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August 24, 2022

Sent Via Electronic Mail and Regular Mail

Clerk of Supreme Court
Attention: Deputy Clerk-Rules

P.O. Box 1688
Madison, WI 53701-1688
clerk@wicourts.gov

RE: Comments to Rule Petition 22-03, In re Amendment to SCRs 72.01 (8), 72.01 (9), and 72.02 (10),
Relating to Retention of Records in Eviction Cases

Dear Clerk of Supreme Court:

I am legal counsel and a registered lobbyist for the Apartment Association of Southeastern Wisconsin, Inc. (AASEW). These Comments are submitted in opposition to granting of the above Rule Petition 22-03. I am authorized to state that these Comments also represent the views of two other Wisconsin organizations whose members are actively involved in housing issues, namely the Wisconsin Realtors Association and the Wisconsin Apartment Association.

I. Introduction

The Petition should be denied for five main reasons:

1. The Wisconsin Legislature established a policy for the retention of records in eviction cases via 2017 Act 317 which created Wis. Stat § 758.20. The Wisconsin Supreme Court invalidates legislation only for constitutional violations. The Petition does not assert any constitutional objections.

2. The policy change on retention of eviction records for which Petitioner Legal Action of Wisconsin advocates is already substantially available (with a two, not one-year window) per Wis. Stat. § 758.20(2)(b). The Director of State Courts already has the authority under that statute – not currently being exercised - to remove eviction cases from WCCA online access if no money judgment has been docketed two years after dismissal; the Court can instruct the Director to implement that policy now.

3. Access to court records – to any public record actually – is a major policy question which should be determined by elected representatives of the people. Other states have recently acted via legislation on the topic of expungement or sealing of eviction case records.

4. The Petitioner's arguments that evictions are punitive, that they disproportionately affect minorities because of "racialized decision making" by landlords and that this justifies restricting public access to eviction records are completely unfounded.

5. Wisconsin's strong open records policy contained in Wis. Stat. § 19.31 and the court decisions thereunder should not restrict public access to court records after only one year, much less allow electronic case files to be *destroyed*, as sought by Petitioner.

The AASEW recently commissioned a researcher to undertake a comprehensive study of all 1,101 residential evictions which were filed in Milwaukee County Small Claims Court in the month of December 2019, which was one of the last months that evictions were filed prior to the COVID-related court suspensions. An executive summary of our study is attached as a PDF file to these Comments. The complete study is available on the AASEW website at https://aasew.org/resources/AASEW_Eviction%20Study_Final%20_031522a.pdf. The data file of those cases contains information about litigants which is no longer available via public search and is therefore not being furnished. It can be provided to the Court or Petitioner upon request. This highly detailed study is an important resource which provides an overview of why eviction cases are brought, explains how eviction cases are resolved and includes percentages and dollar amounts showing resolutions.

II. Statutes Enacted by the Legislative Branch May Not be Annulled or Modified by Court Rule Except When Unconstitutional

The Wisconsin Legislature established a policy for the retention of records in eviction cases via 2017 Act 317 which created Wis. Stat § 758.20. This Court will invalidate legislation only for constitutional violations. *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 338 N.W.2d 684 (1983). "An exercise by one branch of the core power of another branch is impermissible, and a branch 'should not abdicate or permit others to infringe upon' the branch's core powers. *League of Women Voters of Wis.*, 2019 WI 75 at ¶ 34 (quoting *Rules of Court Case*, 204 Wis. 501, 514 (1931)). The Petition does not assert any constitutional objections.

III. Eviction Records Are Already Often Removed from Online Searches

As Petitioner points out on page 4 of its Memorandum, there is currently a two-year window of online access to records of all small claims cases, including evictions. When that window closes, cases which were dismissed "because issue was not joined and the case was not disposed of by judgment or stipulation within six months from the original return date," SCR 72.01(8), are blocked from public access. A current review of the database of the 1,101 Milwaukee County evictions filed in December 2019 will show that 55% of those cases have been removed from WCCA access, 517 automatically by the director of state courts, and in another 14 cases the defendants' names were sealed by a judge.

