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IN THE SUPREME COURT OF MISSISSIPPI

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

No. 2021-AD-00001-SCT

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

EMERGENCY ADMINISTRATIVE ORDER-21

From the onset of the national and state emergencies created by Coronavirus (COVID-19) in March 2020, the Court has issued a series of Emergency Administrative Orders to address the changing circumstances and the evolving guidance provided by health authorities. In these Orders, the Court has sought to properly balance individual rights, public health and safety, and the constitutional requirement that Mississippi state courts remain open and accessible. *See* Miss. Const. art. 3, §§ 24-25.

The most recent Order (Emergency Administrative Order-20 filed on May 20, 2021) considered the then-existing circumstances¹ and rescinded the vast majority of provisions from earlier Emergency Administrative Orders, “including the temporary suspension of any rule(s)” At that time, the Court cautioned that because the pandemic “remains ongoing, this Order may be modified, as changing circumstances may dictate.”

Unfortunately, circumstances have precipitously deteriorated, especially with respect to the Delta variant of COVID-19. On today’s date, State Epidemiologist Dr. Paul Byers reported to the Court that the Delta variant is much more contagious and spreading three

¹E.g., ample vaccine availability, declining infection and hospitalization rates, and guidelines that supported returning to normal activities.

times faster than other strains. As of August 2, 2021, there were 1,574 new COVID-19 confirmed infections in Mississippi. Two days later, on August 4, 2021, the number of new confirmed infections had more than doubled to 3,164.² These new cases are dominated by the Delta variant and a growing number of infections are found in individuals aged 40 or younger.³ COVID-19-related hospitalizations and ICU occupancy are rapidly rising to levels seen during the worst days of the pandemic in Mississippi, with multiple hospitals throughout the state at maximum capacity.⁴ Unvaccinated Mississippians account for the overwhelming majority of confirmed infections, emergency-room visits, hospitalizations, and deaths. Dr. Byers further stated that between June 1 and August 1, 2021, unvaccinated individuals accounted for 97% of COVID-19 cases, 89% of hospitalizations, and 82% of deaths. The latest guidance from the Mississippi State Department of Health (MSDH) continues to encourage eligible individuals to “[g]et a COVID-19 vaccination[,]”⁵ and recommends “[w]ear[ing] a mask in all indoor public settings, even if you are vaccinated.”⁶ Similarly, “[t]o maximize protection from the Delta variant and prevent possibly spreading it to others,” federal-health authorities now recommend “wear[ing] a mask indoors in public if you are in

²See https://msdh.ms.gov/msdhsite/_static/14,0,420.html#Mississippi

³See https://msdh.ms.gov/msdhsite/_static/resources/13324.pdf

⁴See https://msdh.ms.gov/msdhsite/_static/14,21994,420,873.html

⁵Only 34% of the state’s population has been fully vaccinated. See https://msdh.ms.gov/msdhsite/_static/resources/12130.pdf

Dr. Byers confirmed that, out of the 2,400 Mississippians who died of COVID-19 between Jan. 1 and July 22, 2021, only 37 (1.54%) had been fully vaccinated. He added that nearly all 37 of those “breakthrough deaths” involved high-risk patients aged 65 or older.

⁶See https://msdh.ms.gov/msdhsite/_static/14,21866,420.html#prevention

an area of substantial or high transmission.”⁷ According to Dr. Byers, every county in Mississippi presently constitutes “an area of substantial or high transmission.”⁸

Based upon the evolving nature of this pandemic and the latest information available to the Court, in my capacity as chief administrative officer of all courts in the state, I find that Emergency Administrative Order-20 should be superseded by the following provisions.

IT IS, THEREFORE, ORDERED:

1. Consistent with the Court’s prior Emergency Administrative Orders, 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. In fulfilling the aforementioned duties, individual judges have the discretion to control their own dockets. In exercising their discretionary powers, individual judges are strongly encouraged to refer to the guidance issued by the MSDH for preventing the spread of COVID-19 (e.g., recommendations on social distancing; personal-protective measures, including face coverings; and capacity limitations for gatherings).

3. If not otherwise prohibited, all courts are urged to limit in-person, courtroom contact as much as possible by utilizing available technologies, including electronic filing, teleconferencing, and videoconferencing.

