

Judges, Clerks, and Court Staff:

### **Supreme Court Issues Two New Emergency Orders Regarding Jury Trial Delay and Statute of Limitations**

Today, the Supreme Court issued the [22nd Emergency Order Regarding the COVID-19 State of Disaster](#) (expires September 30 unless renewed). The order renews, as amended, paragraphs 3-10 and 12-13 of the 18<sup>th</sup> Emergency Order (which was set to expire August 31). The order requires:

- **No jury proceedings permitted, including jury selection and jury trials, prior to October 1**, except as discussed below.
  - OCA is directed to coordinate with the Regional Presiding Judges and local administrative judges, to assist trial courts in conducting a **limited number of jury proceedings prior to October 1** and to submit a report to the Court outlining observations and making recommendations regarding procedures for jury proceedings.
    - So far, 5 jury trials have been conducted and 24 more, including 2 fully virtual trials, are scheduled for August. Trial court judges who have jury proceedings which might be appropriate as one of the limited jury trials should coordinate with their local administrative judge and regional presiding judge. Once that coordination has occurred, the Regional Presiding Judge will alert OCA of the potential trial for further discussion.
  - A trial conducted as one of the limited jury proceedings permitted to proceed must:
    - Be at the request of the judge presiding over the case;
    - Ensure adequate social distancing and other restrictions and precautions are taken;
    - Take all reasonable steps to protect the parties' constitutional and statutory rights;
    - Require the admonishment of petit jurors as appropriate to ensure that proper attention is given by each juror and that outside influence is removed;
    - Permit OCA to observe the processes used during the proceeding so that OCA can prepare its report to the Court and develop best practices for other courts' use; and
    - For proceedings where petit jurors appear remotely, all potential and selected jurors must be ensured access to technology to participate remotely (except summary jury trials).
    - **Consent of the parties is not required.**
- Petit and grand jurors are permitted to participate remotely. OCA has obtained equipment that will allow jurors to participate remotely in a jury trial.
- **Courts are prohibited from holding any in-person proceedings without first submitting and having acknowledgment from the Regional Presiding Judge of an operating plan that is consistent with OCA's [Guidance for All Court Proceedings During COVID-19 Pandemic](#).**
- **Courts are required to continue to use all reasonable efforts to conduct proceedings remotely.**
- Courts are permitted to **suspend or modify any deadlines or procedures**, whether prescribed by statute, rule, or order, **for a stated period ending no later than September 30**, except that in parental termination cases filed by the government, the dismissal date for any case previously retained on the court's docket can be extended for an additional period not to exceed 180 days from the date of this Order.
- Extends the authority of a court, without a participant's consent, to allow or require anyone involved in any hearing, deposition, or other proceeding of any kind, to participate remotely; to consider as evidence sworn statements made out of court or sworn testimony given remotely,

out of court; to conduct proceedings away from the court's usual location with reasonable notice and access to the participants and the public; to require every participant to alert the court of COVID-19 symptoms or exposure; and to take any other reasonable action to avoid exposing court proceedings to the threat of COVID-19.

In the [21<sup>st</sup> Emergency Order Regarding the COVID-19 State of Disaster](#) issued last Friday, the Supreme Court renewed, as amended, paragraph 11 of the 18<sup>th</sup> Emergency Order to extend the statute of limitations deadline for any civil case that fell between March 13 and September 1 to September 15.

#### **Grand Jury Impanelment Template Permits Courts to Select Grand Jurors**

As a reminder, OCA has approved impanelment of grand juries without further coordination as long as the court follows the grand jury impanelment procedure in the [pre-approved template](#). If a court uses this template, please remember to submit the [grand jury reporting form](#) as required. OCA has received 26 grand jury impanelment reports, but if you have used the template procedure, please submit your report as soon as possible. The information from the reports will be used in preparation of OCA's report to the Supreme Court of Texas.

#### **Attorney General Issues Opinion on Authority of Judges to Require Face Coverings**

In [Opinion No. KP-0322](#) (issued August 3), Attorney General Paxton responded to a request for opinion on the authority of judges to require face coverings in courtrooms, courthouses, and county buildings, and how to resolve differences in separate branch orders that conflict. The opinion states that:

- A commissioners court may require any person entering a courthouse or other county-owned or controlled building to wear a facial covering;
- A county judge operating under a local disaster order could require a person to wear a facial covering when occupying a courthouse or other county-owned or controlled building;
- **Judges possess broad inherent authority to control orderly proceedings in their courtrooms, and pursuant to that authority, they could require individuals in the courtroom to wear facial coverings;**
- **In addition, because of the Supreme Court's emergency orders requiring all judges to comply with guidance promulgated by the Office of Court Administration, which requires facial coverings by all individuals while in the courthouse, courts may require any person entering the courthouse in which they preside to wear a facial covering while in the courthouse;**
- Under Executive Order GA-29, individuals who fail to comply can be fined up to \$250 for an individual's second violation of a mask requirement;
- In addition, public officials may deny entry to those individuals refusing to wear a facial covering; and
- Issues of conflicting orders issued by various local officials within the same county should be resolved by coordinating with each other. Which official's order would prevail in any particular circumstance may raise separation of powers issues and would be determined after reviewing the specific orders at issue and the corresponding authority of the public officials to issue those orders.

If you have any questions or concerns related to anything in this guidance, please do not hesitate to reach out by email at [coronavirus@txcourts.gov](mailto:coronavirus@txcourts.gov). Thank you for your continued efforts during this difficult time.

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