

IN RE THE MATTER OF CDC EVICTION
MORATORIUM COMPLIANCE FOR
EVICTION FILINGS

FILED

OCT 21, 2020

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

You are hereby notified that the court has issued the following order:

On September 1, 2020, the Centers for Disease Control ("CDC") issued an order entitled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19." ("CDC Order"). The CDC Order was published on September 4, 2020 and remains in effect until December 31, 2020.

On September 21, 2020, Legal Action of Wisconsin and Wisconsin Judicare ("Legal Action") filed a request for an "Emergency Order in the Matter of CDC Eviction Moratorium Compliance for Eviction Filings." On September 23, 2020, the court received a letter from Attorney Heiner Giese, on behalf of the Wisconsin Apartment Association (WAA) and the Apartment Association of Southeastern Wisconsin, Inc. (AASEW). The WAA/AASEW also seek court guidance regarding the CDC Order, albeit regarding different aspects of the CDC Order. On October 2, 2020, the court received a supplemental filing submitted on behalf of WAA/AASEW requesting the court provide certain specific direction to circuit courts presiding over eviction proceedings, as relating to the CDC Order. On October 12, 2020, the court received a response from Legal Action responding to the WAA/AASEW.

The court is mindful of the economic challenges faced by many landlords and tenants during the current health crisis as well as the importance of mitigating the spread of COVID-19. However, we decline to adopt the proposed Emergency Order as proposed by Legal Action or with

the additions proposed by WAA/AASEW. The proposed Emergency Order and the recommendations of WAA/AASEW would impose certain directives on all circuit court judges with respect to the manner in which they preside over eviction proceedings during the pendency of the CDC Order. Some of those directives reflect legal interpretations of the CDC Order, a matter that has not yet come before this court. Some of the concerns identified by WAA/AASEW appear to have arisen in the context of pending cases or controversies that may be subject to review, including, potentially, review by this court. See SCR 60.04(1)(j) ("[a] judge may not, while a proceeding is pending or impending in any court, make any public comment that may reasonably be expected to affect the outcome or impair the fairness of the proceeding."). This is an administrative rules proceeding, not a case or controversy and the court does not render advisory opinions. See Grotenrath v. Grotenrath, 215 Wis. 381, 384, 254 N.W. 631 (1934) ("[C]ourts will not ordinarily render advisory opinions where the questions propounded have not arisen and may never arise."). Our decision to deny the request of Legal Action and WAA/AASEW does not preclude an individual circuit court judge presiding over an existing case from making reasonable efforts to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard, consistent with a judge's obligation to perform all judicial duties fairly and impartially. See SCR 60.04(1)(hm) and accompanying Comment.

Therefore,

IT IS ORDERED that Legal Action of Wisconsin and Wisconsin Judicare's request for an "Emergency Order in the Matter of CDC Eviction Moratorium Compliance for Eviction Filings" is denied; and

IT IS FURTHER ORDERED that no action will be taken on the correspondence filed on behalf of the Wisconsin Apartment Association (WAA) and the Apartment Association of Southeastern Wisconsin, Inc. (AASEW), namely a September 23, 2020 letter submitted by Attorney Heiner Giese as supplemented by an October 2, 2020 letter submitted by Attorney Robert S. Driscoll; and

IT IS FURTHER ORDERED that consistent with the court's usual practice in administrative rules matters, all filings in this matter, including a copy of the CDC Order, are public. They are available on the court's website at <https://www.wicourts.gov/covid19.htm>.