Although cases without money judgments become non-searchable after two years, there are many eviction cases where small money judgments were entered (reflecting only court costs or added sheriff's fees). These remain searchable for 20 years. There are also a fair number of eviction cases where no money judgment is entered and the case is dismissed because (1) the landlord does not appear on the return date because the tenant has moved or (2) the landlord voluntarily dismisses based on a stipulation for the tenant to vacate on a date certain or (3) a stipulated dismissal calls for the tenant to pay rent arrears in installments.

Those small judgments are not often docketed but that eviction case remains as a mark against the tenant for 20 years. **Instead of granting the petition here, which would be inconsistent with the Wisconsin Statutes, this Court should instead direct that the director of state courts implement Wis. Stat. §**

758.20(2)(b) and allow for removal from WCCA searches after two years for an eviction case where an eviction action has been dismissed and no money judgment has been docketed.

IV. The Statute Enacted Via 2017 Act 317 Should Not Be Annulled or Modified by Court Rule

Public policy regarding access to eviction records has been put into a statute, Wis. Stat. § 758.20(2), and the Supreme Court should not reverse a legislative act on such an important public policy question. This is not just a "practice of law" or "administration of the courts" question which would be proper subjects for the Supreme Court's rule-making authority.

Also, to the extent that the Legislature has entered the "administration of the courts" arena, we must note that it had the right to do so per Wis. Stat. § 751.12(4): "This section shall not abridge the right of the legislature to enact, modify, or repeal statutes or rules relating to pleading, practice, or procedure." This Court should only consider a challenge to a legislative enactment in that arena if the legislation is unconstitutional or if the legislature has infringed on an exclusive and essential power of the judiciary.

At page 4, Petitioner attempts to get around the clear-cut requirement in § 758.20(2)(a) that cases where a writ of restitution has been granted must remain searchable for at least 10 years by saying this "applies only to cases that are **not** 'closed, confidential, or sealed.'" Obviously most all eviction cases are closed within a year so such an interpretation would make the statute meaningless and ineffective. There are hundreds of thousands of civil and criminal cases – all closed – which are and should remain publicly searchable for the length of time the Legislature or this Court have established.

Petitioner makes a nonsensical argument at pp. 4-5 when it claims:

Moreover, this statute only limits the power of the Director of State Courts, and not the Wisconsin Supreme Court. Accordingly, the changes proposed by Legal Action's Petition do not conflict with Wis. Stat. § 758.20(2).

Yes, the director of state courts is appointed by, and all the director's functions and powers are established by, this Court under the direction of the Chief Justice, SCR 70.01. But that does not mean the Legislature lacks power to enact statutes governing how programs such as WCCA are to be operated. Does Petitioner seriously propose that because the director is an employee of the Wisconsin Supreme Court that this Court could ignore or reverse any duties given to the director by statute? For example, subsection 3 of §758.20 was created by 2019 Act 123 to require that the director "shall ensure" access to WCCA for certain reporting needs of the Wisconsin Department of Corrections. Can that "shall" mandate also be reversed by this Court? When the Legislature has said "*may not remove case management information*" in subsection 2, this Court cannot ignore or reverse that statutory language by ruling that such language only applies to the director of state courts and not to the director's supervisor. Section 758.20 governs the WCCA system as a whole. And because the system is "maintained by the director of state courts," as stated in Wis. Stat. § 758.20(1), the Legislature's determination that certain information may not be removed binds this Court as well.

V. The Detrimental Impact of an Eviction Record on Renters' Ability to Secure Future Housing Is Unavoidable but can be Ameliorated

In section 3 starting on page 8, Petitioner quotes extensively from academic research showing that renters who have been evicted have difficulty obtaining rental housing in the future. For example, a renter who fell behind on rent, was sued for eviction and then vacated the premises before the court date could have the case dismissed with an agreement by the landlord not to pursue rent arrears and entry of a judgment for only taxable costs of about \$200. That judgment and the fact that it arose through an eviction would remain on the renter's record for 20 years unless paid.¹ Interestingly, Petitioner does not suggest a change shortening the time for online access to such cases, apparently conceding that a money judgment should remain searchable for 20 years. But the AASEW and related housing providers filing these Comments *have* supported legislation to eliminate online access to such a case if the judgment is never *docketed*. See Wis. Stat. § 758.20(2)(b).

