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SUPREME COURT OF VIRGINIA



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August 20, 2020

Dear Judges and Clerks,

As you know, the Judicial Emergency Order currently in effect (8th Order) and the Orders that have been in effect since June 29, 2020, require that everyone aged 10 or over (other than those with a medical excuse) 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, although the presiding judge may authorize removal of a face mask, that should occur only in extremely limited circumstances to facilitate a proceeding or for health concerns. Anyone who does not fall into one of these limited categories should be wearing a face covering at all times. In addition, everyone within a courtroom and within the courthouse should be practicing "physical distancing" by maintaining a physical separation of at least six feet from one another. Compliance with these protective measures is critical to protect the health and safety of all people in the courthouse, including the public, attorneys, litigants, clerks, court staff and members of the press.

The Supreme Court's 5th Order (effective June 8, 2020) required the courts of the Commonwealth to comply with guidance for transitioning from only emergency to routine operations ("transition guidance") provided by the Office of the Executive Secretary ("OES"). In the Supreme Court's 6th Order (effective June 29, 2020), and as incorporated by the 7th Order (effective July 20, 2020), and 8th Order (currently in effect), the Court required compliance with transition guidance from OES and information from the Centers for Disease Control and Prevention ("CDC") in order to minimize the risk of spread of COVID-19 during in-person court proceedings.

Both the transition guidance from OES and guidance from the CDC require enhanced cleaning and disinfection practices, and enhanced workplace safety measures, as well as the broader requirements for face coverings and physical distancing throughout every public space in your courthouses. Signage should be posted reminding everyone of these requirements which continue to be in effect.

In addition to the Court's Judicial Emergency Orders, transition guidance from OES, and guidance from the CDC, the Governor's Executive Order 63, Order of Public Health Emergency Five, effective May 29, 2020, includes a requirement to wear a face covering while inside buildings. This Executive Order plainly states: "The use of cloth face coverings does not replace the need to maintain six feet of physical social distancing, clean and disinfect frequently touched surfaces routinely in all public settings, stay home when sick, and practice frequent handwashing." These requirements have recently been reinforced by 16VAC25-220 (Emergency Temporary Standard - Infectious Disease Prevention, SARS-COV-2 Virus That Causes COVID-19) adopted by the Department of Labor and Industry, effective July 27, 2020.

Letter to Judges and Clerks
August 20, 2020
Page Two

The requirement for wearing face coverings should be implemented consistently with this Court's guidance. The 6th Order provides that the requirement does not apply to judges or magistrates *only* to the extent they determine it inhibits their ability to facilitate a proceeding, or where there are health concerns. If facilitating a proceeding and health concerns are not at issue, both magistrates and judges should be wearing an appropriate face covering.

Recently, I have received complaints from attorneys appearing in the local courts, who state that (i) some judges are not wearing a face covering, and are not requiring bailiffs, clerks, attorneys and litigants to wear a face covering, at all or when not speaking, and (ii) some courts are not enforcing the minimum six feet of physical separation or distancing. We are aware of one court where 13 complaints have been made by the public to the Virginia Department of Health regarding the court. Although the presiding judge may authorize removal of a face mask to facilitate a proceeding, or for health concerns, this should only occur in very limited circumstances.

We are learning more from medical experts about how COVID- 19 is spread through respiratory droplets that float in the air and spread the disease when others breathe that same air. If physical distancing and face coverings are not required and someone in the room has COVID-19, the risk that the virus will spread is greatly increased. Experts advise that physical distancing and wearing a face covering that covers the nose and mouth can have a significant impact on containing droplets from an infected person and protecting others who are in close proximity. Physical distancing and wearing a face covering are especially important in a courtroom, where people are required to be in the same room for a prolonged period.

As judges and clerks, you are the leaders of your courts. The public and those in your courthouse, including attorneys, litigants, clerks, court staff and members of the press, are dependent upon you to provide a safe courtroom and working environment. I believe you have a legal obligation to take all recommended precautions, and by requiring the wearing of a face covering in compliance with the orders of the Supreme Court of Virginia.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald W. Lemons".

Donald W. Lemons