

May 14, 2020

By email and Fed Ex

Hon. Donald W. Lemons
Supreme Court of Virginia
P.O. Box 1315
100 North Ninth Street
Richmond, VA 23219-1315

Karl R. Hade, Executive Secretary
Office of the Executive Secretary
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Edward M. Macon, Counsel
Office of the Executive Secretary
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RE: Reopening of General District and Circuit Courts for Non-Emergency Eviction Hearings During the Pandemic

Dear Chief Justice Lemons, Mr. Hade, and Mr. Macon:

I write to seek your assistance in putting to an immediate end a problem that threatens untold numbers of low-income Virginians contending with the effects of the coronavirus pandemic: eviction from their homes by our General District Courts in violation of federal law.

As I am sure you are aware, the federal CARES Act, found at 15 U.S.C. § 9001 *et seq*, which went into law on March 27, 2020, provides for a 120-day moratorium on all evictions by two categories of landlords: landlords with federally backed mortgages, and landlords who participate in most federally subsidized housing programs, including public housing providers, Section 8 landlords, and housing providers with Low Income Housing Tax Credits. 15 U.S.C. § 9058.

Eviction proceedings are scheduled to recommence in many jurisdictions on May 18, 2020. However, neither this Court nor, to our knowledge, any of our General District Courts have promulgated adequate mandatory policies and procedures designed to ensure that eviction proceedings not go forward on behalf of such landlords. If this Court has promulgated such mandatory policies and procedures, I respectfully request that they be shared publicly on the Court's website.

Thousands of eviction cases are scheduled for hearings in many Virginia General District Courts over the next several weeks. Given the sheer number of landlords who are covered by the CARES Act, either as subsidized housing providers or because they hold federally backed mortgages, it is a foregone conclusion that a great many of these proceedings will have been brought by landlords falling within those categories, and who should therefore not be proceeding in court at this time.

Whether landlords act in derogation of their obligations out of ignorance (not knowing which entity owns their mortgage, or that the CARES Act applies to them) or deliberately, the maintenance of their eviction suits against federally protected tenants amounts to a violation of federal law and regulations, and should be prohibited in our state courts.

It is important to note that the CARES Act prohibits the *mere filing* of these eviction actions, 15 U.S.C. §9058(b), and thus even if a tenant appears in court and successfully defends against the eviction action, a federal violation occurred at the time of the unlawful filing, causing irreparable harm to the tenant by forcing them to divert time and resources to defending an unlawful eviction that could have been spent meeting the financial and health needs of their families. Because such filings are prohibited, courts receiving such filings may be acting beyond their jurisdiction and in violation of federal law.

We are also concerned that tenants expected to be in court starting as soon as next Monday, May 18, have not been informed of their right to request their cases be heard remotely, the process for doing so, and that they might not be allowed admission into courthouses. Instead, defendants have received confusing information about court closures, the availability of remote proceedings, and the requirements regarding in-person appearances. This will likely lead to many tenants losing their homes by default—an unconscionable outcome given that that staying at home is the best way to avoid spreading the coronavirus, and that Governor Northam directed all state entities subject to his jurisdiction to work to avoid evictions.

Finally, we are particularly concerned for our medically at-risk community members facing evictions and deciding between attending their court hearings, which may expose them to this deadly virus, or confronting homelessness if they do not attend. This harrowing decision raises grave due process flaws in reopening without thorough planning by the courts. (It is apparent that many lower courts reflexively decided to reopen, without heeding the most recent Declaration of Judicial Emergency’s directive that they first need to determine whether or not it is safe to do so.)

We respectfully request that you issue 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, 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).

These measures are necessary because numerous circumstances related to the COVID-19 pandemic impede the court from fulfilling its due process obligations, including the heightened risk to tenants who face homelessness during a pandemic; the inability of tenants who are medically vulnerable, or become infected or hospitalized, to participate meaningfully in proceedings; the inaccessibility of telephonic or video-conference hearings for many low-income tenants; and the complex factual and legal applications of the CARES Act itself.

These measures are also necessary because, due to inequities across economic and social systems, race so heavily influences outcomes in both housing policy and COVID-19 infection and mortality rates. Moreover, Virginia—known for having one of the highest eviction rates in the country—is ranked [No. 43](#) for its failure to take steps to protect people from losing housing in response to the pandemic.

Because of the urgency of this matter, we respectfully request that you confirm whether you will immediately proceed (or have proceeded) as we here request by May 19.

We also urgently request that you share with us all public records maintained by the Supreme Court of Virginia or the Office of the Executive Secretary relating to policies and procedures designed to ensure that eviction proceedings not go forward in violation of the CARES Act.

Thank you for your consideration of these requests and for your efforts to ensure public health safety in the courts as well as to safeguard the legal rights of Virginia’s most vulnerable residents.

Sincerely,



Angela A. Ciolfi

cc: Kristi S. Wright, Director, Legislative and Public Relations