

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

Friday, April 4, 2014

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

State Courts Building, 1501 W. Washington, Conf. Rm. 345A/B, Phoenix, AZ 85007

Present: Sandra Markham (Chair), James Boardman, Terri Bublik, Melanie Fay, Judge Pamela Gates, Judge Lee Jantzen, Phil Knox, Chad Roche, Eric Silverberg, Melanie Sturgeon

Absent/Excused: Michael Catlett, Judge Jane Eikleberry, Judge David Haws

Staff: Melinda Hardman, Sabrina Nash

Presenters/Guests: Kay Radwanski (AOC)

Call to Order/Welcome and Introductions

With a quorum present, the April 4, 2014, meeting of the Records Retention Revision Committee of the Superior Court was called to order by Sandra Markham, chair at 10:07 a.m. Ms. Markham welcomed members and introduced Judge Pamela Gates and attorney James Boardman since Judge Gates appeared telephonically for the first meeting and Mr. Boardman was unable to attend the first meeting.

Approval of Minutes

Ms. Markham presented the Minutes of the February 19, 2014, Records Retention Revision Committee meeting for approval.

Motion: To approve the February 19, 2014, meeting minutes, as amended by Melanie Sturgeon to clarify that her question was whether sealed records sent to LAPR must remain sealed “forever.” **Action:** Approve, **Moved by** Phil Knox **Seconded by** Eric Silverberg. Motion passed unanimously.

Review the Purpose of Courts – Records Graphic Discussion

Ms. Hardman presented a graphic she created to help identify court records stakeholders. The graphic should help remind members of the statewide role that records retention and disposition plays. Ms. Hardman also noted that the Arizona Court Manager training program teaches the Eight Purposes of Courts, one of which is “to provide a formal record of legal status.” She suggested that court records stakeholders in Arizona include:

- Clerk of the Superior Court – responsible for case files, miscellaneous filings, and jury commissioner records in the 13 rural counties
- State Library, Archives, and Public Records – responsible for collecting, preserving, and making available the permanent records of the state
- Prosecutors – need court records to prove priors offenses
- Court Administration – responsible for presiding judge papers, finance, and human resource records
- Public – parties, attorneys, creditors, title examiners, the media, etc. rely on court records to document legal status
- Probation – an element of the court system

Some members suggested that the probation records sections of the general jurisdiction court records retention and disposition schedule (GJC RR&DS) should be moved to those Arizona Code of Judicial Administration (ACJA) sections that govern probation issues. Ms. Hardman agreed to ask AOC management about this request.

Review the Initial Draft Modifications to ACJA § 3-402: Superior Courts Records Retention and Disposition Schedule

Ms. Hardman explained that in drafting the committee's proposed revisions from the last meeting, she first completely struck through the old code section, since the revisions require an entirely new records schedule. She then reviewed the new Definitions section of the schedule. Next, she reviewed the General Provisions section, setting out the purpose and use of the schedule to users. Ms. Hardman explained that in general, the schedule is being simplified for clerks and records managers to more easily and accurately identify records that are ready for destruction. By doing so, clerks and records managers can act with authority in disposing of records under the schedule. Another change to the schedule is clarification that there is an established period of retention of records with the court, after which the records must be sent to the State Library, Archives, and Public Records (LAPR) for *permanent* retention. Ms. Hardman next explained that she has arranged the schedule by the holder of the record, such as the Clerk of the Court or Court Administration, so the holder will know which sections of the schedule applies to them.

Continuing Discussion by the Committee of Updates to ACJA § 3-402

A. Definitions

- Members agreed that *case financials* should be included in the definition of *case file*.
- A member suggested that a definition of *case data* should be added to the schedule, since the term is used in the General Provisions section of the schedule.
- A member asked whether a definition is needed for the terms *non-standard items* and *criminal history*. Ms. Hardman explained that the concept of *non-standard items* is included within the definition of the term *case file*. A specific definition of the term *non-standard items* will not be included in the schedule, because the term is not used, statewide. Members then discussed that in most counties, a criminal history report is either filed in the case file and sealed, or it is retained by the probation department. Therefore, the court has already developed a method for handling criminal history reports, and a separate definition or specific direction on how to handle, or how long to keep, these reports is not needed.
- A member stated that the custodian of court records is the Clerk of the Court, and, therefore, the definition of the term *records custodian* should not exclude the Clerk of the Court. Ms. Hardman explained that in drafting the revised schedule she sought to distinguish between the holder of the record to distinguish between those court records held by the clerk and those court records held by court administration. After much discussion, Judge Gates made a motion to change the term *records custodian* to *records manager* and to modify the definition as follows...means the person or persons responsible for keeping and disposing of any records held by the superior court or any

department of the superior court, other than the records held by the clerk of the superior court. Mr. Knox seconded the motion. Motion carries.

