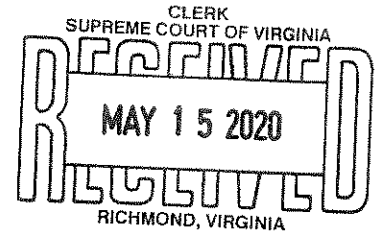


COPY

State of Virginia
In the Supreme Court



In re Kiair Martin and Michelle Powell)
)
 Petitioner,)
)
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)
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No. _____

Petition for Writ of
Prohibition

I. Introduction

1.1. This is a petition for a writ of prohibition under Va Code § 8.01-644. The petitioners seek to enjoin the Chief Judge of the Lynchburg General District from allowing that court to resume in-person hearings in residential eviction cases, as that court has not taken the necessary steps to assume jurisdiction over those cases.

1.2. Petitioners believe that the taking of evidence will be necessary for the proper disposition of the petition.

II. Parties and Jurisdiction

2.1. Petitioners are residential tenants who live within the jurisdiction of the Lynchburg General District Court. Actions for unlawful detainer have been filed against them in that Court, and are scheduled for hearings at 9:00 a.m on Monday, May 18, 2020.

Virginia Poverty Law Center¹
919 E. Main Street, Suite 610

Richmond, Virginia 23219
Phone: (804) 782-9430
Fax: (804) 649-0974

2.2. Hon. Sam Daniel Eggleston is the Chief Judge of the Lynchburg General District Court, a general district court established under Va Code § 16.1-69.7, and which hears and adjudicate actions for unlawful entry and detainer concerning residential rental properties within their territories under Va Code § 16.1-77. As Chief Judge, Judge Eggleston has the power to determine whether and when to open the Lynchburg General District Court for in-person eviction hearings.

2.3. This Court has original jurisdiction over petitions for writs of prohibition under Va Code § 17.1-309.

III. Summary of Claim

3.1. Because of the ongoing Covid-19 pandemic, this Court declared a judicial emergency in all district and circuit courts on March 16, 2020.

3.2. This Court's emergency order suspended "non- essential, non-emergency court proceedings in all circuit and district courts" originally through April 6, 2020. The order was extended twice--first to April 26, and again to May 17.

3.3. Because of the emergency order, residential eviction suits (generally being actions for unlawful entry and detainer under Va Code § 8.01-126) have generally been suspended since March 16.

3.4. On May 6, 2020, however, this Court entered an order authorizing all courts to resume in-person hearings of non-emergency matters on May 18, if such courts “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.” Fourth Order Modifying and Extending Declaration of Judicial Emergency in Response to Covid-19 Emergency, ¶ 4 (May 6, 2020).

3.5. Following this Court’s May 6 order, the Lynchburg General District Court decided to resume in-person hearings for residential unlawful detainer cases. Lynchburg General District Court has indicated that it will resume hearing such cases in-person at 9:00 a.m. on May 18 and continue hearing such cases in-person routinely thereafter.

3.6. However, the Lynchburg General District Court has not taken adequate steps to comply with the OES transition guidance, as required by the May 6 order.

3.7. In particular, the OES transition guidance recommends that courts:

Consider attaching notices to summonses, witness subpoenas, notices of hearing and show causes which provide the following information:

- Only parties and witnesses will be allowed in the courtroom and the number of persons allowed in the courtroom at the same time will be limited.
- If you have been ill or are currently experiencing symptoms such as

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919 E. Main Street, Suite 610

Richmond, Virginia 23219
Phone: (804) 782-9430
Fax: (804) 649-0974

shortness of breath, cough, or a fever, or if you have been exposed to someone who has been diagnosed with the coronavirus, please contact the clerk's office to reschedule your hearing.
-The court is conducting hearings by telephone and/or video conferencing. To request a remote hearing, please file a motion with the clerk's office.

3.8. Providing the recommended information to litigants, witnesses, and other relevant persons is critical to fulfill the due process rights of eviction defendants because this Court's emergency orders limit courthouse access to only "attorneys, parties, necessary witnesses, interpreters, court personnel, court reporters, bailiffs and those deemed necessary by the presiding judge, and members of the press where permitted by law." Order Extending Declaration of Judicial Emergency in Response to Covid-19 Emergency, ¶ 7 (Mar. 27, 2020). Even persons belonging to an admissible group may not enter court facilities "if they have, within the previous 14 days:

- a. visited China, Iran, South Korea, any European countries, or any other high-risk countries identified by the CDC;
- b. traveled domestically within the United States where COVID-19 has sustained widespread community transmission;
- c. been asked to quarantine, isolate, or self-monitor by any doctor, hospital, or health agency;
- d. been diagnosed with, or have had contact with anyone who has been diagnosed with, COVID-19;
- e. experienced a fever, cough, or shortness of breath; or
- f. resided with or been in close contact with any person in the above-mentioned categories.

Id., ¶ 12.

3.9. Despite this Court's order, the Lynchburg General District Court has not adopted the policies or procedures recommended in the OES. Without these notices, tenants facing eviction may be denied entry to the courthouse, deterred from defending, confused about how to respond, appear, or continue their case, or otherwise unable to defend.

3.10. Should the hearings resume on May 18, the Lynchburg General District Court will be acting outside its jurisdiction because that court is not authorized to hear cases except in compliance with the OES transition guidance.

