

IN THE SUPREME COURT OF THE STATE OF KANSAS

GENERAL AND ADMINISTRATIVE

RULE 108

REPRODUCTION AND DISPOSITION OF COURT RECORDS

FILED

SEP 03 2015

HEATHER L. SMITH
CLERK OF APPELLATE COURTS

Rule 108 is hereby amended, effective October 1, 2015.

- (a) **Generally.** This rule governs the retention, reproduction, disposition, and destruction of court records. The following general rules apply:
- (1) **“Court Records” Include.** As used in this rule, “court records” include all original court records, documents, and filings, including electronic transmissions.
 - (2) **Reproduction Preferred.** Unless reproduced, disposed of, or destroyed under this rule, court records must be retained. Reproduction is preferred to retaining the originals.
 - (3) **Retention and Disposition File.** The clerk of the district court in the county in which court records are located must maintain a permanent file containing all correspondence, orders, and other records regarding reproduction, disposal, and destruction of records and notification under subsection (c).
- (b) **Reproduction of Court Records.**
- (1) **Chief Judge’s Authority.** Under K.S.A. 20-357 and 20-159, the chief judge may:
 - (A) provide for reproduction of all court records in the judicial district;
 - (B) acquire appropriate files, containers, or storage systems to store and preserve the reproductions; and
 - (C) provide for equipment to convert the reproductions to usable form.
 - (2) **Indexing and Storing Reproduced Records.** All records reproduced under this rule must be indexed and stored for convenient retrieval and copying.
 - (3) **Guidelines.** The judicial administrator must provide guidelines to ensure:
 - (A) retrieval and reproduction of court records meet acceptable standards; and

- (B) reproduced records are stored and preserved in compliance with K.S.A. 20-159.
- (4) **Reproductions Considered Originals.** When court records are reproduced under this rule, the reproductions are considered original records under K.S.A. 60-465a.
- (c) **Destruction or Disposal of Court Records.**
- (1) **Court Records May Not Be Destroyed Until Case is Closed.** Original court records that have not been reproduced and are being used for active legal proceedings must not be destroyed until the case is closed.
- (A) In a criminal case, “closed” means:
- (i) the case has been terminated, and all appeals have been terminated or the time to appeal has expired; and
 - (ii) any sentence imposed upon conviction has expired or been satisfied and the defendant has been discharged.
- (B) In an action or proceeding other than a criminal case, “closed” means:
- (i) an order terminating the action or proceeding has been filed and all appeals have been terminated, or the time to appeal has expired; and
 - (ii) if a judgment was entered, the judgment is either satisfied or barred under K.S.A. 60-2403.
- (2) **Notification to Historical Societies.** The clerk of the district court must notify the Kansas State Historical Society and county historical societies of the county in which the court is located before disposition or destruction of any court records except records the State Historical Society has exempted from notification. An exemption must be approved by the judicial administrator. Unless the State Historical Society or a county historical society files with the clerk an objection in writing not later than 30 days after the notice is served, the court may proceed with disposition or destruction. If a county historical society objects in writing to disposition or destruction of a record, the objection is considered a permanent refusal to consent to disposition or destruction of all court records of the same type unless the refusal is changed in writing by the society. The State Historical Society has priority over a county historical society if both societies want possession of a record.
- (3) **Destruction After Reproduction.** Unless otherwise provided in this rule – after reproduction and, if required, notification under paragraph (2) – the chief judge may, by written order, authorize the destruction of appearance dockets, journals, minute record books, original case files, including any trial or hearing transcripts, and trial dockets in all categories of cases. Any trial or hearing transcript not reproduced must be retained under subsection (e)(6).

(4) **Method of Destruction.** The chief judge may order court records be destroyed by supervised shredding, burning, or other method. Electronic or tape-recorded records may be destroyed by employing magnetic or electromagnetic fields. Tapes or films from which all records have been erased may be reused.

