

## STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on March 11, 2015, the following order was made and entered:

### **IN RE:           APPROVAL OF AMENDMENTS TO RULE 12 OF ADMINISTRATIVE RULES FOR THE MAGISTRATE COURTS OF WEST VIRGINIA**

On a former day, August 12, 2014, Janie Moore, Director of Magistrate Court Services, presented proposed amendments to Rule 12 of Administrative Rules for the Magistrate Courts of West Virginia.

The public comment period concluded on October 24, 2014. One comment was received from John M. Hedges, Esq., Hedges Lyons & Shepherd, PLLC.

Upon consideration and review, the Court hereby makes certain amendments of its own, as set forth herein, and approves and adopts the proposed amendments, effective March 11, 2015. Additions are indicated by underlining and deletions are indicated by strikethrough.

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#### **“RULE 12. Retention of Records.**

All records of magistrate courts shall be retained by the clerk pursuant to the following schedule, in either paper or a microphotographic, digital, or other format which employs a process for image-storing of documents in a reduced size. The format must conform to the applicable policy approved by the Supreme Court Administrative Director.

~~for a period not to exceed 10 years pursuant to the following schedule:~~

**(a) Traffic and natural resources citations.** - (Except DUI and driving while revoked for DUI).

(1) *Dismissed.* - ~~Destroy~~ Retain all records for one year after dismissal and completion of the audit report applicable annual State Auditor's Report pursuant to W. Va. Code § 50-3-8.

(2) *Failure to appear, no warrant issued.* - ~~After~~ One year from ~~after~~ the issuance date of citation, transfer to inactive status; ~~after~~ retain all records for five years ~~after~~ from issuance date of citation, ~~destroy all records.~~

(3) *Failure to appear, warrant issued but unexecuted.* - ~~Treat as all other misdemeanors, below.~~ One year after date of warrant, transfer case to inactive status, and retain all records for 10 years after date of warrant.

(4) *Fine assessed but unpaid.* - ~~After one year from assessment of fine transfer to inactive status; after~~ Retain all records for five years from ~~after~~ last collection effort; destroy all records.

(5) *Fine paid.* - Retain all records for one year after payment and completion of the ~~audit report applicable annual State Auditor's Report pursuant to W. Va. Code § 50-3-8, then destroy.~~

(6) *Appeal.* - Forward all records to the circuit clerk and retain the file transfer sheet signed by the circuit clerk for 10 years.

**(b) DUI and driving while revoked for DUI.**

(1) Retain all records for 10 years after dismissal or conviction date.

(2) *Appeal*. - Forward all records to the circuit clerk and retain the file transfer sheet signed by the circuit clerk for 10 years.

**(c) Malicious or unlawful assault; assault; battery; unlawful restraint; domestic assault; and domestic battery.** – Retain all records for 10 years after conviction or dismissal date; for any case resulting in a conviction or pre-trial diversion dismissal, retain the following records for 75 years after conviction or dismissal date: criminal complaint; arrest warrant or summons; rights/waiver form; bail agreement; and judgment or dismissal order (case history sheet or separate order, whichever is applicable).

**(ed) All other misdemeanors.** - Retain for 10 years.

(1) *Dismissed*. - Retain all records for 10 years ~~from~~ after dismissal date, ~~then destroy all records including case history sheet.~~

(2) *Warrant issued but unexecuted*. - ~~After~~ One year after from issuance date of warrant, transfer case to inactive status; ~~after~~ retain all records for 10 years after from issuance date of warrant, ~~destroy all records including case history sheet.~~

(3) *Fine assessed but unpaid*. - ~~After one year from last collection effort, transfer case to inactive status; after 10 years from last collection effort, destroy all records including case history sheet.~~ Retain all records for 75 years after conviction date.

(4) *Fine paid and sentence served*. - ~~After 10 years, destroy all records including case history sheet.~~ Retain all records for 75 years after conviction date.

(5) *Appeal*. - Forward all records to the circuit clerk and retain the file transfer sheet signed by the circuit clerk for 10 years.

**(de) Felonies.**

(1) *Preliminary hearing, probable cause found*. - Forward all records to circuit clerk and retain the file transfer sheet signed by the circuit clerk for 10 years.

(2) *Preliminary hearing, no probable cause found*. – ~~After~~ Retain all records for one year; destroy all records.

(3) *Complaint dismissed prior to preliminary hearing*. – ~~After~~ Retain all records for one year; destroy all records.

(4) *Preliminary hearing waived*. - Forward all records to the circuit clerk and retain the file transfer sheet signed by the circuit clerk for 10 years.

(5) *Felony dismissed in exchange for plea to misdemeanor*. - Follow retention schedule for misdemeanors; above.

(6) *Unserved felony warrants*. - Retain criminal complaint and warrant for 75 years.

**(ef) Civil**

~~(1) Judgment dismissing complaint. – After~~ Retain all records for one year following dismissal date, destroy all records.

~~(2) Judgment awarding relief. – After~~ Retain all records for 10 years from last collection activity, destroy all records including case history sheet.

~~(3) Judgment appealed. - Forward all records to the~~ circuit clerk and retain the file transfer sheet signed by the circuit clerk for 10 years.

**(g) Civil Domestic Violence.**

(1) Denied emergency protective orders. - Retain all records in paper or electronic form for 10 years.

(2) Granted emergency protective orders. - Forward all records to the circuit clerk and retain file transfer sheet signed by the circuit clerk for 10 years.

**(h) Worthless Check Notices.** - Retain for one year after receipt of the ~~audit report~~ applicable annual State Auditor's Report and resolution of any audit exceptions.

**(i) Fugitive from Justice.** - Forward all records to the circuit clerk; retain file transfer sheet signed by circuit clerk for 10 years.

**(j) Personal safety cases.** - Retain all records in paper or electronic form for 10 years. If appealed, forward all records to the circuit clerk and retain transfer sheet signed by the circuit clerk for 10 years.

**(k) Fiscal/Administrative.** - Retain all records for ~~o~~One year after receipt of the audit report and resolution of audit exceptions, ~~destroy all records including case indices and registers.~~

~~**(g) Administrative.** – One year after receipt of the audit report and resolution of audit exceptions, destroy all records including case indices and registers.~~

~~**(h) Miscellaneous records.** – Ten years after the receipt of any other record and the resolution of any matter raised therein, destroy all records including case history sheets, case indices, and registers~~ Retain any other record, including search warrants, for 10 years.

~~**(i) Records relating to unresolved audit exceptions.** All records relating to unresolved audit exceptions shall be retained until either one year after the resolution of such exceptions or in accordance with the above schedules, whichever date is later.~~

**(m) Official audit reports.** - Retain official ~~audit reports~~ annual State Auditor's Report for 10 years from the conclusion of the covered audit period.

**(n) Electronic recordings.** – For any recorded court hearing not forwarded to the circuit clerk, retain recording for one year after hearing.”

A True Copy

Attest: \_\_\_\_\_  
Edythe Nash Gaiser, Deputy Clerk of Court