Supreme Court of Texas

Misc. Docket No. 21-9145

Forty-Fifth 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. The Forty-Third Emergency Order (Misc. Dkt. No. 21-9119) is renewed as amended.

3. Subject to constitutional limitations and review for abuse of discretion, all courts in Texas may in any case, civil or criminal, without a participant's consent:

a. 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;

b. 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;

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

d. 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 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, or diarrhea; or (ii) recently been in close contact with a person who is confirmed to have COVID-19 or exhibiting the symptoms described above;

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

4. Subject to constitutional limitations and review for abuse of discretion, justice courts and municipal courts may in any case, civil or criminal, without a participant's consent, modify or suspend the following deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than March 1, 2022:

a. trial-related deadlines and procedures; and

b. deadlines and procedures for pretrial hearings.

5. Justice courts and municipal courts that have not already done so should move swiftly to return to regular pretrial and trial proceedings as soon as reasonably feasible before March 1, 2022.

6. In any proceeding under Subtitle E, Title 5 of the Family Code, the dismissal date may be extended, without a participant's consent, as follows:

a. for any such proceeding that, on May 26, 2021, had a dismissal date that was previously modified under a prior Emergency Order Regarding the COVID-19 State of Disaster, the court may extend the dismissal date for a stated period ending no later than December 1, 2021;

b. for any such proceeding that, on May 26, 2021, had been previously retained on the court's docket pursuant only to Section 263.401(b) or (b-1), the court may extend the dismissal date for a stated period ending no later than February 1, 2022;

c. for any such proceeding that, on May 26, 2021, had not been previously retained on the court's docket pursuant to Section 263.401(b) or (b-1), the court may extend the initial dismissal date as calculated under Section

263.401(a) for a stated period ending no later than April 1, 2022; or

d. for any such proceeding that is filed on or after May 26, 2021, the court may extend the initial dismissal date as calculated under Section 263.401(a) only as provided by Section 263.401(b) or (b-1).

7. Courts may continue to use reasonable efforts to conduct proceedings remotely.

a. In criminal cases where confinement in jail or prison is a potential punishment, remote jury proceedings must not be conducted over the objection of the defendant or the prosecutor.

b. In all other cases, remote jury proceedings must not be conducted unless the court has considered on the record or in a written order 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. A timely filed objection may be granted for good cause.

c. Except in a non-binding jury proceeding, 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.

8. The chief justice of a court of appeals, the local administrative district judge, and the presiding judge of a municipal court are encouraged to adopt minimum standard health protocols for court participants and the public attending court proceedings that will be employed in the courtroom and in public areas of the court building, and have the authority to mandate compliance with those minimum standard health protocols.

9. The Office of Court Administration should issue, and update from time to time, best practices to assist courts with safely and effectively conducting in-person and remote court proceedings under this Order.

10. This Order is effective immediately and expires February 1, 2022, except as otherwise stated herein, unless extended by the Chief Justice of the Supreme Court.

11. 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.

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

Dated: November 23, 2021

JUSTICE DEVINE and JUSTICE BLACKLOCK dissent.

Nathan L. Hecht, Chief 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

Rebeca A. Huddle, Justice

Evan A. Young, Justice