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Supreme Court of Wisconsin – via email: [clerk@wicourts.gov](mailto:clerk@wicourts.gov)

**RE: Rule Petition 20-08**

Dear Honorable Justices,

Thank you for considering Legal Action of Wisconsin, Inc.'s comments. Legal Action is a non-profit legal aid firm which provides free legal representation to low-income residents in the Southern half of Wisconsin. We write for two reasons: 1) to support the Petition's recommendation to retain records based on the final disposition of a case rather than on the preliminary charging decision; 2) to suggest modifications to the suggested changes regarding small claims case file retention. The supporting memo for Petition 20-08 states, "the Subcommittee is cognizant of the impact that having one's case viewable on the Wisconsin Circuit Court Access website (WCCA) can have on a person's reputation and on his or her ability to secure housing and employment." Legal Action's clients experience those profound harms daily, as they try to secure stable employment and housing.

**Legal Action supports the recommendation to retain documents  
based on final case disposition**

Over the past four decades, the nation has experienced an epidemic of mass incarceration; during that period, Wisconsin's prison population has increased by a staggering seven hundred percent.<sup>1</sup> Wisconsin's prison population has generally been rising since the 1990s despite trends of significantly reduced violent and property crime across the country during this time.<sup>2</sup> By 2018, in Wisconsin, an estimated 1.4 million people had criminal records.<sup>3</sup>

Studies show that after approximately seven years, past criminal legal system involvement becomes irrelevant for predicting future criminal involvement.<sup>4</sup> Nonetheless, WCCA currently provides free, instant access to criminal conviction histories for 20-75 years. The retention period currently reflects the initial charging level rather than the charge at time of disposition which has the effect of lengthening the required retention period, and correspondingly the case display period on WCCA. Thankfully, this petition would change that. Sections 8, 9, 10, 12, 13, 14, 16, 17, and 18 of Petition 20-08 modify SCR 72.01(15), (16), (17), (18), (19), (20), (24), (24a), and (24m) to retain documents based on the disposition of the case instead of the charging decision. The supporting memo states, "it is fair and

logical to retain cases according to their disposition, not their charging, because the disposition of the case represents the final determination of whether a defendant committed a crime or other violation and, if so, of the seriousness of the crime or other violation.” Legal Action of Wisconsin supports this assessment.

Court records are increasingly detrimental to their subjects due to “advanced technology, a permissive legal framework, and heightened security concerns.”<sup>5</sup> Amongst other issues, “employers are increasingly concerned about negligent hiring claims because technology makes it easier to find and validate information about candidates’ criminal records.”<sup>6</sup> Collateral consequences of convictions are “disproportionately concentrated by race, gender, and poverty status, especially affecting black men”; as a result, criminal records “may be a significant contributor to racial disparities in employment and other socioeconomic outcomes.”<sup>7</sup> Although the recommended changes will not address many aspects of conviction-based employment discrimination, they will make it less likely that potential employers will reject job applicants based on very old criminal convictions.

Moreover, the supporting memo states, “CCAP could program its case management programs to determine the most serious disposition in each criminal case.” Therefore, this change could have a positive impact while creating minimal burden on court staff. This recommendation is therefore in line with guidance from scholars to centralize and automate second-chance remedies for individuals suffering from collateral consequences of court records.<sup>8</sup>

### **Legal Action recommends modifying the retention of small claims records**

Legal Action respectfully requests the court modify the small claims rules at SCR 72.01(8), 72.01(9), and 72.01(10) to shorten the retention period of some eviction cases and small claims case as suggested in the attached proposed revisions. The current rules require most small claims cases to be retained for twenty years. As a result of these rules, and the easy accessibility of the records on the WCCA website, any tenant who has ever had an eviction action filed against them – regardless of the result of the action – has difficulty finding safe and affordable housing.

