

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

In re: Administrative Orders of the U. S. District Court Case No. 3:40-mc-0011

ARTHUR JOHNSTON, CLERK

By: *K. Shearer*, Deputy Clerk

SPECIAL ORDER # 13

On March 13, 2020, the United States District Court for the Southern District of Mississippi entered a Special Order [52] addressing the Coronavirus pandemic. After that, the pandemic grew exponentially in the United States and this district. In response, then President Donald Trump declared a national emergency and later signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020. Among other things, the CARES Act authorizes the use of video and telephonic conferencing, under certain circumstances, for various criminal proceedings during the COVID-19 emergency. The Judicial Conference of the United States also found that the pandemic has affected and will continue to materially affect the functioning of the federal courts generally. By statute, the declaration of emergency and relevant CARES Act provisions were set to expire on the one-year anniversary of the initial declaration unless the President renewed it under 50 U.S.C. § 1622(d). President Joe Biden did so on February 24, 2021; accordingly, the Judicial Conference's finding of emergency conditions remains in effect.

To protect the public, attorneys, litigants, and those that work in or for the Southern District of Mississippi, the Court has entered twelve special orders, seven of which [52, 53, 57, 60, 61, 63, and 81] curtailed in-court proceedings. Each time, the Court considered, among other factors, the reported cases of COVID-19 and the rate at which the virus was spreading.

Since the last special order in January 2021, vaccines have become more widely available and the numbers of new cases has dramatically fallen. For example, whereas the seven-day average of new cases in January 2021 reached nearly 2,500 per day, the current average is below

400. Moreover, the rates of deaths, hospitalizations, and patients in ICU have steadily declined since peaking in January. And while local restrictions still apply, the Governor of Mississippi has lifted state-wide restrictions. In short, conditions now warrant resumption of some court functions that have been suspended.

That said, the pandemic is not over. The CDC is still recommending steps to mitigate transmission, some courthouses remain subject to local restrictions, and the Court has an obligation to protect the health of those participating in trials, including jurors summoned for duty. The Court has therefore adopted a comprehensive jury-resumption plan. *See* <http://156.124.188.239/sites/default/files/Coronavirus/Covid-19%20Jury%20Action%20Plan%20REV%20%28August%202020%29.pdf>. The plan includes steps such as staggering jury selections, limiting the number of trials in each courthouse, requiring social distancing, requiring masks, providing face shields, providing retractable shields in the courtrooms to separate jurors and trial participants, deep cleaning of the courtrooms, providing hand sanitizers, and other similar measures.

While currently necessary, these measures limit the number of trials the Court can conduct because it lacks the physical space and protective equipment to fully reopen. Accordingly, the Court will begin by allowing jury trials in single-defendant criminal cases that are expected to take no more than one week to try. Such trials will be scheduled during the April and May 2021 criminal-trial calendars. The Court will then begin setting longer trials and those with multiple defendants in June—conditions permitting. The Court begins with the shorter, single-defendant trials for two primary reasons. First, starting with the shorter cases will allow more defendants to have their day in court sooner. Second, longer trials, and those with multiple defendants, create additional safety risks. Social distancing is more difficult with additional

parties and attorneys, and the longer the trial lasts, the greater the possibility that someone associated with it might contract the virus, thus requiring a continuance or other actions. It therefore makes sense to try the shorter cases now and the longer cases as conditions improve.

Attempting to conduct jury trials without these safeguards and limitations would create unacceptable safety risks and impair the Court's ability to obtain an adequate spectrum of jurors, potentially leading to a miscarriage of justice. So, while a limited number of cases may be set for trial, the ends of justice outweigh the best interests of the public and the defendants in a speedy trial as to the criminal matters that are not set. 18 U.S.C. § 3161(h)(7)(A). Indeed, trying those other cases would place the public (including witnesses and jurors) and the defendant in jeopardy. To be clear, this is not a matter of general congestion on the Court's calendar. *See* 18 U.S.C. § 3161(h)(7)(C). On the contrary, the Court wants to try as many cases as it can, but it is limited by physical space, supplies, resources, and the nature of the virus itself.

In addition, because many criminal defendants have been incarcerated since before the pandemic began, the Court must generally address their trials before turning to the civil docket. There may though be instances where civil trials must go forward. For example, there are divisions where conducting civil trials would not interfere with—or remove resources from—conflicting criminal trials. That said, criminal trials will take precedence for now, and all civil jury trials are hereby continued unless the presiding judge orders otherwise.