(d) **Court Records That May Not Be Destroyed Until Reproduced.** The following court records must be retained until reproduced:

- (1) Chapter 59 (Probate except Care and Treatment and Wills on Deposit);
- (2) Chapter 60 (Civil);
- (3) Chapter 23 (Family Law Code);
- (4) General Index (Civil and Probate) kept pursuant to statute;
- (5) Chapter 38, Article 22 (formerly Article 15), Termination of Parental Rights (Child in Need of Care);
- (6) Driving Under the Influence (K.S.A. 8-1567);
- (7) Criminal investigation records, including presentence investigation reports — described in K.S.A. 21-6704 (formerly 21-4605), K.S.A. 21-6813 (formerly 21-4714), and K.S.A. 45-221;
- (8) Expunged criminal records — subject to K.S.A. 21-6614 (formerly 21-4619);
- (9) Uniform marriage license application prescribed by the judicial administrator under Rule 106(d); and
- (10) Returned marriage license (K.S.A. 23-2514).

(e) **Court Records That May Be Destroyed Without Reproduction.** Reproduction is preferred to retention of original court records. But court records listed in this subsection may be destroyed without reproduction, after notice if notice is required under subsection (c)(2). The periods of time stated are the minimum number of years the original records must be retained, if not reproduced.

- (1) **Civil.** The following categories of civil court records must be retained for:
 - (A) Chapter 61 (Limited Actions and Small Claims) – 10 years after the date of filing.
 - (B) Chapter 38, Child in Need of Care official and social files – 100 years after the date of filing.

- (C) Fish and Game, Watercraft – 5 years after the date of filing.
 - (D) Mechanics' Liens – the later of 2 years after filing of the lien or upon maturity of an attached promissory note.
 - (E) Chapter 59, Article 29 (Care and Treatment) – 80 years after the date of filing.
 - (F) ~~Marriage License Applications—1 year after the date of the filing.~~
Confidential cover sheet for the uniform marriage license application prescribed by the judicial administrator under Rule 106(d) – upon issuance of the marriage license or 1 year from the date of submission of the application, whichever occurs first.
- (2) **Criminal.** The following categories of criminal court records must be retained for, at minimum, the stated number of years before disposal or destruction, if not reproduced: Adult criminal, juvenile offender, felony, and misdemeanor criminal records and criminal appeals filed with a district court from a municipal court – 100 years after the date of filing.
- (3) **Traffic and Chapter 8 Violations.** The following categories of traffic and Chapter 8 violation court records must be retained for, at minimum, the stated number of years before disposal or destruction, if not reproduced:
- (A) DUIs K.S.A. 8-1567, Reckless Driving K.S.A. 8-1566, Driving on a Suspended License K.S.A. 8-262(a), No Driver's License K.S.A. 8-235; Failure to Stop at an Injury Accident K.S.A. 8-1602, Eluding a Police Officer K.S.A. 8-1568, Transporting an Open Container K.S.A. 8-1599 and all previous cites, and Habitual Violator K.S.A. 8-286 – 50 years after the date of filing.
 - (B) All other traffic violations – 5 years after the date of filing.
- (4) **Wills on Deposit.** Sealed wills on deposit under former K.S.A. 59-620 must be maintained for 75 years after the year of deposit. All sealed wills on deposit for 75 years or longer must be destroyed under subsection (c)(4). The formerly required will index must be maintained to include the date of destruction in compliance with subsection (a)(3).
- (5) **Records of Special or Limited Jurisdiction Courts Prior to 1977.** The chief judge may, by written order, authorize destruction of all categories of cases transferred to the district court under K.S.A. 20-335(a)(1), (2), (3), (4), and (5) from courts of special or limited jurisdiction prior to 1977.
- (6) **Court Reporters' Notes.** The chief judge may by order authorize the destruction or other disposition under subsection (c)(4) of all mechanical or electronic recordings of proceedings, including court reporters' notes, electronic tapes, video tapes, and computer disks, as follows:

