

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 22-03 (**AMENDED**)

In the matter of the amendment to SCR 72.01(8), 72.01(9), and 72.01(10), relating to retention of records in eviction cases.

FILED**JULY 31, 2024**

Samuel A. Christensen
Clerk of Supreme Court
Madison, WI

On March 29, 2022, Legal Action of Wisconsin, by Attorney Korey C. Lundin, filed a rule petition asking the court to amend Supreme Court Rule (SCR) 72.01(8), 72.01(9), and 72.01(10) to shorten the record retention period for eviction cases in which no money judgment is entered to one year.

The court voted to seek written comments. A letter soliciting comments was sent to interested persons on July 12, 2022. The court received 35 comments along with a response from the petitioner. At a closed administrative conference, the court voted to hold a public hearing.

A public hearing notice was issued on July 21, 2023, and the court held a public hearing on September 7, 2023. Attorney Korey Lundin and Attorney Carmen Ayers, on behalf of Legal Action of Wisconsin, presented the petition to the court. The following people spoke in support of the petition: Patricia La Cross, Madison Organizing in Strength,

Equity, and Solidarity (MOSES); Kristin M. Slonski, Director of Advocacy and Legal Services, Judicare Legal Aid; Meagan Winn, Eviction Diversion Court Coordinator, Milwaukee County Courthouse; Greg Jones, NAACP Dane County President, NAACP Wisconsin State 1st Vice President; Laura Berger, Lead Eviction Court Observer, Justified Anger; Sheldon Gross, MOSES; Grace Kube, Director of Eviction Defense Clinic, UW Law School; Brian Michel, Mental Health America of Wisconsin; Talib Akbar, MOSES; Pamela Gates, MOSES. The following spoke in opposition to the petition: Attorney Heiner Giese, Legal Counsel, Apartment Association of Southeastern Wisconsin, Inc.; Rick Van Der Leest, Landlord and Property Manager. Additionally, Carlo Esqueda, Dane County Clerk of Circuit Court, addressed technical concerns with the petition.

At an October 9, 2023 open administrative conference, the court voted to grant the petition, in part, and to revise the rules with additional amendments to provide for a two-year retention period for eviction cases where no money judgment is entered and with a delayed effective date to allow necessary programming and implementation of the revised rules.

Shortly thereafter, the court was made aware of a potential conflict between the approved rule revisions and Wis. Stat. § 758.20(2)(a), relating to the display period for records in eviction cases in which a writ of restitution is granted. On October 30, 2023, the court solicited supplemental public comments concerning the potential conflict. The court received supplemental comments concerning this issue from: the Hon. Audrey K. Skwierawski, then-Interim Director of State Courts; Richard A. Van Der Leest on behalf of VDL & Associates, et al.; Attorney Heiner Giese on behalf of the Rental

Property Association of Wisconsin, Inc., et al.; and Legal Action of Wisconsin. At a closed administrative conference, the court voted to hold a second open administrative conference on April 16, 2024.

At the April 16, 2024 second open administrative conference, the court voted to adopt additional modifications to the rule changes that were approved on October 9, 2023, to eliminate the conflict with Wis. Stat. § 758.20(2)(a) and adopt a new delayed effective date.

Therefore,

IT IS ORDERED that, effective July 1, 2025:

SECTION 1. Supreme Court Rule 72.01 (8) is amended to read:

Small claims case files. All documents deposited with the clerk of circuit court in every proceeding commenced under ch. 799, stats.: ~~20 years after entry of final order or judgment for all cases, 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.~~

SECTION 2. Supreme Court Rules 72.01 (8) (a), (b), (c), and (d) are created to read:

(a) 2 years from date of entry of final order or judgment for all eviction cases in which no judgment for money is entered against any party, including contested cases, stipulated dismissals, and default judgments, except as provided in par. (c);

(b) 2 years from date of entry of judgment for small claims 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;

(c) 10 years from date of entry of final order or judgment for all eviction cases where a writ of restitution was granted against the defendant and no money judgment was entered;

(d) 20 years from date of entry of final order or judgment for all other small claims cases not specified in pars. (a), (b), or (c).

