IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9112

TWENTY-SIXTH EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER

ORDERED that:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. Subject only to constitutional limitations, all courts in Texas may in any case, civil or criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public—without a participant's consent:

a. except as provided in paragraph (b), modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than December 1, 2020;

b. in all proceedings under Subtitle E, Title 5 of the Family Code:

(i) extend the initial dismissal date as calculated under Section 263.401(a) only as provided by Section 263.401(b) or (b-1);

(ii) for any case previously retained on the court's docket pursuant to Section 263.401(b) or (b-1), or for any case whose dismissal date was previously modified under an Emergency Order of this Court related to COVID-19, extend the dismissal for an additional period not to exceed 180 days from the date of this Order;

c. except as this Order provides otherwise, allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a

party, attorney, witness, court reporter, grand juror, or petit juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means;

d. consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means;

e. conduct proceedings away from the court's usual location with reasonable notice and access to the participants and the public;

f. require every participant in a proceeding to alert the court if the participant has, or knows of another participant who has: (i) COVID-19 or flu-like symptoms, or a fever, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, sore throat, loss of taste or smell, congestion or runny nose, nausea or vomiting, diarrhea; or (ii) recently been in close contact with a person who is confirmed to have COVID-19 or exhibiting the symptoms described above;

g. take any other reasonable action to avoid exposing court proceedings to the threat of COVID-19.

3. Courts must not conduct in-person proceedings contrary to the *Guidance for All Court Proceedings During COVID-19 Pandemic* ("Guidance") issued by the Office of Court Administration, which may be updated from time to time, regarding social distancing, maximum group size, and other restrictions and precautions. Prior to holding any in-person proceedings, a court must submit an operating plan that is consistent with the requirements set forth in the Guidance. Courts must continue to use all reasonable efforts to conduct proceedings remotely.

4. Existing grand juries may meet remotely or in-person as long as adequate social distancing and other restrictions and precautions are taken to ensure the health and safety of court staff, parties, attorneys, jurors, and the public. Courts should consider extending the term of a grand jury under Section 24.0125 of the Texas Government Code and reassembling discharged grand juries under Article 19.41 of the Texas Code of Criminal Procedure.

5. A justice or municipal court must not hold an in-person jury proceeding, including jury selection or a jury trial, prior to December 1.

6. A district court, statutory or constitutional county court, or statutory probate court must not conduct an in-person jury proceeding unless:

a. the local administrative district judge for the county in which the court is located has, before the jury proceeding and after conferring with the judges in the county and the local public health authority, submitted a plan for conducting jury proceedings consistent with the Guidance issued by the Office of Court Administration for conducting jury proceedings;

b. to assist with coordination of local resources and to manage capacity issues, the court has obtained prior approval for that jury proceeding from the local administrative district judge and Regional Presiding Judge;

c. not more than five days before the jury proceeding, the local administrative district judge has consulted the local public health authority and verified that local health conditions and plan precautions are appropriate for the jury proceeding to proceed;

d. the court has considered on the record any objection or motion related to proceeding with the jury proceeding at least seven days before the jury proceeding or as soon as practicable if the objection or motion is made or filed within seven days of the jury proceeding; and

e. the court has established communication protocols to ensure that no court participants have tested positive for COVID-19 within the previous 30 days, currently have symptoms of COVID-19, or have had recent known exposure to COVID-19.

7. In criminal cases where confinement in jail or prison is a potential punishment, remote jury proceedings must not be conducted without appropriate waivers and consent obtained on the record from the defendant and prosecutor. In all other cases, including cases in justice and municipal courts, remote jury proceedings must not be conducted unless the court has complied with paragraph 6(d).

8. Except for non-binding proceedings, a court may not permit or require a petit juror to appear remotely unless the court ensures that all potential and selected petit jurors have access to technology to participate remotely.

9. The Office of Court Administration should issue detailed guidance to assist courts wishing to conduct remote jury proceedings and should offer, to the greatest degree possible, assistance to those courts in conducting the remote jury proceedings.

10. Pursuant to Sections 74.046 and 74.047 of the Texas Government Code, the Regional Presiding Judges are assigned the following duties:

a. ensure that all courts in each region are operating in full compliance with the Court's Orders and the Guidance issued by the Office of Court Administration;

b. ensure that all trial court judges in each region, including justices of the peace and municipal court judges, do not conduct in-person proceedings, including in-person jury proceedings, inconsistent with the Court's Orders and the latest Guidance issued by the Office of Court Administration;

c. report to the office of the Chief Justice of the Supreme Court any proceedings that are being conducted in the regions—and the court in which the proceedings are being conducted—that are inconsistent with the Court's Orders and the Guidance issued by the Office of Court Administration; and

d. assist each region's local governments and courts to ensure that courts have the ability to conduct court business.