Petitioner states: "Denying a rental application due to a prior eviction filing — regardless of the outcome of the case — is a common practice among landlords." Pet. Memo. p. 9. Petitioner's implication here is that there are outcomes of evictions where a tenant may have prevailed, where the case was dismissed because the tenant had a valid defense. However, such cases are quite rare. Well over 90% of evictions are based on nonpayment and ultimately there is no sustainable defense in such a case. The AASEW eviction study shows that 92.9% of cases were based on a 5-day pay or quit notice.

Petitioner wants to fault landlords for supposedly not using a fair and proper business practice when they reject a renter who has a dismissed eviction case on their record. But landlords know *from their own experience* with evictions why so many of them get dismissed (50.8% in our study): they know that the narrative of a dismissed case is most likely **not** that the tenant somehow "won" their previous dismissed eviction but that it was most likely based on nonpayment, that the tenant probably moved before a writ had to be executed and that the prior landlord probably agreed to a dismissal or made a business decision not to return to court to obtain a judgment which will be uncollectible.

VI. Data from the Wisconsin Department of Administration's Eviction Data Project Does Not Accurately Report the Number of Judgments

When we first became aware of the Petitioner's reliance on the DOA study purportedly showing that less than 16% of filings in 2019 resulted in a judgment of eviction (Pet. Mem. p. 9), it immediately struck us that our study showed a much higher percentage of cases resulting in a writ being issued (42.2%). We contacted Michael Basford, Director of the DOA Interagency Council on Homelessness, and exchanged emails and conducted a Zoom call with him to explore the discrepancy in the data reporting. His email of June 1, 2022 responding to our questions is attached. The main reason for the discrepancy was that 75 cases in the AASEW study had eviction judgments filed *after* December 31, 2019 while the DOA study picked up *only* the judgments actually granted during that month. Therefore, the AASEW study presents a more accurate analysis of what percentage of eviction filings *ultimately* result in a judgment.

The Petition also claims that only 9.8% of the 17,727 eviction filings in 2021 resulted in a judgment against the renter (p.10), but that statistic must be understood in the context of the

¹ The AASEW eviction study shows that only 2.9% of eviction judgments were satisfied. The AASEW has also researched Wisconsin eviction cases from the year 2015. This research showed that only 2.6% of money judgments had been satisfied after 5 years.

CDC eviction moratorium which was in effect until the end of August 2021 and the fact that the federal Emergency Rental Assistance Program was paying rental arrears which allowed many eviction cases to be dismissed.

At page 10, Petitioner begins a legal philosophy type of discussion: What are evictions all about? It says, "Eviction filings are disputes over breach of contract" and that "The statute does not prescribe punitive remedies, yet the natural result of restitution of the premises is inherently punitive."

Justification for this Court (or more properly the Legislature) to correct the unfair effects of a "punitive" law might have more basis if tenant litigants typically won an eviction at least 40 or 50% of the time but were then subjected to rejection or discrimination in seeking new housing simply because a court record now shows that they had a dispute with their former landlord. And even Petitioner admits that an argument "for retaining eviction records for the current period of twenty years may be that landlords, as business owners, should be able to view these records before making decisions about who they rent to." (p. 10.) Indeed, a person's record of meeting financial obligations is essential to obtaining credit in many fields such as credit cards, car loans, mortgage applications or cell phone services. A prospective tenant's history as a renter is even more vital to a person providing housing because the "credit" granted to an incoming renter cannot be cut off as easily.

Evictions are time consuming and expensive for rental property owners. The AASEW eviction study shows that the mean amount of rent arrears and damages claimed was \$3,178 in cases where a money judgment was sought. Credit card issuers can immediately suspend or close the account of a nonpaying customer. They do not have to go to court to cancel the card and they do not have to keep supplying credit for continuing monthly purchases while the card holder claims that some charges, fees or interest were improperly imposed. Because property owners cannot quickly and easily cut off services to their nonpaying "customers" they need to be able to analyze a prospective tenant's ability and willingness to pay.

