April 9, 2014

Honorable Jean Hoefer Toal
Chief Justice
The Supreme Court of South Carolina
P. O. Box 12456
Columbia, SC 29211

Dear Chief Justice Toal:

This is in response to your letter of March 21, 2014 concerning the certification of the South Carolina Judicial Department's compliance with the digital imaging policy established by the South Carolina Department of Archives and History.

I and Department of Archives and History staff appreciate the opportunity to meet with you and South Carolina Judicial Department staff to discuss digital records and to see a demonstration of the Judicial Department's digital records-keeping system. As you indicate in your letter, the South Carolina Judicial Department will be maintaining in a digital format documents in the Appellate Case Management System used by both the Supreme Court of South Carolina and the South Carolina Court of Appeals; Bar Admissions (BATS) records maintained by the Office of Bar Admissions of the Supreme Court; documents maintained as part of the Trial Court Case Management System (CMS); and documents filed electronically through the SC Courts E-Filing System (E-Filing) for those systems hosted by the South Carolina Judicial Department.

This is to acknowledge receipt of your intention to maintain the records referenced above in a digital system and your certification that the digital records and data maintained in these systems meet the seven criteria as outlined in the *Public Records Stored As Digital Images: Policy Statement (Public Records Information Leaflet #13)* along with meeting recommended practices in the *Trustworthy Information System Handbook* and the *Electronic Records Management Guidelines*. Following these steps helps to ensure that permanently valuable electronic records maintained by the South Carolina Judicial Department will be preserved and accessible for future use.

If, at some point, the custodian of the records decides to destroy original paper documents that have been converted to digital format, the records custodian or their authorized representative

should complete and submit to the Department of Archives and History an *Authorization For Disposal Of Original Paper Records Stored As Digital Images* form (form ARM-13). A copy of this form is enclosed for reference and additional copies are available from this Department. Following approval by this Department, the authorization form will be returned to the records custodian for implementation. This process provides us with information on the specific types and dates of original paper records being destroyed and documents their availability in digital format.

In our meeting and in your letter you noted that some county clerks of court are under the impression that the South Carolina Department of Archives and History requires the clerks of court to maintain records as paper documents or microfilm images. This Department does not dictate the medium in which records must be maintained. Paper, microfilm, and digital records are acceptable for court records by the South Carolina Department of Archives and History.

The current retention schedules for county clerks of court in the Clerk of Court Manual do contain references to microfilm. When these retention schedules were established, the intent in using the "microfilm optional" wording was to indicate that if records were microfilmed, the records custodian could dispose of the original paper documents and maintain the microfilm as the record copy should they choose to do so. Since those schedules were issued, new technology now allows records to be maintained in an electronic records environment. To eliminate any confusion in interpreting the retention schedules, this Department is updating and soon will be submitting to the Judicial Department, retention schedules for the clerks of court that will no longer contain references to any particular records format.

I want to thank you for certifying the Judicial Department's compliance with our digital imaging policy. I appreciate you and the Judicial Department staff working so closely with the Department of Archives and History to help ensure that vital court records are protected and properly preserved.

Sincerely,

Richard Harris

Richard Harris
Records Management Division Director

enclosure: ARM-13 form

cc: Stephanie Nye, Counsel to Chief Justice Toal
Joan Assey, Director of Information Technology
Dan Shearouse, Clerk of Court, Supreme Court of South Carolina
Bryan Collars, Archivist
Carolyn Smith, Local Records Analyst

Code of Laws of South Carolina 1976 Annotated
Title 26. Notaries Public and Acknowledgments
Chapter 6. Uniform Electronic Transactions Act (Refs & Annos)

Code 1976 § 26-6-120

§ 26-6-120. Satisfying law requiring a record to be maintained; checks.

Currentness

(A) A law requiring a record to be retained is satisfied by retaining an electronic record of the information that:

(1) accurately reflects the information in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

(B) A requirement to retain a record in accordance with subsection (A) does not apply to information whose only purpose is to enable the record to be sent, communicated, or received.

(C) A person may satisfy subsection (A) by using the services of another person if the requirements of that subsection are satisfied otherwise.

(D) A law requiring a record to be presented or retained in its original form, or providing consequences if the record is not presented or retained in its original form, is satisfied by an electronic record retained in accordance with subsection (A).

(E) A law requiring retention of a check is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (A).

(F) A record retained as an electronic record in accordance with subsection (A) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this chapter specifically prohibits the use of an electronic record for the specified purpose.

(G) This section does not preclude a governmental agency of this State from specifying additional requirements for the

retention of a record subject to the agency's jurisdiction.

Credits

HISTORY: 2004 Act No. 279, § 1.

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Code 1976 § 26-6-120, SC ST § 26-6-120
Current through 2018 Act No. 177, subject to technical revisions by the Code Commissioner as authorized by law before official publication.

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