

August 24, 2022

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

RE: Petition 22-03 Eviction Record Retention

Dear Honorable Justices,

I am a lessor¹ that has provided rental housing to Wisconsin families for 18 years, and I am writing in support of Petition 22-03 related to reducing the length of time eviction records are held.

Wisconsin has mandatory education and/or training along with licensing requirements for anyone who wants to *sell* residential property (or teach children, cut hair, or drive a car), but there is no education, training, or license requirement for anyone whose business is *renting* residential property.

The lack of training means that I am tempted to use, and many of my fellow lessors often do use court records on CCAP as they screen out rental applicants. Screening rental applications based upon court records is a bad business practice. It is all too easy for lessors to mistakenly think that an eviction filing on an applicant's *past* CCAP record means that renter was and will be unreliable in the *future*. It should be obvious to any trained businessperson that a person's past actions does not predict their future behavior. Moreover, eviction court records are created when a lessor files an eviction for discriminatory or retaliatory reasons. Such records create inaccurate and defamatory impressions. Worse, there is no way for a lessor to tell from CCAP whether an eviction case was filed for "legitimate" reasons, discriminatory reasons, or simply due to a clerical error such as when a rent payment from one renter is misplaced or credited to the wrong account. Eviction judgments can be, and are entered in all of these cases because renters often fail to attend or assert all their defenses in court.

¹ I use the term "lessor" instead of "landlord" because the latter is an anachronism. It is not only incorrect, but it is also offensive since many, if not most, property owners worked very hard to purchase and provide rental housing; they were not given the land they rent by some monarch or inheritance. This Court and Wisconsin's appellate courts have used the more appropriate and modern term, "lessor" for more than 50 years. *E.g.*, *Bay View State Bank v. Lieber*, 33 Wis. 2d 539, 148 N.W.2d 122 (1967); *Rivera v. Eisenberg*, 95 Wis. 2d 384, 290 N.W.2d 539 (Ct. App. 1980).

In addition to being a lessor for 18 years, I am also a Rent Abatement Hearing Examiner for the City of Madison. In that role, I preside over cases where the City Building Inspectors have documented code violations in rental properties that impact renters' health and safety. Yesterday, I presided over a case where a single mother and her three children had live in an apartment that flooded every time it rained for years. I have observed that renters in many of these derelict units live in such unsafe and unsanitary conditions because they cannot obtain rental housing elsewhere, often due to old, misunderstood, and misused eviction court records.

In addition to being a lessor and Hearing Examiner, I am also a practicing attorney and a Clinical Professor at the University of Wisconsin Law School. I have practiced law for 20 years, taught rental housing law to students, attorneys, fellow lessors, and judges at the Judicial Education Seminar. In my time training all of these professionals, I have seen over and over that people misunderstand and misuse eviction court records. As others have commented in response to this petition, there are vastly better screening tools available to lessors. We can call and email rental references to find out what kind of renter a person was and if they paid rent on time, or we can run a credit check. However, lessors continue to erroneously deny rental applicants safe housing based on CCAP records. As noted at the top of this letter, there is no training requirement that would inform lessors of better screening tools. This Court should adopt the petition and limit reduce the length of time eviction records are publicly available on CCAP. Doing so will benefit lessors, renters, and public health and safety.²

Sincerely,



Mitch
State Bar Number 1041034,
Lessor,
Rent Abatement Hearing Examiner,
Clinical Professor, &
Director of the Economic Justice Institute at the UW Law School

² While I have referenced my work as a Hearing Examiner for the City of Madison, and a Clinical Professor at the University of Wisconsin Law School, I am not speaking for them. The opinions in this letter are my own.