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April 22, 2020

Eden B. Heilman
Legal Director
ACLU of Virginia
701 E. Franklin St., Suite 1412
Richmond, VA 23219

Dear Ms. Heilman,

Thank you for your letter of April 16, 2020 to Chief Justice Lemons, which has been referred to me for response.

Your letter does not mention the orders entered by the Court on March 16 and March 27, 2020 declaring a judicial emergency for all district and circuit courts in the Commonwealth. You may find these orders at <http://www.vacourts.gov>.

Because you suggest that litigation may ensue, it is not appropriate for the Chief Justice or anyone on his behalf to communicate further about the matters raised in your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Macon".

Edward M. Macon

cc: The Honorable Mark R. Herring, Attorney General

Supreme Court of Virginia

IN RE: ORDER DECLARING A JUDICIAL EMERGENCY IN RESPONSE TO COVID-19 EMERGENCY

On March 12, 2020, Governor Northam entered Executive Order Number Fifty-One (2020) Declaration of a State of Emergency Due to Novel Coronavirus COVID-19. The Governor noted that the Virginia Department of Health (VDH) has been working with local, state, and federal officials, healthcare and emergency management experts, and various state agencies to form a COVID-19 Taskforce to prepare for and respond to this threat, and that, given recent confirmed occurrences of COVID-19 within the Commonwealth and in neighboring states, as well as information from the Centers for Disease Control and Prevention, it is anticipated that the disease will spread. A state of emergency exists in the Commonwealth of Virginia and efforts of the executive branch are underway to continue to prepare and coordinate its response to the potential spread of COVID-19, a communicable disease of public health threat. This state of emergency became effective March 12, 2020, and is to remain in full force and in effect until June 10, 2020, unless sooner amended or rescinded by further executive order.

On March 13, 2020, the Governor advised that “if you have not already, please continue to review your [Continuity of Operations or] COOP plan. It is critical that you think about essential functions as they relate specifically to the COVID-19 event.” Many courts are actively doing so and court users and the public may access information on courts’ responses to the COVID-19 emergency online at: <http://www.vacourts.gov/>. All judges and clerks may access resources and information via the Court’s intranet site at: <http://oesinet/>. Courts that have not already done so, should review their continuity of operations plan and consult remotely with local stakeholders.

In 2010, the Supreme Court of Virginia’s Pandemic Flu Preparedness Commission issued the Pandemic Influenza Bench Book for Virginia’s Court System and it has been available since then to the public and court personnel via the Court’s web site at: <http://www.vacourts.gov/programs/pfp/benchbook.pdf>. It was revised in 2017, and most recently was specifically referenced in emails sent to all judges and clerks by the Executive Secretary on February 26 and March 11, 2020, with information for all courts to use in addressing the current COVID-19 emergency.

On Sunday March 15, 2020, Governor Northam announced a statewide ban on all events over 100 people. In light of the foregoing and the Chief Justice having received today, March 16, 2020, a request from the Governor for a declaration of a judicial emergency in all district and circuit courts of the Commonwealth of Virginia, pursuant to Va. Code § 17.1-330, this Order declaring a judicial emergency is hereby issued for all district and circuit courts of the Commonwealth to protect the health and safety of court employees, litigants, judges, and the general public. This Order shall be in effect from today, Monday, March 16, to Monday, April 6, 2020, and it is hereby ORDERED that NON-ESSENTIAL, NON-EMERGENCY court

proceedings in all circuit and district courts be and hereby are SUSPENDED and all deadlines are hereby tolled and extended, pursuant to Va. Code § 17.1-330(D), for a period of twenty-one (21) days, and all circuit and district courts shall implement the following measures absent a specific exception as listed below:

