

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday the 23rd day of June, 2020.

IN RE:

SECOND ORDER CONCERNING COURT OPERATIONS UNDER THE PUBLIC HEALTH EMERGENCY CREATED BY THE OUTBREAK OF CORONAVIRUS DISEASE 2019 (COVID-19)

This order MODIFIES and EXTENDS the provisions of this Court’s March 18, 2020 order concerning the Court of Appeals’ operations under the public health emergency created by the outbreak of Coronavirus Disease 2019 (COVID-19).

In February of this year, the Centers for Disease Control (“CDC”) issued “Interim Guidance” recommending that all employers consider how best to decrease the spread of COVID-19, including the review of guidance from state and local health officials. The CDC described the COVID-19 outbreak in the United States as a “rapidly evolving situation” and provided continuously-updated guidance as to the appropriate community response to COVID-19 as conditions worsened. The CDC’s guidance included a variety of mitigation strategies for communities with local COVID-19 transmission; those strategies were generally aimed at reducing or avoiding exposure to infected individuals, including social distancing.

Consistent with the evolving CDC advisories, beginning in February, the Court implemented a strategy for a staged response to the ongoing public health emergency. The Court’s goal was to balance health and safety concerns with the need to continue to provide an essential service in the Commonwealth.

Phase I of the Court’s strategy included taking extra precautionary measures during the oral arguments held in the courtrooms in order to help safeguard the health of litigants, counsel, the public, court staff, and judges. Further, additional precautionary measures were instituted in the various offices of the Court to help ensure the health and well-being of Court personnel and visitors.

Since the Court's implementation of Phase I, the following events occurred in rapid succession:

On March 11, 2020, the World Health Organization categorized COVID-19 as a worldwide "pandemic." Subsequently, the President of the United States announced updated international travel restrictions aimed at further curbing the pandemic within the United States. On March 12, 2020, Governor Northam entered Executive Order Number Fifty-One (2020), declaring a state of emergency in the Commonwealth of Virginia due to COVID-19. On March 13, 2020, the President declared a national emergency based on the COVID-19 outbreak. On March 15, 2020, Governor Northam announced a statewide ban on all events and gatherings over 100 people.

On March 16, 2020, pursuant to Code § 17.1-330, Chief Justice Lemons declared a judicial emergency for all circuit and district courts of the Commonwealth in order to protect the health and safety of litigants, counsel, court employees, judges, and the general public. Also, effective March 16, 2020, the buildings that house the Supreme Court of Virginia and the Court of Appeals of Virginia were closed to the general public, but remained open for employees, those needing access to the clerks' offices, and others with official business with those courts.

On March 17, 2020, Governor Northam, in another Executive Order, announced additional steps designed to reduce the risk of exposure to and transmission of COVID-19. The measures included restricting the number of individuals in a gathering to 10 or less.

On March 17, 2020, this Court implemented Phase II of its strategy. The critical components of that phase were memorialized in its March 18, 2020 order, which was accompanied by a "Public Advisory Regarding Operating Procedures in Response to COVID-19." Those components are summarized briefly as follows:

- Pursuant to Code § 32.1-48.013:1, the Court would permit and strongly encouraged electronic filing of all documents.
- The Court would utilize a drop-box for the deposit of paper documents to be filed with the Court.

- The Court instituted a liberal extension of time policy for pleadings due to be filed in instances where parties were impacted by this public health event.
- The Court would conduct its upcoming oral argument dockets via teleconference arguments through at least June 30, 2020.
- The Court instituted a liberal continuance policy for oral arguments in instances where parties were impacted by the COVID-19 pandemic.

The March 18, 2020 order further provided that the Court and its clerk's office would remain operational and provide essential services, while addressing the health and safety needs of litigants, attorneys, court personnel, and the public.

In the three months following this Court's March 18, 2020 order, the members of the Bar and litigants have embraced the Court's modified practices. As a result, access to justice in the Court has not been disrupted during this time period.

Since the implementation of Phase II of the Court's strategy, and as the Court continued to closely monitor the outbreak and carefully track the developing guidance from the CDC and the Virginia Department of Health, the following events relevant to this order have occurred:

On March 27, 2020, the Supreme Court of Virginia entered an order extending the declaration of judicial emergency. On March 30, 2020, Governor Northam required Virginia residents generally to stay at home until June 10, 2020, due to the public health threat.