Landlords may refuse to rent to a tenant simply because they had an eviction action filed against them; regardless of whether they were actually evicted, and regardless of how long ago the case was filed.<sup>9</sup> The ease with which landlords can access Wisconsin’s court records has seriously undermined tenants’ ability to find housing.<sup>10</sup> Denying a rental application due to a prior eviction filing – regardless of the outcome of the case – is a common practice among landlords. The State Bar of Wisconsin’s recent manual on landlord-tenant law, advises landlords to: “investigate whether an applicant has been the subject of any eviction or money judgments in suits brought by other landlords.”<sup>11</sup> As a direct result of the current rules on document retention, the filing of just one eviction case against a tenant can have an impact on that tenant’s ability to find safe and affordable housing for decades after the case was filed.

Studies have repeatedly demonstrated that Black and Latinx tenants in Wisconsin are significantly more likely to have eviction actions filed against them.<sup>12</sup> These racial disparities are even more dramatic among Black and Latinx women. This disparate impact on Wisconsin tenants of color further warrants Legal Action's proposed rule changes. The Scarlet "E" which brands any tenant who has ever had an eviction action filed against them, justifies this court dramatically reducing the retention period for eviction cases which do not result in a judgment of eviction, as Legal Action suggests in our proposed rules changes.

For these reasons, Legal Action of Wisconsin, Inc. supports the Petition's recommendation to retain records according to disposition, and respectfully requests this court make additional modifications to small claims case file retention rules.

Sincerely,

Legal Action of Wisconsin

/s/  
Deedee Peterson  
Executive Director

/s/  
Susan Lund  
Employment Priority Coordinator

/s/  
Korey Lundin  
Staff Attorney

## Proposed modifications to SCR 72.01(8), 72.01(9), and 72.01(10)

(8) Small claims case files. All ~~papers~~ **documents** deposited with the clerk of circuit court in every proceeding commenced under ch. 799, stats., **whichever period is shorter:**

(a) 20 years after entry of final order or judgment for all cases **in which any judgment for money is entered against any party; including contested cases, stipulated dismissals and default judgments; except 2 years from date of entry of judgment for cases dismissed because issue was not joined and the case was not disposed of by judgment or stipulation within 6 months from the original return date.**

(b) 21 days after entry of final order or judgment for any eviction case which is dismissed in favor of a defendant following a contested hearing, which is dismissed due to the non-appearance of a plaintiff, or which a plaintiff voluntarily dismisses;

(c) 1 year after entry of final order or judgment for any eviction case which is dismissed by stipulation of the parties;

(d) 2 years after entry of final order or judgment for any eviction case in which no judgment of money is entered against any party; or

(e) 10 years after entry of final order or judgment in any other case not listed above.

(9) Small claims court record. A history and index of proceedings kept in book or card form, **whichever period is shorter: 20 years after entry of final order for contested cases, stipulated dismissals and default judgments; 1 year from date of filing for dismissed cases.**

(a) 20 years after entry of final order or judgment for all cases in which any judgment for money is entered against any party;

(b) 21 days after entry of final order or judgment for any eviction case which is dismissed in favor of a defendant following a contested hearing, which is dismissed due to the non-appearance of a plaintiff, or which a plaintiff voluntarily dismisses;

(c) 1 year after entry of final order or judgment for any eviction case which is dismissed by stipulation of the parties;

(d) 2 years after entry of final order or judgment for any eviction case in which no judgment of money is entered against any party; or

(e) 10 years after entry of final order or judgment in any other case not listed above.

(10) Small claims minute record. A brief statement of in-court proceedings commenced under chapter 799 of the statutes, generally maintained in the case file, **whichever period is shorter: 20 years after entry of final order for contested cases, stipulated dismissals and default judgments; 1 year from date of filing for dismissed cases.**

(a) 20 years after entry of final order or judgment for all cases in which any judgment for money is entered against any party;

(b) 21 days after entry of final order or judgment for any eviction case which is dismissed in favor of a defendant following a contested hearing, which is dismissed due to the non-appearance of a plaintiff, or which a plaintiff voluntarily dismisses;

(c) 1 year after entry of final order or judgment for any eviction case which is dismissed by stipulation of the parties;

(d) 2 years after entry of final order or judgment for any eviction case in which no judgment of money is entered against any party; or

(e) 10 years after entry of final order or judgment in any other case not listed above.