In today's age where a potential spouse, a life partner or a roommate will be found and screened through the internet, it is important to preserve the public's ability to do an online search regarding the background of such a person. A one-year limit for searching eviction filings, as the Petition proposes, is far too short.

VII. The Data Used by Landlords to Screen Tenants is not "Skewed"

At page 7, Legal Action claims that landlords are intentionally reinforcing "racialized boundaries" of "unsafe, unstable and unaffordable housing" by persisting in the "disparate use of evictions" as a "threat." Legal Action asserts at page 11:

While on its face, renter screening may appear to be "good" business practice, using skewed data undermines property owners' intentions. Using eviction court records incorporates discrimination and racialized decision making into future business decisions. . . [Citing academic studies] . . . Because evictions are disproportionately filed against renters of color, a person's name in an eviction court record may not actually be an accurate assessment of their reliability; compared to a white prospective renter who has not faced eviction.

This argument is grossly misleading. Neither the academic studies cited nor any research which we are aware of establishes that property owners use "*racialized decision making*" (emphasis added) when screening prospective tenants. There is no evidence showing that a property owner having, say, two nonpaying tenants – one white and one Black – will decide to evict only the Black tenant and leave the white tenant to continue as a resident. The decision to reject an applicant is based on an *economic* decision. It can be because the prospective tenant has made bad *economic* decisions or faced difficult *economic* circumstances in the past by not paying rent and being evicted. The landlord's economic decision has a disparate impact on racial minorities only because they statistically have less wealth or income than white renters and thus will be subject to evictions at a higher rate.

While Petitioner devotes considerable discussion to the alleged racial bias of landlords, claiming that landlords pursue a disproportionate number of evictions in minority neighborhoods, it cites no research establishing the racial identities of the property owners who are bringing these evictions. What are we to make of the fact that at least half of rental property *owners* in those distressed neighborhoods are Black or another minority? What "bias" are minority owners exhibiting when the evictions they file impact members of their own race?

VIII. Many Eviction Case Records are Already Being Sealed Soon after Filing

Our knowledge under this heading is limited to eviction cases arising in Milwaukee County. Nevertheless, Milwaukee County is where a large percentage of Wisconsin evictions arise. Milwaukee County is a jurisdiction with a high percentage of minority and low-income renters, and thus it is appropriate to examine current practices in the County concerning sealing of cases.

Reviewing the calendar for the week of August 8-12, 2022 of the judge handling evictions in Milwaukee County (Hon. Cynthia M. Lewis, Br. 21) one notes the following:

There were 105 cases heard that week. Forty-nine of these are listed as "motion hearings." Over 90% involve a motion to seal the name of the defendant/tenant party in an older eviction case which has been resolved. If the defendant has served the plaintiff with notice of the motion and shows up for the hearing, the motion to seal is almost universally granted.

There also appears to be a practice of having the defendant's name sealed as part of a contested eviction hearing if the case is dismissed per a stipulation for the defendant to vacate the premises voluntarily within a week or two. Such immediate motions to seal (with the plaintiff not objecting) are granted *even though a future court date might have been set for a hearing on rent arrears and damages.*²

² *Berrada Properties 90 LLC vs. Roberts*, 2022SC15532, 8-9-22, case was contested, plaintiff moves to dismiss all causes of action, defendant moves to seal, plaintiff has no objection, court grants motion to seal.
Waldkirch vs. Schumacher, 2022SC15389, 8-9-22, contested eviction hearing held, parties reach agreement, first cause of action is dismissed per stipulation that defendant vacate by 8-23-22 and; rent and damages set for 10-19-22, defendant moves to seal, plaintiff has no objection, court grants motion to seal.
HTWOO LLC vs. Glover, 2022SC15408, 8-10-22, contested eviction, parties reach agreement, defendant to pay \$1200 by 8-19-22 and vacate by 8-31-22, defendant moves to seal party name, no objection by plaintiff, court grants motion to seal.

