VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 1st day of June, 2020.

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

On March 12, 2020, Governor Northam entered Executive Order 51 (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effective March 12, 2020, and is to remain in full force and effect until June 10, 2020, unless sooner amended or rescinded by further Executive Order.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, effective on Monday, March 16, 2020, to protect the health and safety of court employees, litigants, judges, and the general public ("First Order"). This First Order was effective through 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, effective April 6 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"). On May 6, 2020, the Court entered an Order modifying and extending the Declaration of Judicial Emergency through June 7, 2020 ("Fourth Order"). Paragraph 4 of the Fourth Order was amended on May 12, 2020 ("Amended Fourth Order"). On May 26, 2020, Governor Northam entered Executive Order 63 (2020), effective May 29, 2020, requiring, among other things and with some exceptions, that face masks be worn inside buildings.

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:

1) As provided in the First, Second, Third, Fourth, and Clarification Orders, for all cases in district and circuit courts the statutes of limitation and, except as otherwise provided in this Order, all other case-related deadlines, excluding discovery deadlines, shall continue to be tolled during the ongoing Period of Judicial Emergency (currently March 16, 2020, through June 28, 2020) pursuant to Va. Code § 17.1-330. Consistent with this Court's Fourth Order, in all civil cases, including jury trial cases that are currently suspended, deadlines and obligations arising out of Part Four of the Rules of the Supreme Court of Virginia are not tolled and, upon notice to the parties or their counsel, courts may impose and enforce case related pre-trial deadlines. 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, 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, all courts may hear in-person non-emergency matters and non-jury cases 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. Whether criminal or civil, whether the case is one that is handled in person or by video or telephone, it is not necessary for a party to obtain the agreement of any other party to bring a pre-trial motion before the court or set a non-jury trial. The parties are not relieved of notice requirements or other duties under pre-trial orders and compliance with applicable rules and statutes.

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.

6) 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. Judges shall take reasonable steps to minimize the risk of the spread of COVID-19 through social and physical distancing. In doing so, it may be necessary to limit the number of people present in the courthouse or a particular courtroom at any given time to ensure that those present can remain six feet apart.

7) In order to further minimize the risk of the spread of COVID-19 in addition to recommended social and physical distancing, all persons aged 10 or over entering the courthouse must wear a face covering that covers the nose and mouth. This includes judges, attorneys, deputy sheriffs, court reporters, employees, members of the public, contractors, and all others who work in or visit the courthouse. Within a courtroom, the presiding judge may authorize removal of a face mask to facilitate a proceeding. Individuals without a face mask will not be permitted to enter the courthouse except for those who cannot safely wear a face mask because of a health-related condition. The requirement to wear a face mask shall not apply to judges or magistrates to the extent they determine it inhibits their ability to effectively communicate, or to individuals who have difficulty breathing or who cannot remove a face mask without help or have other medical issues that make the wearing of a face covering unsafe.

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

9) 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 28, 2020).

10) 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.

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

12) It is ORDERED that, without exception and without regard to when any scheduling order was entered, all civil and criminal jury trials are suspended and shall be continued, and no jury trials shall occur in the Commonwealth for the duration of this order. Notwithstanding this suspension, upon notice to the parties or their counsel, courts may impose discovery deadlines, and other pre-trial deadlines in jury trial cases that are currently suspended. All jury trials scheduled for a date after June 28, 2020, are subject to a further period of suspension if the Declaration of Judicial Emergency is extended for additional periods as provided in Va. Code § 17.1-330(E).

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

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

This Order shall be in effect from June 8, 2020, through June 28, 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