

**In re amendment to SCR 72.01(8),  
72.01(9), and 72.01(10), relating to  
retention of records in eviction cases**

**Petition 22- \_\_\_\_\_**

---

### **SUPPORTING MEMORANDUM**

---

Legal Action of Wisconsin, Inc. petitions the Wisconsin Supreme Court to amend Supreme Court Rules 72.01(8), 72.01(9), and 72.01(10), relating to the retention of small claims case files, court records, and minute records to shorten the record retention period for eviction cases in which no money judgment is entered to one year.

#### **SUPREME COURT AUTHORITY**

The Wisconsin Constitution vests the Wisconsin Supreme Court with “superintending and administrative authority over all courts.” Wis. Const. art. VII, § 3. State statutes also vest this Court with broad rulemaking authority. Wis. Stat. § 751.12. The Court has previously exercised this authority to issue rules relating to the retention and maintenance of court records. S. Ct. Orders 20-08, 12-05, 09-02, 06-01, 05-03, 97-03, 93-09, and 93-08. The proposed rule falls within the Court’s constitutional and statutory authority, as well as the historic exercise of that authority.

#### **BACKGROUND**

Legal Action of Wisconsin, Inc. is Wisconsin’s largest non-profit law firm, and provides free civil legal advice and representation to people with limited incomes, including families who live in rental housing and are facing eviction. Our firm’s six offices in Milwaukee, Madison, Racine, Green Bay, Oshkosh, and La Crosse represent renters throughout Southern Wisconsin in thirty-nine counties in both urban and rural areas of the state. Legal Action’s attorneys have spent decades representing clients who rent their homes. Our firm has been a leader in appellate housing litigation before the Wisconsin Supreme Court, the Wisconsin Court of Appeals, and the Seventh Circuit Court of Appeals. See *Dickhut v. Norton*, 45 Wis. 2d 389, 173 N.W.2d 297 (1970); *Brown v. Hous. Auth. of City of Milwaukee*, 471 F.2d 63 (7th Cir. 1972); *Holbrook v. Pitt*, 643 F.2d 1261 (7th Cir. 1981); *Simmons v. Drew*, 716 F.2d 1160 (7th Cir. 1983);

*Shands v. Castrovinci*, 115 Wis. 2d 352, 340 N.W.2d 506 (1983); *Devines v. Maier*, 728 F.2d 876 (7th Cir. 1984); *Highland Manor Assocs. v. Bast*, 2003 WI 152, 268 Wis. 2d 1, 672 N.W.2d 709; *Driver v. Hous. Auth. of Racine Cty.*, 2006 WI App 42, 289 Wis. 2d 727, 713 N.W.2d 670; *Williams v. Integrated Cmty. Servs., Inc.*, 2007 WI App 159, 303 Wis. 2d 697, 736 N.W.2d 226; *McQuestion v. Crawford*, 2009 WI App 35, 316 Wis. 2d 494, 765 N.W.2d 822; *Williams v. Hous. Auth. of City of Milwaukee*, 2010 WI App 14, 323 Wis. 2d 179, 779 N.W.2d 185; *Bratcher v. Hous. Auth. of City of Milwaukee*, 2010 WI App 97, 327 Wis. 2d 183, 787 N.W.2d 418; *Guerrero v. City of Kenosha Hous. Auth.*, 2011 WI App 138, 337 Wis. 2d 484, 805 N.W.2d 127; *Milwaukee City Hous. Auth. v. Cobb*, 2015 WI 27, 361 Wis. 2d 359, 860 N.W.2d 267; *Love v. Smith*, 2016 WI App 3, 366 Wis. 2d 663, 875 N.W.2d 131; and *Williams v. Dist. Council of Madison Inc.*, 2021 WI App 62, 399 Wis. 2d 174, 963 N.W.2d 909. Given this experience, Legal Action is uniquely positioned to advocate for renters in Wisconsin and to comment on the experience of renters in eviction court.

Legal Action first proposed a rule change similar to this Petition in March of 2021, in [a letter of support to Rule Petition 20-08](#). That Petition, submitted by the Director of State Courts, also requested changes to the record retention rules found in SCR 72. Legal Action proposed additional modifications to SCR 72 to shorten the records retention period for some small claims records, including eviction cases. In response, the Director of State Courts submitted [a letter addressing Legal Action's proposal](#). The Director explained “[t]he reasons cited in support of [Legal Action’s] requested changes **are not without merit**,” but expressed some concerns regarding the administrative burden which could be imposed by the changes. (Emphasis added) Ultimately this Court did not adopt the modifications Legal Action proposed, but left the door open to further consideration of the issue. [S. Ct. Order 20-08](#).

The proposals in this Petition significantly simplify Legal Action’s original request in Rule Petition 20-08 to address the Director’s concerns. Prior to filing this Petition, we have reached out to staff in the Director of State Court’s office to discuss the practical implications for the court system to these potential changes. This Petition should present the court system with a minimal administrative burden as discussed below in Section 5.

## ARGUMENT

### 1. Explanation of proposed changes

Currently, most small claims records are retained for twenty years after entry of judgment or final order. SCR 72.01(8), 72.01(9), and 72.01(10). Small claims cases which are dismissed “because issue was not joined and the case was not disposed of by judgment or stipulation within six months from the original return date” are retained for two years. *Id.* The vast majority of eviction cases, however, do not fall into this two-year category and are retained for twenty years; this is regardless of whether an eviction was granted and regardless of whether a money judgment was entered.<sup>1</sup> *Id.*

Legal Action’s Petition proposes to shorten the period of time for retaining eviction records to one year in eviction cases in which there was no money judgment entered against either party. The Petition would maintain the current rule which requires the retention of all small claims cases in which a money judgment was entered for twenty years. The Petition would also maintain the current two-year category for all other small claims cases “not joined and the case was not disposed of by judgment or stipulation within six months from the original return date.” Because the display period of court cases is tied to the retention period, these changes would also impact the amount of time cases are displayed on the Wisconsin Circuit Court Access website.

#### A. Proposed changes to small claims retention periods

This Petition proposes this Court adopt three different retention periods for all small claims records. The first proposed retention period will shorten the retention period to one year for all eviction cases in which no money judgment is entered against either party. This period is tailored to not impact the various post-judgment rights and remedies available to parties. In particular, it does not abridge a litigant’s ability to: 1) appeal an eviction judgment to the Wisconsin Court of Appeals, which must occur within fifteen days of the entry of judgment or order, Wis. Stat. § 799.442; 2) file a motion for reconsideration, which must occur within twenty days after entry of judgment, Wis. Stat. § 805.17(3); 3) file a motion to reopen a default judgment, which

---

<sup>1</sup> The Director of State Courts recently adopted a recommendation by the Wisconsin Circuit Court Access Oversight Committee to limit the electronic display period of dismissed small claims actions to two years after entry of dismissal. *See* WCCA Oversight Committee Recommendations – Action Plan 1-2. Available online at: <https://www.wicourts.gov/courts/committees/docs/wccaactionplan2017.pdf>. This, and all other hyperlinks in this document, were last visited on March 28, 2022.

must be filed within twelve months after entry of judgment, Wis. Stat. § 799.29(1)(c); or 4) seek relief from a judgment based on “[m]istake, inadvertence, surprise, or excusable neglect” or “[f]raud, misrepresentation, or other misconduct of an adverse party,” which must occur not more than one year after judgment is entered, Wis. Stat. § 806.07.

Certain post-judgment avenues do exist for relief which include open-ended time frames which could theoretically extend beyond the one-year retention period. For example, a party may “within a reasonable time” seek relief from a judgment where the judgment is void or the judgment has been satisfied. Wis. Stat. § 806.07(2). Similarly, there is no specific time frame in which a party may seek to reopen a case based on improper venue. Wis. Stat. § 799.29(1)(c). These rare avenues for post-judgment relief, however, are affected by **any** record retention rule. Retaining eviction records in which no money judgment is entered for only one year strikes the appropriate balance between preserving the rights of all litigants and protecting renters against the devastating effects of having any eviction action – even a dismissed one – associated with their name, as discussed in greater depth below.

The second proposed retention period maintains the current two-year period for other small claims cases which are dismissed “because issue was not joined and the case was not disposed of by judgment or stipulation within six months from the original return date.” This two-year period would no longer apply to eviction records. The third and longest proposed retention period maintains the status quo of twenty years, but only for cases in which a money judgment is entered against any party.

#### B. Interaction with other statutes

As noted above, this Petition will impact the electronic display period for eviction cases. This subject is also addressed in Wis. Stat. § 758.20(2), which provides:

- (2) The director of state courts may not remove case management information from the Wisconsin Circuit Court Access Internet site for a civil case that is not a closed, confidential, or sealed case for the following periods:
  - (a) If a writ of restitution has been granted in an eviction action, a period of at least 10 years.
  - (b) If an eviction action has been dismissed and no money judgment has been docketed, a period of at least 2 years.

By its own terms, however, this statute applies only to cases that are **not** “closed, confidential, or sealed,” while the records relevant to this Petition are all closed cases, in which judgment has been entered. Moreover, this statute only limits the power of

the Director of State Courts, and not the Wisconsin Supreme Court. Accordingly, the changes proposed by Legal Action’s Petition do not conflict with Wis. Stat. § 758.20(2).

Nor does this Petition conflict with the duties clerks of courts have to “open to the examination of any person all books and papers required to be kept in his or her office and permit any person so examining to take notes and copies of such books, records, papers, or minutes therefrom . . .” Wis. Stat. § 59.20(3). As discussed in greater depth below in Section 4, this Petition does not infringe on these duties, and does not conflict with either the letter or the spirit of Wisconsin’s open records laws.

## **2. The proposed retention rule recognizes evictions are not filed uniformly against all racial groups and seeks to address the disparate impact of eviction records on people of color**

Multiple research studies have documented dramatic racial disparities in both eviction filings and eviction judgments. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, *American Journal of Sociology* 118, 88-133 (2012); Peter Hepburn, Renee Louis, and Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, *Sociological Science* 7, 649-662 (2020).<sup>2</sup> One of these recent national studies looked at five years of eviction court records from thirty-nine states. Hepburn at 649. The study found that property owners filed evictions and won judgments against Black and Latino renters far more often than against white renters. *Id.* at 653. Additionally, the rate of filings and judgments against communities of color was drastically disproportionate to those communities’ percentages of the population. *Id.* For example, Black renters made up nearly thirty-three percent of eviction defendants, despite comprising only twenty percent of the renter population. *Id.* White renters, in contrast, made up almost fifty-two percent of the renter population but were named defendants in only forty-three percent of the cases. *Id.*

The study found multiple points of disparity within the eviction process. Women who are caring for children experienced the highest rate of eviction judgments across all demographics. *Id.* Property owners were more likely to serially file for restitution of the same property against Black and Latino renters. *Id.* at 656, 659. Courts were also more likely to grant eviction judgments against Black and Latino

---

<sup>2</sup> <https://scholar.harvard.edu/files/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf>; and [https://sociologicalscience.com/download/vol-7/december/SocSci\\_v7\\_649to662.pdf](https://sociologicalscience.com/download/vol-7/december/SocSci_v7_649to662.pdf).

renters than against white renters. *Id.* **In Wisconsin, the eviction filing rate against Black women is over two times the rate against white renters.** *Id.* See also Sophie Beiers, Sandra Park, and Linda Morris, *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, *American Civil Liberties Union*, (January 10, 2020).<sup>3</sup> These findings demonstrate the propensity – whether intentional or not – of property owners filings evictions against families of color far more frequently than against white renters. A 2016 Dane County report supports these findings, stating “eviction may serve as means to ‘police’ the boundaries between different communities and therefore contribute to the overall pattern of racial segregation.” J. Revel Sims, Ian Aley, Lexa Dundore, Sheila Long, Emily Lutz, Ruanda McFerren, *Evicted in Dane County, Wisconsin: A Collaborative Examination of the Housing Landscape*, (2016), 19.<sup>4</sup>

Despite these disparities in eviction filings and judgments, landlords will still use this skewed data found in the public record when making decisions about who to rent to; either not knowing – or not caring – about this disparate impact. Those skewed decisions, based on skewed data, disproportionately impact renters of color in Wisconsin. Landlords use this skewed information from dismissed cases, settled cases, cases where the renter prevailed, and cases which are decades old. The negative impact of these filings on a renter’s ability to find housing is undeniable. As discussed below in Section 3, any whiff of an eviction record impairs a renter’s ability to secure safe and stable housing.

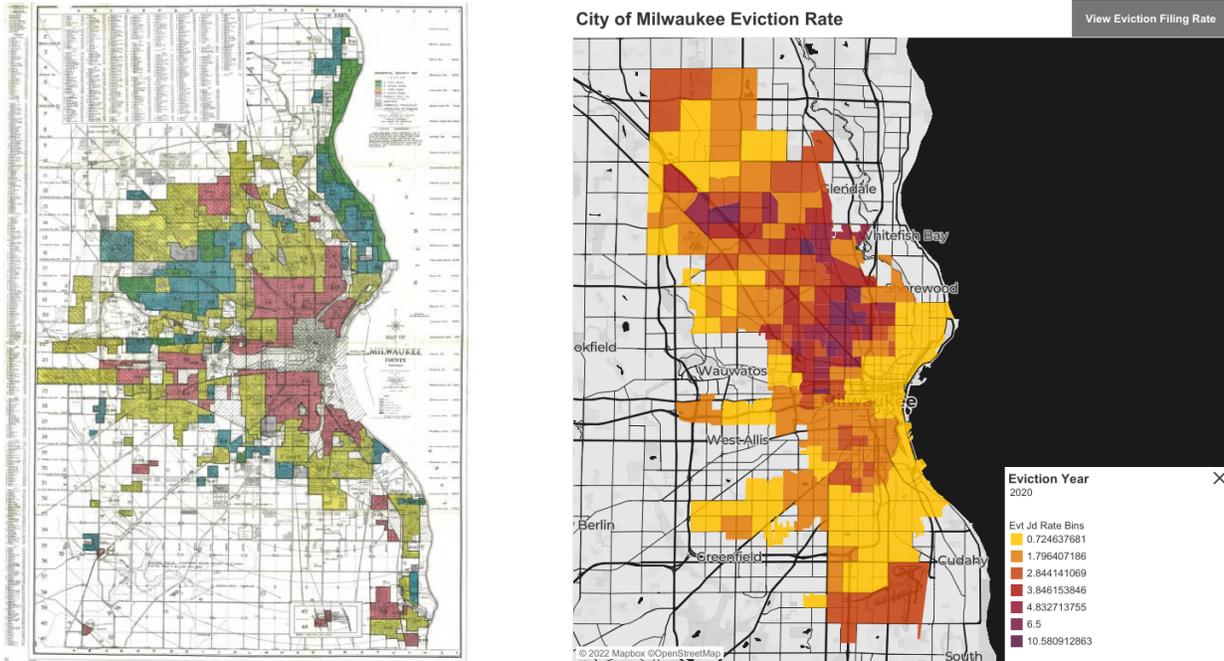
In considering this Petition, this Court should take into account the prolonged and pervasive racial disparities in the rental housing market in Wisconsin. While the longer record retention periods harm all renters facing eviction threats, the negative impact to Black and Latino renters is greater due to the high rate at which those individuals are listed as defendants in eviction cases. The current record retention rules reinforce the effect of eviction filings and judgments on renters of color by allowing the harm to linger for two decades in most eviction cases. Subsequently, Wisconsin renters of color are more likely than their white counterparts to encounter a barrier to obtaining safe and stable housing.

---

<sup>3</sup> <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

<sup>4</sup> [https://d3n8a8pro7vhmx.cloudfront.net/tenantresourcecenter/pages/416/attachments/original/1477332303/EvictedInDaneCounty\\_final-1.pdf](https://d3n8a8pro7vhmx.cloudfront.net/tenantresourcecenter/pages/416/attachments/original/1477332303/EvictedInDaneCounty_final-1.pdf).

Communities of color have historically been pushed into less safe and less stable housing. These disparities are glaring when comparing a map from 1938 showing the redlined areas of Milwaukee with a recent map which shows where evictions were filed in 2020 against families who rent their homes.<sup>5</sup>



Leah Foltman and Malia Jones, UW Applied Population Lab, *How Redlining Continues To Shape Racial Segregation In Milwaukee*, August 19, 2019.<sup>6</sup> The disparate use of evictions to reinforce these racialized boundaries perpetuates this cycle: relegating communities of color to unsafe, unstable, and unaffordable housing; housing from which they are more likely to be evicted. A court record maintenance system which allows landlords to wield evictions both as a tool and a threat perpetuates this cycle. By implementing Legal Action’s proposed retention rule, this Court will begin to address the long-term harmful effects that eviction filings and judgments have on all renting families in all of our communities throughout Wisconsin.

<sup>5</sup> Residential Security Map of Milwaukee County, Wisconsin, 1938. <https://collections.lib.uwm.edu/digital/collection/agdm/id/3028/>. Medical College of Wisconsin. <https://mke-evict.com/sda/fourth-post/>.

<sup>6</sup> <https://www.wiscontext.org/how-redlining-continues-shape-racial-segregation-milwaukee>.

**3. The proposed retention rule addresses the severe detrimental impact that eviction court records have on the housing stability of families who live in rental properties**

Any eviction record directly impacts a renter’s ability to secure safe, stable, and affordable housing. Deena Greenberg, Carl Gershenson & Matthew Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 HARV. C.R.-C.L.L REV., 118, 155 (2016) (“Evicted tenants are often forced into inadequate housing.”).<sup>7</sup> See also Desmond, *Eviction and the Reproduction of Urban Poverty*; Hepburn, *Racial and Gender Disparities among Evicted Americans*. **Any eviction record** pushes families who rent into substandard housing with more tenuous rental terms because they are forced to choose between housing of last resort and homelessness. A recent Illinois report suggests “the impact of an eviction filing on someone’s record is so detrimental, a higher bar should exist for placing an eviction case into the public record.” Housing Action Illinois & Lawyers’ Committee for Better Housing, *Prejudiced: The Stigma of Eviction Records*, March 2018, page 5.<sup>8</sup> The American Bar Association also recently adopted a resolution urging all governmental bodies to implement the “ABA Ten Guidelines for Residential Eviction Laws.” *American Bar Ass’n Resolution 612* (2022).<sup>9</sup> One of the ABA’s recommendations is to automatically seal the names of renters in dismissed eviction cases, “in recognition that being associated with an existing eviction court record can devastate a person’s ability to obtain rental housing in the future.” *Id.* This Petition will help ensure Wisconsin can begin to meet some of the ABA’s recommendations.

Wisconsin courts have previously recognized the salience records found on the Wisconsin Circuit Court Access website in individuals’ attempts to secure housing, employment, and other necessities. In *Keller v. Patterson*, the Court of Appeals found that an online WCCA record of a temporary restraining order could support an abuse of process claim – even though the petition for a restraining order was voluntarily dismissed – because of the harm the record on the WCCA website had on the named respondent. *Keller v. Patterson*, 2012 WI App 78, 343 Wis. 2d 569, 819 N.W.2d 841.

---

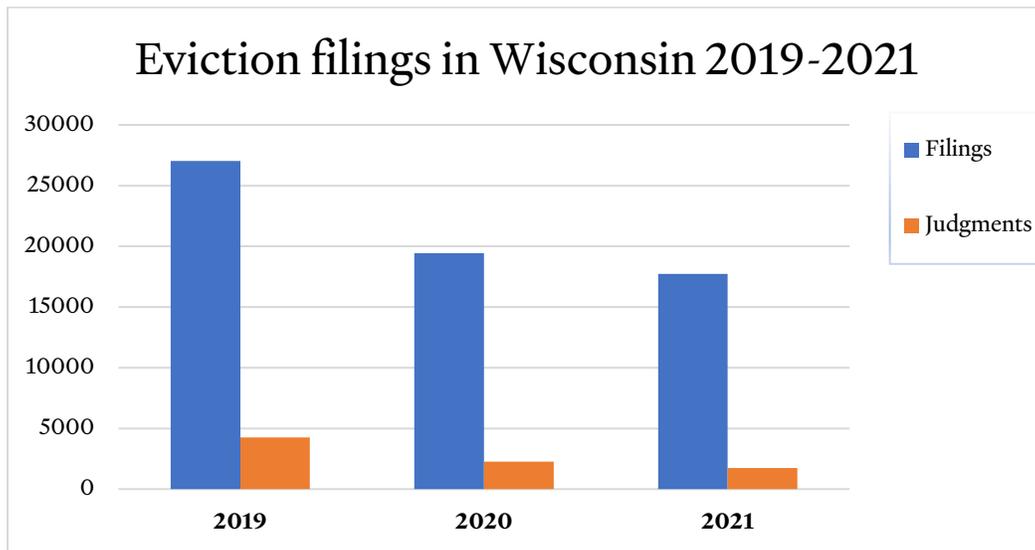
<sup>7</sup> [https://scholar.harvard.edu/files/mdesmond/files/greenberg\\_et\\_al\\_.pdf](https://scholar.harvard.edu/files/mdesmond/files/greenberg_et_al_.pdf).

<sup>8</sup> <https://lcbh.org/sites/default/files/resources/Prejudged-Eviction-Report-2018.pdf>.

<sup>9</sup> <https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2022/612-midyear-2022.pdf>.

Denying a rental application due to a prior eviction filing – regardless of the outcome of the case – is a common practice among landlords. Landlords in Wisconsin may take any eviction court record into consideration when screening an applicant. Wis. Stat. § 66.0104(2)(a)1.e. This includes eviction cases which are decades old and cases which never resulted in a judgment of eviction. A review of some Wisconsin management companies’ selection criteria reveals it is standard practice to deny an application for an eviction in the last two, five, ten, or more years; some without any regard at all to the actual outcome of the eviction case.<sup>10</sup>

**The vast majority of renters in eviction court are not evicted.** As demonstrated in the graph below, the number of eviction filings vary drastically from the number of actual judgments.



This data, from the Wisconsin Department of Administration’s Eviction Data Project, shows that in 2019, there were 27,026 eviction filings in Wisconsin.<sup>11</sup> **Less than 16% of those filings resulted in a judgment of eviction.**<sup>12</sup> In 2021, there were 17,727 eviction

<sup>10</sup> See criteria for MPI Property Management, LLC, <https://www.mpiwi.com/rental-criteria>; Colonial Property Management, LLC, <https://app.propertyware.com/pw/application/#/tenant/colonial-management>; Strong Blocks Property Management LLC, [https://strongblocks.appfolio.com/listings/rental\\_applications/new?listable\\_uid=89926315-d837-47f9-a407-3d71e8f944dd&source=Website](https://strongblocks.appfolio.com/listings/rental_applications/new?listable_uid=89926315-d837-47f9-a407-3d71e8f944dd&source=Website); and Madison Property Management, Inc., <https://www.madisonproperty.com/application>.

<sup>11</sup> <https://doa.wi.gov/Pages/Wisconsin-Eviction-Data-Project.aspx>.

<sup>12</sup> <https://doa.wi.gov/Documents/2019-full-year.pdf>.

filings in Wisconsin.<sup>13</sup> **Only 9.8% of those eviction filings actually resulted in a judgment of eviction against the renter.** Most of the families who found themselves in eviction court will have to deal with the online record of the filing on the WCCA website for at least the next two years. Under current records retention rules, however, almost all court records of eviction cases will be retained for twenty years. SCR 72.01(8), 72.01(9), and 72.01(10). While the online record on WCCA in many cases may go away after two years, the court record will remain publicly available in almost all cases for twenty years. While the online record may disappear, the court record remains for decades.

Eviction filings are disputes over breach of contract. The legal remedy, if a breach is committed, is to restore the rental property to the owner of the property and allow them to pursue recovery for their financial loss. The statute does not prescribe punitive remedies, yet the natural result of restitution of the premises is inherently punitive. The family loses their home and may lose their personal property, in a court process which often occurs in a matter of weeks or just a few months. The current record retention rules, which require most eviction records to be retained for twenty years, add additional punitive outcomes. After losing their home and personal property, renters continue to face consequences for decades. As discussed above, this means that, under current records retention rules, nearly 16,000 renters with evictions filed against them in 2021, will endure the consequences the of the filing **until 2041, when the clerk of courts disposes of the court record of their eviction case.**

One argument for retaining eviction records for the current period of twenty years may be that landlords, as business owners, should be able to view these records before making decisions about who they rent to. This Court has already recognized in its current records retention rules that not all court records should be kept for lengthy periods of time. Many guardianship and mental health court records are retained for just seven years. SCR 72.01(32), 72.01(33), 72.01(34), 72.01(38), 72.01(39), and

---

<sup>13</sup> <https://doa.wi.gov/Documents/2021-full-year-FINAL.pdf>. This large decline in eviction filings from 2019 through 2021 can largely be attributed to the COVID-19 pandemic and the resulting state and federal moratoria on some evictions. From March 27, 2020, until May 26, 2020, a state moratorium on most eviction cases in Wisconsin was in effect. *Executive Order #15, March 27, 2020*. From March 27, 2020, until July 24, 2020, the CARES Act placed a moratorium on some eviction cases. *15 U.S.C.A. § 9058*. On September 4, 2020, the Centers for Disease Control and Prevention issued a moratorium on some eviction cases. *85 Fed. Reg. 55292* (2020). The CDC's eviction moratorium was in place for almost a year, until August 26, 2021. *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485 (2021).

72.01(40). Dismissed divorce and paternity cases are retained for **only two years**, even though their retention lacks the same detrimental effect on one’s access to basic needs that an eviction filing has. SCR 72.01(11)(b), 72.01(12)(b), and 72.01(13)(b). This Court recently shortened this records retention period from five years to two years. *S. Ct. Order 20-08*. Even the three major credit reporting agencies – Equifax, Experian, and TransUnion – do not display debts beyond seven years old. These credit reporting agencies also do not report eviction judgments on credit reports, because they cannot be accurately tied to one’s credit report in the same way financial accounts can. National Consumer Law Center, *Salt in the Wound: How Eviction Records and Back Rent Haunt Tenant Screening Reports and Credit Scores*, August 2020.<sup>14</sup>

These arguments in favor of maintaining the current rule are undercut by the disparate impact that results when landlords use skewed data, like the court records of eviction cases, as discussed above in Section 2. Using data resulting from discriminatory business practices fosters business decisions which perpetuate the same exact discrimination. While on its face, renter screening may appear to be “good” business practice, using skewed data undermines property owners’ intentions. Using eviction court records incorporates discrimination and racialized decision making into future business decisions. Desmond, *Eviction and the Reproduction of Urban Poverty*, 120-121; Greenberg, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 116-118. Because evictions are disproportionately filed against renters of color, a person’s name in an eviction court record may not actually be an accurate assessment of their reliability; compared to a white prospective renter who has not faced eviction. A renter’s race undeniably plays a role in determining how likely the person’s name is going to appear in the court record, regardless of their qualities as a renter.

Legal Action’s proposal retains some eviction records for only one year, balancing the business owner’s interest in screening prospective renters with our communities’ interest in ensuring all families can find a safe and secure place to call home. After a family receives a termination notice, they could be sued in an eviction action in just a matter of days or weeks, frightened and in crisis of losing their home and belongings. They are faced with making time in their work schedule and their children’s schooling to spend hours in court. This costs them time and money, which is critical for a family with a limited income. If an eviction judgment is entered, a sheriff

---

<sup>14</sup> [https://www.nclc.org/images/pdf/special\\_projects/covid-19/IB\\_Salt\\_in\\_the\\_Wound.pdf](https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Salt_in_the_Wound.pdf).

could come to their home and remove them and their belongings in just a few days. If they have not found a place for their family and their personal property, they could lose everything they have spent years and money accumulating. The economic and emotional impact of an eviction action is enormous. Children can be shuffled from school district to school district, losing their connections, community, and teachers. While there are times when eviction might be a just course of action under the law, everyone must recognize that all evictions are an extremely destabilizing and traumatizing event. Doing what we can to help families avoid this hardship, while allowing rental properties to run effectively, is vital to the stabilization and dignity of our communities. Legal Action believes this Petition takes a step in that direction.

**4. This Petition strikes an appropriate balance between the extreme harm an eviction filing has on families who rent and Wisconsin’s open records laws**

Open records laws are rooted in the notion that parties have an “absolute right” to “know about operations of their government, including the judicial branch.” *State ex rel. Bilder v. Delavan Tp.*, 112 Wis. 2d 539, 553-54, 334 N.W.2d 252 (1983). As such, open records laws are “a powerful tool for everyday people to keep track **of what their government** is up to . . . .” *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶ 2, 327 Wis. 2d 572, 580–81, 786 N.W.2d 177, 182. (Emphasis added) Wisconsin’s open records law’s declared policy is “that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” Wis. Stat. § 19.31. When it comes to the action of a court, “the court record and the verbatim transcript of all court proceedings are the most accurate sources of information on the operation of the trial court and the court’s performance of its official duties and acts.” *State v. Panknin*, 579 N.W.2d 52, 58, 217 Wis.2d 200, 212 (Ct. App. 1998).

A change in the record retention requirements for eviction cases would not frustrate the purpose of open records laws. The impetus for open record laws – monitoring of government action – is of relatively little significance in eviction cases. In most rental scenarios, the parties involved are private actors who are engaged in a private contractual relationship. The only government intervention in these relationships occurs when an eviction action is filed in circuit court because the property owner is asking for a court order to: 1) evict the renter, and 2) grant a money judgment against the renter.

In cases where a renter wins their eviction action and the court dismisses the case, the court is ruling the landlord did not have a legal or factual basis to file the lawsuit. Whether based on a court ordered dismissal, a stipulated dismissal between parties, or a default judgment for failure to prosecute, there is minimal court intervention as a result of a dismissed eviction filing. As such, the reduction in record retention for dismissed eviction cases warrants no protection under open record laws. The severe harm the dismissed eviction case will have on a renters' future ability to find housing outweighs the arguments for the public having the right to access the court file for two decades.

In eviction cases where the court grants an eviction and no money judgment is entered, court involvement is also limited to issuance of a writ which authorizes the owner to ask the sheriff's assistance in removing the renter. The court's involvement in these cases is limited to a single act: the issuance of the writ of restitution. The actual execution of the writ – the most substantive portion of government involvement – is carried out and overseen by the sheriff. The local sheriff's department maintains records of its own which are subject to open records requests, and which would not be impacted by a modification to SCR 72. If a reduced record retention rule were implemented, members of the public who want to learn about government involvement in executions of writs of restitution could still request and get that information from their local sheriff's department. What the public could not do is use court records – ostensibly made available to monitor government action – to review the rental history of private parties for an unreasonable amount of time.

This Court's recognition in *Bilder* that public access to information must be tempered by other considerations – particularly the administration of justice – is instructive. Throughout the state, circuit courts have repeatedly recognized that the prejudicial impact of an eviction record, whether dismissed or granted, has a severe impact on the ability of families to find safe, stable, and affordable housing. The impact is made manifold by the likelihood that a layperson reviewing a court record may not understand the distinction between eviction filings, dismissed eviction cases, and granted evictions. Regardless of outcome, the potential negative impact of cases bearing the mark of eviction is often the same: disqualification of a family as a renter. Weighing the public interest in minimizing the harms of eviction records, against the limited public interest in open records in eviction cases, the balance favors a record

retention policy which allows people to secure housing by eliminating older eviction records while maintaining a reasonable record of a renter's recent rental history.

Retention of some eviction records for only one year provides landlords with a reasonable period of information from which they can draw inferences regarding a renter's viability. Renters with a chronic history of non-payment or other grounds for eviction are much more likely to be subject to repeated evictions which would be visible over the course of a year. Likewise, renters who are repeatedly subject to eviction actions face the increased likelihood of having a case that results in a money judgment against them. If this Petition is adopted, landlords would continue to have access to this information to make business decisions.

**5. The proposed retention changes will increase judicial efficiency and decrease administrative burdens for clerks of court**

Currently, if a person wants a court to remove their name from the court record in an eviction case, they have only one option: to request the circuit court seal or redact their name from the circuit court record. Wis. Stat. § 801.21. Circuit courts throughout Wisconsin now routinely hear motions to seal or redact a renter's name in eviction cases. This is the only tool renters have to mitigate the long-term harm an eviction record has on their ability to secure housing. In the experience of Legal Action's attorneys, in Milwaukee, hearings on motions to seal and redact are being scheduled out at least three months. From January 2021 through February 2022, the Marquette University Law School's Eviction Record Clean-up Clinic met with almost two hundred people who sought assistance with sealing or redacting their eviction records. Many of these renters, after receiving assistance from the clinic, filed *pro se* motions to seal or redact their court records. The proposed record retention rule will increase judicial efficiency by eliminating the need for many of these motions and reduce the workload of circuit court judges throughout the state. This will also reduce the workloads of clerks of court, who are tasked with implementing a judge's order to seal or redact the renter's name.

