VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 22nd day of April, 2020.

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

Having received a request from the Governor pursuant to Va. Code § 17.1-330, on March 16, 2020, the Chief Justice entered an Order declaring a judicial emergency for a period of twenty-one days, through April 6, 2020, for all district and circuit courts, recognizing the need to protect the health and safety of court employees, litigants, attorneys, judges, and the general public ("First Order"). 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. The Court unanimously extends 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"). The First, Second and Third Orders shall be collectively referred to as the "Emergency Declaration Orders." The period of time encompassed by these three Orders, from March 16 through May 17, 2020, shall be referred to as the "Period of Judicial Emergency."

As the Declaration of Judicial Emergency has been extended from March 16 to May 17, 2020, without interruption, it is ORDERED that:

1. The terms and requirements of this Court's First and Second Orders, as amended and clarified, shall continue in full force and effect through May 17, 2020, as if fully set forth herein.

2. As recognized in the First and Second Orders, in district and circuit courts the statutes of limitation and case related deadlines are tolled during the Period of Judicial Emergency pursuant to Va. Code § 17.1-330. For example, if a two-year statute of limitations would expire on a plaintiff's personal injury claim on April 16, 2020, the Period of Judicial Emergency (currently March 16 through May 17, 2020) would not be counted for purposes of the statute of limitations. Due to the tolling of the limitations period as a result of the Declaration of Judicial Emergency, once the emergency ends (currently May 17, 2020), the plaintiff will have an additional thirty-two (32) days to file suit.

3. In appeals from the circuit court to this Court for the Period of Judicial Emergency, with the exception of matters enumerated in this paragraph, the Emergency Declaration Orders toll the deadlines for filing the notice of appeal in the circuit court under Rule 5:9 and all filing deadlines in the circuit court pertaining to transcripts and written statements of fact as set forth in Rule 5:11, and for filing the petition for appeal in this Court under Rule 5:17(a)(1), for the total number of days of the Period of Judicial Emergency.[*] Appellate deadlines for filings in Part Five of the Rules of the Supreme Court of Virginia that are not calculated in reference to a circuit court filing, such as the brief in opposition under Rule 5:18, the reply brief under Rule 5:19,

[*] The Period of Judicial Emergency shall not be counted for purposes of calculating the deadline. *See* Black's Law Dictionary 1448 (6th ed. 1990) (defining "toll" as "[t]o suspend or stop temporarily"). If, for example, the circuit court entered final judgment on March 10, 2020, six days before the Judicial Emergency was declared, then the total number of days of the Period of Judicial Emergency shall not count toward the 90-day deadline for filing the petition for appeal under Rule 5:17(a)(1), and this deadline would be extended for a period of 84 days after the Judicial Emergency ends.

and briefs filed in granted appeals under Rule 5:26(c), are not tolled. The Emergency Declaration Orders do not toll the filing deadlines in this Court for appeals governed by Rules 5:21 or 5:22. Nor do the Emergency Declaration Orders toll filing deadlines for appeals from the Court of Appeals to this Court under Rules 5:14(a) and 5:17(a)(2), regardless whether such appeal was an appeal of right in the Court of Appeals. The Court of Appeals' Order of March 18, 2020, remains in effect. Further, the Court's statement regarding "Tolling of Appellate Deadlines" in the Court of Appeals available in the COVID-19 Appellate and Local Court Information document on Virginia's Judicial System website (http://www.vacourts.gov) is unchanged by the Emergency Declaration Orders, and parties may continue to seek extensions in the Court of Appeals if that is the appropriate Court under the Rules.

4. In district and circuit courts, the court may, in its discretion, hear any non-emergency matters, upon agreement of all parties, attorneys and witnesses, by two-way electronic audio-visual communication system using a secure communication platform such as Polycom or WebEx, or by telephone. Requests to participate by telephone should be liberally granted.

5. The court shall continue all in-person ceremonies, such as specialty court graduations and juvenile licensing ceremonies, unless, in the discretion of the court, such ceremonies can be conducted via a secure two-way electronic audio-visual communication system such as Polycom or WebEx, or by telephone, while protecting the health and safety of the participants and court personnel.

6. In any matter heard or considered and any ceremony conducted, either by secure two-way electronic audio-visual communication or by telephone, the court shall prohibit

in-person gatherings of ten (10) or more individuals at all remote sites and require physical distancing at those sites.

7. In any criminal case where the defendant is charged with a crime that carries a penalty of incarceration or in any case where the court is considering or reconsidering a sentence including some period of incarceration, before sentencing a defendant to incarceration or modifying or vacating such a sentence, the court shall in the exercise of the court's lawful discretion, consider (i) the potential health risks of the COVID-19 public health emergency, and (ii) any appropriate alternatives to incarceration.

This Order and the Period of Judicial Emergency may be extended for additional periods as provided in Va. Code § 17.1-330(E). It is so ORDERED.

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CHIEF JUSTICE DONALD W. LEMONS