

District Court Records: Questions and Answers

➤ General Authority for Disposal

Q1: Why are there three schedules instead of one?

A: Many courts expressed a desire for a court-specific schedule.

Q2: When do we have to start using the new schedules?

A: If your court is going to dispose of any records, the new schedule relevant to your court must be used.

Q3: Is General Schedule #13 effective now? Is it retroactive?

A: General Schedule #13 was effective when it was approved by the State Administrative Board on 8/1/17. It applies to all district court records.

Q4: Is each district court formally required to adopt the General Schedule? Can the court use General Schedule #13 without adopting it? Or can the court customize its own schedule?

A: General Schedule #13 is the approved records retention and disposal schedule for all district courts. MCL 399.811 and MCL 750.491 require that all public records be listed on an approved retention and disposal schedule that identifies the amount of time that records must be kept to satisfy administrative, legal, fiscal, and historical needs.

Courts are not permitted to destroy any court record that has not been identified on a schedule approved by the Archives of Michigan and the State Administrative Board. MCL 399.811. Any record not contained on this list or not having a statutory retention period cannot be disposed of without first securing an amendment to this schedule.

MCL 600.1428 states that “[t]he state court administrative office shall establish and maintain records management policies and procedures for the courts, including a records retention and disposal schedule, in accordance with supreme court rules.” The records retention and disposal schedule shall be developed and maintained as prescribed in MCL 399.811.

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➤ **Determining Eligibility for Disposal**

Q1: Define “date of disposition.”

A: Disposition means that the case has been adjudicated or otherwise disposed as defined in caseload instructions. Although disposition may be a trigger for a retention period, that is not necessarily the only criteria for destroying a court record. For example, in a criminal case the matter may have been disposed but the case is in warrant status. That case is ineligible for destruction.

Q2: For civil cases, why is retention based on date of filing and not judgment? What happens if a judgment takes more than a year and the judgment is valid for 10 years?

A: The retention period is based on date of filing for ease of disposal because courts maintain files by filing dates, not judgment dates. Because of the change from judgment to filing date, the retention period was extended four years to accommodate situations where disposition may take more than one year from filing. The previous retention period was 6 years from judgment date, which would normally be 7 to 8 years after the filing date. Regardless of the retention period, a case file could be destroyed before the judgment is satisfied. However, the case history data, which contains all the information necessary to validate a judgment, is maintained for 100 years. Therefore, the case file does not need to be maintained longer.

Q3: Why does the schedule use disposition date for criminal cases rather than closure date? A closure seems much more uniform.

A: The trigger for the retention period on the previous records retention and disposal schedules was the date of the latest dispositive order, which could have been a reference to either the most recent order entered in the case or the latest disposition of the case. Because of this lack of clarity and the inconsistent interpretation by courts, the trigger was changed to the disposition of the case as defined by caseload, which means the case has either been adjudicated or otherwise disposed.

The term “closure date” or “closed date” is not a standard term used in district courts and would also require all district court clerks to enter closed dates on criminal cases – something that is not currently done. While some courts enter a “closed code” for purposes of caseload reporting, that does not mean the case is closed. This “closed code” is only a method used by some case management systems to count the “disposition” of the case for caseload, but the case may open for several more years (e.g., probation, collection activity, etc.). A

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closure date would require courts to monitor criminal cases for some event that constitutes closure and that has not been defined.

Q4: How long does a court retain a file if there is an Order for Administrative Stay for Bankruptcy? Before judgment? After judgment?

A: A case is stayed for bankruptcy no longer than it takes to discharge the bankruptcy. Chapter 7 and 11 bankruptcy cases take less than a year for discharge, and Chapter 13 bankruptcy cases cannot be approved by the bankruptcy court if they are scheduled to take longer than five years.

