

Supreme Court of Texas

Misc. Docket No. 22-9022

Forty-Ninth 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-Seventh Emergency Order (Misc. Dkt. No. 22-9005) 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. In any proceeding under Subtitle E, Title 5 of the Family Code, the dismissal date may be extended by the trial court, without a participant's consent, as follows:

a. 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;

b. 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

c. 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).

5. The Regional Presiding Judge of a trial court's administrative judicial region may further extend the dismissal date in paragraph 4 without a participant's consent upon good cause shown by the requesting trial court. Before requesting further extension of the dismissal date by the Regional Presiding Judge, the trial court should consider the use of alternative dispute resolution under Section 153.0071 of the Family Code and Section 154 of the Civil Practice and Remedies Code. Any extension or extensions granted by the Regional Presiding Judge, whether granted under this Order, the Forty-Seventh Emergency Order, or both, must not exceed 60 days cumulatively.

6. 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.

7. 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.

8. 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.

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

10. 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.

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

Dated: March 22, 2022.

JUSTICE DEVINE and JUSTICE BLACKLOCK dissent.

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", written over a horizontal line.

Nathan L. Hecht, Chief Justice