11. The Office of Court Administration should coordinate with the Regional Presiding Judges to monitor jury and other court proceedings in Texas and the Texas Department of State Health Services regarding the public health situation in Texas and its regions. The Office of Court Administration should adjust its Guidance and make recommendations to the Court as necessary to ensure the health of court staff, parties, attorney, jurors, and the public.

12. In determining a person's right to possession of and access to a child under a court-ordered possession schedule in a Suit Affecting the Parent-Child Relationship, the existing trial court order shall control in all instances. Possession of and access to a child shall not be affected by any shelter-in-place order or other order restricting movement issued by a governmental entity that arises from the pandemic. The original published school schedule shall also control, and possession and access shall not be affected by the school's closure that arises from the pandemic. Nothing herein prevents parties from altering a possession schedule by agreement if allowed by their court order(s), or courts from modifying their orders on an emergency basis or otherwise.

13. An evidentiary panel in an attorney professional disciplinary or disability proceeding may—and must to avoid risk to panel members, parties, attorneys, and the public—without a participant's consent:

a. conduct the proceeding remotely, such as by teleconferencing, videoconferencing, or other means;

b. allow or require anyone involved in the proceeding—including but not

limited to a party, attorney, witness, court reporter—to participate remotely, such as by teleconferencing, videoconferencing, or other means; and

c. consider as evidence sworn statements or sworn testimony given remotely, such as by teleconferencing, videoconferencing, or other means.

14. This Order is effective October 1, 2020 and expires December 1, 2020, except as otherwise stated herein, unless extended by the Chief Justice of the Supreme Court.

15. The Clerk of the Supreme Court is directed to:

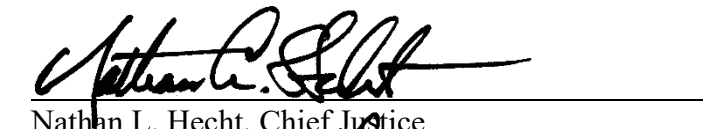
a. post a copy of this Order on www.txcourts.gov;

b. file a copy of this Order with the Secretary of State; and

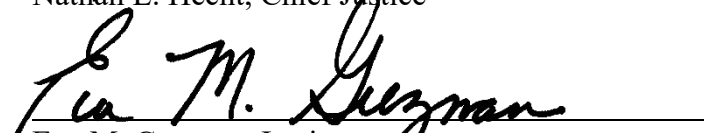
c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

16. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

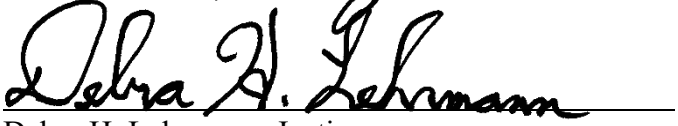
Dated: September 18, 2020



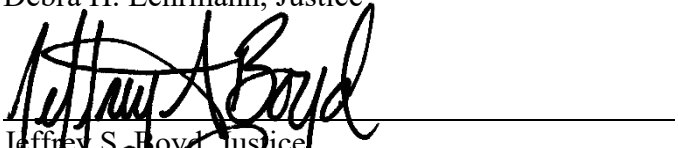
Nathan L. Hecht, Chief Justice



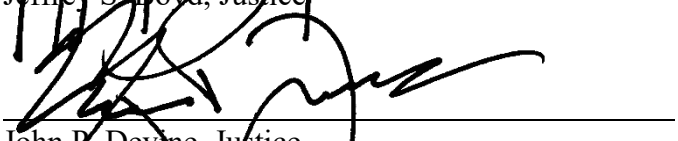
Eva M. Guzman, Justice



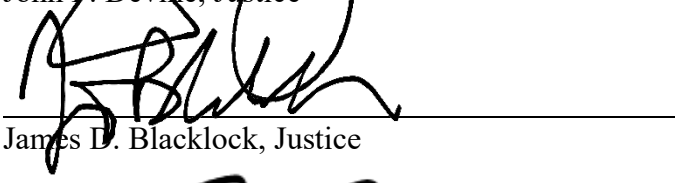
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice

J. Brett Busby, Justice

Jane N. Bland, Justice