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COURT OF APPEALS

Serial: **232824**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2020-AD-00001-SCT

IN RE: EMERGENCY ORDER RELATED TO CORONAVIRUS (COVID-19)

EMERGENCY ADMINISTRATIVE ORDER-14

The power of our government originated with and is derived from the people. The rights guaranteed therein are "instituted solely for the good of the whole." *See* Miss. Const. art 3, § 5. Public safety was a concern of the drafters of our Constitution and remains a paramount concern today. As such, the Court continues to balance personal rights with the constitutional obligation to remain open and accessible. *See* Miss. Const. art 3, §§ 24-25.

In prior Emergency Administrative Orders, the Court has recognized that the national and state emergencies created by Coronavirus (COVID-19) require appropriate measures to protect the health and safety of the citizens of this State. We continue to monitor the COVID-19 pandemic and to enter Orders as changing circumstances dictate.

Our first Emergency Administrative Order was entered on March 13, 2020. Since then, the Court has closely scrutinized the data provided by the Mississippi State Department of Health (MSDH) and has repeatedly consulted with the State Health Officer, Dr. Thomas Dobbs, and State Epidemiologist, Dr. Paul Byers, regarding the impact of COVID-19 on the citizens of our State. The Court has further tracked the evolving guidelines issued by both the MSDH and the Centers for Disease Control and Prevention (CDC).

With the exponential spread of COVID-19 throughout our State, Governor Reeves signed Executive Order No. 1507 on July 10, 2020, declaring that thirteen counties "are at a higher risk for the transmission of COVID-19; accordingly, additional jurisdiction specific measures are necessary to disrupt the spread of the COVID-19 virus within those counties to address and further limit person to person contact and other health and safety measures."[1] On Monday July 20, 2020, Governor Reeves extended the order, adding an additional ten counties to the list of those with stricter measures in place.[2]

The MSDH recommends that "[a]ll Mississippi residents should wear non-medical grade masks or homemade cloth face coverings when shopping, running errands, or otherwise away from home."[3] The CDC has recently affirmed that "revie[w] [of] the latest science . . . affirms that cloth face coverings are a critical tool in the fight against COVID-19 that could reduce the spread of the disease, particularly when used universally within communities."[4] Clear and convincing evidence exists that face coverings reduce the risk of transmission of COVID-19.

Throughout our Emergency Administrative Orders, the Court has recognized the necessity of balancing health risks presented by COVID-19 with the courts' constitutional and statutory duty to remain open and accessible. In light of the overwhelming evidence, I find that modification of prior Emergency Administrative Orders is warranted. The

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[1] *See* https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1507.pdf.

[2] *See* https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1509.pdf.

[3] *See* https://msdh.ms.gov/msdhsite/_static/14,21866,420.html#EO1507.

[4] *See* https://www.cdc.gov/media/releases/2020/p0714-americans-to-wear-masks.html.

aforementioned evidence, when coupled with the increasing transmission of the COVID-19 virus within this State, dictates that face coverings over the nose and mouth of all persons shall be required in every courtroom in this State, without exception, upon the entry of this Order.

Courts are unlike businesses, e.g., shops, stores, restaurants, salons, or houses of worship, where one's presence is a personal decision, voluntarily made. The presence of court personnel, including the judge, law clerks, court clerks, law enforcement, bailiffs, court reporters, counsel, parties, witnesses, jurors, and victims, is regularly required, and at times, they are in close proximity to each other. Others are commanded to attend court. While masks may be objectionable or pose a slight inconvenience to some, such inconvenience cannot prevent our courts from remaining open and accessible to all.

Given the pandemic nature of this emergency, and to ensure constitutional rights are protected in a manner consistent with the general welfare and health of all citizens of this State, the prior Emergency Administrative Orders in this matter are clarified and amended, as follows:

IT IS THEREFORE ORDERED:

1. Consistent with the Court's prior Emergency Administrative Orders 1-13, in my capacity as chief administrative officer of all courts in the state, I reiterate that all local and state courts—municipal, justice, county, chancery, circuit, and appellate courts—shall remain open to ensure the fulfillment of their constitutional and statutory duties. *See, e.g.,*

Miss. Const. Art. 3, § 24 ("All courts shall be open . . . and justice shall be administered without sale, denial, or delay").

