

**Records Retention Revision Committee of the Superior Court
MINUTES**

Wednesday, February 19, 2014

10:00 a.m. to 3:00 p.m.

State Courts Building, 1501 West Washington Street, Conf. Rm. 345A, Phoenix, AZ 85007

Present: Sandra Markham (Chair), Terry Bublik, Michael Catlett, Judge Jane Eikleberry, Melanie Fay, Judge Pamela Gates (*telephonically*), Judge Lee Jantzen, Phil Knox, Eric Silverberg, Melanie Sturgeon

Absent/Excused: James Boardman, Judge David Haws, Chad Roche

Staff: Melinda Hardman, Julie Graber, Sabrina Nash

Presenters/Guests: Odette Apodaca (Pinal County Superior Court), Theresa Barrett (AOC), Jerry Lucente-Kirkpatrick (LAPR), Marcus Reinkensmeyer (AOC), Patrick Scott (AOC)

Call to Order/Welcome and Introductions

With a quorum present, the February 19, 2014, meeting of the Records Retention Revision Committee of the Superior Court was called to order by Sandra Markham, chair at 10:04 a.m. Ms. Markham welcomed members and introductions were made around the room.

Committee Rules of Procedure and Proxy Form

Ms. Markham presented the Committee Rules of Procedure and Proxy Form for approval.

Motion: To approve the Committee Rules of Procedure and Proxy Form, as presented.

Action: Approve, **Moved by** Judge Lee Jantzen, **Seconded by** Phil Knox. Motion passed unanimously.

Review of Committee Charge and Scope of Work; Changes Proposed to ACJA § 3-402 by Clerks' Association

Ms. Markham reviewed the committee charge set out in Administrative Order 2014-13, which is to revise the superior court records retention and disposition schedule in the Arizona Code of Judicial Administration (ACJA) § 3-402. The charge arose out of two recent developments: 1) The Arizona Judicial Council (AJC) recently approved policy recommendations from the Advisory Committee to Develop Policies for Retention, Destruction, and Access to Electronic Court Records, requiring destruction of electronic case records on a mandatory and automatic basis, which impacts ACJA § 3-402, and 2) The clerks of superior court submitted to the AOC proposed revisions to ACJA § 3-402.

Ms. Hardman explained that this committee's draft work product will be circulated to AJC standing committees and other stakeholders who might be impacted by potential revisions to ACJA § 3-402. The draft will also be posted to the AOC's website for comment. These efforts are intended to solicit input on the draft and allow this committee to consider adjusting its work product before presenting it to the Arizona Judicial Council at the Council's October 2014 meeting.

Review of CMS functionality with ACJA § 3-402

Since the Superior Court in Maricopa County has a different case management system (CMS), iCIS than the one the thirteen rural counties in Arizona have, AJACS, Ms. Markham offered Maricopa County an opportunity to address the committee with any concerns it may have with potential revisions to ACJA § 3-402. Melanie Fay, the Public Records Administrator for the Maricopa County Clerk of Superior Court, reported that the Superior Court in Maricopa County does not have any concerns with revisions, as iCIS is not impacted by the retention schedule. Ms. Markham noted that she had made this same inquiry of Pima County, prior to this meeting, since Pima County also has a different CMS, AGAVE. Ms. Markham reported that Pima County said they do not have concerns with revisions to ACJA § 3-402, from a CMS perspective, either.

Review of scope and level of detail of existing ACJA § 3-402; Practical aspects of how the superior court in all fifteen Arizona counties works with LAPR; How a *permanent* retention period works

Ms. Hardman introduced Melanie Sturgeon and Jerry Lucente-Kirkpatrick from LAPR. Ms. Sturgeon and Mr. Lucente-Kirkpatrick had both reviewed the existing superior court records retention schedule prior to this meeting. Ms. Sturgeon reported that most superior court clerks follow the schedule and send court records to LAPR as required, but some do not. Mr. Lucente-Kirkpatrick noted that the scope and level of detail in the current schedule is confusing. He suggested that the committee consider simplifying, clarifying, and condensing the schedule. For example:

- Capture a reference once instead of repeating it throughout the document:
 - “as provided by Rule 29”
 - “not authorized for purging”
- Clarify whether a record *must* or *can* be destroyed:
 - replace *may* with *shall* or *shall not*
- Group important information together and feature it up front, or in strategic places, e.g.:
 - retention of transcripts and depositions should be moved up to the beginning of the schedule since these items are part of a case file
 - the criminal records section seems buried and should be easier to find
- Include a more general approach to court records and avoid too many categories and subcategories in the schedule:
 - refer to schedules used for all public bodies as examples
 - describe what is included (and not) for each record type

Member comments and questions on these issues included:

1. The current schedule allows for case files to be purged before transferring the file to LAPR; however, it is more efficient for courts to not take this extra step. LAPR indicated there is no problem for them to accept the files without being purged.
2. There are some court records LAPR does not take, such as demand for notice files. LAPR also does not usually take search warrants unless the warrant is part of a case file.