Also, the undersigned can represent to the Court that he has observed several hundred eviction cases in Milwaukee County via Zoom since April 1, 2022. These have been cases heard by court commissioners in the first instance. The commissioners are usually diligent in informing *pro se* tenants that they can file a motion to seal the case in the office of the clerk of court if their case has been settled or dismissed. If the tenant is represented by counsel and if the case is resolved without needing to be transferred to the judge for a contested hearing, tenant's counsel will frequently indicate that a motion to seal is going to be filed.

The above examples illustrate that sealing of evictions for defendants is occurring quickly and often and with almost no opposition from plaintiffs. In a case where the defendant has agreed to vacate voluntarily, and the plaintiff has thus agreed to an immediate entry of an order dismissing the action, the plaintiff will consent to sealing. The defendant/tenant is thereby able to secure new housing without being rejected due to a recent eviction.

IX. Any Major Change Affecting the Public's Right to Access Court Records Should be Determined by the Wisconsin Legislature.

Access to court records – to any public record actually – is a major policy question which should be determined by elected representatives of the people. This has been the path followed in other states which have recently acted via legislation on the topic of expungement or sealing of eviction case records.

Arizona House Bill 2485 became law on June 8, 2022. Section 33-1379, Arizona Revised Statutes, was created to allow sealing of an eviction record if the eviction was dismissed prior to entry of judgment, if judgment was entered in favor of the tenant or if the landlord and tenant filed a stipulation to set aside an order of eviction and seal the court file.

In the state of Utah legislation entitled *Expungement of Eviction Records* was enacted effective 7/1/2022. Chapter 372, 2022 General Session. Parties to an eviction can stipulate to expungement. Automatic expungement can occur after three years if the entire case was dismissed. A tenant must have satisfied any judgment as a precondition to filing a petition for expungement.

The states of Nevada (NRS §40.2545), Minnesota (Minn. Stat. §484.014) and Illinois (735 ILCS 5/9-121, eff. 8-1-2022) have also enacted sealing/expungement measures via the legislative route, not through action by their high courts. Similar to these states, this important public policy issue can only be fully addressed and decided by the Wisconsin Legislature.

X. Granting the Petition Would Contravene Wisconsin's Strong Open Records Policy

Wisconsin's strong open records policy contained in Wis. Stat. § 19.31 and the court decisions thereunder should not restrict public access to court records after only one year, much less allow electronic case files to be *destroyed*, as sought by Petitioner. *Hagen v. Board of Regents of the University of Wisconsin System*, 2018 WI App 43. *Friends of Frame Park, U.A. v. City of Waukesha*, 2022 WI 57 (see discussion of general principles of public records law at ¶26 and 27).

XI. Response to Other Submitted Comments

We would like to briefly address arguments raised in numerous other Comments which are on file with the Court as of August 22, 2022. The submissions by social welfare and tenant advocacy agencies raise justifiable concerns about the pernicious impact of evictions on the lives of Wisconsin families. One answer to those concerns is to prevent a court record of an eviction from arising in the first place by promoting mediation. The AASEW strongly supports mediation and is a founding partner of Milwaukee's Rental Housing Resource Center (referred to in Comments by Mike Bare of Community Advocates, Inc.)³ A second answer is to provide more rental assistance funding for low-income tenants, primarily through the federal Housing Choice Voucher program. The AASEW supports this.

One theme arguing for more limited retention of eviction records runs through many of the Comments on file: it is illustrated by this sentence from Mike Bare's Comments: "*These records also tell an incomplete story of why the eviction was filed, and what its outcome was.*" But the AASEW study of 1,101 December 2019 evictions in Milwaukee County **does** tell a complete story. Taking the 92.9% of cases filed for nonpayment, then adding cases where a tenant failed to comply with an ordinary notice terminating a lease and adding evictions based on bad tenant behavior we do have the "complete story." The truth is that very few tenants are evicted for legally unjustified reasons.