2. Court personnel and all other persons appearing in the courtrooms shall be masked at all times, unless the presiding judge uses their discretion to permit the temporary removal, if necessary to insure the accuracy and integrity of the proceedings.

3. Because of the evolving nature of this pandemic, judges remain in the best position to make decisions for their courts. Individual judges continue to have discretion to control their dockets. Nothing in this Order prohibits any court in the state from conducting in-person proceedings, including trials, so long as that court utilizes appropriate caution, prudence, and otherwise complies with prior Orders of this Court.

4. All court proceedings shall be limited to attorneys, parties, witnesses, bailiffs, members of the press, and other necessary persons and staff, as determined by the trial judge.

5. Bailiffs should continue to prohibit congregating outside courtroom doors and enforce social distancing inside the courtroom.

6. Courts shall continue to limit the number of persons summoned for jury duty to the minimum amount of persons necessary. Prospective jurors should be provided a separate document with their summons indicating grounds for juror excuse and/or exemption, illness and/or personal hardship excuses, including those related to COVID-19, and the local court's requirements regarding COVID-19 precautions.[5] All prospective jurors should be informed that if they have been diagnosed with any illness or are primary caregivers for a

[5] Judges may obtain sample Juror Notice forms from the Judicial College.

vulnerable person who has been diagnosed with any illness, they shall contact the court by telephone. They shall not come to the courthouse before speaking with court personnel. All attorneys and parties shall be informed of the same and shall take the same precautions.

7. As of the date of this order, 84% percent of all deaths in our state occur in persons aged 60 and older. Therefore, during this emergency, judges are granted the authority to extend juror-age exceptions to persons 60 and older, if such persons desire to seek such exemption. This exemption shall be included in the separate Juror Notice.

8. All courts are urged to limit in-person, courtroom contact as much as possible by utilizing available technologies, including electronic filing, teleconferencing, and videoconferencing. *See, e.g.,* MRCrP 1.8(c) (outlining permissible proceedings for "[a]pperance by interactive audiovisual equipment, including video conferencing").

9. Consistent with prior Emergency Administrative Orders, to the extent that the utilization of remote technologies is prohibited, unavailable, or otherwise not feasible, certain in-person proceedings shall continue to be conducted by all local and state courts including, but not limited to:

a. Proceedings directly related to:

(1) Protecting the constitutional rights of all persons;

(2) Habeas corpus;

(3) Emergency child-custody orders;

(4) Relief from abuse and orders of protection;

(5) Mandatory youth court detention hearings for youth held in custody;

(6) Emergency mental-health orders;

(7) Emergency protection of elderly or vulnerable persons;

(8) Petitions for temporary injunctive relief;

(9) Issues involving the COVID-19 public-health emergency;

(10) Obtaining arrest and search warrants, and other proceedings required by law enforcement;

(11) Felony plea hearings;

(12) Ensuring the Mississippi Judiciary has met its constitutional requirements.

b. Department of Child Protection Services emergency matters related to child protection.

c. Any other emergency and time-sensitive matters, in the discretion of individual judges.

10. The following requirements for the use of "interactive audiovisual equipment" remain in effect in such proceedings:

a. a full record of the proceedings shall be made, which may include an electronic recording (digitally or on tape);

b. the court shall determine that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by interactive audiovisual means; and

c. provisions shall be made to allow for confidential communications between the defendant and counsel before and during the proceeding.

See MRCrP 1.8(b). This order does not suspend any requirement for defense counsel to participate in such proceedings, but such may include their remote participation via the use of interactive audiovisual equipment.

11. Courts shall continue to communicate effectively with the local bar, local officials, the public, and the state.

12. This Order may be modified, as circumstances may dictate. All other portions of earlier Emergency Administrative Orders that have not been modified and/or amended by this Order remain in full force and effect.

SO ORDERED, this the 23 day of July, 2020.

MICHAEL K. RANDOLPH,
CHIEF JUSTICE