Discussion of Updates to ACJA § 3-402: Superior Court Records Retention and Disposition Schedule

Ms. Markham proceeded to lead the committee in a review of the proposed revisions to ACJA § 3-402 submitted by the clerks of superior court. Discussion ensued.

A. Definitions:

The schedule refers to *case records* and *case files* interchangeably, but it is important to call them one thing. Members agreed.

C. Retention and Disposition Schedule:

1. COURT CASE FILES:

a. Civil Case Files

- Members agreed to combine all general “Civil” cases into one category and retain them for 50 years.
- Examples of *non-standard* items include:
 - attachments to pleadings that cannot be scanned into the case file
 - CDs, which may include a magnified portion of an Excel spreadsheet
 - DVDs
 - oversized geographical maps
 - recordings on disc
- Since these items are part of a case file, though they may be stored separately from a paper or electronic case file, these items should have the same 50-year retention period.
- Ms. Sturgeon noted that LAPR is concerned about keeping electronic, non-standard items alive. These records are subject to degradation and may need to be upgraded to be readable in the future. The schedule should establish that neither LAPR nor the court have an obligation to migrate these electronic records, since neither has the resources to do so. A filer who files these electronic records does so at his or her own risk.

Family Law Case Files: The clerks of superior court suggested a 50-year retention period (down from the current 75 years).

- A member asked whether there is a need to maintain a distinction between family law cases, *with* and *without* children, and *dismissed* cases. Another member asked whether there is a need to delineate all types of Family Law cases or whether this information can be included in the definition. It would be helpful for Pima and Maricopa Counties to keep the distinction of dismissed cases.
- Ms. Markham noted that Yavapai County does not generally receive requests to review family law case files after 50 years.

Orders of Protection/Injunctions against Harassment Case Files: The current schedule requires that these case files be retained for five years.

- A member suggested that this category could be joined with *civil* cases. Some counties retain these records for 50 years because they are civil cases.

- Some members felt 5 years was insufficient, especially in a criminal context.
- A member asked whether when an order of protection is filed in a family law case, the order of protection is retained according to the family law retention period. Another member asked whether, in this situation, an order of protection should be treated as a family law case or a civil case.
- A member questioned whether there is a statute that directs prosecutors to look back a certain number of years in a criminal case to review prior orders of protection. Ms. Bublik thought *no*, however, she agreed to follow-up on this question and report back to the committee.

Demand for Notice Case Files: Leave as is.

Mental Health Case Files: Leave as is.

Probate Case Files: The clerks of superior court suggested that probate case files be retained 50 years instead of 100 years.

- Members raised some concern that 50 years was not long enough. After first considering a change to the date triggering the retention period, members then decided to split the difference and recommend that these cases be retained for 75 years.
- A member asked what “Probate Vouchers and Receipts” are. Members suggested that this category should be struck as a stand-alone category and moved into Probate case files.
- “Wills filed in accordance with A.R.S. § 14-2901”: Filed wills cannot be destroyed.

General Stream Adjudication:

- “Contents of the case file”: Ms. Sturgeon indicated that these cases are permanent.
- “Office of the Special Master”: Ms. Sturgeon questioned the distinction between permanent retention and 25 years, and proposed that these records be retained permanently.
 - Mr. Knox will talk to the Water Master about whether there is a distinction between the Water Master and a Special Master and will identify the types of cases each handles. He will report his findings at the next meeting.
 - Separate “administrative, financial, and human resource” records categories are not needed if there is a general category in which to place these records.

Transcripts and Depositions: These items should be moved into the definition of “Case File.”

b. Criminal

Capital Felony Cases:

- In practice, these case files are transferred to LAPR when the defendant is executed, so members suggested that the schedule provide that the records be transferred to LAPR once the defendant is executed.

c. Juvenile:

- The recently-completed Advisory Committee to Develop Policies for Retention, Destruction, and Access to Electronic Court Records proposed that juvenile delinquency case files be retained for a set period of 25 years following the year filed, instead of the currently vague period of “following juvenile’s 30th birthday.” Courts do not store juvenile delinquency case files by the juvenile’s age, and a time-certain date for destruction is needed. Members agreed.
- Ms. Sturgeon expressed an interest in having pre-1959 juvenile delinquency case files transferred to LAPR as permanent records, instead of permitting clerks of court to retain them locally. These case files provide great historical value for research purposes. But, unlike adoption case files, statute does not close juvenile delinquency case files. If juvenile delinquency case files are transferred to LAPR, the files are open, and it is not within this committee’s authority to recommend they be closed. However, juvenile delinquency case files retained at the local level are also open.
- Perhaps all types of juvenile case files should be combined into one category with a 100-year retention period.
- No changes were suggested for the “Juvenile traffic and other violations” records category. This category is used only by Santa Cruz County.
- The “Juvenile case exhibits” category should be included with a general “Exhibits” section. Exhibits for all case types should be treated similarly.
- “Juvenile case transcripts” could be relocated to the “Official Court Record” section for all case types. Juvenile case depositions are part of the case file.

d. Lower Court Appeals:

