VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 6th day of May, 2020.

IN RE: FOURTH ORDER MODIFYING AND EXTENDING DECLARATION OF 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. This state of emergency became effective March 12, 2020, and is to remain in full force and effect until June 10, 2020, unless sooner amended or rescinded by further Executive Order. On March 16, 2020, the Chief Justice received 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. The Chief Justice issued an order declaring a judicial emergency 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 became effective on Monday, March 16, to Monday, April 6, 2020.

After careful consideration and review, on March 27, 2020, the Justices of this Court unanimously extended the Declaration of Judicial Emergency for a second twenty-one day period, through April 26, 2020, for all district and circuit courts of the Commonwealth ("Second Order"). On March 30, 2020, the Governor, through Executive Order 55 (2020), required Virginia residents generally to stay at home until June 10, 2020, due to the public health threat. On April 22, 2020, the Court extended the Declaration of Judicial Emergency for a third twenty-one day period, through May 17, 2020, for all district and circuit courts of the Commonwealth ("Third Order"). On May 1, 2020, the Court entered a Clarification Order

Concerning Tolling of Statutory Speedy Trial Deadlines During the Judicial Emergency In Response To COVID-19 Crisis ("Clarification Order").

The Novel Coronavirus COVID-19 has presented significant challenges around the world and has proven deadly. The Judiciary of Virginia has remained open, albeit with modifications. The balance between public safety and maintaining current dockets has been particularly challenging. Before this pandemic, in 2019, there were 2.8 million case filings and 3.4 million hearings (65,322/week) processed by the General District Courts in Virginia; the Juvenile and Domestic Relations District Courts processed 466,583 new case filings and held 1,084,832 hearings (20,862/week), and the Circuit Courts processed 483,761 new cases and held 1,131,451 hearings* (21,759/week, *excludes Fairfax & Alexandria). From March 16, 2020, through May 1, 2020, the General District, J&DR and Circuit Courts have continued approximately 413,000, 125,000 and 135,000 cases, respectively, to a future date. Every week, with the dockets limited only to emergency cases, adds approximately 60,000, 18,000 and 19,000 more cases to this growing backlog in the General District, Juvenile and Domestic Relations District Courts and Circuit Courts, respectively.

Metrics developed by the Office of the Executive Secretary have revealed a significant shortage of Deputy Clerks for many years. The District Courts are currently 275 positions short of the staffing needs to handle normal dockets. The 2020 General Assembly initially passed a budget that would have begun to address this staffing shortage by funding an additional 120 positions over the upcoming biennium. Unfortunately, due to the anticipated economic impact of the Coronavirus Pandemic on the state budget, the Governor recommended budget amendments that froze all new spending which were adopted and passed by the General Assembly during the recent veto session. This resulted in these new positions being put on hold indefinitely.

Now the General District Courts and Juvenile and Domestic Relations District Courts will need to handle cases that have been continued as well as new cases coming into the court system. For the courts that were already understaffed, it will be a serious challenge to reduce this backlog while doing their best to keep current cases from adding to the delay.

Under the constitutional, statutory, and inherent authority of the Supreme Court of Virginia, the Court unanimously hereby MODIFIES and EXTENDS the declaration of judicial emergency and ORDERS the following:

l) As provided in the First, Second, Third and Clarification Orders, for all cases in district and circuit courts the statutes of limitation and all other case-related deadlines, excluding discovery deadlines, shall continue to be tolled during the ongoing Period of Judicial Emergency (now March 16, 2020, through June 7, 2020) pursuant to Va. Code § 17.1-330. In all civil cases, any tolling of deadlines and obligations arising out of Part Four of the Rules of the Supreme Court of Virginia shall terminate as of the effective date of this order (May 18, 2020). All discovery issued with a deadline to respond during the judicial emergency shall be due within twenty-one (21) days of the effective date of this Order (May18, 2020). Litigants are encouraged to resolve as many pretrial matters as possible with or without the assistance of the courts.

2) Courts shall continue to prioritize emergency matters including, but 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.

3) Courts should continue to conduct as much business as possible by means other than in-person court proceedings. In all civil and criminal matters, courts are encouraged to continue and even increase the use of video conferencing, telephone, teleconferencing, email, or other means that do not involve in-person contact. These methods are preferred over in-person court proceedings.

4) Notwithstanding the ongoing preference for conducting hearings by video conferencing or telephone, effective May 18,2020, all courts may hear in-person non-emergency matters if they determine it is safe to do so, and provided they comply with the guidance for transitioning from emergency to routine operations provided by the Office of the Executive Secretary in order to minimize the risk of the spread of COVID-19 from in-person court proceedings.

5) All courts and security personnel shall take reasonable measures to prohibit individuals from entering the courthouse if they have, within the previous 14 days:

i. traveled internationally;

ii. been directed to quarantine, isolate, or self-monitor;

iii. been diagnosed with, or have had contact with anyone who has been diagnosed with, COVID-19;

iv. experienced a fever, cough, or shortness of breath; or

v. resided with or been in close contact with any person in the above-mentioned categories.

The court and security personnel shall direct such individuals to contact the clerk's office by telephone or other remote means to inform the clerk of their business before the court so they may receive further instruction regarding alternate arrangements for court access.

6) Judges are charged with the responsibility to take reasonable steps to minimize the risk of the spread of COVID-19 as outlined in this Order and as provided by the Centers for Disease Control and Prevention (CDC) and the guidance provided by the Office of the Executive Secretary for transitioning from emergency to routine operations. In order to ensure recommended social and physical distancing, it may be necessary to limit the number of people present in the courtroom or courthouse at any given time as this number will necessarily be limited by the size of the courtroom to ensure that those present can remain six feet apart.

7) Court clerks are charged with ensuring that their offices remain open and functions continue.

8) As provided in the Clarification Order, deadlines imposed by the Speedy Trial Act, Va. Code § 19.2-243, are tolled during the ongoing Period of Judicial Emergency (March 16, 2020, through June 7, 2020).

9) All courts are authorized to accept pleadings, orders and other documents that are electronically signed, including those where the electronic signature is accomplished by scanning.

10) Continuances and excuses for failure to appear shall be liberally granted for any cause resulting from the impact of the ongoing COVID-19 crisis.

11) All courts should enter orders consistent with this Order to advise their court users of new protocols and schedules consistent with this Order.

12) Effective immediately, it is ORDERED that all civil and criminal jury trials are suspended and shall be continued until further notice and no jury trials shall occur in the Commonwealth.

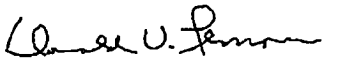
13) Judges should exercise their discretion with regard to holding grand jury proceedings.

14) To the extent that the content of this Order is different than the proceeding orders, this Order shall control.

Transition to normal operating process and procedures should be accomplished by Chief Judges assembling a transition team for the purpose of receiving input from representatives of all interested stakeholders. Transition plans are not "one size fits all." While localities are well suited to adjust their practices and procedures to their unique circumstances, there are some matters that are subject to the unequivocal orders of this Court. The prohibition against jury trials is one of them.

As provided herein, additional guidance for transitioning from emergency to routine operations shall be provided by the Office of the Executive Secretary. This Order shall be in effect from May 18, 2020, through June 7, 2020. The Declaration of Judicial Emergency may be extended for additional periods as provided in Va. Code § 17.1-330(E).

It is so ORDERED.



CHIEF JUSTICE DONALD W. LEMONS