⁷See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>

⁸See https://msdh.ms.gov/msdhsite/_static/resources/8634.pdf

4. Rule 1.8(c) of the Mississippi Rules of Criminal Procedure provides that “[a]pppearance by interactive audiovisual equipment, including video conferencing, may be permitted in the discretion of the court at any proceeding except that this Rule shall not apply to any trial, probation violation hearing, or any felony plea and/or sentencing.” That Rule is hereby temporarily suspended to permit the use of “interactive audiovisual equipment” in probation-violation hearings, felony-plea hearings, and felony-sentencing hearings.⁹ The following requirements for the use of “interactive audiovisual equipment” shall be 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) after consultation with counsel, the defendant shall provide written consent to the use of “interactive audiovisual equipment” during the proceedings;
- (3) the court shall determine that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by interactive audiovisual means; and
- (4) provisions shall be made to allow for confidential communications between the defendant and counsel before and during the proceedings.

This provision does not suspend any requirement for defense counsel to participate in such proceedings, but with respect to all proceedings permitted to be conducted via “interactive audiovisual equipment” (including probation-violation and felony-sentencing hearings), Rule 1.8(b) of the Mississippi Rules of Criminal Procedure is temporarily suspended to permit defense counsel’s remote participation via the use of interactive audiovisual equipment. The lone exception is with respect to felony-plea hearings at which counsel shall be physically

⁹To the extent that Rule 1.8(c) is temporarily suspended, the Court also temporarily suspends Mississippi Rule of Criminal Procedure 10.1(b)(2)(A) 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”

present with the defendant during the proceedings, with each taking appropriate and/or mandated measures to minimize the potential transmission of COVID-19 (e.g., face coverings over the nose and mouth; social distancing).

5. To the extent that the permissible utilization of remote technologies is 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.

6. Individual judges are authorized to determine the manner in which in-person proceedings are to be conducted. Any in-person proceedings shall be limited to attorneys, parties, witnesses, security officers, members of the press, and other necessary persons, as determined by the trial judge. However, the discretion extended to individual judges with respect to in-person proceedings may not include prohibitions on voluntary mask-wearing by individuals, unless it impairs the accuracy, integrity, or safety of the proceedings.

7. Individual judges have the discretion to postpone jury trials scheduled through Friday, September 10, 2021.

8. Individual judges have the discretion to instruct their clerks that jury summonses should not be sent to jurors that would be returnable to any date prior to Monday, September 13, 2021. If jury summonses are sent, they should include a separate document to alert prospective jurors of recognized 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.¹⁰ Additionally, all prospective jurors should be informed that if they have been diagnosed with any illness or are primary caregivers for a vulnerable person who has been diagnosed with any illness, they shall contact the court by

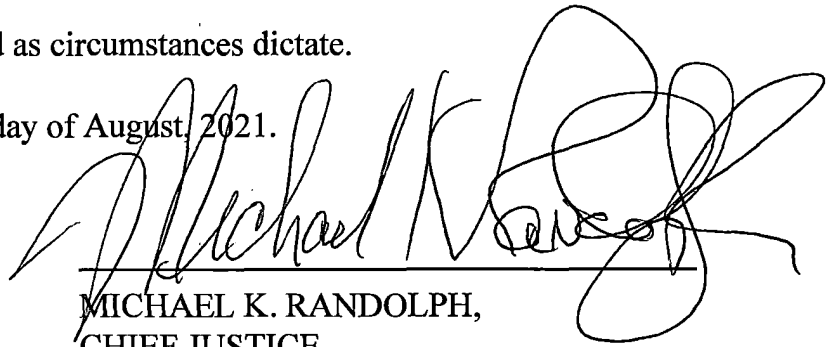
¹⁰Judges may obtain sample Juror Notice forms from the Mississippi Judicial College. *See, e.g.,* <https://mjc.olemiss.edu/wp-content/uploads/sites/134/2020/07/COVID-court-docs-17th-Circuit.pdf>

telephone. They shall not come to the courthouse before speaking with court personnel. All parties, attorneys, and witnesses shall be informed of the same and shall take the same precautions.

9. Individual judges presiding over drug-intervention courts are authorized to modify the scheduling of drug testing and home-supervision visits as they see fit through Friday, September 10, 2021.

10. This Order may be modified as circumstances dictate.

SO ORDERED, this the 5 day of August, 2021.

A handwritten signature in black ink, appearing to read "Michael K. Randolph", written over a horizontal line. The signature is stylized and cursive.

MICHAEL K. RANDOLPH,
CHIEF JUSTICE
FOR THE COURT