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Wednesday, November 22, 2023

Sent By Email and Regular Mail

Clerk of Supreme Court
Attention: Deputy Clerk - Rules
P.O. Box 1688
Madison, WI 53701-1688
clerk@wicourts.gov

RE: Supplemental Comments to Rule Petition 22-03, as requested October 30, 2023, in letter form, by Supreme Court Commissioner Timothy M. Barber, related to the retention of records in eviction cases.

Dear Clerk of Supreme Court:

This supplemental comment is submitted at the request of the Court, made in the letter dated October 30, 2023, by Supreme Court Commissioner Timothy M. Barber, indicating that the Court is soliciting interested persons to submit supplemental comments regarding the following:

> If the court adopts a modified version of the petitioner's proposed SCRs 72.01(8)(a), (9)(a), and (10)(a) that would create a retention period of "2 years after entry of final order or judgment for all eviction cases in which no judgment for money is entered against any party, including contested cases, stipulated dismissals, and default judgments," would the court be required to include an exception for cases governed by Wis. Stat. § 758.20(2)(a) in which a writ of restitution has been granted, in order to avoid a conflict with that statute?

I have been a rental property owner, property manager and real estate investor for over 30 years. Currently I sit on the Board of two organizations that since 1995, have been advocating for common sense housing related legislation that promotes safe, clean, and sustainable housing. Specifically, I am authorized to state that these supplemental comments also represent the views of the Apartment Association of Northeast Wisconsin and the Fox Valley Apartment Association. Additionally, we work together with the Rental Property Association of Wisconsin, Inc. (formerly the Apartment Association of Southeastern Wisconsin, Inc.), as well as several other Wisconsin based organizations whose members are actively involved in housing issues within our State. Collectively, these organizations represent a substantial footprint in our State whose members, well into the thousands, are engaged in rental property ownership, property management and real estate investment.

I spoke before the Court at the public hearing on September 7, 2023, to explain why we did not support Rule Petition 22-03, specifically stating how implementation of the Petition as it was originally submitted would do more harm than good to the very group of people it intended to help. Explaining how taking that "vision" away from rental property owners and property managers would reduce their ability to execute a risk management mechanism within their day-to-day operations and would force them to compensate through adjustments in their screening criteria. Increasing Security Deposits, Credit Score thresholds, increases in references related to

previous landlords, employers, criminal background checks, and forced increases in rent to offset additional costs related to this Petition. All of this would not only hurt the people this Petition was intending to help, but would also hurt most of the residents, who were never a part of this targeted beneficiary group in the first place. The majority pay their rent on time, have no lease violations, are good neighbors, respect the property, and keep it clean, etc. This is where the concept of collateral damage and unintended consequences of the implementation of this Rules Petition was also discussed.

At the close of the hearing on September 7th, the Petitioner closed with final comments, and they essentially made a point to state that they always hear about how landlords, and or real estate associations will have to do the things we had described that day, but this never actually happens. I would like to point out to the Court, on that day we heard from all of those who were there to advocate for this Petition, that they are constantly working with fewer and fewer landlords, or seeing landlords who were issuing 28 Day Non-Renewals, or seeing more and more estates who upon the death of the landlord, are no longer participating in that part of the rental market, or explained how much rents have gone up for their clients, etc., etc. With all due respect to the Petitioner, in listening to the very group of people who came there to support that Petition on September 7th, their comments only served to reinforce that the rental property industry and its owners/managers are indeed reacting to some of these well intended housing policies, by migrating their properties to a different rental marketplace target.

We do sincerely hope that one day soon we will be able to get all the appropriate stakeholders involved in addressing these housing issues and concerns together and brainstorm through solutions "*upfront*", as opposed to always trying to come up with solutions that are void of all those involved in the subject matter at hand, forcing this "*reactionary mode/response*" that only inhibits our end goal and objective of providing safe, clean, sustainable housing. Our customers, who are our tenants, and the very clients of those who are advocating for them, deserve better from all of us.

I also attended the Court's Administrative Open Conference on October 9, 2023. While it was interesting to listen to the discussions that ensued as each position was being brought forward, I would like to summarize what we heard that day:

- There was deep concern brought forth by Justice Hagedorn, among other things, about the historic precedent the State of Wisconsin has taken as it relates to the publics access to Open Records, the harm that enacting this Petition as it was written, could potentially do to the rental property industry, as well as the public at large who may have an interest in being able access records such as these.
- Perhaps as a carryover from the September 7th public hearing, there was further dialog and discussion about whether the court had the authority to do what the Petitioner was asking for as it did appear to conflict with Wis Stat §758.20.
- The modification to Petition 22-03 was brought forth by Justice Ann Walsh Bradley, and involved bringing the Petitioners request, back in line with the Wis Stat §758.20 (2)(b), from their original 1 year to 2-year time frame. This it seemed was an apparent attempt to find some common ground with the different points of view being discussed that day, and from what we "thought" we heard was to effectively make "Official" what was the intent of Wis Stat §758.20(2)(b). There was no discussion, that we can recall regarding Wis Stat §758.20(2)(a), which involves the 10-year retention period when a Writ of Restitution has been granted.

We came away from that October 9th open conference, understanding that what the court was effectively doing was to enforce what the Legislature had already approved and made law, through Wis Stat §758.20. In fact, Justice Dallet made this point to her colleagues later during the discussion after the Petition was modified to 2 years as there was more debate about the role of the Court, versus the Legislative branch. Justice Dallet commented that all they were doing was to confirm the standard the Legislature had set with Wis Stat §758.20, in the first place.

Interestingly, the Courts own question positioned to seek additional comments from the Petitioner and Interested Parties, seems to seek further clarification because of this concern once again. This question, illustrated on page 1 of this document, concludes as follows:

> "…would the court be required to include an exception for cases governed by Wis. Stat. § 758.20(2)(a) in which a writ of restitution has been granted, in order to avoid a conflict with that statute?"

To maintain consistency with how the dialog, debate and rational was explained in the October 9th open conference, our position is that of course there would need to be language adopted such that the full integrity and standard established by Wis Stat §758.20 was maintained. Anything less than this would seem to now disregard how the position of the Court on this matter was being articulated within not only its own body of Justices, but also those of us who were in attendance to listen to this as it was discussed and debated.

In short, there is nothing unconstitutional about Wis Stat §758.20, which has stood the test of time now for over 5 years. We left that administrative open conference session feeling relieved that the Wisconsin Supreme Court would observe and maintain the separation of powers and the authority granted to each of the three branches of government. With recognition that they would put the responsibility back on the Legislature to address issues such as those brought forward by the Petitioner, that seemingly attempted to circumvent that branch of government in the first place.

Housing issues, and let's make no mistake about this, eviction records and their related visibility are one component of the housing crisis we have in this state, this country; are complex and best resolved through the Legislative process, where all appropriate stakeholders can be a part of the dialog, debate and solutioning. This is not the time or place to have this discussion, but at some point, for the benefit of the very people we are all trying to help here, our customers, and the Petitioners' clients; all the appropriate stakeholders need to start meeting at the front end of these discussions. Anything less than this reinforces our consistent, albeit flawed methodology of treating the Symptoms and not the Disease itself, yet we expect a different result? With the unintended consequences of hurting all our customers, not just the targeted group being discussed in this Rules Petition, by continuing to use this ill-fated problem-solving methodology.

Respectfully submitted,

Richard A. "Rick" Van Der Leest