

2705 EAST NEWBERRY BOULEVARD
MILWAUKEE, WI 53211

September 1, 2022

By electronic mail to clerk@wicourts.gov

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

Re: 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

May it please the Court:

I write in support of this petition, which asks the Court to limit the time that the clerk retains and makes available court records of very limited utility – records, indeed, that are too little understood and too often misinterpreted.

In 2016 and 2017, I served on the Wisconsin Circuit Court Access Oversight Committee, a committee convened by the Director of State Courts and chaired by the Director. One of our distinguished members was Speaker Robin Vos.

After investigating the way that information available on WCCA is used – and abused – we published a report with fourteen recommendations for improving the management of WCCA. One recommendation, which was adopted by the Court, was to limit the amount of time that certain small claims records are available on WCCA. We recognized in the report that records should not be made available on WCCA when “there is little public value and much potential harm to individuals to maintain a prolonged online display.” November, 2017 WCCA Oversight Committee Final Report at 4.

Although the petition before the Court is not focused on WCCA records, the same principle is at work. Clerks in each of the circuit courts hold onto eviction case records and make them available to the public for twenty years, even in cases where the parties resolve them without the court entering any money judgment.

Indeed, as the petition recounts, these cases constitute the vast majority of the records available to the public. Further, as is also demonstrated in the petition, these records are too often misinterpreted, particularly by landlords who are trying to assess

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the risk of a tenant failing or refusing to pay rent. Although such records are inconclusive, and therefore of little help to making such an assessment, landlords tend to rely on them anyway. Experience has shown that the mere fact that a tenant has been sued previously, and regardless of whether the tenant was evicted or whether there was any merit to the landlord's claim, tends to serve as a black mark on the tenant's record that unduly and unfairly limits their access to safe, stable and affordable housing.

There is a balance to be struck between showing the public what claims are made in our courts (as well as retaining the records for the court's own use) and limiting the damage that is done in cases in which the claims aren't resolved. Making such records available for public review for a year seems like a reasonable way to strike that balance.

Fairness to prospective tenants is reason enough for the Court to grant the petition. But there is an additional advantage in doing so. Currently, in order to mitigate the unintended consequences of having inconclusive records available to landlords and other members of the public, tenants approach the circuit courts at the end of a case with requests to seal the court record, completely or partially. As the petition details, these motions are increasing in frequency (which is, perhaps, a sign of the crisis that is mounting as the result of the misinterpretation of the records we make available). And circuit courts, who have little guidance as to how they should exercise their discretion, are deciding these motions inconsistently. Many of our colleagues, no doubt moved by the plight of tenants seeking to avoid being blackballed, are granting such motions. Others, feeling perhaps constrained by our devotion to open records and trusting in the wisdom of the public in interpreting court records, are denying such motions. Granting the petition will provide greater clarity for circuit judges and for the public.

Thank you for your consideration of this matter of significant public concern.

Sincerely,

A handwritten signature in blue ink that reads "Richard J. Sankovitz". The signature is written in a cursive, flowing style.

Hon. Richard J. Sankovitz, ret.

cc: Atty Korey Lundin, Legal Action of Wisconsin, Petitioner