Judge Gates also made a motion that unless otherwise addressed by this committee on a specific incident by incident basis all occurrences of the term *records custodian* shall be replaced with the phrase the *clerk and records manager*. Mr. Roche seconded the motion. Motion carries.

B. General Provisions

- Sealed Files – Ms. Markham, reported that the Clerks Association is considering approaching the AOC to ask for a definition of the words *sealed*, *restricted* and *confidential*. These words are not used consistently by courts. Dr. Sturgeon reiterated that LAPR would like to have a period of time after which sealed documents or files can be unsealed by LAPR. Members noted that the concept of unsealing after a period of time is outside the scope of this committee; however, it will be added to a *Parking Lot* list of issues that need further attention by others.
- Completeness of Schedule – Judge Gates made a motion to streamline paragraph 8 of the draft schedule by keeping the first sentence and amending the second sentence, as follows: this schedule is intended to cover all superior court records. A records custodian should use his or her best judgment to place a record within a category that is already identified in this schedule, where the record best fits. Judge Jantzen seconded the motion. Motion carries.
- Destruction – A member asked whether AOC-designed technology is capable of deleting electronic images of case documents from all places in which they reside, including servers and hard drives, as paragraph 10 of the draft schedule requires. Ms. Markham responded that the capability is there and that the AJC approved the Electronic Records Retention and Destruction Committee’s proposal of providing two years to implement this policy.

Case Files Held by the Clerk of the Court

- A member asked for clarification on the phrase that “Clerks *may* transfer” certain case files to LAPR any time after 50 years. This phrase appears to be discretionary. Dr. Sturgeon explained that when the retention schedule was last updated, the Clerks of Court wanted to retain case files created before 1960, locally. The Clerks of Court did not want to send these case files to LAPR. So, LAPR agreed to allow the Clerks of Court the option of retaining these records locally or turning them over to LAPR. However, the Clerks of Court must transfer to LAPR, for preservation, archiving, and access, all records created after 1959.
- Dr. Sturgeon asked that the phrase “after 50 years, transfer to LAPR” be added to the Remarks field of the schedule, after each category of cases filed on or after January 1, 1960, to make this distinction more clear.
- Dr. Sturgeon indicated that she would like to see juvenile delinquency case files transferred to LAPR for historical research, after a period of 25 years with the court; however, she recognizes that this position might result in harm to the individual who is

the subject of the case file. Dr. Sturgeon suggested that LAPR could follow the same procedure with juvenile delinquency case files as with adoption case files, and make juvenile delinquency case files available to the public only after 100 years. However, a member noted that the 100-year period for which adoption files are closed is based on statute, and, such a proposal is beyond the scope of this committee for juvenile delinquency case files, since it would require a new statute. There is no similar statute for juvenile delinquency files. Judge Gates made a motion that the “Full Retention Period at LAPR” for juvenile delinquency case files be designated as *N/A*, instead of *Permanent*. Mr. Knox seconded the motion. Motion carries.

- Ms. Markham stated that the Clerks of Court recommend that Injunctions against Harassment and Injunctions against Workplace Harassment be removed from the Orders of Protection case file category. Ms. Kay Radwanski, AOC, explained the difference between Injunctions against Harassment, Injunctions against Workplace Harassment and Orders of Protection. Ms. Radwanski agreed that Injunctions against Harassment and Injunctions against Workplace Harassment could be separated from Orders of Protection in the schedule. Judge Gates made a motion to strike Injunctions against Harassment and Injunctions against Workplace Harassment from this category and to set the retention period for Orders of Protection at 50 years and not identify them as permanent records. In effect this places Injunctions against Harassment and Injunctions against Workplace Harassment in the civil case file category, with a 50 year retention period with the court and a permanent retention period with LAPR. Judge Jantzen seconded the Motion. Motion carried.
- Ms. Hardman questioned whether the retention period for criminal capital felony case files should be tied to the death of the defendant. Specifically, she asked whether a court is likely to receive notice when a defendant in such a case has died. The Clerks of Court responded that they *would* receive notice of the defendant’s death.