As in prior orders, the Court notes that the situation remains fluid, as does the guidance on safe practices. It therefore makes sense to allow the presiding judges to assess the circumstances of their cases and their division in real time to determine whether it would be appropriate to conduct jury trials and other in-person hearings. The fact that some judges may proceed with trials or in-person hearings in some contexts does not mean that they would be

advisable in all divisions or in all contexts. The judges will make those determinations. In addition, conducting hearings in whole or in part by video conferencing will be allowed based on the same findings and under the same parameters initially adopted in Special Order #2.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. This Order supersedes all previous Special Orders.
2. Effective immediately and running until further order from this Court, all civil jury trials and all criminal trials that are not designated for trial are continued as are any related deadlines. Due to the Court's ongoing efforts to provide a safe courtroom and the limitations noted above, the period of the continuances for jury trials implemented by this Order are excluded under the Speedy Trial Act, 18 U.S.C § 3161(h)(7)(A).
3. All other in-court hearings and proceedings may go forward at the presiding judge's discretion, including proceedings that involve the attendance of a detainee. As noted above, judges in some divisions may conclude that detainees should not appear in person, and for that reason, certain findings, as required by the CARES Act and as set forth in paragraph 5 below, are being made.
4. For all matters set for in-court proceedings, and all bankruptcy proceedings, the following conditions apply:
 - A. Counsel must notify the presiding judge (or bankruptcy trustee) and opposing counsel if that attorney or any individuals the attorney intends to bring to the courthouse have any of the following risk factors:
 - Persons who a doctor, hospital, or health agency has asked to self-quarantine;
 - Persons who have been diagnosed with, or have had contact with anyone who has been diagnosed with, COVID-19;

- Persons with fever, cough, shortness of breath, or loss of smell or taste; or
- Any other persons who would raise a reasonable concern of exposure.

Counsel must contact persons they wish to bring to the courthouse and ask whether they have these risk factors. If so, counsel must give notice as soon as possible, but no later than 24 hours before the proceeding. The presiding judge or trustee will have sole discretion to determine whether the proceeding should be delayed or can go forward, perhaps by alternative means.

B. Anyone entering the courthouse will be screened as provided below.

C. Anyone entering the courthouse must wear masks while in any common area of the courthouse and in the courtroom unless speaking during the proceeding. Counsel are instructed to bring their own masks and advise those attending to bring masks.

Additional masks will be made available if necessary.

D. Each courtroom will be cleaned after each court session (which could include more than one proceeding). Presiding judges will determine how cleaning should occur during individual proceedings (e.g., cleaning counsel table, the lectern, or witness box).

E. Participants in hearings, as well as spectators, must observe social distancing.

5. Although in-person proceedings are allowed, judges and counsel are still encouraged to utilize video conferencing and teleconferencing to the extent possible to avoid unnecessary disruption in the cases and exposure to the virus. To that end, the Court makes the following additional findings with respect to criminal proceedings addressed in the CARES Act.

A. The Court has reviewed the conditions in this district daily since the pandemic began. Acting under Section 15002(b)(1) of the Act, the Chief Judge has—at least every 90-days—reviewed and renewed the finding that video conferencing and

teleconferencing remain necessary. The Court hereby again re-authorizes the use of video conferencing, or teleconferencing if video conferencing is not reasonably available, for all events listed in Sections 15002 of the CARES Act.

B. Under Section 15002(b)(2), the Court further specifically finds that felony pleas under Federal Rule of Criminal Procedure 11 and felony sentencings under Rule 32 cannot be conducted in person in every circumstance without seriously jeopardizing public health and safety. As a result, if judges in individual cases find, for specific reasons stated in the record, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice, the judges may use video conferencing for felony pleas and sentencings in those cases and may use teleconferencing if video conferencing is not reasonably available.

C. Video conferencing (or alternatively teleconferencing) as described in paragraphs A and B may not occur unless the defendant consents after consultation with counsel. Consent must be in writing.

D. All counsel wishing to conduct proceedings by video conference must comply with the Court's Video-Conferencing Plan as posted on the Court's website.

6. Grand juries have been operating during the pandemic with approval of the Chief Judge.

Grand juries may continue under the following limitations.

A. Grand jurors must appear voluntarily and so indicate on the record.

B. The United States Attorney shall implement protocols to protect the health of the grand jurors and others who may come in contact with them.

Any deviation from these conditions will require notice and approval by the Chief Judge.

7. All pre-trial detainees must be taken to the appropriate holding facility as determined by the United States Marshals Service (USMS), or its agents or designees, for medical screening before appearing in court for any proceeding. The presiding judge must be notified before transport to the courthouse if the detainee exhibits risk factors.

8. The USMS, in conjunction with the Court Security Officers (CSOs), shall have the authority to screen any visitor to a federal courthouse within the district and prevent them from entering if they present a risk of infecting others. The USMS is directed to continue utilizing the screening procedures it previously implemented. If an individual is stopped, the USMS or CSO must immediately notify the presiding officer by telephone. This could include the presiding federal judge, the Clerk of Court, the presiding bankruptcy trustee, the Chief Probation Officer, United States Attorney, or head of any other building tenant. The presiding officer will then have authority to decide how the matter should be handled, including entry with appropriate precautions.

The Court recognizes that it is impossible to cover all possible contingencies and that the situation remains fluid. This Order is therefore designed to give the presiding officers flexibility to address issues as they arise while implementing necessary safeguards. This Order remains in place until further order of this Court.

SO ORDERED, this the 16th day of March, 2021.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE