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August 18, 2022

Clerk of the Wisconsin Supreme Court  
Attn: Deputy Clerk-Rules  
P.O. Box 1688  
Madison WI 53701-1688

Re: Petition 22-03 (Retention of Small Claims-Eviction Case Records)

Dear Clerk and Honorable Justices,

Thank you for the opportunity to provide written comment on Petition 22-03.

I am the Clerk of Circuit Court for Dane County, as well as the Chairperson of the Legislative Committee of the Wisconsin Clerks of Circuit Court Association. Our Committee has reviewed the petition and, on behalf of our entire Association, wish to provide information regarding the effect of this petition, if approved. The Association has taken no formal position for or against its adoption.

The petition seeks to reduce the retention period for certain small claims eviction case records, e.g. all except those with money judgments, to 1 year.

The petitioners should be aware that the retention periods provided within SCR 72 are minimum retention periods. If SCR 72 were amended as the petitioners seek, no Clerk of Circuit Court in the state would be in any way required to destroy these case files after 1 year. Many Clerks choose to never destroy records.

The petitioners, as well as the Court, should also be aware of conflicting provisions within SCR 72. SCR 72.01(48) pertains to "receipts." The retention of receipts is 7 years after issuance. Every small claims eviction case begins with the payment of the filing fee, for which a receipt record is generated and maintained as an integral part of the case record within the CCAP database. Thus, even if the petition is successful, and even if a Clerk wanted to purge the otherwise eligible eviction case record after 1 year, the CCAP case management system will not permit it, because doing so would destroy the receipt record associated with the case. We see this happening now. Consider that SCR 72.01(12)(b) holds that dismissed divorces need only be retained for 2 years. Yet if I attempt to run a purge list for FA cases, the only cases that display in the eligible purge list for the period of between 2 and 7 years ago are those that never had a filing fee paid, because the petitioner(s) had an approved indigency fee waiver. For the same reason that we cannot purge dismissed divorces after 2 years, we would be unable to purge eviction cases after



1 year, as all of them would have a filing fee receipt on the case (it is highly unlikely that a landlord would qualify for an indigency fee waiver).

What is certain is that if the petition is successful, small claims eviction cases eligible for the 1 year minimum retention period would drop off the Wisconsin Circuit Court Access website when that time came (just as those dismissed divorces do when the 2-year retention period has elapsed), which would appear to address, at least somewhat, the social justice concerns raised by the petitioners in their supporting memo. However, Clerks of Circuit Court may then notice a significant increase in requests from landlords seeking to inspect/copy these records which will still be retained at their courthouses.

Thank you for your consideration.

Sincerely,

/s/

Carlo Esqueda  
Dane County Clerk of Circuit Court  
Chair, Legislative Committee of the Wisconsin Clerks of Circuit Court Association