On April 22, 2020, the Supreme Court of Virginia entered a third order extending the declaration of judicial emergency. On May 6, 2020, the Supreme Court entered a fourth order modifying and extending the declaration of judicial emergency and providing direction for beginning the transition from emergency to routine operations in the circuit and district courts, with guidance from the Office of the Executive Secretary of the Supreme Court.

On May 26, 2020, the Governor entered Executive Order Number 63 (2020), effective May 29, 2020, requiring among other things and with some exceptions, that face masks be worn inside buildings.

On June 1, 2020, the Supreme Court of Virginia entered a fifth order modifying and extending the declaration of judicial emergency, addressing measures to be taken in the circuit and district courts to minimize the risk of the spread of COVID-19. On June 22, 2020, the Supreme Court entered a sixth order extending the declaration of judicial emergency.

In light of these developments and updated precautions recommended by the CDC, other public health authorities, and the Office of the Executive Secretary, to reduce the spread of COVID-19, and as the Court begins to transition to routine operations, the Court today implements Phase III of its strategy. In this phase, the following measures previously set forth in its March 18, 2020 order remain in effect:

- Pursuant to Code § 32.1-48.013:1, the Court will continue to permit and strongly encourage electronic filing of all documents.
- The Court will continue to utilize a drop-box for the deposit of paper documents to be filed with the Court.
- The Court will continue its liberal extension of time policy for pleadings due to be filed in instances where the parties are impacted by this public health event.
- The Court will continue its liberal continuance policy for oral arguments in instances where the parties are impacted by the COVID-19 pandemic.

In addition, Phase III of the Court's strategy includes the following measures, all of which are taken to minimize the risk of the spread of COVID-19 while the Court is transitioning to routine operations:

- The Court is mindful that, as the circuit courts begin to transition to routine operations and hear more cases in person, those courts will need to maximize the use of their courtroom space and will be constrained in their ability to host the Court of Appeals' panel hearings. The Court is also cognizant that attorneys' schedules will exponentially increase as they work to have their clients' cases heard in those courts during this time of transition. Accordingly, as virtual arguments will provide more flexibility for all parties involved and will enable the Court to proceed with its

docket in a timely manner, the Court will conduct its upcoming oral argument dockets by some type of virtual medium, whether it be by teleconference or videoconference, through at least October 31, 2020. This arrangement will have the additional benefit of reducing travel for attorneys and litigants at a time when the Commonwealth remains in a state of recovery. The hearings will be live streamed for public access.

- Although the Court's clerk's office remains open for those persons having business with the Court, any party needing to access court records and documents should continue the present policy by contacting that office at 804-786-5651. Court staff will ensure timely access in the best and safest manner.
- All persons age 10 or over entering the Court's clerk's office must wear a face covering that covers the nose and mouth. Individuals without a face mask will not be permitted to enter the clerk's office except for those who cannot safely wear a face mask because of a health-related condition, as outlined in the Governor's Executive Order Number 63 (2020). Parties entering the clerk's office will be provided with disposable gloves and hand sanitizer. Upon prior request, a mask will also be provided.
- Individuals will not be permitted to enter the Court's clerk's office if, within the previous 14 days, they have:
 - * traveled internationally;
 - * been directed to quarantine, isolate, or self-monitor;
 - * been diagnosed with, or have had contact with anyone who has been diagnosed with, COVID-19;
 - * experienced a fever, cough, or shortness of breath; or
 - * resided with or been in close contact with any person in the above-mentioned categories.

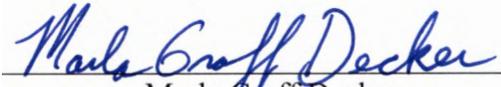
Any such individuals should contact the clerk's office at the number above so they may receive further instruction regarding alternate arrangements for access to records or the Court.

- In order to practice social and physical distancing, the number of people present in the Court's clerk's office at any given time will be limited to ensure that those present can remain six feet apart. The reading carrels, as well as the public copier, in the clerk's office will be thoroughly cleaned and disinfected after each use.

As the Court moves forward into this phase of its operational strategy, its goal remains to balance vital health and safety concerns with the critical need to ensure access to justice for all and to continue to provide essential services to those with business before the Court.

Due to the ever-changing nature of this public health event, all interested parties should monitor the Court's postings at www.courts.state.va.us/news/items/covid_19.pdf for further updates and detailed information.

This order shall remain in effect until further order of the Court.



Marla Graff Decker
Chief Judge, Court of Appeals of Virginia