Serial: **231075**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2020-AD-00001-SCT
&
No. 89-R-99038-SCT

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

EMERGENCY ADMINISTRATIVE ORDER-7

In Emergency Administrative Order-4, relating to the COVID-19 virus, the Court addressed the "procedures available for conducting initial appearances and bail review hearings." The Court "temporarily suspended" Rule 1.8 of the Mississippi Rules of Criminal Procedure's requirement that "defense counsel be present at the location with the defendant during the proceedings." And in Emergency Administrative Order-5, this Court urged trial and appellate courts "to limit in-person, courthouse contact as much as possible by utilizing available technologies, including electronic filing, teleconferencing, and videoconferencing."

Rule 1.8(c) of the Mississippi Rules of Criminal Procedure expressly prohibits "[a]ppearance by interactive audiovisual equipment," in the context of a "trial, probation violation hearing, or any felony plea and/or sentencing." MRCrP 1.8(c). *See also* MRCrP 10.1(b)(2)(A) (prohibiting a defendant's waiver of the right to be present "during the imposition of his/her sentence in a felony case"); MRCrP 27.3(a) (addressing probation-revocation hearings).

In Emergency Administrative Order-4, the Court determined that:

> the Office of the State Public Defender and the State are granted the authority to develop procedures based on available technology to ensure that people

> have access to the courts at this critical time while minimizing the risk of bringing this potentially deadly virus into one of our detention centers.

Based thereon, a Joint Motion for Partial Temporary Suspension of Rule 1.8(c) of the Mississippi Rules of Criminal Procedure was filed by the Attorney General for the State of Mississippi and the State Public Defender on March 25, 2020. The motion requests that the Court "temporarily suspen[d]" Rule 1.8(c) "to allow use of interactive audiovisual equipment to conduct probation violation hearings, felony plea hearings, and sentencing hearings." According to the motion, such action "would allow correction and detention centers to limit exposure to the virus by limiting the movement and transport of detainees, while still providing these individuals with access to the courts by the same means – interactive audiovisual equipment – used in other hearings."

After due consideration, the Supreme Court and the Chief Justice, in his capacity as chief administrative officer of all courts in the state, find that this motion should be granted in part. The Court finds that Rule 1.8(c) of the Mississippi Rules of Criminal Procedure should be temporarily suspended with respect to its prohibition on "[a]ppearance by interactive audiovisual equipment" in the context of a "probation violation hearing" and "any felony . . . sentencing." To the extent that Rule 1.8(c) is temporarily suspended, the Court also temporarily suspends Rule 10.1(b)(2)(A) of the Mississippi Rules of Criminal Procedure and its prohibition on a defendant's waiver of the right to be present "during the imposition of his/her sentence in a felony case . . . ."

The Court further finds that the following requirements for the use of "interactive audiovisual equipment" remain in effect in such proceedings:

> (1) a full record of the proceedings shall be made, which may include an electronic recording (digitally or on tape);
> (2) the court shall determine that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by interactive audiovisual means; and
> (3) 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.

IT IS THEREFORE ORDERED that the Joint Motion for Partial Temporary Suspension of Rule 1.8(c) of the Mississippi Rules of Criminal Procedure filed by the Attorney General for the State of Mississippi and the State Public Defender is hereby granted in part. Rule 1.8(c) of the Mississippi Rules of Criminal Procedure shall be temporarily suspended, until further order of the Court, with respect to its prohibition on "[a]ppearance by interactive audiovisual equipment" in the context of a "probation violation hearing" and "any felony . . . sentencing." To the extent that Rule 1.8(c) is temporarily suspended, the Court also temporarily suspends Rule 10.1(b)(2)(A) of the Mississippi Rules of Criminal Procedure, and its prohibition on a defendant's waiver of the right to be present "during the imposition of his/her sentence in a felony case[,]" until further Order of the Court.

IT IS FURTHER ORDERED that the following requirements for the use of "interactive audiovisual equipment" shall remain in effect in such proceedings:

> (1) a full record of the proceedings shall be made, which may include an electronic recording (digitally or on tape);

(2) the court shall determine that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by interactive audiovisual means; and
(3) provisions shall be made to allow for confidential communications between the defendant and counsel before and during the proceeding.

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.

SO ORDERED, this the 26 day of March, 2020.

MICHAEL K. RANDOLPH,
CHIEF JUSTICE