

## MEMORANDUM

To: Advisory Committee on Rules  
From: Carolyn Koegler  
Re: # 2018-012. Supreme Court Rule 57-A. Custody and Return of Documents and Materials Filed In Camera in Trial Courts.  
Date: February 10, 2019

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At the December 2018 meeting, the Committee considered a November 26, 2018 memorandum from me raising a concern regarding Supreme Court Rule 57-A. The concern arose from a recent Supreme Court appeal from a Superior Court order denying the appellant's request for the return of confidential documents submitted pursuant to court order. Although the State and the defendant had agreed that the records should be returned, the Superior Court refused to return them, citing Supreme Court Rule 57-A.

The Committee discussed the issue and agreed that the rule should be amended to state that it is unnecessary for the court to retain the documents in cases in which a defendant is acquitted. The Committee also discussed what should be done in cases in which charges are nol-prossed, there are mistrials, or there are hung juries. It was generally agreed that in these cases, it might make sense for the court to retain the records for a period of time, so the Court should have some discretion about this. The Committee asked me to draft an amendment to the rule to make it clear that: (1) in a case in which a defendant has been convicted, the records shall be retained for ten years; but (2) if there is no conviction, the court shall have discretion about whether to retain the records.

Attached as appendix A is the proposed language.

I would also like to remind the Committee that the Court has also asked the Committee to consider the purpose of retaining the records for 10 years, and whether the implementation of e-filing requires any amendment to this rule.

## APPENDIX A

Amend Supreme Court Rule 57-A as follows (new material is in **bold and brackets**]; deleted material is in ~~strikethrough~~ format):

Rule 57-A. Custody and Return of Documents and Materials Filed In Camera in Trial Courts.

(a) During the time a case is pending in the trial court, all documents and materials filed in camera with the court shall be maintained by the court.

(b) Civil Cases

(1) Upon the final conclusion of a civil case in the trial court, documents and materials filed in camera will be held at the court until such time as the appeal period has expired. At that time, the clerk shall return the documents and materials filed in camera to the individual or organization that furnished them, unless the court orders otherwise.

(2) If an appeal is filed in a civil case, the documents and materials filed in camera shall remain in the custody of the trial court pending resolution of the appeal unless the supreme court orders that they be transferred for purposes of the appeal. Upon receipt of the mandate from the supreme court, and if no further proceedings are required, the trial court clerk shall return the documents and materials filed in camera to the individual or organization that furnished them, unless the court orders otherwise.

(c) Criminal Cases

(1) [**Cases in which a criminal defendant has been convicted.**

**(A)]** Upon the final conclusion of a criminal case in the trial court, documents and materials filed in camera will be held at the court as a part of the official court file for a period of ten (10) years after the appeal period in the case has expired. After ten years, the clerk or designee shall destroy the in camera documents unless a written request has been made prior to that date for the records to be retained for an additional specified period.

~~(2)~~ **[(B)]** If an appeal is filed in a criminal case, the documents and materials filed in camera shall remain in the custody of the trial court pending resolution of the appeal unless the supreme court orders that they be transferred for the purposes of the appeal. The trial court clerk shall retain the documents as part of the official court file for a

period of ten (10) years from the date of the supreme court mandate. After ten years, the clerk or designee shall destroy the in camera documents unless a written request has been made prior to that date for the records to be retained for an additional specified period.

**[(2) *Cases in which a criminal defendant has not been convicted.***

**(A) Upon the final conclusion of a criminal case in the trial court in which a defendant has not been convicted, the trial court shall have discretion regarding whether, and, if so, for how long, the documents and materials filed in camera will be held at the court as a part of the official court file.**

**(B) Prior to destroying the in camera documents, the trial court shall provide written notice to the parties of its intention to destroy the documents. A party intending to object to the destruction of the documents shall do so within thirty days of the date on the notice. If no objection is made, the clerk or designee shall destroy the in camera documents.**

**(C) If the documents and materials filed in camera are held at the court as a part of the official court file then, after ten years, the clerk or designee shall destroy the in camera documents unless a written request has been made prior to that date for the records to be retained for an additional specified period.**