IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST & SECOND JUDICIAL DISTRICT

RE: CRIMINAL & CIVIL MATTERS BEFORE JUDGE PETERSON

GUIDELINES FOR REMOTE HEARINGS
(Updated: May 21, 2020)

Upon agreement of the parties, the Court will conduct proceedings using an e-platform. The Court will allow access only to attorneys of record and persons identified prior to the proceeding.

- When scheduling a hearing using an e-platform, counsel for each party should provide an email address and contact number for counsel of record appearing on behalf of their respective party, any witnesses and/or other persons observing the proceedings online. This information should be provided in advance of the proceedings so that they will receive a secure link to the hearing.
- Pursuant to the Emergency Administrative Order-6 of the Supreme Court and due to the COVID-19 healthcare emergency, witnesses may be sworn remotely. Witnesses will be allowed into the proceeding by video as they are needed to testify.
- Attorneys, who are involved in the proceeding, are required to open their video feed when addressing the Court, but are permitted to mute their video when they are not addressing the Court. Prior approval from the Court is required to proceed by audio only.
- Any persons observing the proceeding should mute their visual feed at all times to reduce distractions for the Court while conducting the proceeding.
- All witnesses are required to have video access capability if they intend to present testimony to the Court unless they have been provided approval by the Court to allow audio access only.

- All microphones should remain on mute unless instructed by the Court to open the mic. Persons addressing the Court should refrain from eating or chewing gum while their video feed is open.
- The Court Reporter will be making a record of the proceedings and the Court Reporters' transcript is the official record of the proceeding for appeal or other official purposes for which a record may be required.
- If the parties intend to admit any exhibits, they should be pre-marked and forwarded to the Court Reporter and the Judge's Law Clerk in advance and marked for identification purposes only. A list of pre-marked exhibits should be forwarded as well for the convenience of the Judge, Court Reporter and parties.

Inasmuch as stated by Emergency Administrative Orders -7 and -11, which temporarily suspended Rule 1.8 of the Mississippi Rules of Criminal Procedure, plea hearings/felony sentencing and revocation proceedings may be conducted using audiovisual devices. A waiver of in court appearance must be completed and filed on MEC prior to the scheduled proceeding.

IN CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST/SECOND JUDICIAL DISTRICT

STATE OF MISSISSIPPI **PLAINTIFF**

VS. **CASE NO. _____**

_____ **DEFENDANT**

WAIVER OF IN COURT APPEARANCE

In accordance with Emergency Administrative Order-7 from the Mississippi Supreme Court, I hereby waive my personal, in court appearance in the case listed above for the [plea / motion hearing/ probation violation hearing / felony sentencing] scheduled for _____, 2020 at _____.

I hereby enter this waiver with the acknowledgment and understanding of the following:

1) I have maintained contact with my attorney. I understand the nature of the proceeding that will be held on the date listed above and have discussed with my attorney any questions I have about the proceeding.

2) This waiver is effective only for the proceeding noted above.

3) I will be required to appear and participate by use of interactive audiovisual equipment.

I have read the above conditions of my waiver of appearance and have discussed these conditions with my attorney. I understand these conditions and I am not under the influence of drugs or alcohol. I enter this waiver with the understanding that my personal, in court appearance is unnecessary for this proceeding. No one has forced or threatened me to enter this waiver, and I am entering this waiver freely and voluntarily. This waiver is signed the _____ day of _____, 2020.

_____
DEFENDANT

I hereby certify that I am counsel for the Defendant and that I have informed the Defendant of the nature of this waiver and the proceedings that shall be held on the day for which the Defendant is waiving his personal presence. I believe the Defendant understands this waiver and the requirements that he maintain contact with me and appear at all future proceedings. I believe the Defendant is entering this waiver freely and voluntarily and with a full and complete understanding of his responsibilities.

_____
Counsel for the DEFENDANT

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

FILED

MAY 07 2020

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Serial: **231687**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2020-AD-00001-SCT

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

EMERGENCY ADMINISTRATIVE ORDER-11

The Court continues to monitor the COVID-19 pandemic and enters Orders as empirical data and changing circumstances dictate. Local judges and their staff, in conjunction with local bar associations and elected officials, remain in the best position to balance the public-health risks in their communities related to COVID-19, while fulfilling their constitutional and statutory duty to keep our courts open.