If a trial court case is pending disposition when the bankruptcy is filed, it is unlikely that the trial court case will still be without disposition five years after the bankruptcy stay is lifted. It is just as unlikely that a district court case would be pending for five years before it went into bankruptcy. However, if there were such a situation, the court would not destroy the file of an unadjudicated case, regardless of the retention period. If a trial court case has already been adjudicated (has a judgment), the filing of the bankruptcy case does not affect the retention period for the case because postjudgment filings and activity can take place based on the case history, without the case file.

Q5: Can a criminal case in warrant status be destroyed if there is a disposition (i.e., plea or conviction)?

A: If a criminal case is in warrant status at any time, the file is not eligible for disposal (transfer to Archives or destruction) even if the case has been adjudicated (a disposition has been entered). This includes prejudgment and postjudgment warrants.

Q6: If a criminal case has a balance due and owing and does not have a probation order in effect or is not in warrant status, can the file be destroyed?

A: If the case history contains the information required to enforce collection, the court can destroy a criminal case file when it is eligible for destruction even if there are outstanding court-ordered financial obligations.

Q7: Are small claims cases and summary proceedings (landlord-tenant and land contract) cases included in the 10-year retention period for civil cases?

A: Yes. See Record Series 13.003D in the records retention and disposal schedule.

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Q8: Is it correct that any file with a FAC/FCJ suspension must be kept until purged by the Secretary of State (SOS)?

A: All civil infraction and parking case files can be destroyed three years after the case is closed. Closed means paid, dismissed, waived, or purged from the Secretary of State.

If there is an active FAC/FCJ suspension on a case, the court may not close the case. After the suspension is purged, the court can close the case and three years later destroy the case file. See Record Series 13.002 of records retention and disposal schedule.

Q9: Are reports or queries available in the case management system to indicate which files are eligible for destruction?

A: Courts should contact their system providers about the availability of reports or queries that will assist in identifying cases eligible for destruction.

➤ **Case History Data (Register of Actions, Calendars, Docket Books, Indices)**

Q1: What is the official record, the electronic ROA or the paper ROA in the file?

A: The electronic case history data (ROA) is the official record if the case history data exists in the case management system. The paper ROA is the official record if the case history exists only in paper. If identical case history for a particular case exists in both the case management system and on a paper ROA, the electronic case history is the official record and the paper ROA should be destroyed. If case history for a particular case exists in both the case management system and on a paper ROA, but the data is not identical, the court must maintain the most complete record.

Q2: If the case history/register of actions (ROA) is in the electronic case management system, can the paper ROAs be destroyed?

A: The electronic case history is the official record. All paper (ROAs) can be destroyed, provided they are a copy of the data in the case management system. All paper ROAs that are not copies of the case history data in the case management system (e.g., ROAs created before the court had an automated case management system) must be kept for the full retention period.

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Q3: Can case histories (ROAs) and indices be kept in paper form post-1940?

A: Case history can be maintained on paper if it was created on paper. From the point the court implemented an automated case management system, case history must be maintained electronically pursuant to MCR 8.119(D)(1)(a).

Q4: Why is a case history (ROA) important to preserve for 100 years?

A: If a post-1940 case records is selected by Archives for preservation, the case history need not be preserved. If a court record is not selected for preservation, it is important to maintain the case history (ROA) for the life of the parties for purposes of post-judgment activity (such as collection efforts on a money judgment), hence, the 100-year retention period.

Q5: What is a financial register of actions?

A: This is a compilation of case history pertaining to financial court-ordered obligations (including restitution) in criminal cases. The financial information must include judgment date, judgment amount, satisfaction of judgment or judgment paid, payments made, payments disbursed, and filing dates of post-judgment collection documents. This is often displayed in the register of actions screen and is simply a duplicate subset of that information.

Q6: Is a financial register of actions and the associated information required in cases pre-automation?

A: Information regarding any court-ordered financial obligation in a criminal case and any information regarding civil money judgments should be recorded in the case history. However, courts will not be required to review case history or case files to determine the accuracy or completeness of this information. Certain assumptions about these records will permit courts to dispose of this body of records with minimal processing and instructions are available to assist with this process.

