

KEVIN E. MARTENS



Pauline Garry
Court Reporter

Katherine Wilberg
Deputy Clerk

Dear Clerk,

I am writing in response to the comments that have been submitted to Rule Petition 20-08, which I filed on behalf of the Records Management Retention Subcommittee.

I am encouraged to see the support we have received on the proposed changes to the retention of criminal, forfeiture, and ordinance violation records (SCR 72.01(15), (16), (17), (18), (19), (20), (24), (24a), (24m)). Given that retention periods increase based on the seriousness of offenses, the Subcommittee believes changing the rules as we have proposed, including making retention periods dependent on the disposition of cases rather than initial charging, would be a positive change. It would lead to more consistent recordkeeping, with records kept for time periods that reflect the actual offense. Additionally, as both the Public Interest Law Society and Legal Action of Wisconsin, Inc. (“Legal Action”) have indicated, it would also help reduce the negative effect that past convictions can have on employment and housing opportunities.

Legal Action has also proposed changes to small claims case retention. Currently, most such cases are retained for 20 years after entry of judgment or final order. Small claims cases that were dismissed and never joined and that were not disposed of by a judgment or stipulation within 6 months of the return date are retained for only 2 years.

Legal Action is proposing to create five categories of small claims cases, each with its own retention period. To summarize, those categories would be as follows:

- (1) Money Judgment cases
Retention Period: 20 years after entry of judgment
- (2) Eviction cases, contested but there is no appearance by the plaintiff at the hearing or the plaintiff voluntarily dismisses
Retention Period: 21 days
- (3) Eviction cases, dismissed by stipulation of the parties
Retention Period: 1 year
- (4) Eviction cases, where no money judgment is entered
Retention Period: 2 years
- (5) Other

Retention Period: 10 years

The reasons cited in support of these requested changes are not without merit. People who have an eviction case filed against them may well face barriers when seeking future housing. However, the changes being proposed would be a significant deviation from the current retention periods and would impose a considerable burden on clerks of court and their staff.

Legal Action proposes that dismissed evictions be retained for a time period between 21 days and one year. No other court records under SCR 72.01 are retained for one year or less. Aside from the small claims retention period for dismissed and never joined cases, the shortest retention period that currently exists is 4 years for certain juvenile court records and 5 years for traffic forfeiture, conservation forfeiture, and ordinance violation case files, as well as dismissed family cases. Implementing a retention period of less than a month would be a substantial change.

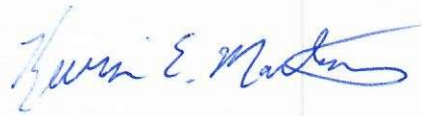
Additionally, from a procedural perspective, I am advised that the purging of files is an annual event for clerks, not a daily event. Given that retention periods are minimum (and not maximum) periods that records must be kept, it is unlikely that clerks would choose to purge these files pursuant to a daily, weekly, or even monthly retention schedule. Instead, it is highly likely that clerks would continue to keep these files based on a yearly schedule, making them still subject to public inspection even after the 21 day retention period would have passed.

Moreover, I am advised that Legal Action's proposals would require substantial programming changes to the Consolidated Court Automation Programs (CCAP), Wisconsin Circuit Court Access (WCCA), and the Representational State Transfer (REST) subscriptions with an extensive period of time for completion. These programming changes would ultimately require clerk staff to enter multiple new data elements for all small claims cases to ensure that the CCAP system can provide clerks with timely and accurate lists of purge-eligible cases. This would substantially increase the workload on clerks and their staff, who would be required to review the facts of each case with enough specificity to input the additional required information correctly. Cases would be processed more slowly and, quite possibly, with increased errors.

Finally, the Director of State Courts Office has already recognized the negative effect that a dismissed small claims case can have on a person's housing and employment prospects. In 2018, the Director adopted a recommendation by the WCCA Oversight Committee by implementing a policy limiting the display period of dismissed small claims actions on WCCA to two years after entry of dismissal. This policy was intended to address the challenges faced by those who have had an eviction case filed against them that was ultimately dismissed and balance the interests of all interested parties.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Kevin E. Martens". The signature is fluid and cursive, with a long horizontal stroke at the end.

Hon. Kevin Martens