- Members questioned why “Remanded case transfer index” has a separate 5-year retention period. Ms. Fay will do some research and report her findings at the next meeting.
- Ms. Sturgeon inquired whether sealed documents must remain sealed, forever, once a file is transferred to LAPR. A member noted that the sealing of a document is based on the judge’s judgment and discretion. The judge intends a document to be sealed for a specific reason, and the document is to remain sealed unless the court issues another order, unsealing the document.

e. Grand Jury Records:

- Members proposed to eliminate “(3) Grand Jury Records Court Reporter Notes.” This provision is redundant here and should be reflected only in the “Official Court Record” section.
- Members felt there was no need for “(4) No true bill/admonitions/readings/dismissed/miscellaneous documents” because counties do not retain any records in this situation.

f. Miscellaneous Filings:

- “Administrative Orders” should be moved to the “Court Administration” section.
- The clerks of superior court proposed a separate “Administrative Reviews” category. Unlike other miscellaneous filings, Administrative Reviews are filed separate from any case and should be destroyed after the reference value is served.
- “Landmark Cases” and “Historically Significant Cases” are not case categories, so these categories should be removed from the chart. Landmark cases and historically significant cases are transferred to LAPR based on the underlying case type.

2. OFFICIAL COURT RECORD:

- A member questioned whether the required time to transcribe court reporter notes for a criminal defendant tried in absentia should be extended. The current requirement is burdensome to counties. It might be beneficial to wait to *transcribe* the notes until the *end* of the retention period for the notes, themselves. Although the current language does not say that transcription should be done *immediately*, in practicality, judges ask for the transcription right away.
- A member suggested that the question of “what should be transcribed for an appeal” be referred to the Committee on Superior Court to see if the question could be resolved by revisions to Rule 31, Rules of Criminal Procedure. This question goes beyond the scope of this committee.
- A member questioned whether, in capital cases, a category and retention period for court reporters’ notes is needed when the transcript is considered a permanent record.
- A member questioned why juvenile and non-criminal court reporters’ notes and recordings are separate in the current schedule. Perhaps these notes should be retained for five years.
- A member questioned whether there are statutory requirements regarding how long court reporters’ notes are to be retained for juvenile cases. Ms. Bublik will check on this issue and report back at the next meeting.

3. EXHIBITS:

- Juvenile exhibits should be moved to this section.

4. RECORDS CREATED OR RECEIVED BY THE CLERKS’ OFFICE:

- Dockets and registers of actions must be kept permanently. Ms. Sturgeon noted the importance of these records, which she uses frequently. LAPR asks courts to provide them an index of a court case or a print-out from the CMS when the case is transferred to LAPR.
 - Ms. Fay will research nursing subpoenas and return to the next meeting with more information.
 - A category should be added for “Special Appointment Applications.” These should be kept for two years from the date of issuance.

5. COURT FINANCIAL RECORDS:

This information should be condensed and should mirror the code for Minimum Accounting Standards (MAS).

6. COURT ADMINISTRATION:

The clerks of superior court proposed adding “Administrative Orders” under court administration records, with a ten-year retention period. Mr. Knox will obtain the source of authority for the ten-year retention period.

- Members agreed that court administrators, not the clerk of superior court, should inform presiding judges about the goal of transferring former Chief Presiding Judges’ business papers to LAPR.

7. ADMINISTRATIVE RECORDS:

Members agreed on the current five-year retention period. Statistical records should be defined as those that are currently required by the AOC.

8. JURY COMMISSIONER RECORDS:

Answered juror questionnaires are often retained more than 90 days, because it takes longer than ninety days for a two-step court to work through a juror-notification cycle. Also, Ms. Hardman noted that juror questionnaires answered online are currently stored at the AOC but cannot be retained indefinitely. She suggested that members consider a one-year retention period for these records.

10. HUMAN RESOURCE RECORDS:

Ms. Sturgeon suggested that the committee look at the human resource schedules for other agencies so the courts can condense existing information and mirror the other schedules. She will follow-up on this.

12. ADULT PROBATION RECORDS /13. JUVENILE PROBATION RECORDS:

These categories should be discussed with the Committee on Probation for their input.

E. Transfer of Records to Arizona State Library, Archives, & Public Records:

Add “and exhibits” (Transfer of Records *and Exhibits*). Ms. Sturgeon advised that LAPR does not accept 3-dimensional items, such as bullets, drugs, or artifacts. She will bring suggested language on this topic to the next meeting.

F. Historically Significant and Landmark Cases:

Ms. Markham asked the following questions:

1. What should the retention period be for high profile cases? What are the obligations of the clerk of court once these cases are posted online? Ms. Hardman will review this issue and bring her findings back to the committee.
2. What should be the retention period for online minute entries? The retention schedule for paper case records must mirror the retention schedule for electronic case records.

Discussion of Future Meeting Dates

The proposed future meeting dates were agreed to by members. The first five meetings of this committee will be used to develop a work product, and the last meeting will be used to incorporate public comments after the work product has been circulated.

Next Meeting Date

April 4, 2014, 10:00 a.m. to 3:00 p.m.
Arizona State Courts Building, Conference Room 345A/B

Good of the Order/Call to the Public

Marcus Reinkensmeyer thanked committee members for their participation in this committee.

Adjourned at 1:54 p.m.