Q7: Can electronic ROAs be printed and certified if the file has been destroyed?

A: If someone requests a document from a case file that has been disposed pursuant to the records retention and disposal schedule, the relevant case history (ROA) can be printed and certified by the clerk of the court as an official record of that case history.

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Q8: How do we handle an inquiry for case history or a document from a party whose case file has been disposed?

A: Case history and case files will not be disposed of before they should be. Each retention period for a given type of record reflects the legal, administrative, fiscal, and historical need for the records. Records that are no longer of any use or are no longer needed for any of these purposes are eligible for disposal.

The retention periods were reviewed and approved by the State Court Administrator; Records Management Services of the Department of Technology, Management & Budget; Archives of Michigan; the Attorney General; and the State Administrative Board in accordance with MCL 399.811 to ensure all these interests were adequately considered.

Q9: Not all cases have SID numbers due to the nature of the charge. Will the SID number still be required as a standard data element?

A: SID numbers are only required when applicable. There are many data elements that are required only when applicable.

Q10: Is a system provider required to maintain case history for the retention period? Will a system provider ever purge the case history from a case management system?

A: All system providers are required to maintain case history for the full retention periods prescribed by the records retention and disposal schedule. Courts are responsible for ensuring that their system provider adheres to these requirements.

Q11: If a court has case files, docket cards, and journals that were created before the automated case management system, what does the court need to maintain?

A: If a case does not contain a case history (ROA), the entire file must be maintained or the court must enter the required case history data into the court's case management system before disposing of the file. Maintaining only the judgment is not sufficient. Docket cards and journals may be sufficient, but it depends on what these records are. These terms have different meanings to different courts. If a journal or docket card contains the history of a case (what would normally be in a ROA) and that history contains all the data required for case history, the file can be disposed.

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Q12: If a case history in a civil case includes a judgment for the plaintiff and the judgment amount, does the court still have to keep a copy of the judgment? What if the file contains other rulings? Can the court still destroy the file if it is eligible for destruction?

A: Provided all case-history data is recorded on some medium, the court does not maintain any documents in a case file that is eligible for disposal.

Q13: Should we back scan old paper ROAs (that still need to be kept for the 100 years)?

A: Paper is the most stable medium for records and should be retained if practical. Factors to consider are availability and cost of existing onsite or offsite storage space, how frequently the records need to be retrieved, and the cost and efficiency in retrieving the records. Before making a decision to scan, these factors should be weighed against the cost of scanning and digital storage space (including the cost of migration of the digital images at seven-year intervals).

Q14: Are indices considered case files?

A: Case records consist of indices, case history (ROA), and case files. See MCR 8.119(D)(1). Before automated case management systems were implemented, the indices were the numerical and alphabetical means for locating case files. They include the case name and case number. With automation, the indices are no longer separate from the case history (ROA) and are simply a query on the case name or case number. Case files contain the documents.

Q15: Can the court pursue collection of an unsatisfied civil infraction if the SOS has already purged the suspension?

A: A court can pursue collection of an unsatisfied civil infraction after SOS has purged the suspension. At a minimum, the court must maintain the case data elements required for the financial case history. The retention schedule refers to retention of a financial register of actions for criminal cases, not civil infraction cases. If, however, a court wanted to continue pursuing collection on a civil infraction case after 10 years, it would need to maintain the financial case history data.

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Q16: Why did the civil infraction (satisfied) ROAs change to 10 years? Courts used to be able to destroy them when the file was destroyed (3 years), without incident, and now they have to keep them for 10 years.

A: The reason that retention period the case history data for satisfied civil infractions was changed to 10 years is because that is the longest time frame that case history could be maintained for unsatisfied civil infractions (a license might be suspended 10 years before it is purged from the Secretary of State's system).

A decision was made to keep the case history for both satisfied and unsatisfied civil infractions for roughly the same time frame under the premise that it would be simpler to program one purge routine. Unless courts were maintaining civil infraction case history on paper, the case history data has likely never been destroyed and remains on the case-management system. If courts have already been purging this data from case-management systems on a regular basis, consideration could be given to changing the retention period back to three years.

