

May 17, 2020

By email

Edward M. Macon, Counsel
Office of the Executive Secretary
Supreme Court of Virginia
P.O. Box 1315
100 North Ninth Street
Richmond, VA 23219-1315

RE: Reopening of General District and Circuit Courts for Non-Emergency Eviction Hearings During the Pandemic

Dear Mr. Macon:

Thank you for your prompt response to my letter. While we appreciate the steps taken to date, they are insufficient to secure the rights of tenants in housing protected by the CARES Act.

Mr. Hade's memo covers a Congressional Research Service memorandum recognizing that, at best:

[O]wners might not know whether Fannie Mae or Freddie Mac subsequently purchased their loans from their lenders because owners are not parties to these transactions. The opacity of this information raises questions about the enforcement of the protections.

The Congressional memo is correct. And if owners might not know, tenants are at an even greater disadvantage. Respectfully, your advisory (in response to my questions ##1 and 2) that “[a]ll courts have been alerted to the requirements of the CARES Act” sidesteps this problem and fails to meaningfully address my requests.

I am confident the Supreme Court seeks to ensure that our General District Courts to operate in accordance with the U.S. and Virginia Constitutions, and applicable federal law, including the CARES Act. It would thus seem incumbent on the Supreme Court of Virginia and the Office of the Executive Secretary to ensure—not just that lower level judges be “alerted” to the existence of CARES Act protections—but that they receive guidance reasonably calculated to make sure that our state courts are not being used to violate federal law. Indeed, the very reason Congress enacted 42 U.S.C. §1983 was to provide a cause of action against state officials who were unable or unwilling to enforce federal or state laws protecting private parties from injury by other private parties.

The Virginia Poverty Law Center reports that, beginning tomorrow morning at 8:30 AM and continuing over the next two weeks, [over 800 eviction cases](#) are scheduled to be heard across the Commonwealth. Surely the Court does not wish to play whack-a-mole with over 100 General District Courts left to their own devices to figure out what, if any, steps they must take to ensure compliance with the law—all at the principal expense of defendants who should not be in court at all, physically or electronically.

With that urgency in mind, I renew my request for the immediate issuance of an emergency order requiring the following:

- 1) All courts shall develop and publicly announce procedures for ensuring that no eviction lawsuit will be accepted for filing, and that no judgment or further proceeding will be taken on any unlawful detainer or eviction action filed on or after March 27, and during the federally protected period;
- 2) No court shall enter any judgment or order for possession or writ of restitution in an eviction case without first making a finding, supported by *admissible* evidence, that the eviction is not prohibited by the CARES Act;
- 3) No court shall hear or decide any eviction matter without first developing and publicly announcing procedures for ensuring that:
 - a. All defendants have been provided adequate advance notice of any restrictions on courthouse access, alternatives for appearing or defending by phone or videoconference, and how to utilize such alternatives;
 - b. High-risk litigants have been made aware that they may request and obtain continuances or reasonable accommodations, and may do so without difficulty; and
 - c. Defendants are informed of available free legal services in their communities;
- 4) Continuances shall be liberally granted for the purpose of seeking representation or for investigating whether the eviction pertains to a “covered dwelling,” as that term is defined in 15 U.S.C. § 9058(a)(1).

Nothing less will protect the persons intended to benefit from this provision of the CARES Act and demonstrate the legal system’s commitment to enforcement of applicable law.

I respectfully request your response by close of business Tuesday, May 18.

Sincerely,

Angela Ciolfi

cc: Hon. Donald W. Lemons, Chief Justice of the Supreme Court of Virginia