1. Continue all civil, traffic and criminal matters, including jury trials, subject to a defendant's right to a speedy trial, with the exception of emergency matters, including but not limited to, quarantine or isolation matters, arraignments, bail reviews, protective order cases, emergency child custody or protection cases, and civil commitment hearings. Judges may exercise their discretion with regard to proceeding with ongoing jury trials, and in cases where the defendant is incarcerated.
2. Continue all ceremonies, such as juvenile licensing ceremonies.
3. Limit courtroom attendance to attorneys, parties, and necessary witnesses and members of the press in any matters that cannot be continued.
4. Issue summonses in lieu of a *capias* for failure to appear.
5. For jury trials that cannot be continued, excuse or postpone jury service for jurors who are ill, caring for someone who is ill, or in a high-risk category as defined by the Center for Disease Control (CDC).
6. Suspend new juror orientations.
7. Require attorneys to use e-Filing if available.
8. Require individuals with legitimate court business who are ill, caring for someone who is ill, or is otherwise in a high-risk category, as defined by the Center for Disease Control (CDC), to call the local clerk of court or other appropriate court personnel to request an appropriate accommodation.
9. Consult with the locality, including the sheriff, about posting signage at all public entry points advising individuals not to enter the building if they have:
 - a. visited China, Iran, South Korea, any European countries, or any other high-risk countries identified by the CDC in the previous 14 days;
 - b. traveled domestically within the United States where COVID-19 has sustained widespread community transmission;
 - c. been asked to quarantine, isolate, or self-monitor by any doctor, hospital, or health agency;
 - d. been diagnosed with, or have had contact with anyone who has been diagnosed with, COVID-19;

- e. a fever, cough, or shortness of breath; or
- f. resided with or been in close contact with any person in the above-mentioned categories.

Individuals attempting to enter the court in violation of these protocols may be denied entrance by a bailiff or court security officer, and may be directed to contact the clerk's office by telephone or other remote means to inform the clerk of their business before the court so as to receive further instruction regarding alternate arrangements for court access.

10. Consult with the sheriff and/or bailiffs to prohibit individuals or groups from congregating anywhere in the courthouse, and to require social distancing throughout the courthouse, including inside the courtroom.

11. Use telephonic or video technology, as provided in the Code of Virginia, for all necessary hearings, trials, or other matters, including arraignments.

Nothing in this Order shall preclude the chief district and chief circuit judges from implementing additional local policies as needed. Except as provided in this order, to the extent possible, the courts and clerks' offices shall remain operational and provide essential services while balancing the health and safety needs of court visitors and personnel. This Order shall be effective from March 16, 2020, to April 6, 2020, This Order may be extended for additional periods not to exceed 21 calendar days or for the duration of the threat, by a majority of the justices of the Supreme Court to mitigate the risks potential spread of COVID-19.



(SEAL)

Donald W. Lemons
Chief Justice of the Supreme Court of Virginia

Supreme Court of Virginia

IN RE: ORDER EXTENDING DECLARATION OF JUDICIAL EMERGENCY IN RESPONSE TO COVID-19 EMERGENCY

On March 16, 2020, the Chief Justice, having received a request from the Governor pursuant to Va. Code § 17.1-330, entered an Order declaring a judicial emergency, recognizing the need to protect the health and safety of court employees, litigants, attorneys, judges, and the general public. After careful consideration and review, the Justices of this Court hereby unanimously ORDER that the declaration of judicial emergency be in effect and continue beginning April 6 through April 26, 2020, for all district and circuit courts of the Commonwealth.

Except as provided in this order, the courts and clerks' offices shall remain operational and provide services required by law while, at the same time, maintaining protections for the health and safety of court users and personnel. With the exception of matters enumerated herein, all applicable deadlines, time schedules and filing requirements, including any applicable statute of limitations which would otherwise run during the period this order is in effect, are hereby tolled and extended, pursuant to Va. Code § 17.1-330(D), for the duration of this Order.

All courts shall implement the following measures during this extended period absent a specific exception as listed below.

1. The court shall continue all civil, traffic and criminal matters, including jury trials, except for emergency and other matters as provided in this Order. For example, routine proceedings, including but not limited to non-emergency: warrants in debt, unlawful detainers, issuance of garnishments and writs of eviction shall be continued during the period this Order is in effect.
2. In any matter heard or considered by a court as provided in this order, judges shall exercise their discretion as necessary in determining whether the matter is urgent and must be heard

without delay in order to protect important liberty and constitutional interests and the health and safety of the parties, and others necessarily involved and affected by the proceedings.

