

## Brist, Steven

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**From:** David Sparer <Sparer@herricklaw.net>  
**Sent:** Friday, February 16, 2018 10:36 AM  
**To:** Brist, Steven  
**Subject:** rent abatement issue from yesterday's meeting  
**Attachments:** 1776\_001.pdf

Hi Steve:

Attached is the Affidavit from the circuit court case which I brought up to you yesterday, at the Landlord Tenant meeting.

I looked at CCAP regarding what has happened in this case, and it does not answer our concerns about the ordinance.

However, as you will see upon looking at the attachment, the issues are clear enough, and we can address them easily.

1. Apparently in the Hearing Examiner's decisions there is a reference to appeal, AND the citation is incorrect. So, we just need to get the Hearing Examiner forms to be corrected. Easy enough. The correct citation is noted in the attached affidavit.
2. Second, as you had mentioned, only FINAL administrative orders are appealable, and nowadays one always looks to have a court's "final" order say it is "final for purposes of appeal." This also could be addressed by simply having the forms used by the Hearing Examiner say that "This is a final order for purposes of appeal."
3. Next, slightly modifying the Ordinance, specifically 32.04(4)i, so that it more clearly indicates to anybody looking at it that an appeal needs to be to circuit court. I looked at the language used by the City for the EOC (specifically 39.03(10)(c)(4)). That language does a more complete job of addressing these issues. So, maybe we could amend 32.04(4)i to more closely track that language from that EOC section about judicial review.

That's it. Not too complicated. I would think that items 1 & 2 can be handled simply by having Kyle direct someone in his staff to modify the forms, and he, or George, could update us at the next meeting. Item 3 would require an Ordinance amendment draft.

I would hope we could have a draft to review for our next meeting. Let me know.

David

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STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 17

DANE COUNTY

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May Shaw and Roman Zrotowski

Appellants

v.

Case No. 2017CV427

Todd Chojnowski

Appellee

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SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF MOTION FOR SANCTIONS  
PURSUANT TO WIS. STAT. § 802.05

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STATE OF WISCONSIN  
DANE COUNTY

Linda Monroe, upon affirmation states:

1. I am the attorney for Appellee Todd Chojnowski in this action.
2. I make this affidavit on personal knowledge in support of Appellee's motion for sanctions pursuant to Wis. Stat. § 802.05.
3. At the scheduling conference on September 5, 2017, Appellant Roman Zrotowski stated that in bringing the challenged claim, he followed the instructions given with the final rent abatement decision; he was unable to produce the document at that conference.
4. On September 6, 2017, I spoke with Karen Tantillo, the Rent Abatement Clerk for the City of Madison Building Inspection Division. She confirmed that the last correspondence sent to Appellants May and Zrotowski was the "Amended Rent Abatement Decision Summary" dated January 9, 2017. She stated that there was no cover letter or other document which provided instructions on appeal of the rent abatement decision. A copy of this Amended Summary is attached as exhibit 1, and is identical to Appellants' exhibit 12, page 3, submitted with their Appeal/Complaint, except for what appears to be Appellants' handwritten notes on their exhibit.

5. At the bottom of the attached exhibit, below the Hearing Examiner's signature, is the only instruction given to an aggrieved party. It states: "Circuit Court of Appeal: Review must be sought within thirty (30) days of receipt of decision and order under M.G.O. Sec. 32.06(4)l."

6. There is no M.G.O. Sec. 32.06(4)l. The correct citation is M.G.O. Sec. 32.04(4)i, which provides:

(i) Appeal. All orders of the Rent Abatement Hearing Examiner shall be final administrative determinations and shall be subject to review in court as by law may be provided. Any party to the proceeding may seek review thereof within thirty (30) days of service by mail of the final determination of the Hearing Examiner. In addition, written notice of any request for judicial review shall be given by the party seeking review to all parties who appeared at the proceeding before the Hearing Examiner, with said notice to be sent by first class mail to each party's last known address.

7. No exception is recommended by the city agency, nor provided by municipal or state law, which obviates the need for certiorari or permitted alternative procedures for review of a municipal administrative decision as prescribed by Wis. Stats. §68.13 and the case law thereunder.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Linda Monroe

Signed and affirmed before me  
on \_\_\_\_\_  
by Linda Monroe

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission \_\_\_\_\_