

## EFFECT OF THE VIRGINIA SUPREME COURT'S ORDER DECLARING A JUDICIAL EMERGENCY IN RESPONSE TO COVID-19

April 7, 2020

On March 27, 2020, the Supreme Court of Virginia, pursuant to Va. Code § 17.1-330, renewed their March 16 order declaring a judicial emergency for all district and circuit courts throughout the Commonwealth (“Emergency Order”). The Emergency Order was first entered on March 16 at the request of Governor Northam to protect the health and safety of court employees, litigants, judges, and the general public from the COVID-19 public health emergency. The Emergency Order has been renewed from April 6 until April 26 and it requires that all applicable deadlines, filing requirements, and statutes of limitation to be tolled and extended until it expires. Further extensions may be necessary as the public health emergency develops.

### STATUTES OF LIMITATION ARE EXTENDED

While the Emergency Order is in effect, statutes of limitation will not expire for any pendent claims. Though the March 16 order did not expressly refer to statutes of limitation—the renewed order clarifies that litigants may rely on the tolling of statutes of limitation from April 6 through the duration of the Emergency Order (currently set to expire April 26). The Emergency Order states, “[A]ny applicable statute of limitations which would otherwise run during the period this order is in effect, are hereby *tolled and extended* . . . for the duration of this Order.” Since statutes of limitation are intended to be precise and expire on a date certain, understanding the mechanism by which they’re extended should be especially important to potential defendants. Though statutes of limitation will be *extended* for the duration of the Emergency Order, the *tolling* order indicates that Plaintiffs can expect to have the balance of time they were entitled to as of March 15, the last day before the Emergency Order, to file the Complaint<sup>1</sup>. For example, if the Emergency Order expires on June 1 then a statute that would have expired on March 20 (5 days after March 15) will be extended until June 6. The Courts remain open for the filing of civil actions—so most Plaintiffs are likely to file suit within the traditional statute of limitations to protect their interests. But the Emergency Order creates the opportunity for uncertainty regarding the expiration of the statute of limitations.

### COURT PROCEEDINGS SUBJECT TO EMERGENCY ORDER

The Supreme Court has ordered that all “non-essential, non-emergency court proceedings in all circuit and district courts be suspended and all deadlines extended.” Non-essential proceedings include all “civil, traffic, and criminal matters” as well as jury trials. Cases on hold will include medical malpractice claims, collections matters, and other claims of civil

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<sup>1</sup> See Va. Code 8.01-229. See Also *Baker v. Zirkle*, 226 Va. 7 (1983).

liability. During the period Virginia courts are subject to the Emergency Order, they will continue to docket and preside over emergency proceedings, such as “quarantine or isolation matters, arraignments, bail reviews, protective order cases, emergency child custody or protection cases, and civil commitment hearings.” In proceedings that cannot be postponed pursuant to the Emergency Order, courtroom attendance will be limited to attorneys, parties and necessary witnesses and members of the press.” Nothing about the order precludes the parties from moving forward by agreement with any issues such as factual investigation discovery, settlement negotiations, or mediation. Public health and court restrictions may also prevent necessary face to face investigation, interviews, depositions, and hearings which may cause delays in pending cases.

## LOCAL RULES MAY DIFFER

The Emergency Order does not “preclude the chief district and chief circuit judges from implementing additional local policies as needed.” However, the Supreme Court order establishes a precautionary floor as to the suspension of proceedings. Though custody and commitment hearings may still be a priority in one circuit court, another may restrict them or change the procedures for their adjudication. In [Fairfax County](#), which currently has the most cases of COVID-19 in Virginia, the Circuit Court has allowed parties to waive oral arguments by agreement.

Hancock Daniel’s [Medical Malpractice Defense](#) and [Medical Malpractice – Long Term Care/Assisted Living Facility](#) teams are prepared to assist with any issues or questions related to the coronavirus and the Supreme Court of Virginia’s Emergency Order(s). Our [COVID-19 Taskforce](#) will advise and assist employers on all concerns arising from the pandemic.

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