3. The court's determination that a criminal case must be heard in order to avoid violating a defendant's right to a speedy trial shall be made by the presiding judge on a case by case basis. Among other things, considerations may include the liberty interests of the defendant, and the health and safety of the parties, attorneys, court personnel, and others necessarily involved and the ability of the court to safely proceed, taking into account the ability of the court to use technology as authorized by law, social distancing and other measures.
4. The court shall give precedence on the docket to emergency matters including, but are not limited to, quarantine or isolation matters, criminal arraignments, bail reviews, protective order cases, emergency child custody or protection cases, civil commitment hearings, petitions for temporary injunctive relief, proceedings related to emergency protection of elderly or vulnerable persons, petitions for appointment of a guardian or conservator, and proceedings necessary to safeguard applicable constitutional protections. Judges should exercise their discretion with regard to holding ongoing jury trials, grand jury proceedings, cases where the defendant is incarcerated, foster care cases, and child dependency cases. The exercise of discretion should focus primarily on considerations of the liberty and constitutional interests at stake, the health and safety of the parties, attorneys, court personnel, and others necessarily involved, and the ability of the court to safely proceed, taking into account the ability of the court to use technology as authorized by law, social distancing and other measures.
5. To the extent authorized by law, all matters that a court hears pursuant to this Order should be conducted by two-way electronic audio-visual communication, if available. The parties, attorneys, witnesses and others should be allowed to appear by such two-way electronic audio-visual communication in order to reduce or eliminate the need for parties, attorneys and others necessarily involved to physically appear in the courthouse. If a party, witness, or other

participant is unable to participate via the provided secure communication platform such as Polycom or Webex, if available, then, upon request to the court, they may participate by telephone. Requests to participate by telephone should be liberally granted.

6. The court shall continue all ceremonies, such as specialty court graduations and juvenile licensing ceremonies.
7. The court shall limit courtroom attendance in any matters that cannot be continued to attorneys, parties, necessary witnesses, interpreters, court personnel, court reporters, bailiffs and those deemed necessary by the presiding judge, and members of the press where permitted by law.
8. The court should issue summonses in lieu of capiases for failure to appear.
9. For jury trials that cannot be continued, the court should excuse or postpone jury service for jurors who are in a high-risk category as defined by the Centers for Disease Control and Prevention (CDC) at <https://www.cdc.gov/>, or who are ill, caring for someone who is ill, or are caring for children under the age of 16.
10. The court should require attorneys to use e-Filing if available.
11. The court should require individuals with legitimate court business who are ill, caring for someone who is ill, or who are otherwise in a high-risk category, as defined by the CDC, to call the clerk of court or other appropriate court personnel to request an appropriate accommodation.
12. The court shall consult with the sheriff about posting signage at all public entry points advising individuals not to enter the building if they have, within the previous 14 days:
 - a. visited China, Iran, South Korea, any European countries, or any other high-risk countries identified by the CDC;
 - b. traveled domestically within the United States where COVID-19 has sustained widespread community transmission;
 - c. been asked to quarantine, isolate, or self-monitor by any doctor, hospital, or health agency;

- d. been diagnosed with, or have had contact with anyone who has been diagnosed with, COVID-19;
- e. experienced a fever, cough, or shortness of breath; or
- f. resided with or been in close contact with any person in the above-mentioned categories.

Individuals attempting to enter the court in violation of these protocols shall be denied entrance by a bailiff or court security officer, and will be directed to contact the clerk's office by telephone or other remote means to inform the clerk of their business before the court so as to receive further instruction regarding alternate arrangements for court access.

- 13. The sheriff and/or bailiffs shall prohibit individuals or groups from congregating anywhere in the courthouse, and require social distancing throughout the courthouse, including inside the courtroom.
- 14. Nothing in this Order shall preclude the chief district and chief circuit judges from implementing additional local policies as needed, and as allowed by law.
- 15. If a court finds it necessary to limit access to the court clerk's office for any time during the scope of this order, the clerk's office shall, nonetheless remain accessible during regular business hours by telephone and email, with such contact information posted on the Internet and at any public entrance(s). If available, drop boxes should be used for any conventionally filed documents and clerks shall take steps to safely accommodate any individual(s) requiring access for important matters, including but not limited to, title or record searches and recordation of land records.

This Order shall be effective beginning April 6 through April 26, 2020. This Order may be extended for additional periods as provided in Va. Code § 17.1-330. It is so ORDERED.

THE SUPREME COURT OF VIRGINIA



CHIEF JUSTICE DONALD W. LEMONS

Entered 3/27/2020