

**FILED BY**

*KS*  
**MAY 29 2020**

Thomas M. Gould, Clerk  
U. S. District Court  
W. D. OF TN. Memphis

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

**IN RE: CONTINUED COURT )  
OPERATIONS UNDER THE ) Administrative Order No. 2020-26  
EXIGENT CIRCUMSTANCES )  
RESULTING FROM COVID-19 )  
OUTBREAK )**

---

The CARES Act, Title V, § 15002(b)(3)(A), provides that upon the determination of the Judicial Conference of the United States “that emergency conditions due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID-19) will materially affect the functioning of either the Federal courts generally or a particular district court of the United States,” the chief judge of any judicial district covered by the finding is permitted to authorize the use of video teleconferencing (or telephone conferencing where video teleconferencing is not reasonably available) for certain proceedings. The Judicial Conference of the United States made such a determination on March 29, 2020, thereby triggering the Chief Judge’s authority to allow video teleconferencing in this District.

On March 17, 2020, the Court entered Administrative Order No. 2020-12, In Re: Court Operations Under the Exigent Circumstances Resulting From COVID-19 Outbreak, in response to President Trump’s March 13, 2020, declaration that the COVID-19 outbreak was a national emergency, and in light of guidance considered from the Centers for Disease Control and Prevention (“CDC”), as well as federal, state, and local public health authorities, in order to protect the health, safety, and welfare of the public and Western District of Tennessee Court employees.

On March 30, 2020, the Court entered Administrative Order No. 2020-17, recognizing that emergency conditions exist throughout the District, as found by the Judicial Conference of the United States under the CARES Act, and specifically found that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure could not be conducted in person without seriously jeopardizing public health and safety, and thus permitted the use of video teleconferencing, or telephone conferencing if video teleconferencing was not reasonably available, in such cases. The Court further found that

if a judge in an individual case found, for specific reasons, that such a plea or sentencing could not be further delayed without serious harm to the interests of justice, the judge was permitted, with the consent of the defendant after consultation with counsel, to use video conferencing, or teleconferencing if video teleconferencing was not reasonably available, for the felony plea or sentencing in that case.

On April 3, 2020, the Court entered Administrative Order No. 2020-19, extending and otherwise modifying its March 17, 2020 Administrative Order, in response to the ongoing health and safety concerns related to the COVID-19 outbreak. On April 21, 2020, the Court entered Administrative Order No. 2020-21, extending and otherwise modifying its March 17, 2020 Administrative Order 2020-12, through May 31, 2020.

The Court has continued to monitor the spread of the COVID-19 outbreak in this District and updated guidance from the CDC and federal, state, and local public health authorities. Consistent with the best information available, the Court has adopted a phased resumption of in-person proceedings. Therefore, the Court hereby extends and otherwise modifies its April 21, 2020 Administrative Order No. 2020-21, and any previous Administrative Order not otherwise specifically extended, modified or repealed, for implementation of Phase I of the Court's reopening beginning June 1, 2020 as follows:

- 1) In-person court proceedings should continue to be minimized using video and teleconferencing to the greatest extent possible, and continuation of telework shall be encouraged whenever possible and feasible with judiciary operations, keeping initial staffing to a minimum as follows:
  - (a) No in-person civil proceedings will be conducted unless the civil action is a case of significant public importance, a delay in hearing any motion or other issue raised in the action would cause harm to a party or parties, and the Presiding Judge determines the interest in a prompt determination of the issues substantially outweighs the public health risks of a courtroom hearing; and
  - (b) The Court may conduct in-person criminal proceedings when either (i) the defendant had a Skype hearing during the courtroom closure period and did not consent to video (causing the case to be held over to Phase I) or (ii) the judge in a particular case finds that an in-person hearing is deemed "necessary." Initial appearances, arraignments, bond and detention hearings, and other in-person criminal proceedings will be conducted on a schedule determined by the magistrate judge assigned to criminal duty and will continue to be conducted by video conferencing or as directed by the magistrate judge; and