The Comment received from Prof. Matthew Desmond of Princeton University, director of its Eviction Lab, perhaps deserves special attention due to his and the Eviction Lab's prominent national reputation. In support of Legal Action's petition, Prof. Desmond refers to research he did in Milwaukee for his 2016 book, *Evicted: Poverty and Profit in the American City*. The undersigned happens to have written the top-rated Amazon review of *Evicted*.⁴

As explained in the footnote below, Prof. Desmond's reference to the tenant who had to apply "to 90 apartments before a property owner said yes" is actually an example of why access to eviction records remains crucial for property owners.⁵ That tenant (named "Arleen" in the book) had been evicted six times so of course that would, and should, be important for a prospective landlord to

³ [Milwaukee Rental Housing Resource Center | Helping tenants and landlords with housing challenges. \(renthelpmke.org\)](http://renthelpmke.org)

⁴ [The 'Hood is Actually Not So Good \(amazon.com\)](https://www.amazon.com/dp/B01LWVW000) (Reviewed by Heiner Giese as "Milwaukee Joe." Over 1200 "helpful" ratings).

⁵ After Matthew Desmond's book about housing in Milwaukee was published in March 2016 and quickly rose in popularity, garnering a Pulitzer Prize and other awards, Milwaukee landlords were naturally quite interested in its background. Milwaukee property owner Timothy Ballering (whose rental operations are featured briefly in the book) and AASEW attorney Heiner Giese had several lengthy phone calls and exchanged emails with author Desmond. Giese learned "Arleen's" real name and researched court records of her evictions. There were nine between 2003 and 2015. Not all cases had judgments for rental arrears but those that did totaled \$9,358.

One of the book's featured landlords "Sherrrena" was the owner of 18 rental duplexes on the north side of Milwaukee. Desmond claims she was clearing \$10,000 in monthly profit (*Evicted*, p. 152). Court records research by Giese showed she had filed over 70 evictions before losing all her properties to mortgage or city tax foreclosures within a year or two after Desmond left Milwaukee in December 2009. Desmond never updated his research when his book was published six years later. Sherrrena's story is relevant to the issue of eviction record retention because it shows that if landlords are not careful in screening out bad risks they can fail and lose their entire investment.

know. And with such a track record of evictions in recent years a landlord could reasonably assume that most of her evictions did have "merit" and a justified "outcome" (Desmond's words), thus requiring rejection of her rental application.

XII. Conclusion

The Wisconsin Legislature has enacted a statute concerning public access to eviction records, § 758.20. That statute has primacy and forecloses Petitioner's request here. This Court should not annul or modify a legislative act unless it is unconstitutional. Petitioner Legal Action of Wisconsin has full ability to contact members of the Assembly and Senate and to propose drafting of bills to modify eviction record retention.

It is not just rental property owners who would be adversely affected if the Petition is granted. Anyone looking to enter into a co-housing arrangement with another person should be able to check online whether their potential roommate has a stable rental history.

Petitioner's assertions that landlords bring evictions in a racialized and discriminatory manner are totally unsupported.

Finally, the benefit to tenants of sealing their names from WCCA searches so that a prior eviction filing will not hang over them when they apply for new housing – which is the goal of Legal Action's Petition – is already being realized as we discussed in section VIII above. A change in WCCA record retention policies is not necessary. And it is especially not necessary via the destruction of the electronic file after only one year.

Respectfully submitted,

Heiner Giese
Legal Counsel, Apartment Association of Southeastern Wisconsin, Inc.



Executive Summary
- eviction study 0315:



Basford Mike DOA
email 06.01.22.pdf

cc: Atty Korey C. Lundin, Legal Action of Wisconsin (via email to kel@legalaction.org)

RE: Problem with Wisconsin Eviction Data Project

From: Basford, Mike - DOA (mike.basford@wisconsin.gov)

To: hgiese@ameritech.net

Cc: gary.goyke@gmail.com; chrismokler@kwcommercial.com; tim@apartmentsmilwaukee.com;
mike.cottrell@equitablebank.net; tpettit@petriepettit.com; joem@wra.org

Date: Wednesday, June 1, 2022, 02:07 PM CDT

Thank you very much for the opportunity to talk with the Apartment Association of Southeastern Wisconsin about the Wisconsin Interagency Council on Homelessness' Wisconsin Eviction Data Project on May 19th. At this meeting, we discussed the discrepancies between AASEW's and ICH's analysis of Milwaukee County eviction data from December 2019. I asked for two weeks to review AASEW's analysis against our data.