3.11. This Court's May 6 order also states that "[a]ll courts should enter orders consistent with [the May 6] Order to advise their court users of new protocols and schedules consistent with this Order." Fourth Order Modifying and Extending Declaration of Judicial Emergency in Response to Covid-19 Emergency, ¶ 11 (May 6, 2020).

3.12. The Lynchburg General District Court has not entered any order advising users of any new protocols or schedules consistent with this Court's order, such as orders informing the public which persons may or may not enter the courthouse or what procedures to follow if unable to enter court or to request a remote hearing.

3.13. Should the hearings resume on May 18, the Lynchburg General District Court will be acting outside its jurisdiction because that court is not authorized to hear cases without having entered an order advising users of any new protocols or schedules.

3.14. In addition, during the judicial emergency, the federal government enacted a series of restrictions on residential eviction proceedings under the CARES Act, Pub.L. 116-136, §§ 4023-4024. For instance, § 4024(b) of the CARES Act prohibits the filing of certain unlawful detainer actions in properties that participate in federal housing programs or have federally-backed mortgage loans.

3.15. However, the Lynchburg General District Courts has not taken adequate steps to ensure either that cases are not filed in violation of the CARES Act, or that any such filings are identified and dismissed. Unless the Lynchburg General District Court takes such steps, it is likely that unlawful detainer actions prohibited by the CARES Act will be brought in that court.

3.16. When the hearings resume on May 18, the Lynchburg General District Court will almost certainly act outside its jurisdiction if they will unknowingly hear and enter rulings in cases brought unlawfully in violation of the CARES Act.

IV. Request for Relief

Virginia Poverty Law Center
919 E. Main Street, Suite 610

Richmond, Virginia 23219
Phone: (804) 782-9430
Fax: (804) 649-0974

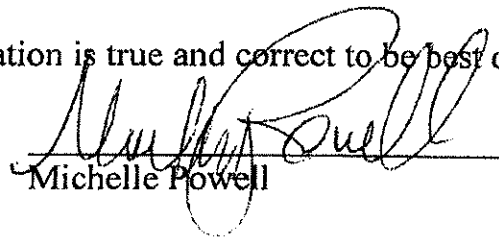
4.1. For all of the foregoing reasons, petitioners ask this Court to enter a writ of prohibition, restraining the Lynchburg General District Court from resuming in-person residential eviction hearings until such time as that court demonstrates having taken appropriate steps (a) to comply with the OES transition guidance, (b) notify court users, by written order, of new protocols and schedules made necessary by this Court's emergency orders, and (c) to prevent the filing of cases barred by the CARES Act or to identify and dismiss such cases before hearing them.

4.2. Petitioners further request their costs under Va Code § 8.01.-648.

4.3. Petitioners further request any additional relief to which they may be entitled by any law, or in the interests of justice.

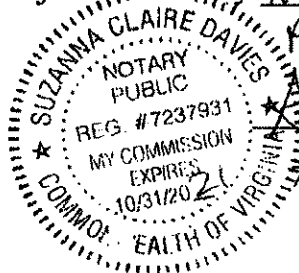
Petitioners swear or affirm that the information is true and correct to the best of knowledge, information and belief.

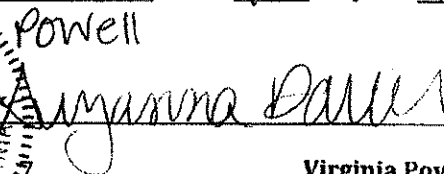
May 15, 2020
Date


Michelle Powell

Commonwealth of Virginia)
County (City) of Lynchburg)

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned Notary Public in and for the aforesaid jurisdiction, by Michelle Powell, this 15 day of May, 2020.





Virginia Poverty Law Center
919 E. Main Street, Suite 610
Richmond, Virginia 23219
Phone: (804) 782-9430
Fax: (804) 649-0974

Notary Public

My Commission Expires: 10/31/2021
My Notary Registration No. 7237931

May 15, 2020
Date

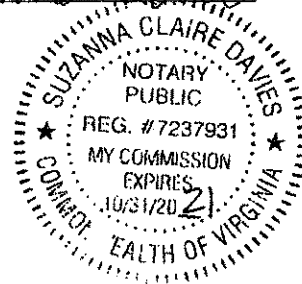
Kiair Martin
Kiair Martin

Commonwealth of Virginia)
County (City) of Lynchburg)

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned Notary Public
in and for the aforesaid jurisdiction by Kiair Martin, this 15 day of May, 2020.

Suzanna Claire Davies
Notary Public

My Commission Expires: 10/31/2021
My Notary Registration No. 7237931



Respectfully submitted this 15th day of May, 2020, by:

Jeremy P. White
Jeremy P. White, Esq.
VIRGINIA LEGAL AID SOCIETY, INC.
State Bar ID No. 48917
P.O. Box 6200
Lynchburg, VA 24505
Tel: (434) 846-1326
Fax: (434) 846-3826
Counsel for Petitioner



Steven M. Fischbach, Esq.

VIRGINIA POVERTY LAW CENTER

State Bar ID No. 94280

919 East Main Street, Suite 610

Richmond, VA 23219

Phone: 804-351-5266

FAX: 804-649-0974

Counsel for Petitioner

Virginia Poverty Law Center
919 E. Main Street, Suite 610

Richmond, Virginia 23219
Phone: (804) 782-9430
Fax: (804) 649-0974