- (c) Those who must conduct in-person proceedings during Phase I should limit such proceedings to no more than ten (10) people, adhere to strict social 6-foot distancing and hygiene protocols, and make every effort to “prescreen” supervisees and clients to determine that they exhibit no COVID-19 symptoms.
- 2) All judges are encouraged to continue to conduct all other civil and criminal proceedings via video conferencing and telephone conferencing proceedings in accordance with the CARES Act, Administrative Order No. 2020-17, and all subsequent Administrative Orders addressing COVID-19 issues.
- 3) Limited Grand Jury proceedings are permitted based on procedures agreed to and followed by the United States Attorney.
- 4) All civil and criminal jury selections and jury trials scheduled to commence now through July 31, are hereby CONTINUED until further notice.
- 5) Due to the Court’s reduced ability to secure an adequate number of jurors and the public health declarations made by the President of the United States, the World Health Organization, the Governor of the State of Tennessee and the governing bodies of the cities in which the Court sits, as well as the Judicial Conference of the United States, the time period of the continuances implemented by this Administrative Order will be excluded under the Speedy Trial Act, as the Court specifically finds that the ends of justice served by ordering the continuances outweigh the best interests of the public and each defendant in a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A).
- 6) Additional Protocols and Procedures for Persons Appearing in Person for Court
  - (a) All persons entering a court facility must follow all building rules adopted for the building in which the proceeding is being held. Participants may not enter the building or may be removed from the building if they fail to comply with building rules and screening protocols.
  - (b) Everyone in the courtroom will wear a face covering over their mouth and nose, as recommended by the CDC. A judge may request that a participant remove a face covering for a limited purpose.
  - (c) Gloves may be worn but are not required. The USMS may require detainees to wear gloves.
  - (d) The CDC’s recommended social distancing guidelines will be followed. The courtroom will be marked to indicate the distances to be kept between the participants. Because of the need to maintain social distancing among the participants, limited seating will be available for the public.

- (e) Probation and Pretrial Services Officers may attend in-person hearings remotely, minimizing the number of people in the courtroom. If a lawyer or the judge needs an officer to be present in person, the officer must be notified by the close of business the day before the hearing.
  - (f) Hand sanitizer and other cleaning material will be available for the participants in the courtrooms and should be used.
  - (g) Cleaning protocols between hearings will be followed.
  - (h) If any person who appeared in person in court develops COVID-19 symptoms or tests positive for the coronavirus, that person must report that information immediately to the chambers of the Presiding Judge or the Judge's case manager.
- 7) Public Access to Video Teleconferencing and Telephone Conferencing. Members of the public and media may attend video conference or telephone conference proceedings. Any person who wishes to attend must obtain instructions from the Presiding Judge for connecting in advance of the proceeding.
- (a) During any video or telephone proceeding, the courtroom deputy will mute the microphone of any person, including a media representative, who is not a party to the action, counsel of record, or a witness in the immediate proceeding.
  - (b) Consistent with existing court policies for in-person proceedings, all photography, videography, recording, broadcasting, or streaming of any kind, either by audio or video, of any proceeding conducted by video teleconferencing or telephone conferencing is prohibited. Violations of the rule may result in sanctions against the offending party, just as if the violation had occurred as part of an in-person proceeding held in the courtroom.
  - (c) Nothing in this provision abridges the judicial officer's authority to close the courtroom or seal the proceedings under appropriate circumstances.
- 8) Media Access to In-Person Proceedings. Members of the media may attend in-person proceedings, subject to the Court's plan for reopening and any other appropriate limitations set by the Presiding Judge to protect the health and safety of all participants.
- (a) All members of the media will be subject to the screening protocol implemented by the building in which the proceeding will take place to the same extent that the public is subject to that protocol. Media representatives may not enter the building if they fail to comply with building rules and screening protocols.
  - (b) Media representatives will also be subject to any other requirements set forth in the reopening plan to the same extent that the public is subject to those requirements.

- (c) If access is restricted in the interest of public safety and health, a media representative may present a request for access to the Presiding Judge. If the request establishes good cause, access will be permitted, either in-person or by remote access conducted by video conference or teleconference during the COVID-19 national emergency.
- (d) Photography, videography, recording, broadcasting, or streaming of any kind, either by audio or video, of any proceeding conducted in-person remains prohibited under established court policy.
- (e) Nothing in this provision abridges the judicial officer's authority to close the courtroom or seal the proceedings under appropriate circumstances.

The CARES Act requires the Chief Judge to review the authorization after ninety (90) days. Prior to June 26, 2020, the Court will review its authorization for video teleconferencing and telephone conferencing to determine whether to extend it further.

The Court will continue to evaluate existing circumstances and updated guidance from the CDC and federal, state, and local public health authorities, to determine whether circumstances warrant a transition to Phase II of the Court's reopening plan.

The public is encouraged to continue utilizing available Court services while following all applicable public health guidelines.

FOR THE COURT this May 29, 2020,

s/ S. Thomas Anderson  
S. THOMAS ANDERSON  
CHIEF UNITED STATES DISTRICT JUDGE