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- <sup>1</sup> Mary M. Prosser & Shannon Toole, *Wisconsin's Mass & Disparate Incarceration*, Wis. Law., April, 2018. Available online at: <https://www.wisbar.org/NEWSPUBLICATIONS/WISCONSINLAWYER/Pages/Article.aspx?Volume=91&Issue=4&ArticleID=26275#a>.
- <sup>2</sup> State of Wisconsin Department of Corrections, *Prison Point-in-Time Populations: 2000-2016*, page 6. Available online at: <https://doc.wi.gov/DataResearch/InteractiveDashboards/DAIPointInTime2000to2016.pdf>. John Gramlich, *What the data says (and doesn't say) about crime in the United States*, Fact Tank (November 20, 2020), <https://www.pewresearch.org/fact-tank/2020/11/20/facts-about-crime-in-the-u-s/>.
- <sup>3</sup> Wisconsin Policy Forum, *A Fresh Start: Wisconsin's Atypical Expungement Law and Options for Reform*, June of 2018. Available online at: [https://wispolicyforum.org/wp-content/uploads/2018/06/FreshStart\\_FullReport.pdf](https://wispolicyforum.org/wp-content/uploads/2018/06/FreshStart_FullReport.pdf).
- <sup>4</sup> Megan C. Kurlychek, Robert Brame & Shawn D. Bushway, *Enduring Risk: Old Criminal Records and Predictions of Future Criminal Involvement*, 53 Crime & Delinquency 64 (2007) (Wisconsin study concluding that, after seven years, the risk of a new offense approximates that of a person without a criminal record); Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 Criminology & Pub. Pol'y 483 (2006) (studying concluding that six or seven years after an arrest, an individual's risk of re-arrest approximates that of an individual who has never been arrested).
- <sup>5</sup> Collen Chien, *America's Paper Prisons: The Second Chance Gap*, 119 Mich. L. Rev. 519, 532-33, 553 (2020); Becki Goggins, *An Overview of Findings from the 2016 Survey of State Criminal History Records Repository Administrators*, Survey Insights Blog (Spring of 2018), [http://www.search.org/files/pdf/2016\\_Survey\\_Insights\\_Blog\\_1.pdf](http://www.search.org/files/pdf/2016_Survey_Insights_Blog_1.pdf); Society for Human Resource Management, *SHRM Survey Findings: Background Checking—The Use of Criminal Background Checks in Hiring Decisions*, July 12, 2012, available online at: <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/criminalbackgroundcheck.aspx>; National Inventory of Collateral Consequences of Conviction, available online at: <https://niccc.csgjusticecenter.org> (documenting 486 consequences codified in Wisconsin law).
- <sup>6</sup> Samuel K. Baier, *Reducing Employment Barriers for People with Criminal Records*, 46 J. Corp. L. 219, 222 (2020).
- <sup>7</sup> J.J. Prescott & Sonja Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 Harv. L. Rev. 2461, 2471, (2020).
- <sup>8</sup> Prescott, *supra* note 7 at 2553; Jeffrey Selbin, Justin McCrary, and Joshua Epstein, *Unmarked: Criminal Record Clearing and Employment Outcomes*, 108 J. Crim. L. & Criminology, 1, 8 (2018).
- <sup>9</sup> Wis. Stat. § 66.0104(2)(a). Kristin K. Beilke et al., *Wisconsin Landlord & Tenant Manual* (1<sup>st</sup> ed. 2020), § 1.4.
- <sup>10</sup> Lauren Kirchner, *Data Brokers May Report COVID-19-Related Evictions for Years*, The Markup, August 4, 2020. Available online at: <https://themarkup.org/locked-out/2020/08/04/covid-evictions-renter-background-reports>.
- <sup>11</sup> Wisconsin Landlord & Tenant Manual, *supra*, § 1.16.
- <sup>12</sup> 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).