The likely burden on the Director of State Court's office in implementing this Petition will be minimal. Petitioners have already spoken with staff in the Director's office, and it is anticipated that the programming necessary to accommodate the new records retention rule in the Consolidated Court Automation Programs will be minimal. This Petition drastically simplifies Legal Action's prior proposal submitted to

this court during its consideration of Rule Petition 20-08. A clerk will only need to determine whether a money judgment was entered against any party in an eviction. This criterion will make it easy for clerks to determine whether an eviction case should be retained for only one year or for twenty years. If there is no money judgment, the eviction case will be retained for only one year. If there is any money judgment, the eviction case will be retained for twenty years. This will make it easy for clerks of courts throughout the state to administer this new rule.

**6. A uniform approach to eviction records promotes stability, consistency, and equality across Wisconsin**

A uniform approach to record retention which minimizes the harmful impacts of eviction will promote housing stability and ensure the consistency of record management across the state. Motions to seal or redact court eviction records have become increasingly common over the last few years. These motions, however, are subject to the discretionary decision-making of the circuit court judge presiding over the case in question. In the experience of the attorneys at Legal Action, even within a single county, the judge-by-judge approach to resolving these motions can vary significantly. Establishing a consistent standard of record retention will ensure eviction cases without any money judgments are handled in similar fashion throughout the state.

As noted above, this consideration is of particular import when considering the disparate impact of evictions on communities of color and families with limited income throughout Wisconsin. Evictions are often perceived as an issue only in cities, but the impacts of eviction records are equally harmful in rural areas. In rural areas where legal representation – particularly free legal representation – is less accessible, the consistent handling of eviction records will be particularly impactful for those families who cannot afford a lawyer to assist them with filing a motion to seal or redact their eviction record. For parts of the state with larger communities of color and a corresponding disparate rate of eviction filings, the uniform and expedient handling of eviction records will ensure the harmful impacts of eviction are not borne in a disproportionate amount by Wisconsin's communities of color.

## CONCLUSION

This Rules Petition presents this Court with a historic opportunity to make Wisconsin a leader in protecting families who rent their homes from the detrimental impact of court records in eviction cases. Reducing the records retention period to only one year for eviction cases in which no money judgment is entered strikes a reasonable balance between the interests of property owners, renters, the general public, and the court system. The administrative and fiscal impact to the court system in adopting the Petition is minimal. This impact is outweighed by the benefits to the court system through the reduction in the number of motions to seal or redact which renters may file, circuit court judges may have to decide, and clerks of courts may have to process. The Petition also recognizes the disparate impact that eviction records place on Wisconsin's communities of color. Adoption of the Petition will make it easier for renters throughout the state to find safe, stable, and affordable housing for themselves and their families. For the reasons set forth in this Memorandum, Legal Action of Wisconsin respectfully requests the court grant this Rules Petition, with an effective date of January 1, 2023, or July 1, 2023.

Respectfully submitted this 29<sup>th</sup> day of March, 2022

### **LEGAL ACTION OF WISCONSIN, INC.**

---

Korey C. Lundin  
State Bar No. 1030868  
E-mail: [kcl@legalaction.org](mailto:kcl@legalaction.org)  
Allison Creekmur  
State Bar No. 1116947  
E-mail: [apc@legalaction.org](mailto:apc@legalaction.org)  
Heidi M. Wegleitner  
State Bar No. 1058163  
E-mail: [hmw@legalaction.org](mailto:hmw@legalaction.org)  
744 Williamson Street, Suite 200  
Madison, WI 53703  
Phone: (608) 256-3304

Niabi Schmaltz  
State Bar No. 1104724  
E-mail: [nks@legalaction.org](mailto:nks@legalaction.org)  
Raphael F. Ramos  
State Bar No. 1058909  
E-mail: [rfr@legalaction.org](mailto:rfr@legalaction.org)  
Charles Bowen  
State Bar No. 1107964  
E-mail: [ctb@legalaction.org](mailto:ctb@legalaction.org)  
633 West Wisconsin Avenue, Suite 2000  
Milwaukee WI 53203-1918  
Phone: (414) 278-7722

Carmen L. Ayers  
State Bar No. 1056531  
E-mail: [cla@legalaction.org](mailto:cla@legalaction.org)  
245 Main Street, Suite 202  
Racine, WI 53403  
Phone: (262) 635-8836