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September 5, 2023

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SEP 06 2023

CLERK OF SUPREME COURT  
OF WISCONSIN

Mr. Samuel A. Christensen  
Clerk of the Supreme Court  
110 East Main, Suite 215  
Madison, WI 53701

Dear Clerk of the Supreme Court,

I am submitting this written comment as Chair of the Wisconsin Records Management Retention Subcommittee (Retention Subcommittee) regarding the Rule Petition 22-03 hearing on September 7, 2023.<sup>1</sup> The Retention Subcommittee is comprised of court clerks, district court administrators, legal advisors and other record retention specialists. It periodically reviews record maintenance and retention rules to ensure consistency with best practices based on the business needs of the court, taking into account the legal and administrative value of the records to the court and other justice system partners.

In its Rule Petition, Legal Action proposes to shorten the period for retaining eviction records to one year in all eviction cases in which no money judgment is entered against either party.<sup>2</sup> Among the important factors that the Supreme Court must consider are the procedural and legal issues raised by the proposed rule change. In August 2022, the Director of State Courts (in consultation with the Retention Subcommittee) provided detailed procedural information regarding the administrative and technological impacts of this petition.<sup>3</sup> The following highlights several of those issues.

**The Proposed Rule Change Conflicts with Wis. Stat. § 758.20(2)**

Wisconsin Statute § 758.20(2)(b) directs the Director of State Courts to not remove any dismissed eviction action with no money judgment from the Wisconsin Circuit Court Access

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<sup>1</sup> Procedure 1.13(1) of the Rule Making Process provides that at the public hearing “interested persons and entities shall have an opportunity to comment on the rule petition.” Wis. Sup. Ct. Advisory Comm. on Rule Procs., *Report and Recommendations: Appendix A Procedures* (May 2011), <https://www.wicourts.gov/scrules/docs/committeereport.pdf>.

<sup>2</sup> Attorney Korey C. Lundin, *Rule Petition 22-3* (Mar. 29, 2022), <https://www.wicourts.gov/supreme/docs/2203petition.pdf>.

<sup>3</sup> *Comments from the Hon. Randy R. Koschnick, Director of State Courts* (Aug. 24, 2022), [https://www.wicourts.gov/scrules/docs/2203\\_koschnickcomments.pdf](https://www.wicourts.gov/scrules/docs/2203_koschnickcomments.pdf).

(WCCA) website sooner than two years. This means dismissed eviction cases with no money judgment *must* remain on the Wisconsin Circuit Court Access (WCCA) website for at least two years. Legal Action’s proposed rule change does not appear to comply with this statute.

Legal Action argues its proposed rule change does not conflict with Wis. Stat. § 758.20(2) because the statute states that the restrictions only apply to cases that are “not closed, confidential, or sealed.” They argue the records relevant to the petition are all closed cases, meaning a final judgment has been entered.

For the reasons stated in the Director’s August 2022 letter, however, it appears that the term “closed” as used in the statute is analogous to the companion terms “confidential” and “sealed”, and does not incorporate final judgments. In the context used, these terms are referencing different manners in which a case is restricted from public viewing. Reading “closed” to mean that the case is concluded and a judgment has been entered would create an exception that swallows up the rule – the two-year retention period would effectively apply only to prejudgment cases. It goes without saying that an open, active case would never be removed from the WCCA website -- unless it was “confidential”, “sealed”, or otherwise part of a “closed” proceeding. It appears, then that the Rule Petition conflicts with Wis. Stat. § 758.20(2).

**Supreme Court Rule 72.01 Establishes Minimum Retention Periods**

The next consideration is a practical one. Supreme Court Rule 72.01 sets forth *minimum* retention periods for circuit court case records. When a case record reaches its retention period, the CCAP case management system automatically removes the case from displaying on the WCCA website. However, Clerks of Court must manually purge (or delete) each case to remove the record from the case management system itself. Clerks are not required to immediately purge those records. Whether (and when) to purge those records is a decision made by each Clerk of Court as the statutory keeper of circuit court records.<sup>4</sup> As the Director noted in his letter, many counties do not purge on a regular basis and only do so when staff is available.

Until this purging takes place, a case record may be viewed in the county’s Clerk of Circuit Court Office by anyone who is permitted to have access to the record – even if that record is past its minimum retention period. If the Rule Petition is granted, clerks will not be required to purge those records after one year. It appears that many counties will continue to retain these case records – accessible to the public -- well past the one-year retention period.

**SCR 72.01(48) Requires a Seven-Year Retention Period for any Case Containing a Receipt**

Another issue arises regarding the retention period under SCR 72.01(48) for cases involving a receipt. This rule states that a receipt for money received by the clerk of circuit court or register in probate must be retained for seven years after issuance. The clerk or register in probate must

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<sup>4</sup> Wis. Stat. § 59.40(2).

therefore retain any case that contains a receipt for a minimum of seven years after the receipt was issued.

As the Wisconsin Circuit Court Clerk's Association explained in their comments, eviction actions generate a receipt with the payment of the filing fee.<sup>5</sup> This means eviction records must be retained for seven years if a filing fee is paid, even if the case is otherwise eligible to be purged. In accordance with Wisconsin Supreme Court Rules, the CCAP case management system will not permit a case to be purged if it contains a receipt and seven years has not passed from the issuance of the last receipt.

### **Stipulated Dismissals in Small Claims Cases Will Have Different Retention Periods**

Finally, the proposed rule change may present additional difficulties regarding disparate treatment of stipulated dismissals in small claims cases. The proposed rule states that all eviction cases, including stipulated dismissals, where no money judgment is entered would be retained by the Clerk of Court and display on the WCCA website for one year.

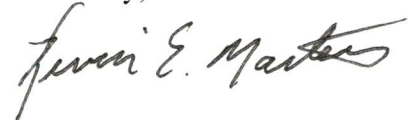
Under the proposed rule change, stipulated dismissals in small claims cases will be treated differently depending on whether the case included an eviction claim. For example, if a stipulated dismissal is entered in a case with both eviction and money judgment claims, that case would only be required to be retained by the Clerk of Court (and displayed on the WCCA website) for one year. This is true even if the stipulated dismissal required monetary payments between the parties and even if they payments exceeded the one-year time period.

If, on the other hand, a stipulated dismissal is entered in a non-eviction small claims case that required monetary payments to be made between the parties, it would be retained by the Clerk of Court for 20 years and display on the WCCA website for two years. Inconsistencies such as these make records management and CCAP programming more difficult and lead to greater unpredictability for litigants.

### **Conclusion**

Thank you for accepting these comments on behalf of the Retention Subcommittee. Again, more detailed information is included in the Director's August 2022 letter. I appreciate the Supreme Court considering the procedural impacts of proposed rule changes on court system staff, programming and technology, and the users of the court system.

Sincerely,



Kevin E. Martens

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<sup>5</sup> *Comments from the Legislative Committee of the Wisconsin Clerks of Circuit Court Association* (Aug. 18, 2022), [https://www.wicourts.gov/srules/docs/2203\\_legislativecommitteecomments.pdf](https://www.wicourts.gov/srules/docs/2203_legislativecommitteecomments.pdf).