

### PART 3. CLERKS OF THE CIRCUIT COURT

**Rule 3.1 Clerk's Duties.** In addition to the duties listed in Rule 1.7(b), it shall be the duty of the Clerk to: (1) immediately notify the Presiding Judge and the state's attorney of the filing of a petition for post-conviction relief and, at the Presiding Judge's direction, set the petition for hearing in accordance with Illinois law; (2) immediately deliver copies of any notice of appeal to the responsible court reporters; (3) retain all exhibits received in evidence unless otherwise ordered by the Court; (4) prepare lists of pending civil and criminal cases as requested by the Court; and (5) comply with all administrative orders of the Presiding Judge and the Chief Judge.

#### **Rule 3.2 Pleadings and Court Files**

(a) **Caption.** Each pleading shall set out the name of the circuit and county and the designation of the parties.

(b) **Filing Fee.** The Clerk shall not accept a pleading for filing or electronic filing unless the pleading is accompanied by any required filing fee or an application to sue or defend as an indigent person pursuant to S. Ct. R. 298 and 735 ILCS 5/5-105. A pleading accompanied by a petition to sue or defend as an indigent person is considered filed when it is electronically filed or properly presented to the Clerk for filing. The Clerk shall promptly present all petitions to sue or defend as an indigent person to the Court for consideration.

(c) **Signature.** Every pleading, notice, or other paper filed with the Clerk that is not electronically filed shall be legibly signed by at least one attorney of record in his or her individual name or by the SRL.

(d) **Removal.** No pleading, exhibit, file, or other document shall be removed from the Clerk's office except by leave of Court.

(e) **No Filing by Facsimile.** The Clerk shall not file documents received by facsimile transmission unless otherwise authorized by Supreme Court Rule or the Court.

#### **Rule 3.3 Sealing and Impoundment**

(a) **Presumption of Openness.** A strong statutory presumption of public access to the Court's files and records exists that may be overcome only on a compelling showing that the public's right of access is outweighed by the interests of the public and the parties in protecting files, records, or documents from public view. Nothing in this Rule shall be construed to expand or restrict statutory provisions for sealing files, records, or documents or those rules promulgated by the Illinois Supreme Court or the Administrative Office of the Illinois Courts pursuant to the Manual on Recordkeeping. For purposes of this Rule, "sealing" means to remove all access to the file, record, or document except for users authorized by the Court or these Rules. "Impoundment" means to remove all access to the file, record, or document except for users authorized by statute or the Court.

(b) **Written Order Required.** Except as otherwise provided by statute, the Manual on Recordkeeping, or these Rules, files, records, or documents may be impounded or sealed only on order of the Court.

(c) **Specific Exceptions.** The following exceptions are specifically identified and controlled by statute or rule. Except as set forth in exceptions (1), (2), and (3), impoundments shall be limited to the identified record or document:

(1) Juvenile files shall be impounded subject to the terms of 705 ILCS 405/1-8 and 705 ILCS 405/5-901. An attorney who represents a client in a pending criminal matter may without leave of the Court review the file from any juvenile court delinquency proceeding in which the client was the respondent minor, except to the extent any document in the file was specifically sealed by the Court during that proceeding.

(2) Adoption files shall be impounded subject to the terms of 750 ILCS 50/18.

(3) Proceedings under the Parental Notice of Abortion Act shall be sealed pursuant to the terms of 750 ILCS 70/25.

(4) Fitness reports and psychological and/or psychiatric evaluations shall be impounded subject to the terms of 725 ILCS 5/104-19.

(5) Presentence investigation reports shall be impounded subject to the terms of 730 ILCS 5/5-3-4 (a) and (b).

(6) Mental health records shall be impounded subject to the terms of 740 ILCS 110/1 *et seq.*

(7) Reports filed with respect to adjudication of disability and appointment of guardian shall be impounded subject to the terms of 755 ILCS 5/11a-9.

(8) Financial affidavits and other documents described in Rule 8.1(d) shall be impounded as described in the Rule.

(9) Judge's notes as described in Rule 3.8 shall be impounded as described in the Rule.

(10) Pre-trial bond reports and substance abuse evaluations shall be impounded unless otherwise directed by the Court.

(d) **Procedure for Sealing or Impounding.** All motions to seal or impound a file, record, or document must be made in writing and presented to the Court after appropriate notice to all parties. The motion must explain the basis for sealing or impounding the file, record, or document and specify the proposed duration of the sealing

or impounding order. Any motion to seal or impound, on specific request, may also be sealed or impounded if it contains a discussion of the confidential material. The Court shall enter a written order granting, granting in part, or denying the request. If the Court grants the motion in whole or in part, the order shall designate whether the entire file, record, or document or only a portion of the entire file, record, or document shall be sealed or impounded. The order shall further designate whether it includes removing the parties' names from public access and the duration the file is to be sealed or impounded.

