

The Supreme Court of Ohio

MEMORANDUM

TO: Sara Andrews, Executive Director

CC: Chief Justice O'Connor

FROM: Jo Ellen Cline, Criminal Justice Counsel

DATE: January 29, 2015

RE: Ohio Criminal Sentencing Commission – Records Retention

Question Presented

What record retention policy applies to the Ohio Criminal Sentencing Commission?

Brief Answer

Because the Ohio Criminal Sentencing Commission is a statutory entity under Section 181.21 of the Ohio Revised Code but created “in the Ohio Supreme Court”, the Commission’s records are subject to retention under the Supreme Court’s Administrative Policy on Records Management.

Explanation

First, it is important to note that the Rules of Superintendence for the Courts of Ohio would not apply to the Ohio Criminal Sentencing Commission. Sup.R. 1(A) states that the Rules of Superintendence apply to the courts of appeal, the courts of common pleas, municipal and county courts. Therefore, the provisions of the Rules, including Sup.R. 26 through 26.05 would not apply to the records of the Commission.

As a statutory entity, it could be reasoned that the Commission is subject to the Ohio Revised Code’s provisions on records retention; however, Ohio Revised Code Section 181.21 creates the Ohio Criminal Sentencing Commission and specifies that the Commission is created “within the supreme court”. In addition, the funding for the Ohio Criminal Sentencing Commission provided by the Ohio General Assembly is contained in the general operating budget of the Supreme Court/Judiciary, not as a separate appropriation, nor as a line item, within the Supreme Court/Judiciary budget. Compare the Commission’s statutory framework with that of the Ohio Judicial Conference in Section 105.91 of the Revised Code. R.C. 105.91 states that

“There is hereby established an Ohio judicial conference consisting of...” and does not include the phrase “within the supreme court”. In addition, the Conference’s operating budget is completely separate from that of the Supreme Court/Judiciary. These differences are significant and, as a result, it would appear that the Ohio Criminal Sentencing Commission and its employees are a part of the Supreme Court of Ohio.

Based upon the statutory framework for the Commission it can be argued that the Criminal Sentencing Commission’s records can be retained or destroyed under the Supreme Court of Ohio’s Administrative Policies. (Administrative Policy 35). Currently those policies are stated to pertain to employees of the Court, and, in some instances, employees of the Ohio Disciplinary Counsel, the Board of Professional Conduct, and the Lawyers’ Fund for Client Protection. At a future time, consideration should be given to amending the applicability provision to specify that, unless specifically exempted, the policies apply to the Ohio Criminal Sentencing Commission.

Conclusion

Based upon the foregoing analysis, the Ohio Criminal Sentencing Commission should follow the Supreme Court of Ohio’s Administrative Policies regarding the retention and destruction of records.