

**In re amendment of SCR 72.01
and SCR 70.36,
regarding record retention**

PETITION

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

1) SCR 72.01(46) should be amended to eliminate the conflict between this rule and Wis. Stat. 974.07, which became effective September 1, 2001. Wis. Stat. 974.07 allows a person, any time after being convicted of a crime, adjudicated delinquent, or found not guilty by reason of mental disease or defect, to request DNA testing of any "biological material" collected in connection with the investigation or prosecution of a case. SCR 72.01(46), however, requires the clerk to retain criminal case exhibits for only one year past the time of appeal and makes no distinction as to retaining biological material longer.

SCR 72.01(46) should be amended to reflect the new statutory provision.

SCR 72.01(46a) should be created to read as follows:

SCR 72.01(46a). Criminal case exhibits containing biological material subject to DNA testing under Wis. Stat. 974.07. Any criminal case exhibit

that is deemed to contain “biological material” and that remains in the courts’ custody shall be retained for 50 years after entry of final judgment or until the court otherwise orders the disposition of the evidence under 974.07.

2) SCR 70.36, judges’ and circuit court commissioners’ certification of status of pending cases, should be amended to provide a retention period for these records to make this rule clearer and more complete. These records are kept so that litigants and citizens can verify that judges are disposing of cases in a timely manner. They are also kept to provide investigatory information for the judicial commission.

The Records Management Committee recommends a 10-year retention period to provide a sufficient number of records to show that judges are accurately reporting their cases or to establish any pattern of misconduct. SCR 70.36(2)(a)(3) should be created to read as follows:

70.36(2)(a)(3). Certificates shall be retained by the office of the director of state courts for 10-years from the date they are filed.

Respectfully submitted this ___ day of _____, 2004.

A. John Voelker
Director of State Courts