➤ Case Files

Q1: What is the official case file – paper or electronic?

A: Documents or files can be maintained in any medium authorized by the Records Reproduction Act. Examples are paper, digital image, or microfilm. After a paper document is reproduced into a digital format, the official record is the digital format and the paper records are nonrecords. The paper files should be destroyed.

Q2: If a court runs a new ROA at the time of closing a case, is this necessary if the court is keeping an electronic ROA in the case-management system?

A: MCR 8.119(D) requires all courts to maintain case history in an automated case-management system. Case history printed from a case-management system to paper (ROA) is not a record; it is a reproduction only and is considered a nonrecord.

Q3: If a court has case files, docket cards, and journals that were created before the automated case management system, what does the court need to maintain?

A: If a case does not contain a case history (ROA), the entire file must be maintained or the court must enter the required case history data into the court's case management system before disposing of the file. Maintaining only

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the judgment is not sufficient. Docket cards and journals may be sufficient, but it depends on what these records are. These terms have different meanings to different courts. If a journal or docket card contains the history of a case (what would normally be in a ROA) and that history contains all the data required for case history, the file can be disposed.

Q4: Does a court need to maintain case files that were created before implementation of an automated case management system?

A: Case history data and case files have different retention periods. Regardless whether records are paper, microfilm, digital image, or electronic data, each type of record must be maintained for its full retention period. Most district court case history must be maintained for 100 years, while the case files only need to be maintained for 6-10 years. Refer to the records retention and disposal schedule for details.

Q5: How long should the court keep a garnishee disclosure for a forever garnishment?

A: The garnishee disclosure is a postjudgment civil filing. After the clerk of the court enters all required case history data into the case-management system, the garnishee disclosure can be filed in a batch with other postjudgment civil filings and disposed one year after filing. For details, see Record Series 13.003E in the records retention and disposal schedule. If the document is placed in the case file, it will need to be maintained for the retention period of the case file.

Q6: If a case file has not yet been destroyed, should the court file documents pertaining to postjudgment or collection activity in the case file or separately from the case file?

A: Courts do not have to keep documents pertaining to postjudgment activity separate from the file, but they can if they want. After the clerk of the court enters all required case history data into the case-management system, these documents can be maintained separately in batches by the date filed/ordered to reduce the work involved in filing them in the case file.

Collection activity on civil infraction and criminal case files includes gathering financial information, creating payment plans, issuing orders to show cause, bench warrants, income tax garnishments, prisoner remit orders, wage assignments and orders discharging financial obligations. All information and records collected for purposes of collection activity are confidential and shall be maintained in a separate file marked confidential. The separate file may be

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stored within the legal file or be completely separate from the court file. Collection files are not accessible to the general public.

➤ **Transcripts**

Q1: Can transcripts be destroyed with the files?

A: Transcripts are filed with the court and are docketed in the case history data (ROA) as filed. As such, they are part of the file contents even if they are maintained separately. They are to be disposed of at the same time as the file.

Q2: If a court has court recorder tapes going back to 1970, can those be destroyed? Can you recommend a company that will destroy those types of records?

A: There is not a simple answer to this question. Because courts do not associate entry of judgments with the recordings of cases, it is difficult to determine when to destroy court reporter notes, tapes, and recordings. A good rule of thumb would be to maintain them for the longest retention period for case files. In addition, when conducting a records disposal project, courts must determine which case records are ineligible for destruction (stayed before adjudication or in warrant status) and continue to maintain them. The recordings of these cases should be identified at that time and maintained.

➤ **PostJudgment Case Activity**

Q1: The court has received a filing in a civil or criminal case that has been preserved electronically and the paper case record has been destroyed or has only ever existed electronically. What do we do with the filing?

