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September 23, 2020

Chief Justice Patience D. Roggensack
Justice Ann Walsh Bradley
Justice Annette Kingsland Ziegler
Justice Rebecca Grassl Bradley
Justice Rebecca Frank Dallet
Justice Brian Hagedorn
Justice Jill J. Karofsky

Wisconsin Supreme Court
110 E. Main St., Suite 440
Madison, WI 53703

via email:

clerk@wicourts.gov

[Supreme Court Commissioners@wicourts.gov](mailto:Supreme_Court_Commissioners@wicourts.gov)

cad@legalaction.org

mary.triggiano@wicourts.gov

Re: Request of Legal Action of Wisconsin and Wisconsin Judicare for Emergency Order/s in the Matter of CDC Eviction Moratorium Compliance for Eviction Filings

To the Honorable Justices of the Supreme Court of Wisconsin:

The undersigned is legal counsel to the Apartment Association of Southeastern Wisconsin, Inc. (AASEW). The Wisconsin Apartment Association (WAA), which represents housing providers throughout the state, has authorized me to state that this letter also represents their position.

The federal CDC Order issued September 4, 2020 which imposed a moratorium on certain types of eviction actions has resulted in great uncertainty, inconsistency and (in our view) improper handling of eviction actions by judges and court commissioners in various counties. Guidance by the Wisconsin Supreme Court is indeed necessary.

The purpose of this letter is to advise the Court that the AASEW and WAA are in the process of retaining legal counsel in order to make a detailed response to the above-referenced Request for an emergency order. We expect that such a response would be filed very shortly.

The Court should know that I and other attorneys representing both landlords and tenants in Milwaukee County have engaged in a bench/bar meeting via Zoom on the questions raised by the CDC Order. I have also had a series of emails with Chief Judge Mary Triggiano. We requested that Judge Triggiano issue local rules or guidelines on this CDC matter but she has declined to do so.

The most important question for the Court to resolve is how the requirement in the CDC Order that tenants must use “best efforts” to pay partial rent can be enforced when that issue arises in an eviction action. This is currently being handled improperly by court commissioners and judges:

1. A judge in Rock County reportedly has dismissed pending evictions outright without giving landlords an opportunity to raise the partial payment issue or at least staying the action.

2. The judge handling evictions in Dane County has reportedly stated during a bench/bar conference call that she would not allow landlords to question a tenant’s Declaration concerning ability to pay partial rent. Deputy Chief Judge William Pohan in Milwaukee made a similar observation during a bench/bar conference on September 11.

3. The small claims court judge in Milwaukee County has adjourned a number of eviction cases until January where the tenant has submitted or claimed they would submit a Declaration. Such cases should be adjourned for a much shorter time so that the landlord and tenant can attempt to resolve the partial payment issue.

4. A court commissioner in Milwaukee County has imposed a requirement that landlords submit an affidavit stating that they had not received a CDC Declaration from the tenant. This has been imposed without notice and has blindsided pro se landlords in particular, resulting in an unfair delay in their case.

Finally, the Court should know that we have suggested to Milwaukee County Chief Judge Triggiano that an issue of partial rent payment might be referred for immediate mediation. The AASEW has discussed this with Mediate Milwaukee which has been doing an excellent job these past months in negotiating forbearances by landlords as they await payment of rent relief through Wisconsin’s WRAP assistance.

Respectfully submitted,

Heiner Giese