**(e) Review of Sealed and Impounded Files.** Unless otherwise specified in the order, the Clerk annually shall present for each judge's review a list of all files, records, or documents sealed or impounded by the judge. If the judge ordering the file, record, or document to be sealed or impounded is no longer available, then the case shall be referred to the Chief Judge or his or her designee for review. The judge ordering the case, record, or document sealed or impounded shall review the file to determine whether the case, record, or document will remain sealed or impounded. A judge may unseal and open a case, record, or document if a party fails to object to unsealing or opening within 30 days following written notice of the intent to unseal or open. For purposes of this Rule, review of files sealed or impounded as described in Rule 3.3(c) is not required.

**(f) Motion to Rescind Sealing or Impounding Order.** A person or entity seeking access to a sealed or impounded case, record, or document, regardless of whether they were a party in the original case and regardless of whether the case is pending or closed, may, on the proper filing of an appearance and if required, paying the appropriate filing fee, file a motion requesting the order sealing or impounding the case, records, or document be vacated. The Clerk within 14 days shall set the motion for hearing before the judge who ordered the case, record, or document to be sealed or impounded. If the judge ordering the case, record, or document sealed or impounded is no longer available or cannot hear the motion within the 14 days, the case shall be referred to the Chief Judge or his or her designee for review.

**Rule 3.4 Hours of the Office of the Clerk.** Each Clerk's office shall be closed on Saturdays and Sundays and on holidays designated by the Chief Judge. If the deadline for filing a notice, pleading, or action is on a Saturday, Sunday, or designated holiday, the time for filing the notice, pleading, or action is extended to the next business day of the Court. Each Clerk's office shall be open eight hours per business day.

**Rule 3.5 Forms and Legal Assistance**

**(a) Forms.** Each Clerk shall provide forms approved by the Illinois Supreme Court, the Conference of Chief Judges, or the Circuit to parties and attorneys or direct those requesting forms to the appropriate location or website to obtain the forms.

**(b) Prohibition Against Giving Legal Advice.** No Clerk, deputy clerk, or court personnel shall provide legal advice or make specific referrals to attorneys. These employees, however, may assist those who are illiterate or cannot read or write in the English language in completing forms. This Rule does not prevent any employee from

referring a person to programs that provide legal assistance to indigent persons and/or to state or local bar associations.

**Rule 3.6 Issuance of Subpoenas; Docket Entries**

(a) **Issuance.** Subpoenas shall be issued only by the Clerk or his or her authorized deputies or licensed attorneys in accordance with 725 ILCS 5/115-17, 735 ILCS 5/2-1101, and Rule 5.6. Subpoenas of the Clerk or of attorneys may issue only in pending proceedings on file with the Clerk and shall be returnable only for dates set before the Court, except as otherwise provided for subpoenas issued in the course of discovery pursuant to Illinois law.

(b) **Docket Entries.** When the Clerk or his or her authorized deputy issues a subpoena, the Clerk or deputy shall make docket entries at the times of issuance and return recording that those events have occurred.

**Rule 3.7 Custody of Evidence**

(a) **Duty to Preserve.** The Clerk shall take custody of all items admitted in evidence by the Court at any proceeding, hearing, or trial. The Clerk shall preserve, safeguard, and account for each piece of admitted evidence until specifically relieved of that duty by court order and shall bring the evidence back into the courtroom as required by the judge. When court is not in session, every effort shall be made by the Clerk to secure all contraband items or items of intrinsic value or danger in a secure safe or a locked storage area, and the Clerk shall not entrust them to another's possession. At the conclusion of a case, the Clerk shall retain custody of all items in evidence, preserving, safeguarding, and accounting for them until the Clerk may be relieved of custody by court order.

(b) **Removal of Evidence.** Items in evidence removed from the Clerk's custody shall be specifically listed in a written order or enumerated orally on the record, and entrusted to a named individual, such as a deputy sheriff, bailiff, or attorney. When alternate custody is no longer needed, all removed items shall be immediately returned to the Clerk's custody, and the return of each item shall be memorialized by written order or enumerated orally on the record.

(c) **Items Offered but not Admitted.** Items offered but not admitted in evidence shall be retained by the proffering party, unless ordered to be taken into the custody of the Clerk for purposes of future review. Once taken into custody by the Clerk, an item shall be preserved, safeguarded, and accounted for in the same manner as an item in evidence.

**Rule 3.8 Judge's Notes.** At the request of any judge, the Clerk may, for the sake of convenience and judicial economy, keep and maintain a judge's trial and/or hearing notes in the court file. These notes are the property of the judge and shall not be filed of record by the Clerk. A judge's notes shall be placed in an envelope, which shall be sealed and marked "Judicial Notes - Impounded Documents," together with the name of the judge

requesting the notes be preserved and stored. The Clerk may, at the time of file destruction, dispose of a judge's notes found in a court file by returning them to the judge, or, if the judge approves, is retired, or deceased, by destroying them using approved methodology pursuant to the Local Records Act and the retention schedules established by the Illinois Supreme Court.