A: After pertinent case history information is entered into the case-management system following the filing of a postjudgment document, it is unnecessary to file the document in the case file or to maintain the document for longer than a year. Instead, postjudgment documents can be stored in a group file by date (batch filed) with other civil postjudgment filings. In the event the document needs to be reviewed at a hearing, it can be readily retrieved from the group file based on the date of filing. Batch-filing postjudgment documents is an efficient and cost-effective process for storing and disposing of those documents. Examples include requests and writs for garnishment, garnishee disclosures, satisfactions of judgment, orders of eviction, and orders to seize property.

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Q2: If a criminal case has a balance due and owing and does not have a probation order in effect or is not in warrant status, should the case file be maintained?

A: If the case history contains the information required to enforce collection, the court can destroy a criminal case file when it is eligible for destruction even if there are outstanding court-ordered financial obligations. All activity that occurs after the retention period has been met must be recorded in the case-management system (case history/ROA), which is a sufficient record.

Also, any postjudgment document that is filed or created as a result of postjudgment activity must be maintained for at least one year after being recorded in the case-management system. After the one-year retention period, there is no need to maintain the physical copy of the order to show cause (by then the show cause hearing has long since passed). However, if a bench warrant is issued after the case file is destroyed, the court must maintain a copy of the bench warrant while the case is on warrant status.

Q3: What if a court decides to proceed with a bench warrant for enforcing collection after a physical file is destroyed? Should another file be created?

A: Courts should not issue a bench warrant for failure to pay, but rather issued an order to show cause for failure to comply with the judgment. If the defendant fails to appear for the show cause, then the court may issue a bench warrant for failure to appear. Even without the physical criminal file, the court can still enforce collection. If a bench warrant is issued after the case file is destroyed, the court must maintain a copy of the bench warrant while the case is on warrant status.

➤ Other Court Records

Q1: Is a problem-solving court subject to a records retention and disposal schedule, and if so, which one?

A: Problem-solving courts are subject to the records retention and disposal schedules. The subject-matter jurisdiction of the problem-solving court and the case-type code assigned to the case determines the appropriate schedule.

These cases involve defendants who are diverted out of the traditional criminal process and into a treatment court. Therefore, if a mental health court or veterans treatment court is handling felony criminal cases, the circuit court records retention and disposal schedule must be followed, or if a veterans treatment court is handling misdemeanor criminal cases, the district court records retention and disposal schedule must be followed.

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Q2: If a district court judge sits as a circuit court judge under a concurrent jurisdiction plan, how long do felony treatment court files need to be kept?

A: Problem-solving treatment court files and probation files are to be maintained for three years from the date of discharge from probation or until date of sentencing (if not placed on probation). This retention period is the same for both the district and circuit courts. The retention schedules pertain to the jurisdiction of the court. Therefore, a circuit court case is a circuit court case and a district court case is a district court case, regardless which judge is handling the case.

Q3: How long do you keep a request for a record check?

A: Courts should not be performing record (background) checks. If this is not about a background check and is instead a request for or about a record, file copy request forms can be destroyed when they are of no further reference value. See Record Series 13.403 of the records retention and disposal schedule.

Q4: How long should a court keep a restitution request form (homegrown form for collecting restitution information for sentencing)?

A: Any document containing a defendant's identifying and financial information that is used to aid the court in collecting payments toward criminal judgments (including restitution) are to be maintained until of no further value, but not less than six years. See Record Series 13.103 of the records retention and disposal schedule.

Q5: How long do I need to keep reports of escheated items?

A: Six years after the end of the fiscal year. See Record Series 13.301 of records retention and disposal schedule.

Q6: How long should a court keep the Correction to Criminal History (CRD) transmission?

A: Three years after the date filed or created. See Record Series 13.309B of records retention and disposal schedule.

Q7: How long should a court keep a print-out for corrections or deletions to the register of actions?

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A: Assuming this is referring to an exception report that is generated as part of the caseload reporting process so that courts can correct data in the case-management system, it would be eligible for disposal one year after the records are of no further value. See Record Series 13.311 of the records retention and disposal schedule.