Background

In May 2021, the ICH released the Wisconsin Eviction Data Project. The purpose of the project was to gauge the efficacy of homelessness prevention interventions over long periods of time. Prior projects such as Princeton University's *Eviction Lab* didn't provide eviction data for the entire state – so one purpose of the project was to provide data on eviction filings and judgements throughout the state. Another purpose of the project was to report on data on a monthly and per-county basis – with the idea that it could generate conversations on how evictions are filed and how they become converted to judgements for eviction in communities where those rates were higher than the state.

Methodology

The data is extracted monthly using an application programming interface (API) developed by DOA's Division of Enterprise Technology to pull data from the Wisconsin Circuit Court Access REST service. This provides the county circuit court data from the Consolidated Court Automation Programs (CCAP) for eviction filings and judgements. I then take that data and produce reports to show the number of evictions filed and judgements per county per month.

It is noted that CCAP provides no warranties as to the accuracy or timeliness of the information contained in the WCCA data – but subsequent analyses of data (which I'm asked to do on a regular basis by organizations such as AASEW and other interested parties) has shown that the numbers are close enough to allow for a showing of trends in Wisconsin in eviction filings and judgements – particularly as they were affected by state and federal moratoria on evictions and by investments by the federal government in emergency rental assistance.

Cross-Analysis

For this request, I pulled a report for eviction judgements made in Milwaukee County for December 2019 (attached). I compared the results in the fields against those in AASEW's file (from which I separated out all cases that didn't result in an eviction judgement – I am also attaching that file).

My time and capacity limitations didn't make it possible for me to review all 465 cases in AASEW's analysis which resulted in a judgement for eviction in CCAP. My analysis was a sample of the first 100 cases in AASEW's data file. I sorted the cases in order of case number. Of the cases that resulted in eviction judgement that I analyzed; I found the following:

- 75 cases in the AASEW file were found to have eviction judgements filed after December 31, 2019. What this means is that those cases would not have wound up in my eviction judgement file for December 2019 and should have wound up counted in the months judgements happened (many of these cases didn't have a judgement filed until over a year later – no doubt a result of eviction moratoria in 2020 and 2021)
- 12 cases in the AASEW file were also reported in my December judgement file – meaning that they were filed AND received judgements in December 2019. Those rows are highlighted in yellow.
- 7 cases in the AASEW file came up blank when I ran a search in CCAP. Those rows are highlighted in blue.
- 3 cases in the AASEW file didn't show a judgement for eviction at any time. Those rows are highlighted in green.
- 3 cases in the AASEW file came up in CCAP as cases that had both filings and judgements for eviction in December that didn't exist in my data file. Those are highlighted in red.

Conclusion

As AASEW analyzed each eviction filing in December 2019 to its conclusion, regardless of when that conclusion was reached and our data reports are for events in only the month of the event happening, I can conclude that the discrepancies in the numbers between AASEW's analysis and ICH CCAP data files are the result of difference in the parameters we each used for our separate analyses – as well as different methods as AASEW used researchers to examine individual filings at court while ICH numbers rely completely on the WCCA REST service. I am confident in both the results of AASEW's analysis and ICH's monthly data pulls.

I also agree that the AASEW analysis contains a much wider scope of data collection than ICH's. I'd submit that is due to the difference in our data needs. ICH also has capacity limitations that preclude such deep research into each case file. However, I am satisfied that ICH's Wisconsin Eviction Data Project is meeting our goals in providing new information to the public on the effects of our actions to date regarding evictions.

As always, I am happy to discuss this further and welcome any opportunities to work with landlords – who we view as needed and valued for providing housing for Wisconsinites.