Our first Emergency Administrative Order was entered on March 13, 2020. Since then, this Court has monitored and closely scrutinized the empirical data provided by the Mississippi State Department of Health ("MSDH") and has 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 most recent MSDH-published data[1] reflects that of Mississippi's eighty-two counties, only one county has reported zero cases, and forty counties have reported two or fewer deaths.[2] Nearly forty-

[1]*See* https://msdh.ms.gov/msdhsite/_static/14,0,420.html

[2]The following counties have reported two or fewer deaths: Alcorn, Amite, Benton, Choctaw, Claiborne, Copiah, Covington, Franklin, George, Greene, Grenada, Issaquena, Jasper, Jefferson, Jefferson Davis, Lawrence, Leake, Marshall, Montgomery, Newton, Noxubee, Panola, Perry, Pontotoc, Prentiss, Quitman, Sharkey, Simpson, Stone, Tallahatchie,

three percent of all deaths in Mississippi were residents in long-term care facilities. And only seven of the 396 reported deaths occurred without significant, multiple underlying conditions.[3] Additionally, nearly eighty-eight percent of all deaths in Mississippi were persons sixty years and older; only one death occurred in an individual twenty-nine years or younger; and there have been no deaths in persons eighteen years or younger.

Based on the latest information available to the Court, we find that modification of our prior Emergency Administrative Orders is warranted.

IT IS THEREFORE ORDERED:

1. In counties with two or fewer reported deaths attributed to COVID-19 by the MSDH as of the date of entry of this Order,[4] judges may instruct their clerks that jury summonses may be sent to jurors that would be returnable on or after May 18, 2020. The jury summonses should include a separate document to alert prospective jurors of recognized grounds for juror excuse and/or exemption, and should address illness and/or personal-hardship excuses related to COVID-19. *See, e.g.*, Miss. Code Ann. §§ 13-5-23, 13-5-25 (Rev. 2019). In such counties, individual judges also have the discretion to postpone jury trials through June 12, 2020.

Tate, Tishomingo, Tunica, Walthall, Warren, Wayne, Webster, Winston, Yalobusha, and Yazoo.

[3]The most significant underlying conditions referenced are hypertension, cardiovascular disease, diabetes, obesity, lung disease, neurological conditions, renal disease, immuno-compromised, and liver disease.

[4]*See* footnote 2 *supra*.

2. In all other counties, judges shall instruct their clerks that jury summonses should not be sent to jurors that would be returnable to any date prior to June 15, 2020. The jury summonses should include a separate document to alert prospective jurors of recognized grounds for juror excuse and/or exemption, and should address illness and/or personal-hardship excuses related to COVID-19. *See, e.g.*, Miss. Code Ann. §§ 13-5-23, 13-5-25.

3. Each judge presiding over drug-intervention courts is authorized to modify the scheduling of drug testing and home-supervision visits as they see fit through June 12, 2020.

4. We continue to urge limits on in-person courthouse contact, when appropriate, by utilizing available technologies, including electronic filing, teleconferencing, and videoconferencing. 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 in 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.

5. The trial courts remain authorized to exercise their sound discretion in controlling their general dockets (e.g., setting deadlines, scheduling hearings and non-jury trials) by case-specific actions or general orders, subject to compliance with any applicable provisions of Paragraphs 1, 2, and 4. Judges and chancellors throughout the State have been innovative in reducing the number of in-person proceedings, but now have expressed a desire to reinstitute in-person proceedings, taking into consideration any objection by the parties and/or their attorneys. Nothing in this Order prohibits a court from conducting in-person, non-jury proceedings, so long at that court utilizes appropriate caution and prudence, and remains compliant with prior Orders of this Court and the guidelines issued by the MSDH and the Centers for Disease Control and Prevention ("CDC"). In extending such discretion, the Court notes that the CDC has observed that "[e]ach community is unique" and "appropriate mitigation strategies will vary based on the level of community transmission,

characteristics of the community and their populations, and the local capacity to implement strategies." Moreover, the specific resources and the nature of facilities vary across the State (e.g., courtroom and courthouse layouts, the number of judicial employees, alternative buildings which may be designated by the boards of supervisors and found lawfully designated by the acting judge). Since the MSDH has deemed this "a rapidly changing situation[,]" which it and the CDC "continue to closely monitor[,]" judges are urged to consult the available resources disseminated by those agencies for current information in making all determinations and their decisions which implicate in-person courthouse contact (e.g., recommendations on capacity limitations for gatherings; social distancing; personal-protective measures, including face coverings). *See* https://msdh.ms.gov/msdhsite/_static/14,0,420.html and https://cdc.gov/coronavirus/2019-ncov/community/index.html

6. 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.

7. It is the Judiciary's responsibility to ensure constitutional rights are protected during this national emergency. This Order may be amended, extended, or otherwise modified, as circumstances may dictate.

SO ORDERED, this the 7 day of May, 2020.

MICHAEL K. RANDOLPH,
CHIEF JUSTICE