SECTION 3. Supreme Court Rule 72.01 (9) is amended to read:

Small claims court record. A history and index of proceedings: ~~20 years after entry of final order for contested cases, stipulated dismissals, and default judgments; except 2 years from the 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.~~

SECTION 4. Supreme Court Rule 72.01 (9) (a), (b), (c), and (d) are created to read:

(a) 2 years from date of entry of final order or judgment for all eviction cases in which no judgment for money is entered against any party, including contested cases, stipulated dismissals, and default judgments, except as provided in par. (c);

(b) 2 years from date of entry of judgment for small claims 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;

(c) 10 years from date of entry of final order or judgment for all eviction cases where a writ of restitution was granted against the defendant and no money judgment was entered;

(d) 20 years from date of entry of final order or judgment for all other small claims cases not specified in pars. (a), (b), or (c).

SECTION 5. Supreme Court Rule 72.01 (10) is amended to read:

Small claims minute record. A brief statement of in-court proceedings commenced under ch. 799, stats., generally maintained in the case file: ~~20 years after entry of final orders for contested cases, stipulated dismissals, and default judgments; except 2 years from the 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.~~

SECTION 6. Supreme Court Rule 72.01 (10) (a), (b), (c), and (d) are created to read:

(a) 2 years from date of entry of final order or judgment for all eviction cases in which no judgment for money is entered against any party, including contested cases, stipulated dismissals, and default judgments, except as provided in par. (c);

(b) 2 years from date of entry of judgment for small claims 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;

(c) 10 years from date of entry of final order or judgment for all eviction cases where a writ of restitution was granted against the defendant and no money judgment was entered;

(d) 20 years from date of entry of final order or judgment for all other small claims cases not specified in pars. (a), (b), or (c).

IT IS FURTHER ORDERED that notice of the above amendments be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official

publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Samuel A. Christensen
Clerk of Supreme Court

¶1 BRIAN HAGEDORN, J. (*dissenting*). Wisconsin has a long tradition of providing public access to court records of all kinds, including records of eviction proceedings. Today, this court departs from that tradition and votes to shield certain eviction records from public view. It is wrong to do so.

¶2 This rule petition aims to help individuals who have been subject to eviction proceedings secure housing. It is surely true, as the petitioners suggest, that some publicly available eviction records don't tell the whole story, and may even present a misleading picture of a prospective tenant's ability to pay. It's also true that housing, like food, is a basic human need. But cutting off access to public records—i.e., hiding information that would otherwise be available—is an unwise response for several reasons.

¶3 First, changing record-keeping procedures statewide for a very narrow subset of cases is likely to pose an administrative challenge, further stretching already burdened state and local resources. We received written feedback and testimony that confirms the significant amount of time that will need to be spent implementing this change.

¶4 Second, this petition did not go through the normal vetting process by the CCAP oversight and steering committees, as well as other stakeholders, meaning unforeseen logistical and policy issues may arise. We've already seen this happen. After this court approved the initial rule petition, Court Operations discovered that the language the court previously approved conflicted with a statute. This necessitated a second hearing

where the majority agreed to a workaround. We can only hope that is not a harbinger of problems to come.

¶5 Third, if the petitioners are correct that publicly available records are not accurate and fail to tell the whole story, they have still not made a persuasive case that shielding records from public view is the best solution. Other options are available. For example, the policy issues could be debated through the legislative process as they were for the use of certain criminal records. Alternatively, we could explore providing more information about eviction proceedings, not less, to ensure that a complete and accurate picture is available. Simply removing information from the public square, on the other hand, is a blunt, indirect, and likely ineffective attempt to resolve the policy concerns raised.

¶6 Finally, this rule petition focuses on only one side of the story. Landlords are not acting nefariously when they investigate a prospective tenant's eviction record. They run a business, so they are understandably interested in having customers who fulfill their contractual obligations. They must account for risks such as nonpayment and the headache and cost of eviction proceedings. Under this new rule, landlords will need to assume additional costs to mitigate risks that will now be harder to identify. And basic economics suggests those costs will be passed down to the renters themselves. Unfortunately, this court sees the possible benefits of this proposal, but fails to adequately consider the downsides.

¶7 Will this change cause the sky to fall? No. But picking our preferred litigants and creating special rules for them—rules that dramatically depart from our tradition of openness—is not sound decision-making. I worry that other sympathetic litigants whose case records are publicly accessible may also want the same preferential treatment. This rule change may be a sincere effort to assist Wisconsin residents who have difficulty securing housing, but it is sincerely misguided. I respectfully dissent.

I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER and Justice REBECCA GRASSL BRADLEY join this dissent.