Miscellaneous Records Held by the Clerk of Court

- Wills – A member explained that the Arizona State Bar is also currently questioning how long wills should be retained, because the Arizona State Bar takes over the files of deceased attorneys. Many of these files contain wills that were deposited with the attorney for safekeeping. The Arizona State Bar Association’s Probate and Trust Section believes these wills should be held permanently. Alternatively, former A.R.S. § 14-2901, as added by Laws 1973, Ch. 75, § 4, which authorized a testator to deposit his or her will with a court for safekeeping, was repealed by Laws 1984, Ch. 368, § 6. A member noted that since the minimum age to prepare a will is 18, an additional 75 years will encompass a typical life span. Judge Jantzen made a motion that wills deposited with a court for safekeeping be retained for 75 years. Motion was seconded by Mr. Knox. Motion carries.
- Criminal or Civil Cash Bonds – Ms. Markham asked members whether there was a need to identify this category of records in the schedule. The consensus of the committee was *no*. This category will be removed.
- Fingerprint Cards – Ms. Markham asked members whether there was a need to identify this category of records in the schedule. The consensus of the committee was *no*. This category will be removed.

- Marriage Affidavits – Judge Gates made a motion to retain marriage affidavits with the court, permanently. Motion was seconded by Mr. Roche. Motion carries.
- Marriage Certificates or Licenses – Judge Gates made a motion to retain marriage certificates and licenses with the court, permanently. Motion was seconded by Mr. Roche. Motion carries.
- Process Server Investigation Case – Members noted that a process server license is granted by the supreme court; however, a complaint against a process server is filed with the Clerk of Court and heard by the presiding judge. The current 4-year retention period with the court is adequate for these records.
- Public Officials Financial Disclosure Statement - Ms. Hardman asked members whether public officials financial disclosure statements are actually filed in the clerk’s office. Members responded that these disclosure statements are filed with either the Secretary of State, the Board of Supervisors, or the Clerk of Court. Members asked Ms. Hardman to check with the Secretary of State’s Office to identify the retention period for financial statements filed under A.R.S. § 38-542 with that office.
- Special Appointment Applications – Ms. Melanie Fay agreed to look into identification of these filings and report back to the committee.

Miscellaneous Records Held by Either the Clerk of Court or Court Administration

- The Verbal Record, Including Court Reporter Notes and Electronic Recordings of a Court Proceeding, Hearing or Trial for criminal non capital cases – Judge Gates made a motion to retain these records with the court for 10 years from the date of sentencing, however when a defendant is tried in absentia or fails to appear for sentencing, the record of the proceeding must be transcribed. Mr. Knox seconded the motion. Motion carries with 1 nay.
- The criminal capital case verbatim record is to be retained with the court for 50 years from the date of *sentencing*.
- The criminal, non-criminal case verbatim record is to be retained with the court for 5 years from the date of the proceeding.
- The juvenile case verbatim record is to be retained with the court for 10 years from the date of the proceeding.
- The consensus of the committee is that the underlying court reporter notes must be retained even after a transcript is prepared.

Court Administration Records

- Visiting Judge Schedule and Contact Information – A motion was made by Mr. Silverberg to strike this category from the retention schedule. Motion seconded by Melanie Fay. Motion carries.
- Court Visitor Schedule and Contact Information – A motion was made by Judge Jantzen to strike this category from the retention schedule. Motion seconded by Mr. Silverberg. Motion carries.
- Former Chief Presiding Judge Business Papers – Some courts may not have a court administrator to work with the presiding judge to determine whether the presiding judge

wishes to send his or her business papers to LAPR, so this situation needs to be accommodated by the language in the schedule.

Records Held by the Jury Commissioner

Ms. Markham asked the committee for consensus to table the jury commissioner records section until after the May 2 statewide jury conference call so that Ms. Markham and Ms. Hardman can discuss these records with the jury commissioners.

Additional Discussion

Mr. Knox reported on his conversation with George Shaw, the current Water Master, regarding General Stream Adjudication records. Mr. Knox stated that Mr. Shaw did not request any changes to the retention schedule for Water Master records.

Mr. Knox also updated the committee on lower court appeal records. He has spoken to Judge McClennen, the lower court appeals judge for Maricopa County. Judge McClennen suggested adding clarification to the schedule for cases that are remanded to the originating court. Ms. Hardman explained that she has proposed the lower court appeals provisions should provide the clarification that Judge McClennen is suggesting, because the new revisions to the retention schedule will collapse six sections into one.

Next Meeting Date

May 16, 2014, 10:00 a.m. to 3:00 p.m.
Arizona State Courts Building, Conference Room 119

Good of the Order/Call to the Public

Adjourned at 2:01 p.m.