.: Deedee Peterson, Executive Director; Attorney Susan Lund, Employment Priority Coordinator; and Attorney Korey Lundin. Legal Action supports the petition's recommendation to

retain records according to disposition, and requested modifications relating to small claims case file retention rules. The petitioner filed a response to these comments.

The court conducted a public hearing on April 7, 2021, via videoconference. The Honorable Kevin Martens presented the petition to the court on behalf of the Wisconsin Records Management Committee. Attorney Susan Lund and Attorney Korey Lundin, both of Legal Action of Wisconsin provided testimony consistent with Legal Action's written statement.

The court discussed the petition at a closed administrative conference following the public hearing and voted to grant the petition, as drafted. Therefore,

IT IS ORDERED that effective July 1, 2021:

SECTION 1. Supreme Court Rule 72.01 (intro) is amended to read:

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. Supreme Court Rule 72.01(1) is amended to read:

(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. Supreme Court Rule 72.01(8) is amended to read:

(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 4. Supreme Court Rule 72.01(11) (a) and (b) are amended to read:

(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. Supreme Court Rule 72.01(12) (a) and (b) are amended to read:

(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. Supreme Court Rule 72.01(13) (a) and (b) are amended to read:

(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. Supreme Court Rule 72.01(14) is amended to read:

(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.~~

SECTION 8. Supreme Court Rule 72.01(15) is amended to read:

(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, documents retained under this section shall be retained as if the proceeding was disposed as a felony.

SECTION 9. Supreme Court Rule 72.01(16) is amended to read:

(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. Supreme Court Rule 72.01(17) is amended to read:

(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 11. Supreme Court Rule 72.01(17g) is amended to read:

(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 12. Supreme Court Rule 72.01(18) is amended to read:

(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 retained under this section shall be retained as if the proceeding was disposed as a misdemeanor.

SECTION 13. Supreme Court Rule 72.01(19) is amended to read:

(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. Supreme Court Rule 72.01(20) is amended to read:

(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 15. Supreme Court Rule 72.01(20g) is amended to read:

(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 16. Supreme Court Rule 72.01(24) is amended to read:

(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 retained under this section shall be retained as if the proceeding was disposed as a traffic forfeiture, conservation forfeiture, or ordinance violation.

SECTION 17. Supreme Court Rule 72.01(24a) is amended to read:

(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. Supreme Court Rule 72.01(24m) is amended to read:

(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.

SECTION 19. Supreme Court Rule 72.01(26) is amended to read:

(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. Supreme Court Rule 72.01(26m) is amended to read:

(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. Supreme Court Rule 72.01(28) is amended to read:

(28) Records of grand jury proceedings. All ~~papers~~ documents deposited with the clerk of circuit court in proceedings commenced under s. 756.10, ~~1995 stats.~~, or s. 968.40, stats.: 75 years after the date of final proceedings.

SECTION 22. Supreme Court Rule 72.01(29) is amended to read:

(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 23. Supreme Court Rule 72.01(32) (a) and (b) are amended to read:

(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 24. Supreme Court Rule 72.01(33) (a) and (b) are 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 25. Supreme Court Rule 72.01(34) (a) and (b) are 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 318 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 26. Supreme Court Rule 72.01(38) is amended to read:

(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 27. Supreme Court Rule 72.01(42) is amended to read:

(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.

SECTION 28. Supreme Court Rule 72.01(42m) 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~~ 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.

SECTION 29. Supreme Court Rule 72.01(46) is renumbered to Supreme Court Rule 72.01(46) (a) and amended to read:

(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 30. Supreme Court Rule 72.01(46) (b) is created to read:

(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 31. Supreme Court Rule 72.01(46) (c) is created to read:

(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.

SECTION 32. Supreme Court Rule 72.01(47) is amended to read:

(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.

SECTION 33. Supreme Court Rule 72.03(3) is renumbered Supreme Court Rule 72.03(3) (a) and amended to read:

(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 34. Supreme Court Rule 72.03(3) (b) is created to read:

(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 s. 856.03, stats., 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 s. 856.05, stats., 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, stats., may be electronically or optically stored. Such will may be destroyed two years after case closure, provided it is electronically or optically stored.

SECTION 35. Supreme Court Rule 72.03(4) is amended to read:

(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.

IT IS FURTHER ORDERED that notice of the above amendments 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, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 13th day of April, 2021.

BY THE COURT:

Sheila T. Reiff
Clerk of Supreme Court

