

Comments and Responses to ACJA Section 3-402: Superior Court Records Retention and Disposition Schedule
Date: Sept. 11, 2014

| ITEM | FROM | COMMENT | RESPONSE |
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| Through-out | AOC Legal Services Office | See attached | |
| Record Series 22 | The Arizona Association of Superior Court Clerks (AASCC), by Virlynn Tinnell, President | <p>The AASCC supports the proposed changes and had participation on the committee that reviewed the provisions of the code. In reviewing the proposal, one scenario that directly impacts the Clerks was identified that the committee did not address, which is described below.</p> <p>The situation arises under "Financial and Miscellaneous Records Held by the Clerk of Court," Record Series #22, "Warrants and subpoenas that are not part of a case file." The proposal recommends a retention period of one year following the date served.</p> <p>The Clerks note that not all issued warrants and subpoenas of this type get served. Intervening events or decisions sometimes cause the requesting individual or agency to decide not to serve the documents and they allow the documents to expire. Some of the records that get issued are returned, but not to the court or jurisdiction of the Clerk where they were issued. Still other served documents do not get returned to the issuing court's Clerk for unknown reasons. In any of the circumstances above, the proposed retention period will never end because the issued documents are either not served or not returned to the issuing court's Clerk. The Clerks believe that the warrants and subpoenas in this record series must be served well within one year from the date of issuance to be valid.</p> <p>The AASCC recommends the retention period be one year following the date issued. In the alternative, the AASCC requests that the retention period be some other specific period of time, also</p> | |

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| | | <p>tied to the date of issuance.</p> <p>For the reasons stated above, the Arizona Association of Superior Court Clerks supports the proposed changes and recommends clarification to Record Series #22, "Warrants and subpoenas that are not part of a case file."</p> | |
| Record Series 40 | Director Pima County Conciliation Court | <ul style="list-style-type: none"> • Conciliation Court Files are working files. The referral information (requests for mediation and/or court orders for services) are all filed in the Superior Court Divorce or Paternity Court File. The final work product is also filed in the Superior Court file. This includes memorandums to the Court regarding Dismissals of Conciliation Petitions, memorandums to the Court indicating if there was a full, partial or no agreement reached in mediation. If a full or partial agreement is reached the original agreement is forwarded to the assigned Judge for review and order. If signed into an order, the order and mediation agreement are filed in the Superior Court file. For child interviews, the summary and digital recording are sent to the assigned Judge. The Judge seals the summary and the disk in the court file and determines to whom the summary will be distributed. For evaluations, the evaluation final report is sent to the assigned Judge, and attorneys or self-represented litigants. The report is also sealed in the Superior Court file. • By statute, Conciliation Court information is private and confidential. • Until 2012, we retained files for 3 years. In 2012 we began retaining files for 5 years in order to comply with a grant requirement. • If Conciliation Court is included in the retention schedule, preference is for 3 or 5 year retention period as determined by each conciliation Court based on their needs, i.e. grant requirements. • On page 36 of the proposed retention schedule, 38c has non-criminal files retained for 5 years from the date of the proceeding. The requirement for Conciliation Courts should not be greater than 5 years as they are non-criminal files. | |

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| | | <ul style="list-style-type: none"> • Anything beyond a 5 year retention requirement would create storage difficulties - both for paper and/or digital storage. When Conciliation Court went from 3 to 5 year retention in 2012, we ran out of room in our file room. We had to increase our purges to twice yearly. We used to be able to keep all of our files in one file room. Currently we need to store files in the file room and several other areas throughout the office. A 10 year retention schedule would create extreme storage difficulties. We have over 2250 case files opened in any given year. If required to keep files for 10 years we would have to keep over 22,500 files. • Requests for archived files for conciliation services including mediation, child interviews and conciliation sessions are extremely rare due to the confidentiality of the services and because the final products become part of the Superior Court file. In the 24 years that I have worked at the Conciliation Court in Pima County I do not believe there has been a request for such records other than 1 time and that request came within 1 year of the service. Some evaluation files have been requested for in camera review by the Judge while a case was ongoing and within a 6-12 month period after the completion of the evaluation. | |
| Record Series 16 | COSC Member, Superior Court Judge | <i>Juvenile Delinquency Case Files</i> should be retained <i>indefinitely</i> instead of “After satisfaction of A.R.S. § 8-349 [application for destruction of juvenile records] or 25 years following the year the case is filed,” since, in capital cases, every record associated with a defendant may be needed to establish mitigating factors. | |
| Record Series 10 | COSC Member, Superior Court Clerk | General Stream Adjudication Case Files need to be retained longer than “25 years from the year the case is filed,” because these cases often go on longer than 25 years. This issue only affects Maricopa and Apache Counties. One suggestion for revised language would be <i>25 years from the date of the final, non-appealable order in the case.</i> | |
| Record Series 18 | COJC Member | Yuma County also receives juvenile cases in the Superior Court | |