➤ **Methods of Storage (Paper versus Digital)**

Q1: What is the authority for a court converting all of their paper records to digital images and then destroying the paper?

A: MCR 1.109(D)(3) and the Records Reproduction Act (MCL 24.401, *et seq.*) are the authority for converting paper records to digital images and then destroying the paper.

Q2: Best practices for transferring microfilm to digital images.

A: Records Management Services (RMS) of the Department of Technology, Management, and Budget is responsible for establishing standards and best practices for reproduction of records pursuant to the Records Reproduction Act.

See the RMS website for these materials at

http://www.michigan.gov/dtmb/0,5552,7-150-9141_21738---,00.html.

Specifically, *Best Practices for the Capture of Digital Images from Paper or Microfilm* is at

http://www.michigan.gov/documents/hal_mhc_rms_bp_for_digitizing_125527_7.pdf.

Q3: How long does a court have to keep the paper copy of a civil infraction once it has been disposed of?

A: Citations received electronically (as an image or data) need not be printed, but if they are, the printed version is a copy and is considered a nonrecord. The electronic record is the official record. Nonrecords can be disposed of at any time.

Q4: Can courts batch file the renewal of a civil judgment?

A: If the file has already been disposed, then the documents associated with a renewed civil judgment can be batch filed by the date of the order of renewal and destroyed after one year from that date, provided the required case history has been recorded in the case management system.

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Q5: Should we destroy the paper document or file that was scanned into an EDMS and when?

A: When the document or file has been scanned, the digital image is the official record pursuant to court rule. The paper document or file should be destroyed. After you are done scanning documents, you should keep them at least 30 days to provide adequate time to verify that the digital records are accurate and legible in accordance with digital imaging standards.

➤ **Disposal Process**

Q1: What if our court wants to start disposing of records?

A: SCAO is producing step-by-step instructions to help courts with the disposal process. If it is critical for a court to dispose of records soon, contact Trial Court Services staff at trialcourtservices@courts.mi.gov to start developing a disposal plan.

Q2: Is records disposal mandatory?

A: It is highly recommended for a number of reasons.

- Foremost, courts are running out of space for their paper records and converting all records to electronic format is costly. It is becoming increasingly difficult for courts to justify with their funding units the costs for long-term maintenance of a growing body of records, and while the cost of storage and hosting digital images may be cheap, there is usually an annual access fee for every user, and digital images with a long-term retention period (over 10 years) should be migrated during the retention period, a cost that can be prohibitive over time.
- Also, courts do not have adequate facilities, resources, and funding to preserve historical records, which is the responsibility of the Archives of Michigan under law.
- Finally, if all courts dispose of records when they become eligible, it provides a comparable body of records from one court to another, reduces inefficiencies in search and retrieval, reduces unnecessary storage costs, and creates equality. Court users can be both hurt and helped by record availability when seeking things such as visas, licenses, housing, jobs, and driving privilege.

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Q3: Is there an SCAO form for the Order to Dispose of Records?

A: The form has not yet been approved by the Archives of Michigan, but a draft for use by district courts can be provided.

Q4: Are courts required to oversee the actual destruction of their records?

A: The clerk must certify, on the Order to Dispose Court Records, that records have been destroyed. If a court is not overseeing the actual destruction of records, it must use a reputable company for disposal to ensure that the records are destroyed in the manner ordered.

Q5: What if a judge does not want to destroy the files?

A: Although the records retention and disposal schedule is law and the court should comply with it, the clerk of the court cannot destroy records until the chief judge signs the Order to Dispose Court Records.

➤ Approved Methods of Disposal

Q1: What are the approved methods of disposal?

A: Transfer to Archives when required, or destroy. Destruction must be done as specified in the standards.

➤ Transferring Records to Archives of Michigan

Q1: Should old book records from the Justice of the Peace be transferred to Archives or destroyed?

A: Archives has not indicated an interest in any records from the district courts or the courts that existed before the district courts were created. A court may contact Archives to inquire about its interest in the records before the court disposed of them.