Regards,

Michael Basford (he/him/his) | Director

Department of Administration

Interagency Council on Homelessness

Mike.Basford@Wisconsin.gov

<http://homelessness.wi.gov>

Direct: (608) 266-3633



Executive Summary

Comprehensive Study of Evictions Filed in Milwaukee County, Wisconsin

Research undertaken by APARTMENT ASSOCIATION OF SOUTHEASTERN WISCONSIN, INC. (Phase 1)

Introduction:

The Apartment Association of Southeastern Wisconsin, Inc. (AASEW) is the largest trade organization representing owners and managers of rental housing in Wisconsin. Data for evictions filed in Milwaukee County is available online through the Wisconsin Consolidated Court Automation Program (CCAP). This data is tracked and reported on by organizations such as the Eviction Lab at Princeton University. However, reporting about the online data by academic researchers contains missing or misleading information about many aspects of the eviction process—mainly because individual eviction cases have not been examined in depth. Our study now does such in depth research.

Key Findings

1. Prior research did not collect all information necessary.

The biggest unknown is the financial loss sustained by landlords who file evictions, losses both on average and collectively. We found that many eviction cases are either dismissed (51%) or a money judgment for damages is not sought (21%) and a very small percentage of actual judgments are ever paid (2.9%).

2. Incomplete research has led to misleading reporting.

A good example of this is a New York Times story by Emily Badger dated December 12, 2019 - [Many Renters Who Face Eviction Owe Less Than \\$600 - The New York Times \(nytimes.com\)](#). That story, based on research furnished by Eviction Lab, failed to consider that many cases involve a dismissal or a decision by the landlord not to pursue an uncollectible claim for unpaid rent, resulting in a judgment for only a few hundred dollars in court costs. Conversely, our study shows \$1,436 as the average amount requested in an eviction complaint and \$2,672 as the average judgment granted for lost rent and damages.

3. Methodology used in our study.

We selected the month of December 2019 and examined the complete case record and all documents filed in court for that month's 1,101 residential evictions. We picked December 2019 because it was before the COVID pandemic affected the courts. We hired Marquette Law School

student Jacob Dalton to conduct this research in person at the Milwaukee County courthouse. He then compiled his research and created graphs and tables illustrating the data. His summarization of the data has been supplemented with interpretive analysis by AASEW Board members and AASEW legal counsel Heiner Giese.

4. Future research.

This is Phase 1 of a multifaceted review of Milwaukee County evictions. Phase 2 will include the use of professional researchers to follow up through in-person contacts with landlords and tenants. Phase 3 will be an in-depth study of the impact of Right to Counsel (RtC) in Milwaukee County. What are the benefits and costs to owners when a nonpaying renter gets an attorney to help them dispute or negotiate an eviction case? Is mediation (which we strongly encourage) being used to resolve cases? How are owners changing their screening and rental practices due to involvement by attorneys for renters? Phase 4 will attempt to quantify the total impact of unpaid rent in Milwaukee County. Eviction judgments are approximately \$12 million per year. Estimates place the actual unpaid rent in Milwaukee at \$60-100 million annually.

5. Key data points.

- ▶ In December of 2019, there were 1,101 residential evictions filed in Milwaukee County.
- ▶ A majority of the cases filed were dismissed (559 cases and 50.8% of total cases) either by stipulation, at the plaintiff's request, or by judgment.
- ▶ A significant portion of cases resulted in a writ (465 cases and 42.2% of total cases).
- ▶ Tenants were offered the opportunity to stay at the residence in at least 360 of 525 agreements (68.6%) and were ordered to vacate by a specific date in at least 159 cases (30.3%).
- ▶ Tenants did not comply with the stipulation – usually by not paying - 164 of the 525 times (31.2%) requiring the owner to return to court.
- ▶ Cases which began with a five-day notice were the overwhelming majority (1023 instances, making up 92.9% of total cases).
- ▶ Judgments with costs were issued in 484 cases but only 231 of the cases had a money judgment for the landlord granted *in addition* to costs. Moreover, in 56% of the total cases there is *no* judgment entered, although the landlord obviously incurred costs in filing the case. **This is a key finding.**
- ▶ The average (mean) rent arrears and damages in our eviction study (excluding “costs only” cases) were

<u>Notice</u>	<u>Complaint</u>	<u>Requested</u>	<u>Judgment</u>
\$1,242	\$1,436	\$3,178	\$2,672

For further information contact

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