- (A) **Civil.** Chapter 38 (except Article 23 [formerly Article 16], Juvenile Offenders); Chapter 59, Article 21 (Adoptions); Chapter 23 (Divorce and Maintenance) – 25 years after the record is taken.
 - (B) **Other Civil** – the later of 5 years after the case is closed or 20 years after the record is taken.
 - (C) **Criminal and Juvenile Offender** – 100 years after the record is taken.
- (7) **Depositions.** The chief judge may authorize the withdrawal, disposition, or destruction of a deposition in the court’s custody as follows:
- (A) Counsel of record may withdraw a deposition when the case is closed upon giving a receipt to the court.
 - (B) A deposition may be destroyed by written order of the chief judge under subsection (c)(4) – 60 days after the case is closed and notification to counsel of record.
 - (C) In a closed case, a deposition filed prior to July 1, 1987, may be destroyed by written order of the chief judge under subsection (c)(4) – after notification under subsection (c)(2).
 - (D) A deposition filed with the court:
 - (i) must remain sealed and confidential unless opened as allowed by the court; and
 - (ii) must, if opened, be considered an open record associated with the case unless otherwise prohibited by statute or court rule.
 - (E) In this subparagraph, “deposition” includes depositions taken by video, teleconference, videotape, or other electronic means pursuant to statute or court rule.
- (8) **Exhibits.** An exhibit in the court’s custody may be withdrawn, disposed of, or destroyed as follows:
- (A) The court – on its own or on motion of a party, counsel, or other interested entity – may order that an exhibit introduced in a case may be withdrawn. An exhibit withdrawn must be made available for trial or appeal.
 - (i) **Civil Exhibits.** An exhibit not withdrawn within 60 days after the judgment becomes final, if no appeal is taken, or within 60 days after all appeals of the judgment terminate, is considered unclaimed and subject to disposition or destruction.

(ii) **Criminal Exhibits.** An exhibit not withdrawn within 60 days after completion of a sentence – including probation, parole, and post-release supervision – and full discharge of the defendant is considered unclaimed and subject to disposition or destruction. An exhibit may be disposed of or destroyed prior to sentence completion and discharge of the defendant only by order of the chief judge with 30 days prior notice to all interested parties. If no interested party responds 30 days after the notice, the court may proceed with disposition or destruction of the exhibit.

- (B) When the chief judge determines an unclaimed exhibit has value, it may be retained and used as county property, or be sold at public auction with the net proceeds paid to the state treasurer under K.S.A. 20-2801, 21-6307, 22-2512, or other applicable statute.
- (C) When the chief judge determines an unclaimed exhibit has no value, it may be disposed of or destroyed in the manner the chief judge orders.

(9) **Court Accounting Records.**

- (A) The court's accounting records may be destroyed only on the chief judge's written order.
- (B) Criminal, juvenile, and all other case ledger reports may be destroyed without notice 100 years after the date the case was filed.
- (C) Bank statements, daily reports, and monthly reports may be destroyed without notice 5 years after the statements and reports have been audited and approved.
- (D) Receipts, canceled checks, check stubs, and deposit slips may be destroyed at any time.
- (E) Computerized accounting records not purged from the computer system must be preserved by computer backups.
- (F) An accounting record not listed in subparagraphs (B), (C), (D), or (E) may be destroyed as follows:
- (i) if not reproduced – without notice 5 years after they have been audited and approved.
 - (ii) if reproduced – without notice after they have been audited and approved.
- (G) Fax transmission sheets containing debit or credit information must be kept for a minimum of one year after audit.

- (10) **Miscellaneous.** All other miscellaneous court records may be withdrawn, disposed of, or destroyed in compliance with guidelines established by the judicial administrator. If no guidelines have been established for a particular court record, the chief judge must comply with subsection (c)(2) and (4).

BY ORDER OF THE COURT this 3 day of September 2015.

A handwritten signature in black ink, appearing to read 'Lawton R. Nuss', written over a horizontal line.

Lawton R. Nuss
Chief Justice